IN THE MATTER OF AN ARBITRATION

BETWEEN

TEAMSTERS CANADA RAIL CONFERENCE

(the “Union”)

- and -

CANADIAN PACIFIC KANSAS CITY RAILWAY

(the “Company”)

DISPUTE:

Appeal of the 20 day suspension assessed to Conductor William Ryan of Moose Jaw, SK.

JOINT STATEMENT OF ISSUE

Following a formal investigation Mr. Ryan was assessed a 20 day suspension on March 10, 2020 which was described as “A formal investigation was held in connection with " In connection with your tour of duty while working yard assignment KR01-17 in Regina on February 18, 2020 and failing to give proper car lengths to the Engineer during a shoving movement which contacted the stop blocks and caused damage to a customer’s unloading ramp. A violation of T&E Rule Book 12.6 - Shoving Equipment (a) & (b) and
4.2 Communication Requirements.”

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

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 Union contends:

- Question 21 was leading.
- Question 20 and 25 are speculative.
- The Union requested full disclosure of all evidence, specifically requesting the Locomotive Download. Ultimately, the locomotive download was not provided to verify actual events that took place.
- The memo of Assistant Superintendent Cole prematurely assigned culpability to Mr. Ryan, stating that it was Mr. Ryan’s responsibility to take into account the grade of the track when giving car lengths.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above. The Union contends there was no evidence entered into the investigation showing culpability for a violation of the Rule Book for T&E Employees Item 12.6, or that proves Mr. Ryan provided inaccurate car lengths. The Union further contends there is no evidence of a violation of Rule Book for T&E Employees Item 4.2.

In the alternative, the Union contends the discipline assessed is unjustified, unwarranted, and excessive in all of the circumstances, including significant mitigating factors evident in this matter including:

- Mr. Ryan attempted to correct and stop the movement once he realized it was traveling too fast.
- Mr. Ryan told the Engineer to stop the movement well before the stop blocks.
- Then Engineer confirmed he was still doing 4mph when Mr. Ryan provided 1 car length to a stop.
- Mr. Ryan was honest and forthright throughout.

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
Asst. Director, Labour Relations
CPKC

May 1, 2023

Hearing: By video conference. May 11, 2023

APPEARING FOR THE UNION:

Jason Hnatiuk, Vice General Chairperson

Jeramy Quick, Local Chairperson

William Ryan, Grievor

APPEARING FOR THE COMPANY:

Rene Araya, Coordinator Labour Relations

Francine Billings, Assistant 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 Informal Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018, and Letter of Agreement dated September 7, 2021, between the parties. In accordance with their agreement, this award is without precedent to any other matter 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.

[2] I have carefully reviewed the parties written submissions and case law. In keeping with the parties' process agreement, I will only specifically refer to the case law to the extent necessary for purposes of the determination required in this matter

ANALYSIS AND DECISION

[3] On February 18, 2020, the Greivor was working as a conductor in yard assignment KRO1-17 in Regina. The crew backed up their train in the auto compound on the North track with the Greivor spotting the cars. The Grievor counted down the Engineer as they were shoving the 9 loaded autos into the Auto compound into track one, they made contact with the shop block and damaged the ramp with the leading car.

[4] The Company submits that Grievor's role as a Conductor is to see the safe operation of trains and help ensure all operating rules and procedures are followed. He failed to do so when he did not instruct the Engineer to immediately stop when he felt they were going too fast. His primary job in this instance was to make sure that he was protecting the point but failed to do so. These assumptions and lapses in judgment could have potentially led to derailment and/or serious injury. The Grievor through his own admission stated he tried to rectify the situation by counting down the cars quicker, when he realized they were going too fast, however, this was not the safest course of action.

[5] The Company maintains that discipline was warranted and the quantum of discipline was proper and warranted. Prior to the incident, the Grievor had under 1.5 years of Company service. He was issued an AOR/Formal Reprimand on October 2019 for a missed call. Three months later he was issued 20 demerits for failing to ensure the route to be used was lined currently, resulting

in a run through switch December 22, 2019. His failure to protect the point in this instance marks his third disciplinary event in less than 1.5 years.

[6] The Union maintains that the Grievor confirmed the proper car count during the investigation. It says the evidence confirms Conductor Ryan told the Engineer to stop 1 to ½ car lengths from the stop block. Mr. Ryan felt the movement was going too fast and tried to current the situation by giving shorter car lengths in an effort to get his Engineer to slow down. Mr. Ryan told his crewmate to stop prior to detraining, approximately ½ a car way from the ramp. LE Boynton did not dispute Mr. Ryan's statements and confirmed that at one car length he was still doing 4mph. There is no question that Mr. Boynton was operating the movement too fast.

[7] The Union maintains that the locomotive download was requested and not provided without any explanation or justification. It was evidently relied upon by Mr. Cole, who wrote that Boynton applied the 10 pound brake, while Boynton's incident report states that he had an 18 pound brake applied. The Grievor was denied the opportunity to prove what occurred contrary to Article 39 of the collective agreement and CROA Case Nos 3221, 3322. Mr. Ryan was on the leading end of the movement observing the track to be used he provides car counts. It submits there were no Job Briefing violations otherwise.

[8] I find that the Grievor maintained he gave proper car length instructions. He stated he gave LE Boynton an early one car notice to slow him down. He did not say he gave car lenths in rapid succession. Significantly, I find that the difference between a 10 pound brake application by Mr. Cole and an 18 pound brake application should have been addressed from the locomotive download. Mr. Cole's evidence from the download, if correct would suggest Mr. Boynton may have given inaccurate information to cover for his possible handling error.

[9] CPKCR did not produce the locomotive download as requested which I find would have given clarity to the conflicting statements. During the investigation the Grievor's Union Representative objected to the fact that the locomotive was not included as evidence and requested it. The Company did not claim that the download did not exist or was not in its possession. It has presented such information in previous case, in which it supported the Company's interpretation of the alleged violation. It is recognized that there is inconsistency when arguing that safety is paramount and yet not provide the evidence that is in the Company's control when considering rule violations. The burden is on the Company to establish that the rule was violated. It may prove to be difficult to overcome the burden when requests for evidence in its possession is ignored or it chooses to produce evidence that only it regards as relevant.

[10] The Company relies on CROA decisions 4802, 4539, 4455 and 4419 which I find are not on point with the central and troubling issue in this case. That is the Company's refusal to provide the locomotive download to address the braking control and speed of the movement during the incident.

[11] In CROA 4802, unlike this case, the Union acknowledged that Grievor made a misjudgement regarding the distance and car counts he gave his Locomotive Engineer. In CROA 4539 the issue was Union's suggestion that the re-enactment of the incident was biased. Unlike this case, the objection was not made at the time the formal investigation. In CROA 4455, again unlike this case, when dismissing the grievance, the Arbitrator noted that the download was considered. In CROA 4419, the Arbitrator noted the Grievor's most serious error in failing to insist that his co-worker protect the point of the movement, and his decidedly and exceptionally poor decision to be distracted by the use a gaming device during a tour of duty.

[12] CROA 3221 and 3322 recognise that railway arbitrators in a number of prior occasions to consider the principles which govern the application of provisions such as article 82.2 of the instant collective agreement. I agree that it is well settled that a violation of these provisions, as in this case, may amount to the denial of a substantive right, the consequence of which is to render any discipline void ab initio, regardless of the merits of the case. Arbitrators have recognised that it is done to safeguard the integrity of the expedited grievance and arbitration process established within the railway industry and the Canadian Railway Office of Arbitration.

[13] After considering the extensive submissions of the parties I find that the Employer has not discharged its onus to provide a fair and impartial hearing. I do not find that the Grievor engaged in any conduct that warranted discipline.

[14] In view of all of the forgoing and given all the facts and circumstances in this case the grievance is allowed. The Grievor will be compensated for lost time and benefits accordingly.

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

Dated at Niagara-on-the Lake, this 29th day of August, 2023.

Tom Hodges

Arbitrator