

IN THE MATTER OF ARBITRATION

BETWEEN

TEAMSTERS CANADA RAIL CONFERENCE (TCRC)
(the Union)

And

CANADIAN PACIFIC RAILWAY COMPANY (CP)
(the Company)

AH: 777

DISPUTE:

Appeal of the Dismissal of Conductor Rachel Wall of Calgary, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation Ms. Wall was Dismissed which was described as, “In connection with Conductor Trainee wages that you claimed while being off sick from June 8 to June 14, 2020 and June 27, 2020; a violation of the Canadian Pacific Code of Business Ethics.”

UNION POSITION

The Union contends that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement:

- the investigating officer asked an unfair, summary question,
- the investigating officer asked questions which presumed culpability,
- the investigating officer unfairly asked Ms. Wall to recall events that occurred long in the past.

For this reason, the Union contends that the discipline ought to be removed in its entirety and Ms. Wall be made whole.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above. The Union also contends the discipline assessed is unjustified, unwarranted, and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

The Union requests that Ms. Wall be reinstated without loss of seniority and benefits, and that she be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION

The Company disagrees and denies the Union’s request.

The Company maintains the Grievor’s culpability for this incident was established following the fair and impartial investigation into this matter and the discipline was properly assessed.

The Grievor, who was a probationary employee at the time, was afforded a fair and impartial investigation in accordance with the Collective Agreement. The Company produced substantial, probative evidence supporting the Grievor's culpability. The Company's position continues to be that the discipline assessed was just, appropriate and warranted 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:



Dave Fulton
General Chairman
TCRC CTY West

FOR THE COMPANY:



Lauren McGinley
Assistant Director, Labour Relations
CP Rail

March 1, 2022

Hearing: March 31, 2022 - By videoconference

FOR THE UNION:

Ken Stuebing, Caley Wray
Dave Fulton – GC, CTY West
Doug Edward – Sr. VGC, CTY West
Ryan Finnon – VGC, CTY West
Jason Hnatiuk, VGC
E. Kelly – Local Chairman CTY
Rachel Wall– Grievor

FOR THE COMPANY:

Lauren McGinley, Assistant Director Labour Relations
Ivette Suarez, Labour Relations Officer
John Bairaktaris, Director, Labour Relations

AWARD

JURISDICTION

[1] The parties agree I have jurisdiction to hear and resolve this dispute with all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*. This is an Ad Hoc 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.

BACKGROUND

[2] The Grievor, Rachel Wall was in the CP Rail Conductor Training Program in Calgary at the time of her dismissal. She hired on February 3, 2020 and was dismissed on July 29, 2020.

[3] On July 22, 2020, the Grievor was required to attend an investigation in connection with her Conductor Trainee wages claimed while being off sick from June 8th to 14th, 2020.

[4] Article 87.23 provides the following:

87.23 A new Brakeperson shall not be regarded as permanently employed until after six months cumulative service from the date of making first pay trip, and, if retained, shall then rank on the master seniority list from the date and time they commenced their first pay trip. In the meantime, unless removed for cause, which, in the opinion of the Company renders them undesirable for its service, the Brakeperson shall be regarded as coming within the terms of this Collective Agreement.

ANALYSIS AND DECISION

[5] The Company relies on *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.); *Sheet Metal Workers' International Association, Local 473 v. Bruce Power LP*, 2009 CanLII 31586 (ON LRB) ; CROA Cases 4438,1568,4740, 3290, 2004, 2496, 2725, 4445;4735, 1835, 4764, 2280, 461, 478, 899, 1474, AdHoc 730, SHP 311. The Union relies on CROA 4285, 3614, 3409, 4534.

[6] The Company submits that at CP Rail, all TCRC represented Train & Engine employees in Canada work under the Honour System of Pay. The pay system, in which employees are their own timekeepers, has been in place for over 20 years. Running trades employees, including probationary trainees, work in a unique position of trust and are responsible for properly submitting their own wage claims. CP says that false time entries are, therefore, of the most seriousness grounds for termination of employment.

[7] The Company argues that investigation verified the Grievor was familiar with CP's Honour System of payment. It says she was absent from work due to reported illness from June 8 to 14 2020. In that time she did not contact the pandemic team as directed by her supervisor. CP submits that when asked if she was fully aware of the requirements for attendance and pay, the Grievor stated that she believed she was paid 7 days a week.

[8] I find the following questions and answers from the Grievor's investigation are significant in providing:

Q 7. Referring to appendix C are you fully aware of the requirements for attendance and pay?

A. I believed I was paid 7 days week, due to misleading information from other co- workers. Knowing what I know now I believe I need to educate

myself more on the collective agreement honor system and if unsure going forward I will contact my local union reps.

Q8. Did you discuss this in detail during your orientation and or during your conductor trainee program the Canadian pacific honor system?

A. Yes but not in full depth.

Q 19. Are you aware you are not entitled for pay on days you miss and due to illness or personal reason?

A. I am more educated now yes and covid is new and didn't fully understand the process.

Q20. Why do you believe that you should be paid while off sick or on a personal day?

A. I don't think so but I put in the wrong claims and should have contacted my health and safety rep for guidance.

[9] The Union agreed that the Grievor submitted training rate pay for all days, including June 8 to 14, and 27, 2020. However, it argues that as Ms. Wall had called Field Placement Coordinator O'Donoghue prior to booking sick, she believed here absences were authorized and that, therefore, she was not required to be at work. As she believed that she was not required to be at work, she claimed training pay for these days.

[10] The Grievor's absence on June 27, 2020 was also questioned during the investigation. The investigation provided:

36. As per appendix C were you scheduled to work on the CW11-27 June 27 2020?

A. Yes.

37. Did you speak to field placement coordinator Talia O'Donoghue on June 27, 2020 and inform her you left around 11ish?

A. I forgot to tell her I wasn't going to show up that day.

38. Did you show up and work on the cw11-27 June 27, 2020?

A. No

39. Why did you tell field place coordinator Talio O'Donoghue that you showed up and left around 11sh if you had in act not showed up that day?

A. I left early the day before on June 26th at 1300k and my foreman advised Asst Supt. Leafloor. I was under the impression this was referring to the 26th and not the 27th.

[11] The Company submits that after a break requested by the Grievor's Union Representative the Grievor provided a new explanation:

44. Do you have anything you wish to add to this investigation?

A. I would like to introduce an email from Field Place Coordinator Talia O'Donohue,

Part of the email is quoted in the memo "You are not entitled to pay for days you miss due to illness or personal reasons". I would like it noted they email was sent July the 5th and Talia's memo was written on July the 4th. I would like to comment on the memo where Talia states they discussed in great detail in orientation about CP's honor system and attendance. It was never discussed in great detail. During the first week of training Mike Hansen taught the entire class how to pay themselves. We had question about days we were not in training because we were only in training Monday to Friday.

Mike stated as a trainee you get paid 7 days a week no matter what. Which led me believe to entitled to pay while I was off sick.

[12] On October 27, 2020, the Union initiated a grievance at Step 1 submitting that there is no cause for the termination in the circumstances, including mitigating circumstances evident from her investigations. The Union further explained the Union's position that Ms. Wall was not provided a fair and impartial investigation. The Union further notes that Ms. Wall plainly explained her misunderstanding was contributed to by "due to vague, convoluted instructions provided by the Company."

[13] The Grievor claims she received wrong information regarding pay when not available for work. I find there is no evidence that any other employees in the Grievor's training class believed they were paid seven days a week no matter what. This is not a case in which the Company terminated the Grievor without an investigation.

[14] The Union argues that the investigation was not conducted in a fair and impartial manner as strictly required by the terms of Article 39. It says that the conduct of the Investigating Officer breached the minimum standards for impartiality required under the Collective Agreement. The Union says that it is a well-recognized principle Investigating Officer must appear impartial. The Union submits that this requirement was not observed in the conduct of Conductor Wall's employee statement. The Union relies on CROA Case No. 1561. Unlike CROA 1561 the investigation was not conducted by an involved family member. I have reviewed the investigation and find the investigator gave the Grievor every opportunity to be forthright and accountable for her actions.

[15] The Investigation established that the Grievor was instructed to contact CP's Pandemic Team regarding being sick on June 8, 2020 providing:

12. Referring to appendix A, were you sick June 8th 2020?

A. Yes

13. Were you advised by anyone to contact the pandemic team?

A. Yes

14. Did you advise the CP pandemic team that you were sick at any point in time?

A. No

15. Why did you not contact the pandemic team?

A. Because my test came back negative and I didn't know it was mandatory to contact the pandemic team.

[16] The Grievor was clearly instructed to contact the Pandemic Team. She chose not to follow those instructions. The Grievor went on in the statement to attribute wrong information from co-workers providing:

17. Referring to appendix C are you fully aware of the requirements for attendance and pay?

A I believed I was paid 7 days week, due to misleading information from other co- workers. Knowing what I know now I believe I need to educate myself more on the collective agreement honor system and if unsure going forward I will contact my local union reps.

[17] The Grievor maintains that she had misleading information from co-workers and in the future would contact her Union Representatives. I find those statements alarming at best. The honour system is contained in CP's documents not the collective agreement. Contacting her Union Representative is not the first course of action when following a Company document. Unlike the Grievor, I also find the evidence of the Company that it was clear employees are not paid when unavailable credible.

[18] The Grievor claimed that the CMA training was not covered in depth. I find the questions and answers she was provided as part of the CMA training are very clear in providing advice for employees. If there is any doubt before submitting a claim the CMA sets out:

Q: Is assistance with tie-up and timeslip inquiries available? By whom? What will the hours be for this service?

A: Auditors are on duty during normal business hours Monday through Friday. Messages and Internet E-Mails may be left should they be unable to take your call immediately.

[19] The Grievor was aware or should have been aware of her ability to call in to auditors before submitting a questionable claim. Taking advice from co-workers indicated poor judgment. After doing so her answer that she would contact her Union Representative in the future is more concerning given the CMA's clear wording on the ability to call an auditor.

[20] There is no supporting evidence of any other Trainees in her class having similar issues with understanding the Honour System. Given her answers to the questions I have no confidence that she will follow instructions if reinstated. The Grievor chose not to be forthright and accountable for her own actions.

[21] I find the Company conducted a fair and impartial investigation in connection with Conductor Trainee wages that were claimed by the Grievor while being off sick from June 8 to June 14, 2020 and June 27, 2020. The findings were found by the Company to be a dismissible offence. The Grievor was in training for a safety critical positions. Understanding when to follow instructions in written documents and Company Supervisor's instructions is essential to safety.

[22] Given all of the foregoing I can find no reason to reduce the discipline assessed.

[23] Grievance is dismissed.

Dated this 27th, day of May, 2022.



Tom Hodges

Arbitrator