

IN THE MATTER OF AN ARBITRATION

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE

(the "Union")

- and -

CANADIAN PACIFIC KANSAS CITY RAILWAY

(the "Company")

DISPUTE:

Appeal of 20 demerits assessed to Conductor William Ryan of Regina, SK.

JOINT STATEMENT OF ISSUE

Following an investigation Mr. Ryan was assessed 20 demerits on January 28, 2020 which was described as "In connection with failing to ensure the route to be used was lined correctly resulting in the run though of East End Cross Over 13 switch in Regina Yard on December 22, 2019 while working assignment KR01-21".

The parties agree that CROA rules apply including item 14 of the Memorandum of Agreement Establishing the CROA&DR.

UNION POSITION

The Union contends the investigation was not fair and impartial for the following reasons:

1. The subject matter of the Notice of Investigation predetermined culpability;
2. YSE Whitrow was not formally investigated;
3. The memorandum of Superintendent Cole contained incorrect and misleading information.

The Union contends that the Company failed to meet the burden of proof for the following reasons:

1. No rules were identified as violated in the Form 104;
2. YSE Whitrow started the movement before Mr. Ryan could confirm the route to be correctly lined.

The Union contends the discipline assessed is unjustified, unwarranted, and grossly excessive.

The Union contends the Company did not consider the following mitigating factors:

1. Mr. Ryan was honest and forthcoming.
2. YSE Whitrow started the movement before Mr. Ryan could confirm the route to be correctly lined.

With respect to the Company's objections regarding the alleged vagueness of the Union's request that the grievor be made whole, the Union's position remains unchanged. The Union further considers this matter to be *res judicata*.

The Union requests that the discipline be removed in its entirety, and that Mr. Ryan is made whole for all associated loss 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 as outlined in the discipline letter was established following the fair and impartial investigation. Discipline was determined following a review of all pertinent factors, including those that the Union describes as mitigating. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances.

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

Without precedent or prejudice to the Company's aforementioned position, it is incumbent on the Union to provide detailed information on alleged lost wages, benefits and interest. The Company cannot properly respond to this request when the Union is vague and unspecific on what constitutes "made whole".

FOR THE UNION:



For _____
Dave Fulton
General Chairman
TCRC CTY West

FOR THE COMPANY:



For _____
Lauren McGinley
Assistant Director, Labour Relations
CPKC

April 25, 2023

Hearing: By video conference. May 11, 2023

APPEARING FOR THE UNION:

Ken Stuebing CaleyWray – Counsel
Jason Hnatiuk TCRC – Vice General Chairman CTY West
Doug Edward TCRC – Sr. Vice General Chairman CTY West
Brad Wiszniak TCRC – Vice General Chairman CTY West
Jeremy Quick TCRC – Local Chairman CT Division 320
William Ryan – Grievor – Regina, SK

APPEARING FOR THE COMPANY:

Diana Zurbuchen, Manager Labour Relations
Chris Clark, Manager Labour Relations

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] The Grievor, William Ryan, began his employment with Canadian Pacific Railway as a Conductor in the Regina Terminal on September 10, 2018. The Grievor had also worked in Moosejaw but was forced back to Regina. The Grievor was working as a qualified Conductor on assignment KR01-21 on December 22, 2019, when the incident occurred. The Grievor had one year of Company service at the time the discipline was issued.

[3] On December 22, 2019, the Grievor was working assignment KR01-02 as Brakeman in Regina Yard, Saskatchewan. This assignment was an RCLS (Remote Control Locomotive System) assignment with an order time of 23:59 when the following incident in dispute occurred.

POSITIONS OF THE PARTIES

[4] The Company maintains that with his Foreman, Mr. Whitrow controlling the movement via RCLS belt pack, the crew was shoving a single car eastward out of Track RH01. As the movement stopped at the 13 cross-over switch, the Grievor was supposed to reverse the East 13 cross-over switch. He failed to ensure the route to be used was lined correctly and instead lined the west 12

crossover switch, which resulted in the movement running through the East End Cross Over 13 switch.

[5] CPKCR submits that the role of the Grievor as a running trades employee is to see the safe operation of trains and help ensure that all operating rules and procedures are followed. The Grievor, having detrained and walked towards the switch, was responsible to line the East End Crossover 13 switch and ensure he fulfilled his requirement to communicate the switch position before Mr. Whitrow started the movement. The Grievor failed to do so when he lined the wrong switch and did not communicate nor confirm the switch position before the movement started.

[6] The Company maintains that the Grievor knew and understood the rules and requirements expected of him, particularly the importance of T&E Rule Book 41 Communications Requirements that 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; 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

[7] The Company maintains that culpability was established when the Grievor failed to properly line the correct switch and confirm the route to be used with his crewmate and that the 20 demerits assessed for this incident was appropriate and warranted, given the circumstances.

[8] Following the completion of the investigation, on January 28, 2020, Conductor Ryan was assessed 20 demerits for, "In connection with failing to ensure the route to be used was lined correctly resulting in the tin through of East End Crossover 13 switch in Regina Yard on December 22, 2019 while working assignment KRO1-21."

[9] The Company submits that a review of the Grievor's disciplinary record shows in his only one of service, that he was beginning to build a record of non-compliance with Company rules and requirements as this was his second disciplinary infraction in a short, couple month period. The Grievor previously accepted an Admission of Responsibility and Formal Reprimand in connection with his missed call for duty on August 30, 2019. This was the Grievor's second assessment of formal discipline in a mere few months' time.

[10] The Company submits that the Grievor was assessed discipline for his failure to ensure the route to be used was correctly lined, which resulted in the run through switch. It says that a review of the investigation statement also confirms the rules and requirements were properly brought forward and discussed through a line of questioning. The Grievor indicated he knew and understood the rules, their applicability and reasons why they must be adhered to. At no point did the Grievor indicate that he did not understand the allegations put forth to him nor was it any surprise to the Grievor as to why he was being assessed the 20 demerits.

[11] The Company maintains that the assessment of 20 demerits is not excessive. A review of the Grievor's discipline record confirms that the Company followed the principals of progressive discipline, given that this was the Grievor's second disciplinary infraction in a few months' time.

[12] The Company maintains that the other employee involved in the incident accepted an AOR for the same matter is a separate and apart from the issue. The Foreman also had accountability to ensure the route intended was confirmed; however, at the end of the day, it was

the Grievor who physically lined the wrong switch, not the foreman. This resulted in a higher level of accountability and accountability for Mr. Ryan with respect to this incident.

[13] The Union maintains that the tour of duty began without issue. The crew obtained their switch lists and operating authorities, then subsequently performed the required job briefings. The crew then tested their radios and performed the mandatory brake tests on their RCLS locomotive consist. The crew commenced work by lifting one car and were required to move it to C Yard out of Track RH01 in Regina Yard. While proceeding to C Yard, both crew members were riding the point on the footboards of the east end of the locomotive consist. Mr. Ryan rode on the side where the Locomotive Engineer would be situated in a non-RCLS assignment

[14] The Union maintains that crew stopped adjacent to the Regina Yard Office in track RH01 to line Crossover 13 switches in order to travel eastward to “C” Yard and continue with their switching duties. The movement was properly stopped in advance of the switches to be lined. At this location, there were multiple crossover switches in close proximity, centrally located to enable trains to travel in multiple directions from a number of different tracks. YSE Whitrow proceeded to walk toward and line West End Crossover switch 13, while YSH Ryan proceeded to line the East End Crossover 13 switch. The Union maintains that YSH Ryan inadvertently lined the West End 12 Crossover Switch

[15] The East End 13 Crossover and West End 12 Crossover Switches are located a mere few feet apart. The Union submits that YSE Whitrow—who had control of the RCLS box—put the movement in motion before YSH Ryan could confirm the line up and continued to operate the movement eastward over both switches. YSH Ryan did not confirm the route was properly lined with YSE Whitrow, and he did not ask Mr. Whitrow to start the movement ahead. The East End Crossover Switch 13 was subsequently run through. The crew immediately recognized the situation and stopped their movement and advised the Company of the incident.

[16] After reporting this incident, the crew were instructed to secure their movement in a yard track and return to the Yard Office where they were subsequently interviewed by Assistant Superintendent Devin Cole.

[17] The Union submits that Mr. Ryan provides a straightforward account of the event:

We started the shift tied onto one car and were moving it to C Yard. We proceeded eastward out of RH01. I detrained on the engineer's side of the east-facing unit to line crossover 13 and walked toward the switch. Jason was lining the West End Crossover 13 Switch and I was to line the East End Crossover 13 Switch. I lined what I believed was the East End Crossover 13 Switch, but was actually the West End Crossover 12 Switch, to the reverse position and Jason started the movement Eastward before I was able to check our route. The movement ran through the switch which we immediately realized and stopped the movement.

[18] When asked about T&E Rule 4.2, Mr. Ryan explains, “No, I didn't have the chance to communicate the switch position before Jason started the movement.” Mr. Ryan explains that “I am familiar with these switches however the switches are within feet of each other and I didn't get a chance to confirm my route prior to Jason starting the movement.”

[19] The Union maintains that in contrast to Mr. Ryan, Mr. Whitrow, who was in control of the movement when it ran through the switch, was offered and signed an AOR in connection with this incident for a much lesser assessment of discipline.

[20] In reply the Union submitted that CPKC mischaracterized the December 22, 2019, events giving rise to discipline and that the crew was not shoving a car out of RH01. The Union maintains that their movements were headed by the engine. I cannot agree with that position. After reviewing the Union's own Grievance letter of June 1, 2020, stated:

With Mr. Whitrow controlling the movement, the crew was shoving a single car eastward out of Track RH01.

[21] The memo of Assistant Superintendent Devon Cole's January 7, 2020, also indicated the movement was shoving a single car. This fact adds to the responsibility of the Grievor in this instant and I find that after reviewing all of the evidence that some discipline is appropriate.

[22] In CROA Case No. 4423, Arbitrator Silverman considered a Grievor's second run through switch incident in 6 months. He had over 20 years of service. She substituted a 10-demerit penalty in lieu of a termination for a run through of a switch. In that matter, Arbitrator Silverman spoke to the whole crew's shared and commensurate responsibility in matters such as this incident stating:

Given the obligation of all crew members to communicate, the grievor's role in the incident, the June 2014 run through switch infraction and the disparity of discipline, (see *CROA&DR 905* and *3581* regarding unexplained differential treatment), I find that ten demerit points is appropriate discipline.

[23] In CROA No. 4423 the Grievor, a Locomotive Engineer proceeded on radio communication from his conductor believing the movement was protected when it was not. In this case the Grievor was operating with a foreman who, the Union maintains, controlled the movement of the RCLS and moved through the improperly line switch without instructions from the Grievor. It is recognized that all crew members are responsible to communicate in such situations as this. In this the Grievor improperly lined a switch, clearly establishing his lack of attention to fundamental duties. He failed to notice his error and proceeded to the next switch. In this case he did not communicate with his co-worker who was in control of the RCLS. I find his lack of attention to his task and communicating what he was doing are significant aggravating factors warranting the discipline assessed.

[24] In view of all of the forgoing and given all the facts and circumstances in this case, I find that the discipline assessed is within a reasonable range given the facts and circumstances.

[25] The Grievance is dismissed.

Dated at Niagara-on-the Lake, this 28th day of August, 2023.

A handwritten signature in black ink, appearing to read "Tom Hodges", is written over a light gray rectangular background.

Tom Hodges
Arbitrator