AH 723

IN THE MATTER OF ARBITRATION

BETWEEN:

CANADIAN PACIFIC RAILWAY

(The “Company”)

-and-

TEAMSTERS CANADA RAIL CONFERENCE

(The “Union”)

Phillip Elsmore Dismissal
Grievance No. 501-02-601

Arbitrator:
Richard I. Hornung, Q.C.

For the Company:
Diana Zurbuchen - Manager, Labour Relations
Francine Billings - Manager, Labour Relations

For the Union:
Ken Stuebing - Counsel
Chris Yeandel - Local Chairperson Locomotive Engineers - Montreal
Joe Bishop - Senior Vice General Chairperson Locomotive Engineers - MacTier
Ed Mogus - General Chairperson Locomotive Engineers - Oakville
Phillip Elsmore - Grievor

Hearing
March 1, 2021
Via Zoom

AWARD

I

1. Prior to the commencement of the hearing the parties filed the following Joint Statement of Issue:

DISPUTE

The dismissal of Locomotive Engineer Phillip Elsmore of Montreal, Quebec.

JOINT STATEMENT OF ISSUE

Following an investigation, Mr. Elsmore was dismissed as per the 104 as follows:

"a formal investigation was conducted on June 16, 2020 to develop all the facts and circumstance in connection with your "alleged inaccurate wage claims made in the month of April 2020". At the conclusion of that investigation, it was determined that the investigation record as a whole contained substantial evidence proving you falsified wage claims on eight occasions in the period of April 2020. Please be advised that you are hereby Dismissed from Company Service for the following reason(s): For conduct unbecoming of an employee, as evidenced by your falsified wage claims on eight occasions in April 2020."

UNION POSITION

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the Union contends as below.

The Company has provided the Step 2 response as per May 16, 2020 Video Conference Arbitration Handling Guidelines.

The Union objects to the entire process of this investigation as it was flawed from the beginning. The process was biased, partial, unfair and in violation of Mr. Elsmore's rights. Mr. Elsmore was investigated on May 27, 2020 and not disciplined within 20 days of such and therefore cannot be disciplined as per CCA Article 39.05. The Company proved that he was not found at fault by offering to resolve the first statement with full payment of his lost wage for attending such as per CCA. The Company then insisted on a second investigation, at first under the guise of a supplemental hearing which with no new evidence, nor new facts is in violation of the CCA. Then, the Company stated this was a new statement and not a supplemental, which is clearly a violation of past arbitration awards, specifically 4758. The Company had not issued discipline on the first May 27, 2020 investigation therefore no discipline established. The second investigation was unwarranted account no new evidence produced other than a timeslip inquiry which was readily available for the first investigation and does not contribute any new facts that were not provided in other appendices. The Union local officer objected to the investigation in its entirety and also objected to the line of questioning

throughout. This second investigation was not held in compliance of Article 39 and it should be null and void as the transcript ought to be stricken from the record. The Company has never met its burden of proof in either investigation and based on the above, all discipline ought to be expunged. Dismissing Mr. Elsmore in this manner is an abuse of managerial rights.

Notwithstanding the above position and the Union's contention that all discipline is without merit. The Union will address the mitigating factors of the contents of said investigations without prejudicing its position.

The penalty of dismissal inflicted on Mr. Elsmore is excessive in all circumstances. Mr. Elsmore did not submit claims on said dates to intentionally break any rules.

Mr. Elsmore attended two investigations and was forthright throughout. The process for entering claim codes into the CMA system is not without flaw and there are provisions set up for the Company to review, audit, approve, or deny this claim. In fact, the claim that was entered 'ET', has the notation R in the Honour System Handbook which means that the claim will be routed to the payroll admin clerk for verification. Also, Mr. Elsmore put into the comments screen for the payroll admin clerk to see, please adjust.

Therefore, if this was done at the time of input only 1 month earlier, then corrective action and education on the system could have taken place, rather than an outright dismissal. It is common for claims to be held in processing for some time. Again, when Mr. Elsmore first became aware of the overpayment, he immediately contacted the auditing team for repayment. This allegation of wrongful training claims was never an intentional action of Mr. Elsmore and the Company had the opportunity as per their own policy to rectify prior to investigation.

As per Q&A,

> *A 101. I am truly sorry this situation has taken place. I'm here to be transparent and understanding. If I can help with anything during this investigation, do not hesitate to ask. I truly thought these ET claims would not be automatically paid out without the auditor's adjustment. I am used to the process and the amount of time it can take the auditor to process individual claims and thought I was still waiting for the adjustment. Then I received a letter to appear to an investigation. I contacted the auditor immediately after receiving the notice to appear for an investigation and left a message that I was overpaid and needed to rectify the claims approved. I called several times again that day but no response. I called again on Saturday May 23 to no avail and decided to write an email. I received an email on May 25th from the auditor that they would start clawing back claims. I am truly sorry and understand the gravity of this investigation and as to the reason why. I will be thorough and due diligent in the future.*

The Company has not accounted for the mitigating factors and as such has unreasonably and excessively disciplined Mr. Elsmore.

Importantly to note is that the Company had held both investigations providing evidence of the ET claim and his previous TE claims from January of 2020 and from previous years of 2018 and 2017, depicting a scenario that he had done so willingly as he had put in claims accordingly as old as 3 years prior, and depended solely on the recount of events of Mr. Elsmore. The Company in essence tried to entrap him into admitting responsibility of the allegations which is a violation of his rights under the CCA as well as another example of the partiality and unfairness in this matter. It was the Union that brought forth the Company's own policy to prove that the claim was to be vetted by and routed to the Company. Why would the Company not provide the Honour System Manual as evidence if that is what they needed to prove his culpability? The Union offers the answer as the Honour System Manual does not support the Company's allegation and therefore it is clear that Mr. Elsmore was wrongly accused and wrongly terminated.

It is further to be prejudicial action against Mr. Elsmore as the Company dismissed him for claims that were obvious to be confusing as they reissued the policy June 29, 2020. Therefore, admission of the faults that the Company is culpable of. Again, Mr. Elsmore cannot be seen as responsible and has been wrongfully terminated.

The Union's position is the Company has wrongly dismissed Mr. Elsmore. The Company had the right to decline his claims, and then if warranted, the Union would have had the opportunity to grieve if it felt there was a violation of the Collective Agreement for any declinations. Subsequently the Union, Company and Mr. Elsmore could have contributed positively by way of correcting the flaws of the system so this is avoided in the future. This approach would have better served all parties and benefitted the entire membership and Company.

In the Company's Step 2 response it was stated, the Grievor's lack of intent does not diminish the fact that over the course of April 2020 and on eight occasions, the Grievor submitted false wage claims for pay to which he was not entitled to. Again, the Union contends the claims were to be routed for approval/adjustment per the Honour System Manual in effect at the time, past history of claims adjusted by the Company, and Mr. Elsmore's request of the Company to make the adjustments. The process for submission was followed by Mr. Elsmore, and he was not willful nor intentionally submitting false claims rather he was following the procedure.

The Union requests that Mr. Elsmore be reinstated to his position of Locomotive Engineer, and he be made whole for all loss of earnings with interest, benefits, AV and EDO entitlement and without loss of seniority or pensionable service. The Union further requests damages for the unfair and bias handling, wrongful termination, breach of the CCA, and defamation of character of Mr. Elsmore.

In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION

The Company provided a copy of the response to the Union in accordance with the May 16, 2020 Video Conference Arbitration Handling Guidelines.

The Company maintains Mr. Elsmore was afforded a fair and impartial investigation statement on June 16, 2020. The Grievor was found to have falsified his wage claims on eight occasions in the period of April 2020, claiming for wages to which he was not entitled. This constitutes a major infraction and warrants dismissal. It was after the investigation conducted on June 16, 2020 that Mr. Elsmore was dismissed, within the timelines in accordance with Article 39.05.

The Union claims the investigation was an unwarranted supplemental statement to an investigation held May 27, 2020. While the Union refers to the statement of May 27 as a supplemental statement, the company asserts that it was in fact, not, as clearly stated by the company at the time. The investigation which was held on May 27 was expunged in its entirety and a new statement was conducted in regards to the falsified wage claims of the Grievor over April 2020 through the investigation held on June 16.

As a result of the above, the Grievor's culpability was established through the fair and impartial investigation and discipline was assessed within the appropriate timelines.

Discipline was determined following a review of all pertinent factors, including the Grievor's service and discipline record. Further, before discipline was assessed, the Company duly considered all mitigating and aggravating factors.

The Company maintains that the discipline assessed was just, appropriate and warranted in all the circumstances. Additionally, the Company maintains the discipline assessed was proper and no violation of the Collective Agreement has occurred.

2. Phillip Elsmore (the "Grievor") began his career with CP on March 16, 2000. He was subsequently injured in a work place accident which left him with a permanent disability in his right hand. More recently, he has been accommodated and principally works as a Locomotive Engineer.

3. On April 7, 8, 9, 12, 13-16, 2020 he was working his assignments training and providing familiarization to an Engineer Trainee. While doing so, the Grievor submitted wage claims for each of those dates that reflected a daily wage as a Trainee (at $239.15 per day) rather than the 2 hours Trainer premium of $74.66. The claims were reviewed by an Audit Specialist and flagged for investigation in that the payments were improperly submitted in so far as the Grievor was already a qualified Locomotive Engineer and ought not to have submitted wage rates as a Trainee.

4. The Grievor received an initial Investigation Notice on May 21, 2020 *"…in connection with [his] alleged wrongful training claims in April 2020".* (*Union Tab 2; Appendix E*). At the investigation which followed on May 27, 2020 (*Union Tab 3*) the following exchange took place (Q.3):

> *Q3. Did you receive a proper convening notice for this investigation in accordance with your collective agreement?*
>
> *A3. No, i.e. the Union would like to notify the Company at this time that the notice to appear was served in an unsatisfactory manner as it does not meet the criteria of the current collective agreement.*
>
> *I.O. The notice mentions: as per your collective agreement, you're being provided with the following: "in general terms".*

The questioning continued thereafter to its conclusion.

5. Following that first investigation, the Company, according to its Brief, "*expunged*" the statement taken on May 27, 2020 and ultimately served the Grievor with a second Notice of Investigation on June 12, 2020 (*Union Tab 6*): *"…in connection with the alleged inaccurate wages claims made in the month of April 2020".* The second Notice corrected the apparent procedural errors present in the first Notice.

6. Pursuant thereto, a further investigatory meeting was held on June 16, 2020. Throughout the investigation (*Union Tab 7*), the Union objected to the holding of a second investigation and objected to the specific questions which were repetitions of those asked at the first investigation held on May 27, 2020.

7. In responding to the Union's objection at the outset of the second investigatory meeting, the Company made it apparent that the second investigation was not intended to be a supplementary investigation but rather a replacement for the initial investigation held on May 27, 2020. Portions of that exchange are as follows:

> *The Union objects to this investigation in its entirety due to the fact Mr. Elsmore has already completed an investigation on May 27th 2020 at St-Luc yard first floor at 17:00 with investigator Guy- Andre Dufresne. (Appendix G) It has been determined that this investigation is not fair and*

impartial see Appendix? Email chain from Guy Seguin stating that this is not a supplemental statement but rather a redo of the original investigation. The company cannot just redo a statement as it sees fit this is intimidation and a violation of the consolidated collective agreement article 39. The Union seeks that this statement be terminated immediately

Response from the investigating officer:

The Company has an obligation to ensure a fair and impartial investigation is afforded to Mr. Elsmore In order to do so, the Company maintains in this instance, a new statement is required in order to ensure a thorough investigation and that all the facts are established and understood and taken into consideration prior to rendering a conclusion and decision.

Response from LC Yeandel:

The Company has chosen to continue with this unfair and non-impartial investigation, the Union will do so under protest and remain in good faith by continuing. Let it be known that we have tried to reason with the Company but they have chosen to intimidate and bully The Member into doing another statement after he has completed one already. (Appendix G)

Response from the investigating officer:

We are not saying that the first investigation was not fair or impartial, only that we want to be thorough.

Response from LC Yeandel:

*The Union would like to clarify the objection put forth in the first investigation about the notice to appear**. After discussion with the investigating officer it was determined that the notice to appear for Mr. Elsmore was in fact not given in the proper format. The objection was placed into the investigation and we agreed to move forward. The Company cannot use this as crutch to hold another investigation, as we agreed to continue with the investigation remaining in good faith**.*

Response from the investigating officer:

***We are not saying that this is a do over**, the company maintains in this instance, a new statement is required in order to ensure a thorough investigation and that all the facts are established and understood and taken into consideration prior to rendering a conclusion and decision*

8. Following the second investigation the Grievor was served with a Form 104 on July 1, 2020, advising him that he had been dismissed from the Company for:

Conduct Unbecoming of Employee, as evidenced by your falsified wage claims on 8 occasions in April 2020.

II

Fair and Impartial Investigation

9. The parties' Briefs deal extensively with the argument and jurisprudence relative to whether the holding of the second investigation represented a breach of the Company's "fair and impartial investigation" obligation contained in the Collective Bargaining Agreement.

10. There was no supportable reason, pursuant to Article 39.04 of the Collective Agreement, that the Company could rely on for a supplemental investigation in that no new facts were elicited during the first investigation – or subsequent thereto - that were not available to it at the first investigation.

11. The Union asserts that the re-questioning of an employee on all of the identical facts effectively gives the Company a "second chance" at him/her and is an abuse of process which puts into jeopardy the integrity of the investigation process. In that respect, it relies on the recent of Award of Arbitrator Garzouzi in **CROA 4758**.

12. The Company denies that the second investigation was intended as a supplemental investigation or that there was a breach of the fair and impartial rule. It maintains that the first statement was *"expunged in its entirety due to a procedural error*". Based on that error – raised by the Union in Q. 3 of the initial investigation - the Company decided to expunge the statement taken on May 27, 2020 and schedule a new investigatory meeting. It asserts that in order to maintain a thorough, fair and impartial investigation (*Company Brief; par. 30*) it is entitled to expunge the initial statement and begin anew.

13. In my view, as noted in the decision itself, this case is distinguishable from **CROA 4758.** In that case Arbitrator Garzouzi dealt with circumstances wherein the Company convened a second investigation without any evidence to suggest that the first investigation was flawed and in the absence of any justification –

pursuant to Article 39.02 – that new evidence had come to light subsequent to the notification process. The arbitrator arrives at the following conclusions:

> *10. If new facts arise in the course of the investigation, the Company may hold a supplemental investigation. A careful review of the material before me indicates that no new witnesses were called, and no new appendices were entered. The Company would have to present new evidence or compelling reasons to justify a second investigation. In this instance, I find that the Company had no valid justification to restart the investigation process and expunge the first one.*
>
> *11. The Company referred to CROA 3221 where the grievors were assessed discipline for failing to secure locomotives, leading to the derailment of one locomotive. The issue was whether the Company conducted a "fair and impartial investigation." An error had been made. The grievors were not provided with notice to the examination of a Yard Master, an important witness the Company relied on in assessing the grievors' responsibility. Arbitrator Picher dismissed the matter on procedural grounds.*
>
> ***12. In response to the procedural flaw, Arbitrator Picher suggested that the flaw could have been remedied by setting aside the statement of the Yard Master and rescheduling another investigation, with proper notice to the grievors and their Union. Essentially, a retake would have remedied the procedural flaw and provided the grievors with a fair and impartial investigation. This differs from the case at hand.*** *No evidence was presented suggesting the first investigation was flawed. In fact, the first investigation was conducted with proper notification and is deemed fair and impartial.*
>
> *(Emphasis added)*

14. In this case, the Company's decision to expunge the first investigation was taken because of a procedural error in the Notice of Investigation which was brought to its attention at the outset of the first investigation. In order to ensure a fair and impartial investigation - as elaborated on in numerous CROA cases - it re-started the investigation and remedied the procedural error with the proper notice.

15. As noted by Arbitrator Picher in **CROA 2073:**

> *…disciplinary investigations under the terms of a collective agreement containing provisions such as those appearing in Article 34 are not intended to elevate the investigation process to the formality of a full-blown civil trial or an arbitration. What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employee to know the accusation against him, the identity of his accusers, as well as the content of their evidence or statements, and to be given a fair opportunity to provide rebuttal evidence in his own defence. Those requirements, coupled with the requirement that an investigating officer meet minimal standards or impartiality are the essential elements of the "fair and impartial hearing" to*

> *which the employee is entitled to prior to the imposition of discipline. (Emphasis added)*

16. More particularly, in his award in **CROA 3221** (as referred to by Arbitrator Garzouzi in **CROA 4758**), Arbitrator Picher notes:

> *It appears to the Arbitrator undeniable that the Company's investigating officer did fail to provide to the grievors the protections to which they were entitled under article 32(c) of the collective agreement. Nor does the evidence disclose a situation which could not have been easily remedied by the Company**. It could, very simply, have set aside the statement of Mr. Schettler taken on September 5, 1997 and rescheduled another statement by Mr. Schettler, with proper notice to the grievors and their union representative. That would have given them a fair opportunity to attend at Mr. Schettler's statement, as was their right.***
>
> *For reasons elaborated in prior awards of this Office, the standards which the parties have themselves adopted to define the elements of a fair and impartial hearing are mandatory and substantive, and a failure to respect them must result in the ensuing discipline being declared null and void (CROA 628, 1163, 1575, 1858, 2077, 2280, 2609 and 2901). While those concerns may appear "technical", it must again be emphasized that the integrity of the investigation process is highly important as it bears directly on the integrity of the expedited form of arbitration utilized in this Office, whereby the record of disciplinary investigations constitutes a substantial part of the evidence before the Arbitrator, and where the testimony of witnesses at the arbitration hearing is minimized.*
>
> *(Emphasis added)*

17. Based on the jurisprudence noted above, this case is one of those circumstances in which the Company's procedural failure to comply with the appropriate notice could be remedied by setting aside the statement of the Grievor taken on May 27, 2020 and rescheduling another statement with proper notice to the Grievor and his Union Representative.

18. While I understand the Union's concern to guard against the abuse of the investigatory process envisioned by the Collective Agreement, it is apparent that the procedural error here was first manifested to the Company via the Grievor's objection at the May 27, 2020 investigation. The Company was entitled, as noted in the jurisprudence, to reschedule a second hearing to address the procedural error and expunge the first. The questions from the Investigating Officer at the

second investigation, while both tedious and repetitious, do not in and of themselves amount to a breach of the fair and impartial rule.

III

Merits

19. In his investigation, the Grievor was taken through each of the impugned claims. On each occasion, he admitted submitting the claims by allowing the system to auto-populate the amount for an Engineer Trainee (ET) as opposed to an Engineman Trainer (TE) *(See: CMA Honour System Manual)* and confirmed that he was "now" aware that he was not entitled to that rate of pay.

20. His consistent explanation was that he submitted the auto-populated claims on the assumption that they would be audited and adjusted. A representative sampling of his explanations follow:

> *Q.21 After you submitted the ET claim did you check your time slip to see if this was approved transmitted, approved not transmitted or waiting approval?*
>
> *A.21 I don't remember*
>
> *Q.22 Referencing your answer to question 21, is this a normal practice for you not to check your time slip after submitting a standalone claim?*
>
> *A.22 I submitted the claim, and then I look at my tie up screens for the adjustment notification and then go look to see what was adjusted.*
>
> *Q.23 How did you confirm that your claim would be routed to the Auditor for adjustment?*
>
> *A.23 I was under the impression that these claims were routed to the auditor to confirm that I had a trainee and then they would make an adjustment.*
>
> *Q.24 By using the ET claim code you have over paid yourself $164.49 for your claim for a Locomotive Engineer familiarizing on April 07, 2020 in this correct?*
>
> *A.24 Yes this is correct and as I previously stated I anticipated the auditor to adjust my ticket to the proper amount.*
>
> *Q.33 How did you confirm that this claim would be routed to the Auditor for adjustment?*
>
> *A.33 I was under the impression that these claims were routed to the auditor to confirm that I had a trainee and then they would approve*

it or make an adjustment. As seen in appendix A in the notes I specifically ask the auditor to adjust my ticket.

Q.90 Referencing appendix B, in between May 2, 2017 and the most current claim on January 05, 2020, you made 21 claims as a Locomotive Engineer (TE) using the proper claim code TE is that correct?

A. 90 Yes that is correct.

Q.91 After seeing the wrong amount of $239.15 populate on the standalone claim, why did you not check back to your claims in January?

A.91 When I checked the claim code available by pressing PF10 on the standalone claim, I saw the ET code and truly thought it was the right code, I was unsure why that amount populated that's why I figured they would be adjusted.

Q.93 Do you understand that if you are unsure as to how to submit a wage claim or a claim that you are unsure about that you can put in an IP claim with your comments and that get routed to the auditor for approval?

A.93 Yes I do now.

Q.94 After seeing the wrong amount of $239.15 populate on the standalone claim, why did you not use the IP claim code with your comments?

A.94 Knowing what I know now through this investigation, yes I should have.

Q.95 Do you understand that it is your responsibility to ensure that the time slips you submit are an accurate reflection of the worked performed?

A.95 Yes. And at no time did I ever feel I was putting in an inaccurate amount for my ET claims.

Q.96 Do you understand that you have the responsibility to ensure that claims reflect the actual type of service and events performed as well as correct amounts on claims that require manual submission. Honesty and diligence from each and every employee is necessary in order to maintain the trust necessary for an employer-employee relationship to exist?

A.96 Yes. And at no time did I ever feel I was putting in an inaccurate amount for my ET. If I had of thought it was wrong I would have immediately contacted the auditor.

Q.98 Do you understand that if an employee knowingly submits an improper wage claim it could be construed as submitting a false wage claim?

A.98 Yes. And at no time did I ever want to be accused of or did I think I was submitting a false claim. As I previously stated I was waiting for the auditor to adjust it.

21. As is apparent from a reading of *Union Tab 2(a),* the Grievor - at the outset of 8 successive days - flagged the first two of his entries for audit and included the notes: "*Claiming for training engineering Martin Boulais EMP 928507"* and "*Claiming for Engineer Martin Boulais – please adjust*". Further, a review of the *CMA Manual Claim Codes (page 37)* calls for an "*ET*" entry to be automatically routed to "*Payroll Admin Clerk".*

22. The Grievor explained his position at Q. 101, stating:

> *I am truly sorry this situation has taken place. I'm here to be transparent and understanding. If I can help with anything during this investigation, do not hesitate to ask. I truly thought these ET claims would not be automatically paid out without the auditor's adjustment. I am used to the process and the amount of time it can take the auditor to process individual claims and thought I was still waiting for the adjustment. Then I received a letter to appear to an investigation. I contacted the auditor immediately after receiving the notice to appear for an investigation and left a message that I was overpaid and needed to rectify the claims approved. I called several times again that day but no response. I called again on Saturday May 23 to no avail and decided to write an email. I received an email on May 25th from the auditor that they would start clawing back claims. I am truly sorry and understand the gravity of this investigation and as to the reason why. I will be thorough and due diligent in the future.*

23. While I am given pause by his explanation regarding his failure to use *The Interpretation Code (CMA; p. 11)* - which specifically directs that employees submit an *IP Claim* Code in circumstances where they are unsure of their claims – and the fact that he submitted the correct amount on 21 previous occasions, that suspicion does not equate with satisfying me, on a balance, that his conduct rises to the level of fraud. Despite my reservations, I am unable to conclude that the Company has proven, on a balance of probabilities, that he deliberately engaged in making fraudulent wage claims. (See: **CROA 3409; 3614**).

24. The above said, although the Grievor's conduct did not amount to a "*falsified*" wage claim within the conclusion arrived at by the Company in its Form 104, the Notices of Investigation served on the Grievor alludes to his alleged "*inaccurate*" claims. Given his past experience in properly completing similar wage claims on

21 occasions (*Q.90, supra*) and his admissions that he consciously entered wage rates which he anticipated would be audited, it is apparent that he purposely entered a wage rate that, at best, he was unsure of. As such he was in breach of the fundamental requirements of the *CMA Honour System* which obligates employees to be "*responsible for their own payroll*". As his own "*timekeeper"* he is" "*responsible for [his] time slips...and [is required to] make every effort to understand and apply [his] Collective Agreement, Method of Pay and Local Rules to them*".

25. In fact, at page 9, the Manual expressly provides:

> *If you are unsure of your claim, use the Interpretation Code (IP) to route directly to an auditor for interpretation.*

26. The Grievor's conduct, while not rising to the level of fraud, nevertheless constituted an intentional breach of the *CMA Honour System Manual*. As noted in **AH 686** (*page 15*):

> *… The Grievor's conduct affects not only his relationship with the Employer but brings into focus the larger issue of the integrity of the honor system. In order for the honour system to continue to operate effectively, it is incumbent on employees to ensure that their time is justified and appropriately entered. It is not sufficient to simply disagree with the Employer regarding the hours they believe they are entitled to and then, as the Grievor did, claim them.*

27. Submitting an incorrect wage claim under the *Honour System* is a serious offence. If employees generally engaged in a similar practice of entering a wage rate which they were unsure of or on which they expected to be audited, without taking the responsibility to accurately set out their wage entitlement or filing an IP, the consequences for the *Honour System* are self evident. The Grievor ought to have understood his obligations pursuant to that system. If he was uncertain of which code to enter, he ought to have contacted an appropriate Company or Union officer or made an appropriate *IP* claim.

28. As a number of previous CROA decisions have made it abundantly clear: the consequences of a breach of the Manual are intentionally severe in light of the unsupervised trust and independence bestowed on the employees to be their own timekeepers. In the circumstances here, anything other than a severe disciplinary response would invite similar conduct and fail to underscore the importance of the *Honour System*.

29. Considering the above, I would allow the grievance in part; re-instate the Grievor; and in place of his dismissal enter a suspension of 45 days without pay and without loss of seniority, for his for breach of the *Honour System*. The Grievor shall be made whole.

30. I will retain jurisdiction with respect to the application, implementation and interpretation of this award.

Dated at Calgary, Alberta this 25th day of May, 2021.

Richard I. Hornung, Q.C.
Arbitrator