

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**TEAMSTERS CANADA RAIL CONFERENCE**

(the “Union”)

- and -

**CANADIAN PACIFIC RAILWAY COMPANY**

(the “Company”)

**DISPUTE:**

Appeal of the Dismissal of Conductor Dino D’Ulisse of Calgary, AB.

**JOINT STATEMENT OF ISSUE**

Following an investigation Mr. D’Ulisse was Dismissed which was described as, “In connection with your conduct towards a Company Officer and refusal to follow orders directed by a Company Officer during your tour of duty while working as a Conductor on assignment C46- 08, May 8, 2020. A violation of the Canadian Pacific Code of Business Ethics.”

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, based on the Company’s refusal of the Union’s request for witnesses and full disclosure (any materials arising from, and including the investigation of Mr. Khaliq). The Union further alleges that Mr. D’Ulisse was unjustly disciplined in relation to other crew members.

The Union contends the discipline assessed is excessive, including significant mitigating factors evident in this matter including;

- Mr. D’Ulisse’s acceptance of personal responsibility
- Management’s inconsistent accounts for the record
- Previous switching activities endorsed by management
- Personal history between Mr. D’Ulisse and management
- Senior management’s original involvement in the circumstances
- No history of similar behaviour

The Union requests that Mr. D’Ulisse be reinstated without loss of seniority and that he be made whole for all lost wages and benefits 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 was established following the fair and impartial investigation. Discipline was determined following a review of all pertinent factors .

The Grievor was appropriately dismissed for his refusal to follow orders of a Company Officer and his conduct towards Company Officers. During the investigation, the Grievor confirmed his understanding of the seriousness of the violation.

The Union allege the Grievor was not provided a fair and impartial investigation claiming the refusal of witnesses. This allegation is untrue, unsubstantiated and unsupported by any evidence. At no time during the investigation did the Union request any witnesses on behalf of the Grievor, nor did they submit or attempt to submit a statement from Eliza Arentewicz. In addition, the investigation of Mr. Imran Khaliq was in connection with an alleged rule violation and not the conduct of the Grievor.

For all the reasons brought forth through the grievance process, 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:

Signed

Dave Fulton  
TCRC General Chairman

FOR THE COMPANY:

Signed

Chris Clark  
Manager Labour Relations

TCRC CTY West

Canadian Pacific Railway

September 26, 2022

Hearing – October 19, 2022 by videoconference

**APPEARANCES**

**FOR THE UNION:**

Michael Church, Counsel, Caley Wray  
Dave Fulton, GC CTY West  
Doug Edward, VGC CTY West  
Ryan Finnon, VGC CTY West  
Trent Haug - Local Chairman - Calgary  
Dino D’Ulisse - Grievor

**FOR THE COMPANY:**

Chris Clark, Manager Labour Relations  
Elliot Allen, Labour Relations Officer  
Lauren McGinley, Assistant Director Labour Relations

## **AWARD OF THE ARBITRATOR**

### **JURISDICTION**

1. This is an Ad Hoc Expedited Arbitration pursuant to 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. The parties have agreed that I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

### **THE INCIDENT**

2. The Grievor was dismissed for conduct towards a Company Officer and refusal to follow orders directed by a Company Officer. The incident giving rise to the conduct and his dismissal originally began as the result of safety concerns for work being performed on May 8, 2020 by the Grievor and his crew. He had been ordered as the Conductor on C46-08, a Roadswitcher that primarily services customers on the Brooks subdivision in the Carseland industrial region east of Calgary. His crew included Trainman Imran Khaliq and Locomotive Engineer Mike Stuart.

3. At approximately 13:30, Assistant Superintendent Kyle Leafloor and Trainmaster Mike Rioux were performing Efficiency Testing or E-testing on the Grievor and his crew at West

Carseland. The Company Officers submitted memorandums that the Grievor and his crew had been “Bottling the Air” in the train line of the cars being kicked under their own momentum. The procedure, is potentially very dangerous. If a car is being kicked with bottled air and the hand brake is not operational a run-away car can result. CP says the Grievor rode the tail end of the cars being kicked. However, they observed that at no point was the hand brake tested prior to kicking the cars into what was a clear track. Upon observing the rule infraction, the Company Officers immediately communicated with the Grievor regarding the bottling of air. When they approached the Grievor and his crew, a disagreement developed in regards to what Mr. Leafloor was alleging. The discussion between the Grievor and Mr. Leafloor escalated. The Grievor was removed from service for his alleged conduct.

## **THE INVESTIGATION**

4. Following the incident, Assistant Superintendent Kyle Leafloor and Trainmaster Mike Rioux provided memorandums outlining the incident. Mr. Leafloor’s memo provided:

May 8th, 2020

Memorandum to File – C46-08 Dino D’Ulisse #686380 and Imran Khaliq #979625

Re: Efficiency Test – Observations on the C46-08 at West Carseland

On May 8th, 2020 at approximately 1330 I (Kyle Leafloor) and Trainmaster - Mike Rioux were performing joint testing on the C46-08. The crew were working in the BT449C track at west Carseland on the Brooks subdivision. My radio was locked on the stand by channel 191-91.

I heard on the radio Mr. Khaliq ask for three point protection. Once received, he reached over the knuckle and closed the angle cock furthest away from him as well the angle clock right beside himself, effectively bottling the air in the train line. At this point he proceeded to uncouple/kick the cars under their own momentum while Mr. D’Ulisse was riding the tail end car of the cars being kicked. At no point in time was the hand brake tested prior to kicking these cars into a clear alley.

I heard over the radio the crew talking about “bottling air”. The crew then proceeded to kick approximately twelve cars with bottled air, into a clear alley without first testing the hand brake. When the glad hands separated the train line did not propagate an emergency brake application and the cars moved freely. Trainmaster Mike Rioux asked the crew over the radio if they had bottled the air, to which Mr. D’Ulisse said “Nope”. I didn’t believe Mr. D’Ulisse because I had clearly observed this happen. We immediately approached Mr. D’Uliise and confronted him regarding our observations.

I asked Mr. D’Ulisse again, if he had bottled the air while kicking these cars. He replied, “Yes. It was only a small move we had to make. It wasn’t a big deal” He openly admitted to bottling the air to myself and Trainmaster Rioux. Mr. Rioux and I then approached Mr. Khaliq, and asked him if he

bottled the air. Mr. Khaliq openly admitted saying “Yes”. After escalating this incident to Superintendent Roseberry and General Manager Sheaves, I was informed to remove both Mr. D’Ulisse and Mr. Khaliq from service.

I informed both employee’s that they were removed from service pending a formal investigation. Mr. D’Ulisse yelled “This is fucking bullshit!” whilst taking an aggressive stance. Mr. D’Ulisse then continued by yelling, “Fuck this fucking job and this fucking company, I’m sick and tired of all this bull shit!” Mr. D’Ulisse persisted with his yelling by threatening me, stating, “You’re fucking lucky there’s people here.” At this point the employee went to the head end of the locomotive and was not listening or following my instructions any longer. Mr. Rioux and I believed at this point in time it was better to allow Mr. D’Ulisse to calm down and deescalate the situation instead of provoking him further.

Mr. D’Ulisse returned to the ground and approached my truck shortly afterwards, Mr. D’Ulisse said, “I’m fucking done and I quit, I hate this fucking place. This is your fucking fault!” While pointing directly at me. He proceeded to take off all his CP owned equipment, and place it on the ground beside my truck including his vest, belt, switch keys, tablet, work order, etc...

At this point he said, “I quit, I’ll sign my fucking resignation right now. My wife is coming to pick me up I’m done.” I informed him that he was not authorized to leave the property and that he was subject to alcohol and drug testing at Alyth Yard. He refused, stating, “I’m not taking a fucking drug test, and giving an initial incident report, fuck you.”

I then informed him that he was not authorized to leave, and that if he left with his wife he was acting in an insubordinate manner. I further advised him, that he would also be abandoning his job if he left in a personal vehicle. Dino D’Ulisse advised me that he understood what I was saying, and said “I don’t give a shit, I’m quitting anyways.”

Mr. D’Ulisse left the property in a metallic silver BMW with another individual he identified as his wife. I did not speak to Dino after these conversations.

Kyle Leafloor  
Assistant Superintendent – Alberta South  
(403) 803-8849

5. On July 31, 2020, the Grievor attended a Company investigation providing answers to 74 questions from the investigating officer. Similar to the memorandums of Mr. Leafloor and Mr. Rioux, the Grievor gave an overview of what had occurred before answering additional specific questions providing:

Q15 Please explain in your own words the events that transpired up to and including the time you left Carseland on May 8, 2020?

A: Mr. Stuart, Mr. Khaliq, and I were working on the C46-08 and arrived at West Carseland at approximately 1315hrs. Our train consisted of rail-cars for both Nutrien and Orica (55 cars in length). We backed into West Carseland, heading southward. I decided to place our tail-end cars towards BT449C (east track) for storage purposes. Mr. Khaliq was positioned at the north switch (BT449B/C) and I had walked southward earlier, lining switches for our movement. When the movement arrived at the cut, Mr. Khaliq stopped the movement. I was at the tail-end of our movement down BT449C and put on a hand brake. At this point Mr. Rioux, over the radio, had asked us what we were doing. I explained to Mr. Rioux how we were going to switch our train. At the same time, because Mr. Rioux and I were conversing over the radio, I gave Mr. Khaliq a hand signal to back up. The slack from our movement had shown me that the hand brake I had put on earlier was effective. Mr. Khaliq had witnessed this. I released the brake and Mr. Khaliq had kicked approximately 12 rail cars into BT449C. Unfortunately, the cars we kicked did not get very far. Mr. Khaliq coupled back onto BT449C and kicked the cut of cars plus some additional ones into BT449C again. I secured the cars in BT449C on the south end after they had cleared into the track. After the cars were secure, I opened the angle-cock at the south end and the cars went into emergency. Mr. Khaliq put the north end cut of cars in emergency as well.

Mr. Leafloor contacted me on the radio and wanted to speak in person. He asked where I was and I informed him that I was at the south-end of West Carseland. I met Mr. Leafloor and Mr. Rioux and they informed me that I had failed a proficiency test. Mr. Leafloor informed me that the way we kicked the cars, "bottling the air", was against the rules. Mr. Leafloor then spoke to Mr. Khaliq a few minutes later. We continued our work, southward, heading into Nutrien to spot their cars. While working in Nutrien, approximately thirty (30) minutes later, we were asked to stop our movement. Then, another thirty (30) minutes later, Mr. Khaliq and I were informed that we were HOS and that a relief crew had been ordered.

I lost my cool and said some inappropriate words to Mr. Leafloor. After that, I began hyperventilating. Under emotional duress, I told Mr. Leafloor I was quitting. I then called my wife to drive out to West Carseland to pick me up. I was stressed, confused and emotional. I sat on the ground beside the road and cried. Just before my wife arrived, Mr. Leafloor came out of his truck and asked me if I was refusing a drug test and abandoning my job. I told him I was "done with CP" and that I did not want to talk to him anymore. He asked the questions: "Are you abandoning your job?" and "Are you refusing a drug test?" several more times. I told him "I am not refusing anything." I believe Mr. Leafloor was not listening to me and he did not understand the tension and stress I was going through. I recall feeling that it was essential that I leave that situation. Mr. Leafloor then informed me that he required I sign a resignation form immediately. Mr. Leafloor insisted that I call my wife and tell her to turn around and go home. Mr. Leafloor then instructed me to get in his company vehicle and

drive with him back to Alyth. I refused and told him I will drive back to Alyth with my wife. My wife was the only one that I could trust at that moment; I did not trust Mr. Rioux or Mr. Leafloor. A couple of minutes later my wife arrived. My wife and I drove towards Calgary for about ten (10) minutes, then pulled over. I felt sick in my stomach. She helped calm me down. After calming down somewhat, I seeked counsel from my union. I was told that if I did not want to quit that when I arrive at Alyth I should speak to a manager and fill out the required Initial Incident Report (IIR) and perform the required drug test. When I arrived at the Alyth Brownhouse, I spoke with Trainmaster Grant Duncan ("Mr. Duncan"). I told Mr. Duncan that I would take the drug test and fill out my IIR. Mr. Duncan made a phone call to Superintendent Shane Roseberry ("Mr. Roseberry"). Mr. Roseberry requested that I wait by my vehicle. Approximately ten (10) minutes later, Mr. Leafloor, Mr. Rioux, Mr. Stuart and Mr. Khaliq arrived from West Carseland. At the same time a CP Police officer had arrived. I walked over to the officer and Mr. Leafloor came up to us and stated, "This is the guy.". The officer then asked to have a private conversation with myself. The officer asked what had happened and I gave him a brief description of the events that occurred. He then asked if I had threatened Mr. Leafloor. I answered; "No, absolutely not.". I told the officer that I swore at Mr. Leafloor and said some mean-spirited words to him but I did not make or utter threats. The officer then went over to speak with Mr. Leafloor. A few minutes later my union called. I was advised that Mr. Roseberry requested that I leave CP property. It was passed on from my union representative that Mr. Roseberry would not require me filling out an IIR or complete a drug test. Mr. Roseberry informed my union representative that I was to leave CP property immediately. Mr. Roseberry said I was banned from CP property and demanded I resign within twenty-four (24) hours. At that moment, I left CP property and returned home.

In my opinion, there are missing details in both Mr. Leafloor and Mr. Rioux's MTF. I have tried to fill in some of those details. In my sincere estimation, Mr. Leafloor and Mr. Rioux did not witness anything requiring a crew being pulled out of service. I believe it was an over-reaction and misunderstanding. When Mr. Khaliq and I were both given a failed proficiency test on May 8, 2020, it was, in fact, not a rule violation. CP has since changed the rule about "bottling the air" with a bulletin dated July 2, 2020. GOI Section 4, Item 9.3 has been revised since this incident on May 8, 2020.

*Old GOI Section 4 Item 9.3:*

- a) *When cars will be cut off in motion and controlled by one or more hand brakes, such hand brakes must be tested in advance to determine they are operational before equipment is cut off in motion; and*
- b) *Do not couple or allow cars to move under their own momentum onto standing equipment, unless it is known that the brakes applied the standing*

*equipment are sufficient to prevent unintended movement of all the equipment after coupling.*

*New GOI Section 4 Item 9.3 revised July 2, 2020:*

- a) Cars must not be cut off in motion with the brake pipe charged and both angle cocks closed;*
- b) When cars will be cut off in motion and controlled by one or more hand brakes, such hand brakes must be tested in advance to determine they are operational before equipment is cut off in motion; and*
- c) Do not couple or allow cars to move under their own momentum onto standing equipment, unless it is known that the brakes applied the standing equipment are sufficient to prevent unintended movement of all the equipment after coupling I felt it was retaliation because I assume he did not follow proper procedure*

I did lose my cool. I did say things that I regret. I did say I wanted to quit. I did not threaten Mr. Leafloor. Mr. Leafloor accused me of threatening him, then he wanted me to drive back with him to Alyth, alone. I refused to go with him. I do not want to quit my job. Saying that I wanted to quit was a “heat of the moment” remark. I had no intention of quitting my job. After I cooled down and returned to Calgary, I was ready to fill in the IIR and complete the drug test but Mr. Roseberry sent me home. I was not myself that afternoon and I went to see my doctor after the incident because I felt something was wrong with me. I was diagnosed and CP Occupational Health Services (“OHS”) is fully aware. I was medically fit to return to work as of July 7, 2020.

I felt like I was being harassed on a rule we were complying with. I keep up with the rules and am familiar with the process of “bottling the air”. We did not violate the GOI or T&E Safety Rule Book. Mr. Leafloor came to us trackside, with no PPE on, telling us that we violated a rule that does not exist and then an hour later HOS. My crew was switching, with Mr. Rioux, twice before within the previous few days, the exact same way. At the time it made me very upset. The fact that Mr. Roseberry and General Manager Sheaves made the decision to pull the crew out of service was frustrating.

The fact that four (4) supervisors were not familiar with the rule is disheartening. I felt I was being targeted on purpose and it triggered a reaction. Because I was under duress, I told Mr. Leafloor I was quitting. I was not thinking logically or with reason. I left with my wife because she was the only one I trusted in that moment. I feel like I have already been dismissed before I have had an investigation. I have been made to feel guilty without the benefit of the doubt and unfairly treated. When I arrived at Alyth with my wife on May 8, 2020, there was a police officer waiting. That was humiliating. Then being banned from the property and Mr. Roseberry demanding my resignation. The fact that I could not receive any help medically, until three (3) weeks after the incident was also in my opinion disgraceful.



6. Both Assistant Superintendent Kyle Leafloor and Trainmaster Mike Rioux submitted memos which were admitted as evidence into the investigation by the Investigating Officer, Assistant Superintendent Shawn Wiebe which both provided:

Re: Efficiency Test – Observations on the C46-08 at West Carseland.

7. The Grievor was notified to attend an investigation July 31, 2020:

IN CONNECTION WITH:

Your conduct while working assignment C46-08 on May 8, 2020.

8. Trainman Khaliq also provided an Initial Incident Report (IIR) in connection with this assignment on May 8, 2020. On May 14, 2020, Mr. Khaliq attended an investigation in connection with the May 8, 2020 assignment. His IIR was not allowed by the Investigating Officer. He was also not allowed as a witness at Mr. D'Ulisse's investigation. His IIR and attendance as a witness are an issue in dispute in this matter.

9. Following the investigation, the Grievor was found culpable of the following while working as the Conductor on assignment C46-08 on May 8, 2020:

Insubordination; refusing to follow orders directed by a Company Officer, including his refusal to stay on Company property and his refusal to submit to a alcohol and drug test required by Company Policy; and  
Inappropriate, crude and offensive conduct directed towards a Company Officer.

10. The Company submits that the Grievor had an extensive background in all applicable Canadian Railway Operating Rules (CROR), Special Instructions and General Operating Instructions (GOI) and, more importantly, all Company Policies. He had recently completed his rules recertification in February 2020. Included in that recertification program was a specific course related to the Company Policy on Violence in the Workplace: Preventing Violence in the Workplace. Company records indicate that the Grievor completed the Prevention of Violence in the Workplace course on at least four occasions since rehiring with the Company in 2007. The Company maintains that the conduct of CP Officers Mr. Rioux and Mr. Leafloor was not provocation for the conduct of the Grievor.

11. CP maintains that a breach of the policy can be defined as any action, conduct or comment that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment. It says that there is no doubt as to the Grievor's action as being in contravention to the policy. His unwanted, derogatory and offensive remarks to a Company Officer were violations as outlined in the Company's Hybrid Discipline Guidelines.

12. The Union argues that unfounded allegations of Company Officers Mr. Rioux and Mr. Leafloor were the trigger of any inappropriate conduct by the Grievor. In this instance, the E-Test was unfounded and misdirected altogether. It says that the Officers could not physically view the crew during this switching operation, which is described by Mr. D'Ulisse. It says the issue was detailed in the Grievor's statement demonstrating that the managers' account of what they saw—and from where—was not credible.

13. The Union submits that nothing in the then-most-current edition of the Train & Engine Safety Rules, nor anything in the General Operating Instructions, prohibits "bottling the air"

when kicking/switching in the manner being performed by the Grievor and his crew. GOI Section 4 Item 9.3 did not prohibit this practice until revisions were made by the Company on July 2, 2020. It says management had previously endorsed such switching practices (cut off in motion with air), with Mr. Rioux participating in similar activities only a few days previously.

14. As a result of Mr. Leafloor's error, the Union says that tempers flared. Mr. Leafloor advised the Grievor that he was removed from service. Mr. Leafloor asked the Grievor to provide an Initial Incident Report and inappropriately submit to a substance screening test. In the heat of the moment, the Grievor vented at the unfairness of this treatment in the context of an unfounded efficiency test.

15. The Union says the Grievor acknowledges that he refused to ride back to Calgary with Mr. Leafloor because of threat allegations made by Mr. Leafloor. As a result, he called his wife, Eliza Arentewicz, on his cell phone to come pick him up. Ms. Arentewicz arrived and drove directly back to Calgary station (Alyth), an approximate 40-minute drive. Mr. D'Ulisse and his wife arrived at the road crew reporting location, approximately 10-15 minutes before Mr. Leafloor and Rioux.

16. Once at Alyth, the Grievor had calmed down. He spoke with another manager, Trainmaster Grant Duncan, and informed Mr. Duncan that he would submit to a substance screening test, and he did not wish to resign. Mr. Duncan contacted Superintendent Shane Roseberry, and it was agreed that Mr. D'Ulisse would wait outside for further instruction. Mr. D'Ulisse was shortly thereafter instructed to leave the premises immediately. CP no longer sought for Mr. D'Ulisse to complete an Initial Incident Report (IIR) or undertake the drug test. The Grievor complied and left Alyth.

17. Mr. D'Ulisse subsequently sought medical attention and was diagnosed with acute anxiety and stress beginning May 8, 2020. He remained off work due to this diagnosis for almost two months and was medically cleared July 6, 2020 as set out in evidence contained in his counselling reports.

18. The Union submits that Mr. Khaliq provided an Initial Incident Report in connection with this assignment on May 8, 2020. He maintained that the crew operated in a completely proper and normal fashion in full compliance with the relevant rules. On May 14, 2020, Mr. Khaliq attended an investigation in connection with the May 8, 2020 assignment. It says this investigation was commenced but was discontinued prior to completion. The Company discontinued the statement and refused to disclose the contents posed substantial concern. The Union maintains that if Mr. Khaliq was able to defend the crew's switching actions or confirm whether the practise was previously condoned is unfortunately unknown as a result.

19. The Union argues that the Grievor was not afforded a fair and impartial investigation on the basis that his crewmate, Mr. Khaliq, was not called as a witness, nor was Mr. Khaliq's initial incident report contemplated as evidence.

20. In response, the Company maintains that this was a decision properly made by the investigating officer in the circumstances. It says the investigation confirms that there was no evidence from Mr. Khaliq provided when investigating the Grievor's conduct. At no time did the Grievor dispute his conduct unbecoming or advise the investigating officer that Mr. Khaliq had something of significance to add. Calling on Mr. Khaliq as a witness was nothing more than an attempt to highjack the investigation and turn it into circus.

21. The Company says that while the collective agreement allows for witnesses where appropriate, it does not allow for an employee the unfettered ability to call witnesses in order to disrupt and delay an investigation. The record confirms that the investigating officer made the right decision and the Grievor was afforded a fair and impartial investigation.

22. The Company submits that plain read of the investigation and memorandums supplied by the Company Officers show the Grievor's insubordinate behaviour was not only inappropriate but also completely unacceptable. The Company had no other option but to terminate the employment relationship with the Grievor.

### **ANALYSIS AND DECISION**

23. It is generally accepted by arbitrators that railway investigations are part of the foundation for determining if discipline is to be assessed. As in this case, at the outset of the investigation the investigating officers asked the Grievor and his union representative:

Do you understand that investigations are conducted in an effort to determine facts pertaining to incidents and CP expects its employees to answer all questions in a truthful manner and to give false or misleading information in an investigation may result in disciplinary action or dismissal?

24. The investigating officer also stated that the investigation package only included:

Item #1 - Memo from Assistant Superintendent Kyle Leafloor

Item #2 - Memo from Trainmaster Mike Rioux

25. The Union objected and again requested Mr. Khaliq's evidence be included as noted in the investigation:

Union Objection: In the Investigation package that has been issued it does not include the initial investigation of Imran Khaliq of the day in question as he was part of the crew. The Union believes that this evidence and any evidence of Mr. Khaliq's Investigation is key for Mr. D'Ulisse's investigation. The Union is requesting that this evidence is part of the Investigation package as Mr. Khaliq's investigation is essential in order to have a fair and impartial Investigation for Mr. D'ulisse.

Company Officer: The evidence from Mr. Khaliq's investigation was in connection with the alleged rule violation, not the conduct of Mr. D'Ulisse after the fact.

26. I find the Company's investigation and its position regarding the investigating officer's rulings on admissible evidence problematic. Prior to the investigation, the Grievor was served with a notice of investigation. The notification did not advise the Grievor of his right to request witnesses on his own behalf as clearly required by the collective agreement. The investigating officer was advised by email that the Union was requesting that the evidence package include Mr. Khaliq's investigation and that it was essential in order to have a fair and impartial investigation for Mr D'ulisse. The Investigating officer did not respond to the email before the investigation. The collective agreement requires that notification of an investigation shall be accompanied with all available evidence, including a list of any witnesses or other employees, the date, time, place and subject matter of their investigation, whose evidence may have a bearing on the employee's responsibility.

27. The Investigating Officer clearly rejected inclusion of Mr. Kahlid's report on the basis that his evidence was in connection with the alleged rule violation not the conduct of Mr. D'Ulisse after the fact. There is no mention of any concern for an attempt to hijack the investigation and turn it into circus as suggested in the Company submissions.

28. In the Arbitrator's view, Mr. Khaliq's report document and the memos from Assistant Superintendent Kyle Leafloor's and Trainmaster Mike Rioux all clearly detail their concern and details of a rule violation which the Union maintained triggered the conduct of the Grievor.

29. The Company argued that the allegations of a rule violation were not provocation. Mr. Khaliq was present for the period that the Company Officers were involved with the Grievor at Carseland. He was present for the conversations with the Grievor which are in dispute. His IIR evidence directly challenged one of the most significant allegations regarding the untested hand brake. His report was not included notwithstanding the collective agreement requirement that Employees will not be disciplined or dismissed until after a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced.

30. Notwithstanding the contradictions of the Grievor and Mr. Khaliq, neither Trainmaster Rioux or Assistant Superintendent Leafloor were called by the Company to give evidence responding to the challenges. Mr. Leafloor provided a memo later on the day of the incident stating in part:

Memorandum to File – C46-08 Dino D'Ulisse #686380 and Imran Khaliq #979625 Re: Efficiency Test – **Observations** on the C46-08 at West Carseland

On May 8th, 2020 at approximately 1330 I (Kyle Leafloor) and Trainmaster Mike Rioux were performing joint testing on the C46-08. The crew were working in the BT449C track at west Carseland on the Brooks subdivision. My radio was locked on the stand by channel 1 91-91.

**I heard** on the radio Mr. Khaliq ask for three point protection. **Once received, he reached over the knuckle and closed the angle cock furthest away from him as well the angle clock right beside himself, effectively bottling the air in the train line.** At this point he proceeded to uncouple/kick the cars under their own momentum while Mr. D'Ulisse was riding the tail end car of the cars being kicked. At no point in time was the hand brake tested prior to kicking these cars into a clear alley.

**I heard** over the radio the crew talking about "bottling air". The crew then proceeded to kick approximately twelve cars with bottled air, into a clear alley without first testing the hand brake. **When the glad hands separated the train line did not propagate an emergency brake application and the cars moved freely.** Trainmaster Mike Rioux asked the crew over the radio if they had bottled the air, to which Mr. D'Ulisse said "Nope". I didn't believe Mr. D'Ulisse because **I had clearly observed this happen. We immediately approached Mr. D'Ulisse and confronted him regarding our observations.**

I asked Mr. D'Ulisse again, if he had bottled the air while kicking these cars. He replied, "Yes. It was only a small move we had to make. It wasn't a big deal". He openly admitted to bottling the air to myself and Trainmaster Rioux. Mr. Rioux and I then approached Mr. Khaliq, and asked him if he bottled the air. Mr. Khaliq openly admitted said "Yes". After escalating this incident to Superintendent Roseberry and General Manager Sheaves, I was informed to remove both Mr. D'Ulisse and Mr. Khaliq from service.

Mr. D'Ulisse left the property in a metallic silver BMW with another individual he identified as his wife. I did not speak to Dino after these conversations.

31. The Company's documents also included Mr. Leafloor's two E-Tests on the date of the incident on the Grievor's file under Testing noting in part that:

SECURING EQUIPMENT WHILE SWITCHING EN ROUTE Fail  
Employee was **observed bottling air on a cut of cars and failed to check the effectiveness of a handbrake prior to kicking the cars. Employee was removed service...**

APPLYING HAND BRAKES Fail Employee was observed failing to check the effectiveness of a handbrake prior to kicking the cars into a clear alley. Employee was removed service....

32. I find the problem with Mr. Leafloor's observations and the conclusions he makes are simply not consistent or balanced. While observations can be drawn and perceived from listening to radio conversations, Mr. Leafloor's E- Test failures placed on the Grievor's record above state that it was the Grievor who was "observed bottling air and failing to check the hand brake." In his memo he stated radio observations made from his Company vehicle also suggest visual observations when he provides:

I heard on the radio Mr. Khaliq ask for three point protection. **Once received, he reached over the knuckle and closed the angle cock furthest away from him as well the angle clock right beside himself, effectively bottling the air in the train line.**

**When the glad hands separated the train line did not propagate an emergency brake application and the cars moved freely.**

**Emphasis Added**

33. Mr. Leafloor's assertions were directly challenged in Mr. Khaliq's a written incident report later that day also addressing the triggering incident but clearly stating that the handbrake was tested. During the discussions with Mr. Leafloor at the time of the incident, as well as the investigation and grievance process, the Grievor challenged the credibility of Mr. Leafloor's allegations. He maintained that:

Mr. Leafloor and Rioux had not visually observed the crew as alleged, but had drawn inaccurate conclusions from listening to radio conversations on a busy channel while sitting nearby in a Company vehicle.

The hand brake had been tested prior to kicking the cars in question.

Trainmaster Rioux had observed the Grievor and his crew working on the same assignment and switching in the same manner on days just prior to the incident without raising any concern.

The actions were not a rule violation as confirmed by the Company's issuance on July 2, 2020 of a notice of General Operating Instruction (GOI) and Train and Engine (T&E) Safety Rule Book Changes to prohibit the cutting off of cars in motion with a charged brake pipe.

He felt intimidated, stressed and began hyperventilating as a result of Mr. Leafloor's rule violation allegations and the demand that the crew submit to a drug and alcohol test.

He refused to travel and be alone with Mr. Leafloor in his vehicle and called his wife to come and get him.

He denied that he threatened Mr. Leafloor.

He was concerned with Mr. Leafloor's demand that that he travel with him in his vehicle to Calgary.

34. The issues raised by the Grievor and the Union were not challenged, but were instead largely ignored by the Company. The Company chose not to call Mr. Leafloor or Mr. Rioux as witnesses. The Collective agreement requires that Employees will not be disciplined or dismissed until after a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced.

35. The Grievor's allegation is that Mr. Leafloor and Rioux had not observed the crew as alleged. The Grievor maintained that the Officers had drawn inaccurate conclusions from listening to radio conversations on a busy channel while sitting nearby in a Company vehicle.

36. Mr. Leafloor's memo is drawn from what he said he observed and heard. Trainmaster Rioux is somewhat different in which he states:

May 8th, 2020

Memorandum to File - (46-08 Dino D'ulisse #686380 and Imran Khaliq #979625 Re: Efficiency Test- Observations on the C46-08 at West Carseland

On May 8th, 2020 at approximately 1330 Assistant Superintendent Kyle Leafloor and I were in West Carseland performing joint testing on the C46-08 while they were working off the East leg of the wye more specifically track BT449c. **The radio in Mr. Leafloor's company truck was on Train Standby Channel #1 (91-91).**

**I heard on the radio** Mr. Khaliq request 3 point protection and once confirmed he reached over the knuckle closed the angle cock on the far side as well as the angle closest to him on the cars attached to the locomotive, specifically bottling the air in the train line. Mr. Khaliq asked the engineer for a pin back and the cars proceeded to uncouple under their own momentum while Mr. D'Ulisse rode the tail end of the 12 cars being kicked.

**The crew did not test the handbrake prior to kicking the cars into track BT449c which was an empty track.**

**I picked up the radio** and asked Mr. D'ulisse if they had bottled the air on the cut of cars they kicked into track BT449c and Mr. D'Ulisse replied "Nope". Mr. Leafloor and I didn't believe Mr. D'ulisse after what we had **clearly witnessed** Mr. Khaliq close both angle cocks. We immediately engaged Mr.D'Ulisse and discussed what we had **observed**.

At this point in time Mr. Leafloor asked Mr. D'ulisse if they had bottled the air prior to kicking the cars and he said" yes we had a small move to make and we did not want to clear the South Main track". Mr. D'Ulisse admitted to bottling the air with Mr. Leafloor and I. I called Mr. Khaliq on the radio as he was on the point riding the lead car through track BT449B and told him to stop his movement prior to occupying the crossing. Mr. Leafloor and I **confronted** Mr. Khaliq and asked him if he had bottled the air and he undoubtedly said yes. Mr. Leafloor then escalated this incident to Superintendent Roseberry and General Manager Sheaves and we were informed to remove both employees from service.

**While Mr. Leafloor was speaking with Mr. D'Ulisse and Mr. Khaliq on the ground, I climbed up the engine CP 2303 and confronted Locomotive Engineer Stuart and discussed if he had any knowledge of his crew members "bottling the air" and he replied "definitely not". While in the cab of the locomotive, I observe Mr. D'Ulisse walk away from the conversation with Mr. Leafloor and climb onboard the locomotive and he stated" I'm not taking a fucking drug test, this is my last day here." I vacated the CP 2303 and got back into Mr. Leafloor's truck and we agreed to let Mr. D'Ulisse cool off.**

Mr. D'Ulisse returned to Mr. Leafloor's truck and he said "I fucking quit here's all my shit. He proceeded to remove his CP vest and put all CP owned equipment on the ground beside Mr. Leafloor's truck.

At this point Mr. D'Ulisse said "I quit, I'll sign the fucking resignation right now, I called my wife and she's coming to pick me up". Mr. Leafloor informed Mr. D'Ulisse that he was not authorized to leave company property and would be subjected to a drug test upon arriving in Alyth. Mr. D'Ulisse answered "I'm not taking a fucking drug test or filling out a report". Mr. Leafloor then informed Mr. D'Ulisse he was not authorized to leave and if he did he would be acting insubordinately. Mr. Leafloor also told Mr. D'Ulisse he would be abandoning his job if he left with his wife. Mr. D'Ulisse did not care at this point.

**Emphasiss Added**

37. Trainmaster Rioux, unlike Mr. Leafloor is clearer in stating that what was heard was over the radio from within a Company truck. Like Mr. Leafloor, he referred to what he heard as

observation. In regard to the radio conversation, he would also refer to it as what he clearly witnessed. I find the credibility of his memo is significantly challenged. He states that while on engine CP 2303, he confronted Locomotive Engineer Stuart and discussed the bottling of air and at the same time he states that he observed a conversation outside the cab of the locomotive:

I observed Mr. D'Ulisse walk away from the conversation with Mr. Leafloor and climb onboard the locomotive and he stated "I'm not taking a fucking drug test, this is my last day here." I vacated the CP 2303 and got back into Mr. Leafloor's truck and we agreed to let Mr. D'Ulisse cool off.

38. I find that a reasonable person familiar with being on a locomotive would find Mr. Rioux's statement of hearing of a conversation of Mr. Leafloor on the ground with the Grievor concerning. I agree with the Union that the evidence and allowing the calling of Mr. Khaliq as a witness at the Grievor's investigation would have provided further context to the exchange between Mr. Leafloor and Mr. D'Ulisse, as well as the credibility of the memoranda entered by Mr. Rioux and Mr. Leafloor.

39. Assistant Superintendent Leafloor's and Trainmaster Rioux's memos outlining what was heard, observed and witnessed is challenged by the Union without response by the Company prior to the dismissal of the Grievor. The Grievor stated that he could not have seen what he suggested from his truck. In his statement, the Grievor states that in his opinion, there are missing details in both Mr. Leafloor and Mr. Rioux's memos. He said he tried to fill in some of those details. In his estimation, Mr. Leafloor and Mr. Rioux did not witness anything requiring a crew being pulled out of service. He stated that it was an over-reaction and a misunderstanding, not a rule violation. CP has since changed the rule about "bottling the air" with a bulletin dated July 2, 2020. GOI Section 4, Item 9.3 has been revised since this incident on May 8, 2020.

40. I have no doubt that Assistant Superintendent Leafloor's believed he heard a potential rule violation taking place. However, he does not refer to any of the allegations as what he saw. The words observed, heard and witnessed were used by both officers interchangeably. An examination of the accounts of the Company officers must be based on their consistency with the probabilities that surround the existing conditions at the time. It must be clear and credible.

41. I find that in correspondence after the dismissal between the Grievor and Mark Redd, the Executive Vice President of Operations, informative in considering the Officers accounts. After taking time to review the case thoroughly, he more accurately refers to the observations as "a perceived rule violation" in his response to the Grievor stating:

From: Mark Redd <Mark Redd@cpr.ca>  
 Subject: Re: Apology letter  
 Date: June 20, 2021 at 7:59:16 AM MDT  
 To: Dino D'Ulisse <dino3466@hotmail.com>

Dino, thank you for reaching out and asking for a review. I see you have taken next steps with your Dr and Shepell. applaud these steps.

I have taken some time to review this case thoroughly and cannot offer a return. I realize this is not the answer you are looking for, but I cannot allow anyone to return to work after reacting this way.

The situation started with a perceived rule violation but escalated to an extreme situation to where you actually left the scene/property and refused



a drug and alcohol test. I'm sure if the officers were wrong with their rule assessment, this would have been handled quiet differently and corrected. Dino, thank you for reaching as this shows courage. I would ask you to push Dave to try and get this case to an arbitrator sooner than later. I will push my team. Take care.

Mark Redd  
Executive VP Operations 204-793-2374

42. Mr. Redd states the he cannot allow anyone to return to work after reacting this way and suggests a push of the dispute to arbitration. It is at arbitration where the Company bears the onus with respect to factual issues on a balance of probabilities. In discipline matters such as this, the Company has the onus of proof to establish two things, on the balance of probabilities. After reviewing all the evidence, I find the Grievor's conduct was deserving of discipline. The second, task of an arbitrator if discipline is appropriate. In this case was dismissal the appropriate level of discipline in all the circumstances and considering mitigating factors.

43. In this case, the Grievor acknowledged wrong doing on a number of occasions throughout the process to the date of Mr. Redd's letter of June 20, 2021. He summarized at one point stating:

I lost my cool and said some inappropriate words to Mr. Leafloor. After that, I began hyperventilating. Under emotional duress, I told Mr. Leafloor I was quitting. I then called my wife to drive out to West Carseland to pick me up. I was stressed, confused and emotional. I sat on the ground beside the road and cried. Just before my wife arrived, Mr. Leafloor came out of his truck and asked me if I was refusing a drug test and abandoning my job. I told him I was "done with CP" and that I did not want to talk to him anymore. He asked the questions: "Are you abandoning your job?" and "Are you refusing a drug test?" several more times. I told him "I am not refusing anything." I believe Mr. Leafloor was not listening to me and he did not understand the tension and stress I was going through. I recall feeling that it was essential that I leave that situation. Mr. Leafloor then informed me that he required I sign a resignation form immediately. Mr. Leafloor insisted that I call my wife and tell her to turn around and go home. Mr. Leafloor then instructed me to get in his company vehicle and drive with him back to Alyth. I refused and told him I will drive back to Alyth with my wife. My wife was the only one that I could trust at that moment; I did not trust Mr. Rioux or Mr. Leafloor.

44. Given the Grievor's admissions, as well as the facts and circumstances, while I find that discipline was appropriate, the mitigating factors are significant.

45. A large part of the Grievor's were triggered by the Grievor's allegation that Trainmaster Rioux had observed him and his crew working on the same assignment and switching in the same manner on days just prior to the incident without raising any concern is of particular concern. The evidence established that prior to this incident of May 8, 2020, the Grievor had been Passed on E-Tests by Mr. Rioux previously on five occasions without incident as recent as May 4, 2020. He had also been E-Tested over 20 times in the recent past by 12 other Company

Officers without fail until the incident alleged by Assistant Superintendent Leafloor.

46. The clearly inappropriate conduct of this case is not reflected in the Company's comprehensive work record. I find Mr. Rioux's silence regarding his recent Pass remarks in E-Test observations of the crew's switching is concerning for reasons of provocation and triggering the action of the Grievor. It provides for an understanding of the Grievor's stressed and confrontational reaction to Mr. Leafloor's allegations. The Grievor stated that he felt like he was being harassed for violation of a rule they were complying with and on previous approval of Mr. Rioux. Whether intentional or not, the actions of Mr. Leafloor and silence of Mr. Rioux give rise by their actions to a concern for provocation of the Grievor. Evidence also established that the rule in question was changed by System Bulletin shortly after the incident to clearly make the Grievor's interpretation a violation.

47. The Grievor maintained he was troubled that he had a previous incident which drew resentment from Mr. Leafloor when he requested medical attention at a hospital. The Grievor gave evidence during his investigation that in November of 2019, he was working AO2 1 RCLS and was injured. Mr. Leafloor came to him to discuss finishing his shift but he refused, stating that he wanted to go to the hospital. He stated that he was concerned that the laceration on his chin would become infected. The Company did not challenge the allegation. The Grievor's employment record of Personal Injuries indicated that:

At approximately 21:10 November 18th 2019, RCLS assignment A021-18 proceeded westward lite engines into the North fuel pad. Conductor Foreman Dino D'ulisee was exiting the trailing locomotive when their movement coupled onto another set of stationary locomotives. Mr. D'ulisee lost his footing and fell as a result of the coupling contacting his chin on the guard rail.

48. There is no evidence that the Grievor's conduct was premeditated. The Union argues that one time action of Mr. D'Ulisse was also caused by suspicion, given his incident of requesting medical care with Mr. Leafloor and the fully unjustified nature of the proficiency test. The Union submits that Mr. D'Ulisse's profound frustration is understandable. He was accused of a rule violation (bottling the air) and subsequently held out of service, when it says no such rule violation existed or is made out on the record.

49. CP submits that Company officers regularly observe employees as they go about their duties by performing E-testing. The Company maintains that in order to reduce human failure incidents and to improve compliance with safety rules, Company Officers engage in efficiency testing or the observing employees as they complete routine tasks to provide a measure of compliance and performance. An Efficiency Test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge. Testing is not intended to entrap an employee into making an error, but is used to measure rule compliance and to isolate areas of non-compliance for immediate corrective action.

50. I agree with the Company for the need to measure rule compliance in a safety critical workplace and to isolate areas of non-compliance for immediate corrective action. However, in this case the alleged observations by Company officers were legitimately questioned prior to and during the investigation. Under this collective agreement Article 39 INVESTIGATIONS AND DISCIPLINE provides the Company significant flexibility in the control of witnesses and evidence providing in part:

.....

3 The notification shall include advice to the employee of their right to request witnesses on their own behalf. If the Company is agreeable and the witness is a Company employee, the witness will be at the Company's expense. If the Company is agreeable and the witness is not a Company employee, it will be at the Union's expense.

4 The notification shall be accompanied with all available evidence, including a list of any witnesses or other employees, the date, time, place and subject matter of their investigation, whose evidence may have a bearing on the employee's responsibility. Upon request, the Company shall confirm to the employee whether or not technical evidence, such as Q-Tron tapes, will be used at an investigation in order that they might arrange for a qualified accredited representative. The employee and their representative will be allowed time to study this evidence as well as any other evidence to be introduced at the commencement of the investigation. Should any new facts come to light during the course of the investigation, this will be investigated and, if necessary, further memoranda would be placed into evidence during the course of the investigation.

.....

51. In this case, the Investigating Officer chose not to allow Mr. Khaliq's IIR as evidence or provide evidence at the investigation as a witness. The Company maintains this was a decision properly made by the Investigating Officer in the circumstances. It says calling Mr. Khaliq as a witness was nothing more than an attempt to hijack the investigation and turn it into circus. While the collective agreement allows for witnesses where appropriate, as determined by the investigating officer. It does not allow for an employee the unfettered ability to call witnesses in order to disrupt and delay an investigation. In this case, I find that the Investigating Officer's refusal negatively affected the obligation to properly and clearly determine the facts alleged by the Company officers.

52. The Union argues that because of the failure to allow Mr. Khaliq's evidences, the discipline must be rendered null and void. It says the Company's failure to disclose the statement in its possession and relied upon by the Investigating Officer has harmed to the integrity of the process which cannot be remedied in any other fashion.

53. While the Company's has the right under this agreement to control the admittance of witnesses and their evidence at investigations it is not without potential consequences. It makes such restrictions so at its own peril. In this case, the Grievor acknowledged inappropriate conduct. However, I find that not allowing Mr. Khaliq's IIR or to appear as a witness mitigates against the dismissal. Mr. Khaliq witnessed the conversations between the Grievor and the Company Officers which could have established the level a veracity of those statements.

54. The Grievor also gave unchallenged evidence that Trainmaster Rioux recently witnessed the crew performing the same switching procedures and did not express concerns. He also gave unchallenged evidence that Mr. Leafloor had resentment towards the Grievor for a previous incident. The Investigating Officer chose not to call either officer for clarification. In doing so he failed to establish sufficient reasons for the level of discipline assessed.

55. The Grievor and Union claim he was being targeted. The Company submits that the Grievor had already incurred three time served suspensions within the year prior to the May 8, 2020 incidents. He knew that his employment standing was in a precarious position. All he had to do was be honest, adhere to the rules, and regulate his behaviour. The Company submits that the Grievor's record and most recent actions while working as a Conductor are simply incompatible with his continued employment with this railway.

56. The Company submits its Code of Business-Ethics Policy has been recognized by Arbitrators in the analysis of inappropriate conduct. It points me to my decision in AH 771 in which I stated:

However, in obiter, I would caution against any CP employee choosing to believe they are not responsible for their conduct because they believe the CP Rail Code of Business Ethics may not apply to them. The Code of Business Ethics does not stand alone when considering inappropriate conduct that may impact the reputation of the Company. In my opinion, the long standing arbitral test for negative impact on the reputation of an employer from of an employee's conduct is also applicable. Employees can expect to have their conduct tested on the basis of what a reasonably informed person would find given the facts as having a negative impact on the reputation of the Company.

57. Unlike AH 771 the statements of the Grievor and Mr. Khaliq challenging the Company's allegations, the allegations in AH 771 were not challenged. The Company's Investigating Officer refused to allow evidence or witnesses which could have established the disputed facts of this case.

58. The Company relies on CROA 4339 in which Arbitrator Schmitt addressed the consequence of an employee failing to submit to drug & alcohol testing stating:

By refusing to undergo testing in the circumstances of this case, only one reasonable conclusion can be drawn: the grievor was not being truthful in his denial of any involvement in drinking at the time he was confronted by Trainmaster McRobbie in the Hotel lobby and by Superintendent Ross in his truck. Nor was he being truthful in the subsequent investigation or, for that matter, in the hearing of this case. In these circumstances there is little basis upon which I can consider substitution of a lesser penalty (see CROA 2994) irrespective of the grievor's length of service and his commendable disciplinary record.

59. In this case, the Company officers did not suggest any concern for influence of drugs or alcohol by the Grievor in either memo. They acknowledged the Grievor's conduct was a result of the alleged rule violation and returned to their truck leaving the Grievor to cool down with no expression of concern for potential safety due to alcohol or drugs.

60. In considering the appropriateness of dismissal, as the proper level of discipline, the evidence established that the Grievor first entered Company service on May 4, 1992 as an engineering employee. He subsequently resigned approximately 5 years later in February 1997. The Grievor returned to CP Rail on October 9, 2007 where he worked out of the Calgary Terminal as a Conductor until his dismissal on August 17, 2020.

61. The Grievor had recently had three significant suspensions. Two of the related grievances challenging the suspensions were dismissed by this arbitrator. I also note that the Grievor's long

service with long periods without discipline and recent E-Tests by Mr. Rioux indicate Pass. The Grievor had the confidence of the Company to use him as a trainer of new employees up to the time of his dismissal. The Union argues that his recent issues correspond with the recent illness of his wife and the provocation by the E-Testing officers in this case.

62. After considering the extensive submissions of the parties I find that while discipline was appropriate, the Employer has not discharged its onus of proving, on the balance of probabilities, that it had just cause to terminate the Grievor's employment. I do not find that the Grievor engaged in any conduct on May 8, 2020 that warrants discipline at the level of dismissal.

63. In view of all of the forgoing and given all the facts and circumstances in this case, I find that the discipline assessed is excessive and the grievance is allowed in part. The discipline is reduced to a significant suspension to be effective from the date of his dismissal to August 17, 2022. The Grievor will be compensated for lost time and benefits accordingly.

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

Dated this, 23<sup>rd</sup>, day of December, 2022.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges

Arbitrator