

IN THE MATTER OF AN ARBITRATION UNDER THE *CANADA LABOUR CODE*, R.S.C. 1985, c. L-2

**BETWEEN:**

**CANADIAN PACIFIC RAILWAY COMPANY**

**and**

**TEAMSTERS CANADA RAIL CONFERENCE**

**Grievance of 30 Day Suspension – T. More**

**Arbitrator:** Cheryl Yingst Bartel

**Date of Decision:** November 1, 2022

**Date of Arbitration:** October 24, 2022 (Held via Videoconference)

The parties filed a Joint Statement of Issue which reads:

**DISPUTE:**

Suspension assessed to Mr. Timothy Moore (Union file 12.2809; Company file 17119).

**JOINT STATEMENT OF ISSUE:**

On July 16, 2020, the Grievor, Mr. Tim Moore [sic] attended an investigation in connection with “the events surrounding your alleged involvement with the collision between the Cribber Adzer and Chemical Plugger machines at mile 72.2 Keewatin Sub on July 4, 2020”.

On August 10, 2020, the Grievor was assessed a thirty (30) day suspension for:

*“Failure as an operator to stop while travelling a Cribber Adzer that resulted in collision with a Chemical Plugger at Whitemouth MB on July 4th, 2020.*

*This is a violation of Rule Book for Engineering Employees 10.2 Track Unit Operation Speed (a) Track units must be operated at a speed which permits the vehicle to stop: within ½ the range of vision of equipment or a track unit; short of any condition which may affect its safe passage.”*

The Union objected and a grievance was filed on August, 26 2020. The Company responded on September 30, 2020.

**The Union contends that:**

1. The grievor demonstrated genuine remorse for, and acknowledgement of, his error;
2. The grievor did nothing wrong except for having his foot miss the brake pedal when he tried to stop;
3. The discipline assessed was excessive, unfair and unwarranted.

**The Union requests that:**

The Company be ordered to remove the suspension from the grievor’s record and compensate him for all wages and other payments lost as a result.

**Company Position:**

1. The Company denies the Union’s contentions and declines the Union’s request.
2. Following a fair and impartial investigation it was determined that on July 4, 2020, while operating a Cribber Adzer the Grievor collided with a Chemical Plugger. As a result, he not only violated the Rule Book for Engineering Employees 10.2 but also caused significant damage to the machines resulting in over \$11,000.00 in repairs.

3. The Company maintains that this violation is a major rule violation given the seriousness of the infraction and the potential consequences of non-compliance.
4. Given the circumstances, the Company maintains that the discipline assessed was appropriate and in no way excessive nor unwarranted.

**Appearances:**

**TCRC**

David Brown: Legal Counsel  
Wade Phillips: President, TCRC, MWED

**CP**

Francine Billings: Assistant Director, Labour Relations  
Poonam Sheemar: Manager, Labour Relations

**AWARD OF THE ARBITRATOR**

1. This Grievance concerns a 30 day suspension assessed against Machine Operator Timothy More (the Grievor). The Grievor was operating a Cribber Adzer in a set off track when he collided with a Chemical Plugger which was parked.
2. The Grievor had 15 years of service at the time of the collision. He had received discipline on six previous occasions. In 2017 he contacted a concrete barrier and was assessed a five day deferred suspension. His other two suspensions of five days each were assessed for being absent without permission (June of 2018) and modifying a safety device (December 2017).

**Facts and Positions**

3. The facts are not in dispute. On July 4, 2020, the Grievor was operating the Cribber Adzer into the set off track. A Chemical Plugger was parked on that track ahead of his line of travel. He failed to stop and collided with the Chemical Plugger. At the time of the collision, the Grievor had been operating track machines for 12 years and had worked on the Cribber Adzer for five seasons.

4. An Investigation was conducted. The Grievor explained he had conducted a brake test on the day of the collision, but had not documented it. He had no difficulty with the effectiveness of the brakes throughout his work day. He was in the process of parking the machinery in a set off track when the collision occurred. The Grievor explained “I basically missed the brake pedal it happened so fast; the last time I looked the[sic] it was 25 ft away and I missed the pedal and we hit”. No one was injured in the collision, which caused over \$11,000 in damages to the machinery.

5. There is no dispute the collision occurred or that it was caused by the Grievor’s actions. The substantive issue between the parties is whether the assessment of a 30 day suspension was reasonable in all the circumstances.

6. The Company’s position was that the Grievor’s actions were a violation of Rule Book for Engineering Employees 10.2 Track Unit Operation Speed, which requires that:

Track units must be operated at a speed which permits the vehicle to stop: within ½ range of vision of equipment or a track unit; short of any condition which may affect its safe passage.

7. Whether or not the Grievor’s actions can be characterized as a “mistake”, the Company contends that any collision is very serious due to the consequences of non-compliance. It argued that whether or not the Grievor’s foot slipped from the pedal, he was obviously not going a speed which allowed him to stop his vehicle appropriately, as required by Rule 10.2, as he collided with another track unit. The Company noted the collision caused significant damages to the machines and could have resulted in serious injury to the Grievor or others. It argues significant discipline is warranted.

8. The Union contends that this was a mistake and that the Grievor expressed genuine, real and immediate remorse as established in the Investigation. While the Union acknowledged the importance of safety, it urged that discipline must be proportional and reasonable, and that this discipline far exceeded industry standards. It also argued the Company failed to appropriately assess mitigating factors. It noted the five day deferred suspension in the Grievor’s records was the only job performance discipline for the Grievor during this 15 years

of service. The Union urged the discipline was excessive, unfair and unwarranted and was not consistent with the rehabilitative nature of discipline in this industry. It argued demerit points have historically been used to discipline conduct, even where collisions have resulted. It urged this was the case, unless the conduct was particularly egregious and/or an employee had a significant discipline record. It urged the assessment of 20 to 30 demerits in this case would conform to industry standards.

### **Decision**

9. It is not disputed the railway industry is safety sensitive industry. When Rule 10.2 is not followed and two machines collide, the consequences can be catastrophic and tragic. Fortunately, in this case, they were not.

10. An important part of this Grievor's job was to operate his machine on the track so that he kept the appropriate distances from other machines – whether parked or in motion. Knowledge of where the foot pedals are and keeping a distance which allowed him to react to other machines while he moved his feet to access the pedals, are important parts of his job. On July 4, 2020 he exhibited lack of care and judgment when he failed to keep an appropriate distance between himself and another machine that could allow him to find the brake pedal, at a time when the other machine was parked and he was approaching. In such circumstances, he was required to take careful note of his relative position to the parked vehicle as he approached, to avoid colliding with it, which he failed to do. In this case, discipline was warranted.

11. Discipline must be contextual and proportional and consideration must be given to various factors, which can be both mitigating and aggravating. Those factors are outlined in the seminal decision of *Re Wm. Scott & Co.* [1977] 1 Can. LRBR 1. One of those factors is the seriousness of the offence. There are significant implications for lack of care and judgment when maintaining safe distances between machinery, as there are important significant and serious safety consequences related to the operation of equipment. In this case, no injuries occurred, but there was damage to equipment and an injury could have easily occurred had

anyone been on the track. The potential consequences of collisions on the track are significant. A further factor is whether the conduct was premeditated. In this case, it was not. The collision resulted from a lack of care and judgment and not a deliberate violation of a safety rule. The level of remorse shown – and responsibility taken - is also a factor. The Grievor was remorseful and took responsibility for his conduct. He was shaken by the incident and did not try to deflect responsibility.

12. Turning to the Grievor's discipline record and length of service, while the Union noted that only one other performance-related discipline was in this Grievor's record, it was another moving violation, for not assessing distance appropriately and striking a concrete barrier. A previous error in care and judgment in assessing distance is an aggravating factor when assessing discipline for a second incident, however the fact that it was five years previous must also be considered. The Grievor's length of service is significant and is mitigating.

13. Considering the CROA jurisprudence, the principles of progressive discipline and the *Wm. Scott* factors, I find the imposition of 20 to 30 demerits as argued by the Union would not be a proportional discipline response for this incident. This was the Grievor's second violation for lack of care and judgment in a situation with serious potential safety consequences. The Company had cause to impose a suspension of a progressive nature for this collision – with financial impact - to bring home to the Grievor the need for increased vigilance when operating machinery, and in particular when assessing distance. He had already been assessed a five day suspension for a previous incident, although it was deferred.

14. That said, the imposition of a 30 day suspension is disproportional, as it is excessive. The Grievor was remorseful, he took responsibility for his actions, his error was a lack of judgment and not a deliberate attempt to avoid a safety rule, he has a significant service record and his previous discipline for a moving violation was five years previous.

15. Upon reviewing the CROA jurisprudence and considering the principles of progressive discipline, I find that a reasonable and proportional disciplinary response for this incident would be a suspension of 10 days.

Conclusion

16. The Company is directed to reduce the Grievor's discipline from a 30 day suspension to a 10 day suspension.

SIGNED at Wheatland County, Alberta this 1<sup>st</sup> day of November, 2022

A handwritten signature in blue ink, appearing to read "Cheryl Yingst Bartel".

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Cheryl Yingst Bartel  
Arbitrator