

**IN THE MATTER OF AN AD HOC ARBITRATION**  
**BETWEEN**  
**TEAMSTERS CANA**  
**DA RAIL CONFERENCE (TCRC)**  
  
**And**  
**CANADIAN PACIFIC RAILWAY COMPANY (CP)**

**AH: 755**

**DISPUTE:**

Appeal of the dismissal of Conductor Hubert Quinto of Calgary, AB.

**JOINT STATEMENT OF ISSUE**

Following an investigation Mr. Quinto was dismissed which was described as “Your tour of duty on June 16th, 2019 while working as RCLS Yard Service Employee on Assignment CW31-16, more specifically the incident surrounding your movement colliding with train 468-16 on N yard running lead.”

**UNION POSITION**

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding all of the allegations outlined within the discipline assessment. The Union further contends Mr. Quinto’s dismissal is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter. It is also the Union’s contention that the penalty is arbitrary and contrary to the arbitral principles of progressive discipline. Despite both crew members being formally investigated, only Mr. Quinto received discipline.

The Union requests the discipline be removed in its entirety, Mr. Quinto be reinstated with seniority and he be made whole for all losses with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

**COMPANY POSITION**

The Company disagrees and denied the Union’s request.

The Company must first submit a preliminary objection relating to the Union’s allegations that only the grievor was assessed discipline and burden of proof was not met. Within the Step 2 grievance,

the scope of the grievance was expanded by the introduction of this new claim unrelated to the original grievance. This item was not properly progressed through the grievance procedure and the Company is prejudiced by the Union's advancement of a new argument. This principle is referred to in CROA 4263.

The Company maintains that following the fair and impartial investigation, it was determined that the Grievor, who was in control of the movement, was culpable for the incident. When considering the appropriate disciplinary assessment, each case must be considered individually and on its own merits. Before discipline was assessed, the Company duly considered all mitigating and aggravating factors.

In light of the foregoing and all material in the investigation, the Company maintains the dismissal assessed was appropriate, warranted and just in all the circumstances.

Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION:

SIGNED

Dave Fulton  
General Chairman

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FOR THE COMPANY:

SIGNED

Lauren McGinley  
Assistant Director Labour Relations

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October 27, 2021

**Hearing:** November 18, 2021. In person and by video conference.

**APPEARING FOR THE UNION:**

Ryan Finnsen, Vice General Chairman  
Doug Edward, Vice General Chairman  
Dave Fulton, General Chairperson  
Trent Haug, Local Chair, Calgary  
Hubert Quinto, Grievor

**APPEARING FOR THE COMPANY:**

Lauren McGinley  
Assistant Director Labour Relations  
Elliot Allen  
Labour Relations Officer

## AWARD OF THE ARBITRATOR

### JURISDICTION

[1] This is an Ad Hoc Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. The protocols entered into by the parties provided for submission of detailed briefs filed and exchanged in advance of the hearing. At the hearing, the parties reviewed the documentary evidence and made final argument. Awards, with brief written reasons, are to be issued within thirty days of the hearing. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

### BACKGROUND

[2] On June 16th, 2019, the Grievor was working Assignment CW31-16. He was working with a Remote Control Locomotive in RCLS. While working, the movement he was controlling, collided with train 468-16.

[3] A Notice of Investigation was issued June 20, 2019, and an investigation was conducted on June 26, 2019. The Company maintained that culpability of the Grievor had been established through the investigation and the Grievor was dismissed on July 19, 2019.

[4] At the outset of the hearing, I heard the parties voluntarily agree to engage in mediation. Unfortunately, the mediation efforts were unsuccessful, and the matter proceeded to arbitration.

### EXPANSION OF GROUNDS

[5] The Union filed a grievance at Step One of the Grievance procedure. At Step Two of the Grievance process, the Union maintained that Mr. Haber, the other member of the crew working with the Grievor received no discipline as a result of the incident.

[6] The Company objected, stating that the Union expanded its compliment of arguments to include an allegation pertaining to fairness and impartiality as it relates to the assessment of discipline toward the Grievor and not his Helper. It also objected that the Union further expanded its arguments to include an allegation pertaining to burden of proof, more specifically that the Grievor had been compliant with T&E Rule Book Section 4.2 Communications Requirements.

[7] The Company objected to these allegations in its Step Two response on the basis that the scope of the grievance had been changed by the introduction of new issues and claims unrelated to the original grievance and was prejudiced by the Union's advancement of new arguments approximately four months following the Grievor's dismissal.

[8] The Parties agreed that I would review the submissions of the parties regarding the expansion at the outset of my award.

[9] The Local Chairman who submitted the Step One grievance clearly stated that the Grievor was working as part of a Crew. He also noted that the discipline was unfair and excessive. The Rule in question clearly places responsibility for crew members to ensure that switches are properly lined. I take notice that the Company has raised the issue of responsibility of all crew members in other cases not before me. I also have considered the wording of the Rule, the emphasis at Step One regarding the Grievor being part of a crew and the discipline being unfair as well as excessive.

[10] A reading of the Step One grievance is supportive of the Union's position that this is not an expansion of a grievance. When read as a whole, it raises issues of a crew, fairness and excessive discipline. The issue of the Company's obligations and investigation into the incident are part of this grievance properly before me for determination.

### **ANALYSIS AND DECISION**

[11] The Company submitted that the investigation confirmed the Grievor knew his obligation to operate his movement by being prepared to stop within one-half the range of vision of equipment. He failed to do so. The Grievor also knew that it was his obligation to communicate and understand when hand operated switches are lined and/or locked and confirm the route to be used. He failed to do so. In addition, the Grievor knew he was required to have a thorough understanding of all movements and intentions at all times. Again, he failed to do so.

[12] The Company maintains that his failings resulted in the derailment of two train cars as well as his lead RCLS locomotive and had the potential to result in serious injury or other catastrophic consequences. The Company submitted that five months prior to this incident, the Grievor had failed to protect the point of his movement while the lead unit of his train was not in the point protection zone. He was provided education and coaching and was subsequently observed complying with the rules. Less than one month prior to this incident, the Grievor was involved in another side swipe incident having failed to observe safety rules. A day later, he was found to have placed his safety at risk and the importance of situational awareness was stressed to him.

[13] Contrary to the Union's position, the Company maintains that the Grievor had already repeatedly recognized his errors and committed to paying greater attention to his duties and responsibilities in the future; however, he continued to demonstrate his inability or unwillingness to apply the required level of due diligence in the performance of his duties. The Company pointed me to the comments of Arbitrator Jones in SHP 595 stating:

As I have noted before, safety is not negotiable and not optional; safety rules must be complied with 100% of the time.

[14] The Company submitted that the Grievor had proven he could not be relied upon in the performance of his duties.

[15] The Company submitted that, in the event I allowed the Union's argument, it would like to draw attention to several points the Union made in its submission. It maintained that throughout its submission, the Union strategically uses the term "the crew" in a blatant attempt to link the Grievor and his Yard Service Helper's actions in the arbitrators mind.

[16] The Company maintains that the Union has attempted to paint a picture of the Yard Service Helper having equal culpability for the incident at hand and nothing could be further from the truth. The Union relied on the Yard Service Helper's statement to argue his culpability. However, Mr. Haber's testimony failed to establish culpability for anything more than assuming the Grievor would do his job properly. The Company argues that Mr. Haber could have verified the Grievor would check the train was properly lined up. However, he was not obliged to in these circumstances.

[17] The Company argues that, contrary to the position advanced by the Union, there is nothing inequitable, discriminatory or arbitrary about the assessment of discipline to the Grievor and not the Yard Service Helper in these circumstances. Each case of culpability and associated discipline, if any, must be reviewed on its own merits. In the case at hand, the Company maintains its decision

to assess discipline to the Grievor and not his Helper was appropriate and warranted in all the circumstances.

[18] CP Rail maintains that the Union has attempted to paint a picture of utter chaos and adverse conditions. Simply put, Alyth is a busy yard that is key to the Company's operation with multiple exits and entrances to the yard. Plans changing is the name of the game and an everyday occurrence. Finally, it says the Union has argued the Grievor's actions were inadvertent, his best effort and a matter of having forgotten. On the railroad, there is no room for this type of alleged inadvertence or forgetfulness. The rules have been written in the blood of railroaders gone by. This is not a trite saying, but a reality. The Grievor's alleged forgetfulness could have resulted in a serious injury or fatality and is not something the Company can take lightly.

[19] The Union maintained that the dismissal of Mr. Quinto is unwarranted and excessive on the basis of significant mitigating factors. It argued that in the course of their assignment leading to the incident, the crew had confirmed the route to be used when lining hand operated switches. This includes the time the crew had lined the new crossovers. It is undisputed that the Trainmaster's instructions changed multiple times, and it was only on the final change to switch track VT06 did the crew forget to re-line the switch.

[20] Neither the Grievor nor the Union disputed that a rule violation occurred on June 16, 2019. The Union argues that the Grievor and his crewmate mutually accepted their share of responsibility for the collision in the course of their respective employee statements.

[21] The Union argued that Mr. Quinto was honest and forthright immediately after the incident and during the formal investigation process. Mr. Quinto learned from this event and is committed to being more diligent in regards to rules compliance in the future. The Union emphatically maintains that the Company has manifested an undue and discriminatory focus on the Grievor in connection with the June 16, 2019 incident.

[22] On any reading of the record, the crew must be found to share commensurate levels of responsibility. Though Mr. Quinto was operating the RCLS controls, both yard crew members bore responsibility for compliance with Rule 4.2 Communication Requirements (e), for confirming the switch is lined for the route to be used.

[23] On June 19, 2019 the Grievor was advised:

Please be advised that you have been dismissed from Company Services for the following reason:

Your tour of duty on June 16th, 2019 while working as RCLS Yard Service Employee on Assignment CW31-16, more specifically the incident surrounding your movement colliding with train 468-16 on N yard running lead.

Summary of Rules Violated:

T&E Rule Book Section 9.1 Non Main Track

a) I) Prepared to stop: within one-half the range of vision of equipment or a track unit; short of: a 51, switch not lined.

**T&E Rule Book Section 4.2 Communications Requirements**

**Crew members must communicate and understand:**

**e) When hand operated switches are lined and/or locked. Confirming the route to be used.**

**Emphasis Added**

[24] Rule 4.2 provides:

#### 4.2 COMMUNICATION REQUIREMENTS

Crew members must communicate and understand:

- (a) prior to entering a main track or any track with a restricted clearance;
- (b) prior to entering protected limits, the instructions received from a foreman;
- (c) when restrictions are no longer applicable;
- (d) when derails are required to be handled or locked;
- (e) when hand operated switches are lined and/or locked, confirming the route to be used;
- (f) when hand brakes are applied or released;
- (g) when equipment is left unattended, confirming securement is effective;
- (h) results of wayside detectors, immediately after passing;
- (i) when leaving cars in the vicinity of a fouling point; and
- (j) when shoving equipment.

[25] At the time the discipline was assessed, the Company clearly identified the responsibility of all crew members. The accountability of all members of a crew being responsible for the proper lining of a switch no matter their physical location is not unheard of. Indeed earlier in the day the Company presented a case before me in which a Locomotive Engineer was assessed with a 45 day suspension when the conductor he was working with failed to properly line a switch. The switch in that case was a considerable distance away and out of his sight. The Company produced previous case law dealing with proportional accountability in such situations.

[26] The Company relied on CROA 3265, SHP 634, CROA 4263, CROA 4563, CROA 3965, CROA 1981, *William Scott & Co. v. C.F.A.W., Local P-162* (1976), [1977] 1 C.L.R.B.R. 1 (B.C.L.R.B.), *Steel Equipment Co. Ltd.* (1964) 14 L.A.C. 356, *Sheet Metal Workers' International Association, Local 473 v. BrucePower LP*, 2009 CanLII 31586 CROA 4563 and Arbitrator Picher's decision in CROA 3965, The Union relied on CROA 4621, CROA 3361, and CROA 4406.

[27] After review of all of the submissions, I find that discipline is appropriate. Both parties challenged the appropriateness of the other parties' case law given the specific facts of this case. As in the cases they relied on, they were based on their individual facts and circumstances.

[28] At the time of this incident, the Grievor had a discipline free record except for a recent major rule violation. In this case, the rule violation could have had catastrophic consequences. Safety sensitive/critical occupations are not those where new employees should plan on learning on the job. It is a place where rule knowledge and compliance should be at a higher standard from day one. Accountability and forthrightness are essential for employees in these positions.

[29] As I noted, in the case put before me earlier on the same day, both crew members were held accountable for a switch not properly lined. In that case, the issue of lining a switch bears a more onerous duty of care with respect to the movement. In this case, the Company maintained that the Grievor's co-worker had no responsibility to confirm with the Grievor regarding the improperly lined switch. I have concern for that position.

[30] I cannot find that the Company's position regarding the other crew member was in bad faith or discriminatory. It is a position the Company takes based on the facts. In this case, based on all of the facts I find that the Grievor had a more onerous duty of care in ensuring the switch was properly lined. It is not for me to decide if the two crew members confirming would have prevented the incident. It is not for me to decide if a higher standard of accountability for all crew members involved in a movement better ensures safety.

[31] In this case, the crew members were in different parts of the train yard performing different tasks. The Grievor was controlling the locomotive and required a higher degree of focus on where it was going.

[32] In this case, the Grievor entered service in 2015. He had only one disciplinary incident on his record. Since his dismissal, Mr. Quinto has been working with a civil engineering consultancy company. He presents as an articulate and intelligent new Canadian. He and the Union feel he can be a valued employee who can regain the trust of CP Rail. His Proficiency Testing record indicates a clear ability to properly observe the Rules. His only fault appears when he tries to place productivity ahead of ensuring safety. The Union believes he will not repeat that preference again.

[33] The Grievor's case has been delayed in proceeding to arbitration. Subject to complex pension rules, his full pension eligibility may be in jeopardy. The Union requests that he be reinstated with compensation of all lost time and benefits. Given all of the facts in this case I cannot agree to that remedy. However, in view of all of the foregoing, the Grievor will be returned to service 30 days prior to the 2 year pension rule and compensated with a minimum amount necessary to maintain his original hire date for entitlement to the prior pension formula.

I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated this, 20<sup>th</sup>, day of December, 2021.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges  
Arbitrator