

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC KANSAS CITY RAILWAY

(The "Company")

AND

TEAMSTERS CANADA RAIL CONFERENCE

(The "Union")

RE: Grievance of Mr. Clement

SOLE ARBITRATOR: JAMES CAMERON

Appearing For The Union:

A. Stevens	– Counsel, Caley Wray
G. Lawrenson	– General Chairperson, LE-W
H. Makoski	– Vice General Chairperson, LE-W
C. Ruggles	– Vice General Chairperson, LE-W
W. Apsey	– General Chairperson, CTY, E

Appearing For The Company:

F. Billings	– Director, Labour Relations
S. Arriaga	– Manager, Labour Relations

A hearing in this matter was held via Zoom Video Conferencing on July 24, 2024.

THE PARTIES SIGNED JOINT STATEMENT OF ISSUE:

DISPUTE:

The assessment of a thirty-day suspension to Locomotive Engineer Bret Clement (“the Grievor”).

JOINT STATEMENT OF ISSUE:

Following a formal investigation, Engineer Clement was assessed with a thirty-day suspension described as:

Please be advised that your discipline record has been assessed with a 30 (THIRTY) Day Suspension from Company Service without pay (effective 2312 January 19 – 2311 February 18, 2020 including time held out of service) for the following reason(s):

In connection with your tour of duty on train 401-19, and more specifically the events surrounding the yard Assignment CW31 colliding with train 293-16 on January 19, 2020 while working as Locomotive Engineer in Calgary Terminal.

Summary of Rules Violated:

T&E Rule Book Sec 2.2 (a), (c), 2.3, 4.2, and Alberta Summary Bulletin pages 14 and 15.

UNION’S POSITION:

The Union’s position has been thoroughly expressed through the grievance process. For all the reasons and submissions set forth in the Union’s grievances, which are herein adopted, the following outlines our position.

The Union asserts that the Company has not established the burden of proof to warrant any discipline at all. CROA case 349 in short states the onus is on the Company to establish that there was just cause for the assessment of discipline. Under Rule Book for T&E Employees Section 4-Communication Item 4.2 Communication Requirements the investigation is quite clear the rule was adhered to. Had the crew been properly notified from the Terminal Trainmaster there was an active Point Protection Zone they could have complied with instruction received from the RCLS crew.

The Union further contends the Company is grasping while considering this scenario as a violation of Rule 2.2 (a) and (c). The crew worked within these rules as they had contacted the Terminal Trainmaster was directed to contact the crew on channel 59-59. The crew adhered to the instructions received from the Terminal Trainmaster as per the Summary Bulletin.

The Union submits that after further reviewing all the evidence and the investigation, it is unequivocal that the only rule violation made on January 19, 2020, was unfortunately made by Terminal Trainmaster Mitch Wilson. Engineer Clement received the instructions from the Terminal Trainmaster and complied with those instructions as given. The crew was told which tracks and direction to utilize and the channel to contact the west end job and nothing about an active Point Protection Zone.

The Union requested all evidence that would have any relevance to the incident within the investigation. The Union was made aware through the investigation process that Terminal Trainmaster Mitch Wilson had been terminated for the incident. Prior to the Company terminating Trainmaster Wilson the Company failed to retrieve any evidence or memos from him. The Unions position is that the rule violation committed by the Terminal Trainmaster was

the cause of the unfortunate incident and that Engineer Clement did not violate the rules as described on the extreme discipline assessment.

The Union seeks an order that the thirty-day suspension be expunged from Engineer Clement's work record and that he be made whole for lost wages, with interest, as well as any lost benefits in relation to his time withheld from service. 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.

Culpability was established through the fair and impartial investigation. Discipline was determined following a review of all pertinent factors, including those that Union describe. 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:
G. Lawrenson
General Chairman, LE-W

FOR THE COMPANY:
F. Billings
Director, Labour Relations

AWARD OF THE ARBITRATOR

Context

1. The facts are not contested that the grievor took his movement into an active Point Protection Zone ("PPZ") without contacting a crew protected by the PPZ. In addition, a switch was left open, resulting in a collision and derailment between a Yard Crew movement and a stationary train.
2. It is not contested that the Terminal Train Master ("TTM") failed to indicate that there was an active PPZ and a crew operating in the Zone. The TTM was terminated and did not testify.
3. The grievor is a Locomotive Engineer with thirty-three years of seniority. His discipline record includes a four month suspension in 2015 and a 30 day suspension in 2016. Previous demerits have been removed through automatic reduction.

4. At issue is whether the incident was solely the responsibility of the TTM, or whether the grievor also bears responsibility, and if so, what level of discipline is appropriate.

Position of Parties

5. The Company argues that the Alyth PPZ is active on a daily basis. The grievor failed to treat the Zone as active and to follow the necessary rules, in particular contacting the Yard Crew and leaving a switch reversed, which resulted in a collision and derailment.

6. It further submits that the instructions from the TTM were not explicit, and the grievor had a duty to inquire further if there was any doubt. It notes that the grievor passed a red PPZ sign which should have alerted him to stop and inquire.

7. While the Company concedes that the error of the TTM is a mitigating factor, it does not absolve the grievor from an obligation to follow the Rules. This was a significant incident which warrants significant discipline.

8. The Union submits that the Company has not met its burden of proof to show that the grievor was culpable of anything. The grievor had an obligation under the Alberta Bulletin to contact the TTM and follow his instructions, which is exactly what he did. The instructions were not vague, which could have engendered a requirement to inquire further; the instructions were simply wrong.

9. The Union submits that there is no presumption that the PPZ is active. The grievor was directed to contact a crew, which it did. It was not informed of the presence of an additional crew. There is no requirement to reset the switch if the PPZ is not active. The grievor was working with the Yard Crew, who was aware of the state of the switch and would have reset it when the work with the grievor was completed.

10. The incident was serious, but it was solely the responsibility of the TTM. It was reasonable for the grievor to take the TTM at his word. If there is an issue, the Bulletin should be amended.

Analysis and Decision

11. In paragraphs 16-18 of its Brief, the Company references infractions by the grievor of Rule Book 2.2 a) and c), and 4.2 which read as follows:

- (a) Safety and a willingness to obey the rules are of the first importance in the performance of duty. If in doubt, the safe course of action must be taken.
- (b) You must: iv. Be conversant with and comply with this rule book, the CROR, the GOI and each applicable timetable, operating bulletin, safety rule, policy, and instruction.

12. Rule Book T&E Employees 4.2 Communication Requirements

Rule 4.2 provides as follows:

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.

13. In my view, the primary infraction alleged by the Company is an infraction of the Alberta Bulletin, discussed below. I agree with Arbitrator Sims that an arbitrator “should look at the individual allegations as a whole and not treat each possible rule violation as a separate failure” (see **CROA 4492**). These other Rules are to be read within the context of an alleged violation of the Bulletin.

14. The Alberta Summary Bulletin provides for procedures to follow within the Alyth PPZ:

Point Protection Zone Instructions – The purpose of the Point Protection Zone (PPZ) is to allow a crew to work safely and productively, in a given area, under protection from other movements, as other movements cannot enter the Point Protection Zone (PPZ) without proper permission.

Point Protection Zone Instructions – all switches entering the Point Protection Zones will be equipped with locks the 50th Ave Crossover switches may be left normal or in the reverse position but must be left locked.

Point Protection Zones – Signs will identify the start of protection zones to the right of the track as seen from the direction of travel to enter the zone.

Point Protection Zones – Alyth Yard

N-Yard running lead: from the fouling point east leg of north nye west ward to signal 1747E

Hump Lead 1 West: From the west end hump 1 signal 1747D eastward to the fouling point of the hump 2 to hump 1 Blackfoot overpass crossover. Length is 3700'

Odgen Lead-PT02 East: From the east end Norman Yard lead switch (West end Bonnie Brook bridge) eastward on Odgen lead including the 50th St. Crossovers and PT02 50th St. crossovers eastward signal 1712B. Length is 7200'.

PT01 East: P2 East – From Switch XX1 East Switch P Yard lead to V yard lead (West end Bonnie Brook bridge) crossover eastward to fouling point 50th street crossover.

All Crews (Road and Yard) entering Point Protection Zones (PPZ) and Process:

1. Movements requiring access into the zones listed above and movements within the yards that require access to a PPZ must contact the Terminal Trainmaster and be governed by instructions received.

2. Instructions must include whether the PPZ on the route to be used are **active** or **inactive**. If the zone is inactive crews will operated as per CROR, used manual and special instructions. When the PPZ is active instructions must include the remote-control assignment and radio channel to contact the remote-control assignment directly for instructions concerning the use of the active PPZ.

3. In an ACTIVE PPZ the movement will be governed by the instructions received directly from the Remote-Control Assignment:

- Ensure there is a clear understanding of the instructions made before proceeding.

- When practicable crews entering the PPZ will restore all switches used to the same position as previously encountered. When switches are left in other than previously encountered crews MUST communicate to the remote-control assignment the position the switches have been left.
- Crews MUST Communicate with the remote-control assignment when clear or done working within the zones.

4. All Crews (road and yard) within the Remote-Control Assignments limits are reminded that CROR, user manual and special instructions still remain in effect when operating within the zones (underlining added).

15. The Bulletin is clear that all Crews must contact the TTM and “be governed by instructions received”. The instructions given will determine the procedure to follow, depending on whether the PPZ is active or inactive. Finally, it is noteworthy that the “Instructions must include whether the PPZ on the route to be used are **active** or **inactive**.”

16. It is not contested that the grievor contacted the TTM and followed the instructions received. He contacted the crew on 59-59 as directed and worked with them. If the Zone had been inactive, it appears that the grievor would have properly followed the Bulletin.

17. However, the Zone was **not** inactive. A Yard Crew was working in an **active** PPZ. It was never contacted by the grievor, a switch was not relined by the grievor, and a collision and derailment occurred on a movement operated by the Yard Crew.

18. There is no doubt that the TTM never informed the grievor that he was entering an active PPZ. The investigation makes this crystal clear:

Q19. At any time during the job briefing with the TTM, did he discuss with you and Conductor Lybbert what other trains were working in Alyth yard and if there were any active PPZ?

A. During the phone call at the Brownhouse, this was not discussed.

Q24. During your conversation with TTM Mitch Wilson, did he mention any other assignments you needed to contact prior to your movement backing up toward P yard?

A. No he did not.

Q30. Referencing Item #1, Superintendent Roseberry asked both you and Conductor Lybbert if you had inquired about any active PPZ, is this correct?

A. Yes he did, we did not inquire about any active PPZ because we thought we had already received instructions concerning the West end zone.

Q31. Referencing Item #1, Superintendent Roseberry states, you and Conductor Lybbert thought you were allowed to enter the PPZ after you had spoken to the West End job as they had lined your movement for P yard, is this correct?

A. Yes

Q32. At any time during your conversation with the West end job in V yard did you ask them if they had an active PPZ?

A. No we did not as we thought we were working with the zone after the instructions we had been given by them.

Q33. Referencing Item #1, Superintendent Roseberry states, he asked you and Conductor Lybbert if you had received permission to leave the Crossover switches reversed, is this correct?

A. Yes

Q34. In your own words, what was your response to Superintendent Roseberry's question regarding permission to leave the crossovers in the reverse position?

A. Conductor Lybbert told Mr. Roseberry that we had left the top crossovers reversed because we were working with the West end job, they had given us no instructions regarding the Top crossovers because we were working with them.

Q35. Referencing Item #1, Superintendent Roseberry states he asked you and Conductor Lybbert if TTM Mitchell Wilson gave you verbal permission to enter any PPZ, Is this correct and what was your response?

A. Yes this is correct, He gave us instructions to use the top Crossovers to get to P yard and told us to contact the west end job on 59-59, but TTM Mitchell never mentioned anything about an active PPZ.

Q43. Did you comply with the rules outlined in Item #1 (read & discussed) regarding All Crews (Road and Yard) entering Point Protection Zones?

A. Yes, we contacted the TTM and were governed by his instructions.

Q44. Did you comply with the rules outlined in Item #2 (read & discussed) regarding All Crews (Road and Yard) entering Point Protection Zones?

A. At the time, I believed we had complied with the instructions given by TTM Wilson because we were working with the west end job and were only told to contact this assignment.

Q45. Did you comply with the rules outlined in Item #3 (read & discussed) regarding All Crews (Road and Yard) entering Point Protection Zones?

A. We proceeded according to the briefing we had completed with the west end job but did not discuss restoring any switches at that point.

19. I agree with the Union argument that, as the Bulletin is currently written, there can be no presumption that the PPZ is active. Indeed, the Bulletin requires the TTM to inform Crews whether the PPZ is active or inactive and to follow instructions accordingly.

20. However, a very detailed reading of the Bulletin would note that the: "Instructions must include whether the PPZ on the route to be used are **active** or **inactive**". The TTM never explicitly stated that the Zone was active or inactive and the grievor did not ask him to clarify. The instructions from the TTM here did not explicitly contain this information, but merely directed the grievor to take certain actions, which he did.

21. The instructions received from the TTM by the grievor would reasonably have led him to believe that the PPZ was inactive, as he was only directed to contact 59-59 and to work with the West end crew, as he did. Even though the particular PPZ was very busy, it is contested whether it was always active.

22. The red sign notifying crew that they are entering a PPZ (see paragraph 15, Company Brief) is not determinative, as the grievor had received instructions which led him to reasonably understand that the PPZ was not active at that time. In addition, it does not appear that this matter was put to the grievor during his investigation, which would raise issues of admissibility, had I found otherwise.

23. The jurisprudence cited by the Company is, in my view, distinguishable. The cases cited correctly point out that entering a PPZ or travelling on a track without authority is highly dangerous and warrants serious discipline (see **CROA 5044**, where a 30 day suspension was upheld; **CROA 4854**, where a six month suspension was imposed). However, none of the cases cited by either Party deal with a case with similar facts to this matter, where the grievor followed incorrect instructions from the TTM.

24. The grievor followed the orders of the TTM, which the Bulletin requires him to obtain and follow. He did not, however, question the TTM about the status of the PPZ, when the TTM has failed to give explicit instructions as to the active or inactive status of the PPZ. The fault is overwhelmingly that of the TTM, but a very cautious LE, knowing that the PPZ is usually active and applying the safety requirements set out in the Rules, would have enquired.

25. There can be little doubt that this incident has highlighted a need for the Bulletin to be revised, to ensure positive confirmation between the TTM and crew as to the status of the PPZ. It would be possible, for instance, to state that there is a presumption that the PPZ is active unless the TTM explicitly confirms that it is inactive.

26. The Company is invited to consider amendments to the Bulletin, in order to make crew obligations when entering a PPZ as explicit as possible.

27. I view the other alleged infractions concerning the Rule Book as flowing from the failure of the TTM to communicate the active status of the PPM and the failure of the grievor to positively confirm this status, and need not make further decisions concerning these matters.

28. Given my findings above, it is clear that the discipline imposed of a 30 day suspension is excessive. Given the particular facts of this matter, and the critical importance of insuring safety in a congested Yard, I find that a written warning is appropriate.

Conclusion

29. The grievance is therefore allowed with the 30 day suspension quashed and substituted with a written warning. The grievor should be made whole.

30. I remain seized with respect to any issues of interpretation or application of this Award.

August 8, 2024

A handwritten signature in black ink, appearing to read "James Cameron", written over a horizontal line.

JAMES CAMERON
ARBITRATOR