

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANADIAN PACIFIC RAILWAY COMPANY

(the "Company")

- and -

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
(SYSTEM COUNCIL NO. 11)**

(the "Union")

**Re: Erin Crawford
30- Day Suspension**

Arbitrator

Richard I. Hornung, Q.C.

For the Company

Diana Zurbuchen – Manager Labour Relations

Dave Pezzaniti – Director Labor Relations

Jeff Switzer – General Manager S&C

Kevin Ehnes – Director S&C

For the Union

Denis Ellickson – Counsel

Lee Hooper – General Chairman

Brad Kauk – Regional Representative

Randy Roberts – Local Representative

Erin Crawford - Grievor

Hearing

September 24, 2020

December 1, 2020

Calgary, Alberta

I

1. On July 30, 2019, Erin Crawford (the “Grievor”), was assessed a 30-day suspension for: “*The crossing deactivation failure on June 27, 2019*”. The Form 104 (Company; Tab 1) states that the Rules which the Grievor violated were: “S&C *Recommended Practice 1024 V06-GCWS Temporary Deactivation Canada*”.
2. The Union acknowledges the Grievor’s breach of the Rules. The only issue is the appropriateness of the 30-day suspension.
3. The Grievor (28) was hired by the Company on November 30, 2016. She qualified as an S&C Maintainer in January 2018 and was assigned to the Edmonton South territory.
4. Prior to the present dispute, the Grievor had never been disciplined by the Company.

II**Incident**

5. On June 27, 2019, the Grievor was assigned to deactivate a crossing in the Leduc Subdivision for a Maintenance of Way crew who were replacing a frog at mile 80.06.
6. When she arrived at the site, the job briefing had already been concluded. In the deactivation process which was to follow, the Grievor would be operating as Sub-Foreman under the protection of Foreman Dhillion pursuant to the *Recommended Practice 1024 V06*. Accordingly, prior to deactivating the crossing the Grievor retained Sub-Foreman protection from Mr. Dhillion.

7. Following the deactivation, the Grievor advised Mr. Dhillion that she deactivated the crossing. She put her truck on the rails and was in a position to apply the required bonding following the frog installation.
8. As train 468 approached the site and sought instructions to proceed through the work area, the Grievor was advised to clear the track. She removed the high rail and cleared her Sub-Foreman protection with Mr. Dhillion.
9. As confirmed in Mr. Dhillion's investigative statement (Q. 22), when the Grievor reported clear, she did not provide any restriction. However, she advised him that the crossing was still deactivated. Thereafter she left the crossing to attend the washroom.
10. There is no dispute that the Grievor did not place a 103g on the crossing. Instead, she assumed that Mr. Dhillion would advise the train crew of the crossing restriction when he gave them his instructions to proceed through his TOP limits.
11. Train 468 noticed the deactivated crossing as they approached it and were able to stop in time and manually attend to the crossing of the train.
12. After this came to his attention, Foreman Dhillion contacted the Grievor and, in their discussion, he asked if she had a 103g. She told him that: "*No, that is your job*". Foreman Dhillion told her that it was, in fact, her job and that she should have been at the crossing personally.
13. In her investigation, the Grievor stated:

... I am sincerely sorry for this incident. I followed policy 1024 for deactivation and Rule Book for Engineering Employees rule 4.3 (d) (iii) as well as 8.3 (a). Foreman Bobby Dhillion was notified that the crossing was deactivated before the incident. This incident and statement has made me aware that I must take further action to insure that there is additional protection on the crossing (ie) informing RTC by Radio or Phone that the crossing has been deactivated for track work and that a 103g or T&E 13.3e must be applied to protect

the crossing. Due to this incident I suggest there should be something implemented on the TOP and Deactivation book where both parties need to sign that the deactivation is in place.

III

Argument

14. The Union argues that the Grievor had not been informed that she was required to contact the RTC to protect the crossing when applying a deactivation. She understood that this was the responsibility of the Foreman who held the TOP.
15. It asserts that the Grievor had, to that point, followed procedure by first obtaining Sub-Foreman protection from Foreman Dhillion; obtaining a deactivation ticket from the service operation desk; calling her Manager to do a check list review; and only then deactivating the crossing. Further, after she deactivated the crossing, she contacted Mr. Dhillion and advised him of the same.
16. The Union points out that there was no discussion between the Grievor and Mr. Dhillion as to who was responsible for protection of the crossing until after the fact. The Grievor assumed that since Mr. Dhillion was in contact with the crew of the train 468 that he would advise the crew and protect the track.
17. It argues that, in the circumstances, the 30-day suspension is too severe given the Grievor's lack of training and her acceptance of responsibility for her role in the breach of the *Practice Rules*.
18. The Company, for its part, points out that the Grievor failed to ensure that manual protection of the crossing was in place. In this case, the Grievor violated S&C *Recommended Practice* and allowed a warning system to fail to activate for the presence of a train.

19. It takes the position that irrespective of whether or not her failure was due to a misunderstanding or misapprehension of her responsibilities, the fact remains that she failed to ensure the manual protection of the crossing was in place as required.
20. Given the seriousness of the breach of her employment obligation, the penalty imposed is reasonable in the circumstances.

IV

Decision

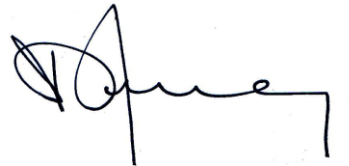
21. Initially, the Union argued the fact that the Company took until August 5 to issue the discipline – when the investigation occurred on July 8 – should be taken into consideration when assessing the appropriate suspension here. However, the Grievor was paid full hours while being held out of service up to and including August 2, 2019. She did not suffer any loss of wages as a result.
22. Regarding the discipline imposed: while I have taken into consideration the Grievor's relative inexperience and her misunderstanding of her responsibilities, I have also taken into consideration her breach of a major rule violation, including the fact that she left the crossing when she knew Train 468 was approaching and was, thereafter, absent when it arrived.
23. The deactivation and activation of crossings is one of the most safety critical tasks an S&C Maintainer performs. The Grievor's violation, however inadvertent or based on a misunderstanding, led to the possibility of a train collision with a member of the public passing through a deactivated crossing. As noted in *CN Railway Company vs. Canadian Signal and Communication System Council #11* (IBEW):

The responsibilities of an S&C Maintainer are clearly among the most highly safety-sensitive in the railway industry. The proper functioning of signals, whether signals to trains operating on main line or secondary tracks, or level crossing signals for the protection of motorists, can truly be said to have a life and death

dimension. The prospect of a level crossing giving the appearance of having crossing signals to caution motorists against an oncoming train, when in fact those signals are not functioning, is an obviously grave situation. Fortunately, in the case at hand, no accident occurred and a train crew communicated the problem before any tragedy did happen.

24. The parameters of the Company's *Hybrid Discipline Policy* provides that for a breach as disclosed in the circumstances here, the penalty warranted is set between 20-days to 45-day suspension up to and including dismissal.
25. Having regard to all the circumstances, the penalty imposed here is within the range of reason.
26. Accordingly, the grievance is dismissed.

Dated this 23rd day of December 2020.

A handwritten signature in black ink, appearing to read 'R. Hornung', with a stylized flourish at the end.

**RICHARD I. HORNUNG, Q.C.
ARBITRATOR**