IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANADIAN PACIFIC KANSAS CITY RAILWAY

Company

and

CANADIAN SIGNALS AND COMMUNICATIONS SYSTEM COUNCIL NO. 11 OF THE IBEW

Union

C. Robinson Grievance

Arbitrator: C. Yingst Bartel

Hearing Date: October 16, 2024

Date of Decision: March 6, 2025

Appearances:

For the Union:
Denis Ellickson, Counsel
Gurpal Badesha, GC (West) IBEW
Brad Kauk, Asst. GC (West) IBEW
Steve Martin, IBEW Intl. Rep.
Chris Robinson, Grievor

For the Company:
Lauren McGinley, Director, Labour Relations
Rene Araya, Labour Relations Officer
Kevin Ehnes, Director S&C Operations (West)

AWARD OF THE ARBITRATOR

[1] This was one of three grievances scheduled to be heard on October 16 and 17, 2024, on an *ad hoc* basis. The parties have consented to my appointment and agree I have jurisdiction to hear and determine the matters at issue in this Grievance.

[2] These hearings were to be conducted according to an agreement of the parties to follow an expedited process similar to that used in this industry by the CROA&DR[1], with written submissions exchanged before the hearing and reviewed by the Arbitrator.

[3] A preliminary issue arose between the parties prior to this hearing, as to *which* CROA Agreement applied to this hearing: the most recent Agreement as amended in 2023 (the "2023 Agreement") which currently applies to CROA hearings (and outlines time limits for the parties in presenting their case); or the Agreement which was in place when the parties made their agreement to follow CROA rules and procedures, which is referred to as the "2004 Agreement".

[4] The 2004 Agreement does not have the same timelines as the 2023 Agreement.

[5] While the Company is a party to the CROA Agreements and has input into their amendment; and while certain unions are also party to that Agreement; this Union is not.

[6] While the Company indicated the parties wished to continue talking about this issue and that it was not raising a procedural issue for which CROA Agreement applied, that statement was inconsistent with its stated position that the CROA Agreement applied to this *ad hoc* hearing process and its request for this Arbitrator's direction.

[7] The Union agreed to a schedule for exchange of written submissions, without prejudice to its arguments on this procedural question.

[8] The issue between these parties is which CROA hearing procedure applied to this hearing – that in the 2004 Agreement; or that in the 2023 Agreement. Both parties recognized that the hearings before me could not proceed until that issue was resolved. Either these time limits applied to these hearings or they did not.

[9] The hearings could not take place without resolution of this issue, given the differing views of the parties. Therefore, this issue was resolved by this Arbitrator prior to this hearing. The reasons for that decision have been set out, below.

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[1] Canadian Railway Office of Arbitration, & Dispute Resolution; established by Memorandum of Settlement in 1965 ("CROA Agreement"). Amended in 2004 and in 2023; the parties' agreement is noted, below.

Preliminary Issue

[10] Article 13.3 of the Collective Agreement between these parties states:

> For the application of this Article, it is understood that the rules and principles of the Canadian Railway Office of Arbitration (CROA) will be adhered to.

[11] The Arbitrator was provided with documentation to support each party's position, and the parties presented their positions orally and in writing.

[12] The modern principle of interpretation applies to this issue.[2] The objective under that principle is to determine the parties' mutual objective intent at the time of contracting; by giving the language the parties used its plain and ordinary meaning, within the broader context in which that language was negotiated and the purpose, object and scope of the agreement.

[13] The "rules and principles of the Canadian Railway Office of Arbitration (CROA) are expressed in what will be referred to as "CROA Agreements". Multiple unions and employers in the railway industry are signatory parties to those Agreements.

[14] While the Company is a signatory to the CROA Agreement, the IBEW is not.

[15] The first CROA Agreement was negotiated in 1965. CROA Sessions take place 11 months of the year and each Session extends over three days.

[16] Significant for this dispute, the 2023 Agreement imposed short time limits on the parties' oral presentations which do not appear in the 2004 Agreement. Hearings without witnesses are now concluded in 60 minutes, and hearings with witnesses are concluded within 90 minutes in CROA sessions, which take place monthly. The CROA parties directed Arbitrators to strictly enforce these time limits, which has occurred[3].

[17] While the process agreed in the 2023 Agreement imposes considerable restraints on the ability of a party to fully argue its case, which supports the expedited nature of the process, the parties arguing cases have admirably adapted to that process. The tradeoff

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[2] See **CROA 4884** for a more detailed description and discussion of this principle.

[3] This Arbitrator is currently one of two Arbitrators under contract to hear and determine cases filed at CROA.

for observing those limitations is that multiple disputes can be heard by an Arbitrator each day of the three day CROA session.

[18] The Union argued that when the agreement was executed with the Company on December 10, 2020, the negotiated understanding was that the CROA Agreement in place <u>at that time</u> – which was the 2004 Agreement – was applicable to the parties' process. It argued that to find it had made an agreement to the 2004 Agreement "as amended" in future, would require clear language of that intent. It argued it had not agreed to be bound to the CROA rules and principles "as amended" and more particularly the 2023 time limitations, which were negotiated by the CROA parties almost three years later.

[19] The Company maintained the 2023 Agreement applied, as the intent of the parties was to follow CROA procedure, which included how that procedure may be amended. It argued the 2023 Agreement – with its timelines – was applicable to these hearings. The Company also maintained at the hearing that it would not have agreed to have this issue resolved as a preliminary issue at this hearing, without providing full submissions, through a separate grievance, and that the parties would be continuing to discuss this issue.

[20] This last submission can be dealt with briefly. The parties approached the Arbitrator before the hearing with this preliminary issue. Neither was willing to compromise its position. This hearing in fact could not proceed without resolution of this issue, given its impact on the appropriate procedure to be followed.

[21] While the parties can of course continue to discuss this issue as between themselves, the issue required resolution for these scheduled *ad hoc* hearings to continue.

[22] While the 2023 Agreement amendments have worked efficiencies for the CROA process, placing a limitation on hearing time is unique in arbitral practice. In the normal course of arbitration hearings which occur across this country, an Arbitrator does not direct or set limits on the time parties are allowed, to either elicit evidence or argue their case(s). Each party is granted the amount of time that party has determined it requires to present its case, in the pursuit of natural justice and fairness.

[23] It is an *exception* in arbitration practice for a time limit to be imposed, whether for evidence or for argument and it does not occur unless the parties have agreed to that process.

[24] An Arbitrator has jurisdiction under the *Canada Labour Code*[4] to control her own procedure: section 61. That type of power is repeated in provincial legislation[5]. While an Arbitrator controls her own procedure, in doing so, she must ensure that the principles of natural justice and fairness are followed. How much time should be allowed to the parties to present and argue their case is at its core a matter of arbitral procedure. It is also an issue of arbitral procedure to determine whether the parties have made an agreement between themselves which serves to remove any aspect(s) of an Arbitrator's statutory powers to control her own procedure.

[25] CROA is such an agreed exception for several parties in the railway industry, as are other similar processes which have followed its lead since it was first implemented almost 60 years ago[6]. It is not disputed that S&C employees also work in the rail industry. However, it is also not disputed that the IBEW is not a CROA signatory, although its membership is employed in the rail industry. Disputes between these parties are not heard at CROA, but on an *ad hoc* basis, although often the decision-makers chosen by the parties have experience in the railway industry, and/or are current CROA Arbitrators, as in this case.

[26] To agree to be bound by a hearing process which is determined by third parties, the Union would logically need to understand what that hearing process *is.* When the parties decided to follow the CROA process in 2020, it was not in the form it became in 2023. It should also be noted that the CROA process was not subject to yearly amendments. While it was amended in 2004, it was not amended again until 2023, 19 years later. The 2023 amendments occurred almost three years after the parties contracted. However, the fact that it *had* already been amended in 2004 was relevant a

[4] R.S.C. 1985, c. L-2
[5] See for example *Labour Relations Code,* R.S.A. 2000, c. L-1; section 143(2)(c).
[6] In 1965.

surrounding circumstance – an undisputed fact – as between the parties, when they negotiated Article 13.3 in 2020.

[27] The parties are sophisticated and well-versed in the art and strategy of collective bargaining. I am satisfied they understand the impact of adding wording such as "as amended" when their Collective Agreement references an external contract that could be amended. That type of language is common, if parties wish to agree they will be bound by future amendments to an existing agreement.

[28] To bind the Union to the CROA Agreement "as amended" - as the Company argued was the mutual, objective intent of the parties - would require precise language to that effect, given that the Union is a *third party* to the CROA Agreement - with no ability to influence what those future amendments might *be*; and given the undisputed fact the CROA Agreement *could* be amended by the signatory parties. That language could have quite easily taken the Company to the place where it argued the parties should now be positioned. That language is lacking in this case.

[29] While the Company advised the Union by letter dated August 1, 2024 that its position was the Union was bound by any amendments to the CROA Agreement, that position was not negotiated into the parties' agreement in 2020. The Union disagreed with that position in September of 2024, noting it had no ability to influence what that amendment might be. Neither letter is evidence of the parties mutual objective intentions at the time of contracting, under the modern principle of interpretation,[7] given that both letters were written well after the parties agreed to be bound by CROA procedure, which agreement took place in 2020[8].

[30] Given the lack of language to support an objective mutual intent to abide by any *amendments* to CROA procedure for resolution of grievances, this Arbitrator determined prior to this hearing that the 2004 Agreement – in place when the parties' agreement was made to abide by that procedure - applied to this *ad hoc* hearing. The parties argued these Grievances on that basis, without the time limits in the 2023 Agreement. Even so,

[7] See **CROA 4884** for discussion of that principle.

[8] See **CROA 4884** for a discussion of what are considered to be "surrounding circumstances" for interpretation of contracts under the modern principle of interpretation.

the parties were still able to argue two of their three Grievances in the two days scheduled, which is less time than discipline cases are typically argued in a non-expedited procedure. The third dispute began but was adjourned to a further date to be continued.

Analysis and Decision: The Merits

[31] The parties were unable to reach a Joint Statement of Issue. Their *ex parte* Statements of Issue are appended to this Award.

Background & Issues

[32] Turning to the merits, the Grievor is a S&C Helper, who has been employed with the Company since June of 2014.

[33] The Grievor was dismissed in 2023 for his filing of expenses relating to mileage in August of 2023. An additional filing of an inappropriate laundry claim, for a date the Grievor was living at home and commuting, was also at issue.The discipline of dismissal was supported by the Company on a "stand alone" basis, but also as a "culminating incident", given the Grievor's significant disciplinary record, which sat at 45 active demerits before this incident.

[34] Under the Brown System, dismissal occurs at 60 demerits. Therefore, any assessment of demerits of 15 or more demerits by the Company for this misconduct would also have resulted in dismissal of the Grievor, for accumulation of demerits.

[35] The Grievor had previously been coached for inaccurate mileage/expense claims in March of 2022, 18 months earlier. On that occasion, the Grievor was assessed 10 demerits for his "*failure to submit expenses in a timely manner, your failure to submit accurate mileage claims*" and a failure to communicate with his manager "*should you be required to take alternate routes which would incur additional mileage/costs to the Company*".

[36] The issues between the parties are:

a. Has culpability been established for some form of discipline? If so,
b. Was the discipline of dismissal a just and reasonable response in all of the circumstances; and, *if no*t

c. What discipline should be substituted by the exercise of this Arbitrator's discretion?

[37] For the reasons which follow, the answers to the above questions are:

a. The Grievor is culpable for some form of discipline; and
b. The discipline of dismissal was not a just and reasonable response in all of the circumstances.
c. An assessment of 30 demerits is appropriately substituted as fair and reasonable discipline.

[38] The Grievance is allowed, in part.

[39] Given that the Grievor had 45 demerits on his disciplinary record before this incident, he stands at 75 demerits. As dismissal occurs at 60 demerits, the Grievor remains dismissed for accumulation.

Facts & Arguments

[40] This Grievance involves the Grievor submitting a claim for mileage on four separate occasions. All mileage relates to August 18, 2023.

[41] On the first two occasions, the Grievor's expense was submitted, in the same form, but several weeks apart. The third and fourth submissions involved different mileage amounts.

[42] The Grievor was also investigated for submitting a laundry claim for a time when he was commuting from home, which had no basis for payment. The Grievor instructed that expense be removed when he was advised he could not claim that amount.

[43] It is unnecessary to outline in detail the background for how the claims came to be made or even assess what the Grievor's reasons were for the underlying amounts claimed for his multiple trips on that day (other than the Grievor's evidence he was instructed to drive to Calgary, which is addressed below). That is because this dispute can be resolved on the basis of what the Grievor chose to do *after* the events on which the expenses arose.

[44] The Union argued the importance of reviewing source documents for this Grievance. That "source" review is always undertaken by this Arbitrator.

[45] The arguments of the parties will be further addressed in this Award, as appropriate.

[46] In summary, the Company argued the Grievor's conduct was culpable and that dismissal was a just and reasonable discipline, although it did not claim fraud. It argued the Grievor was responsible for making claims for only legitimate expenses and that the Grievor in this case chose to claim the same expense on two different occasions, even after it was rejected, and failed to make the inquiries he had been coached to make to determine which expenses should be claimed before submitting that same claim again. It pointed out that while not a true "Honour System" as all claims are audited, the Grievor's manager has many claims to review. It argued that as the Grievor was a 10 year employee, he was familiar with submitting expenses.

[47] The Company argued that S&C employees work in a unique position of trust, and are responsible for their own expense reporting. It took issue with the Grievor's actions in resubmitting the same claim on two different occasions, weeks apart. It argued the Grievor assumed his entitlement to claims when the evidence demonstrated he did not even read through the Collective Agreement to determine what he was entitled to; and offered no credible explanations for his actions. It pointed out the Grievor had issues with this issue in the past and had been disciplined and coached. Despite that, the same issue occurred again.

[48] It argued the Company views inappropriate monetary claim entries with the "utmost seriousness" and considers it grounds for termination. It argued that its discipline was fair and reasonable, given all of the circumstances, which included the Grievor's precarious employment record and the lack of a credible explanation(s) for his behaviour.

[49] The Union argued the two issues were whether culpability was established on these facts, and if so, whether termination was excessive. It argued there was no culpability and that dismissal was excessive. It also argued there was no culminating incident warranting discharge. It argued that if the Company was alleging *intent,* which it argued was being alleged, then it was maintaining the Grievor was fraudulent, which was

not properly put into issue. It argued these were very serious allegations, which had to be established on clear and cogent evidence. It argued that after the first claim was rejected, the Grievor reduced the claim and resubmitted it. It argued he did not understand the Company's clarifications, and keep resubmitting his claim for lesser amounts each time.

[50] The Union argued the Grievor repeatedly sought clarification from the Company to ensure he was compliant with his expense submission, and that clarification was not provided by the Company, leaving him confused. It pointed out he communicated with the Company on October 18 and 31,2023, seeking clarification and was told his expense claim still showed three trips for that day, which was not an explicit explanation. His claim was ultimately approved on November 3, 2023.

[51] It argued this was not fraud, but a dispute over what the Grievor was entitled to. It argued the Grievor *did* reach out to his manager for clarification. It argued the Company did not produce the Grievor's Foreman or Manager, to refute the Grievor's claims regarding his instructions to go to Calgary. It argued the Grievor had reasonable explanations for his misconduct and that he sought repeated clarifications.

[52] The Union also argued the Grievor had received instructions which explained the mileage of 1101 km for August 18, 2023, for his total work cycle. It argued the Grievor was confused about the claim to laundry. When it was explained to him that a laundry claim was only allowed when staying in Company provided accommodations, he requested the claim be withdrawn.

[53] The Union argued there was no culpable misconduct, let alone misconduct worthy of the ultimate penalty of discharge. It argued the Company did not advise the Grievor why his claim was rejected either the first or second time it was rejected, as should have been done, so the Grievor was made aware why his claim was not allowed. The Union argued the facts in this case do not support a finding of "willful blindness". It pointed out the Grievor's previous discipline for an improper claim was assessed discipline of 10 demerits. It argued it was a significant "jump" to dismissal from that earlier discipline, which jump was excessive and unwarranted, on these facts.

Analysis

[54] While this is not a true Honour System of pay - as the manager *does* audit expense claims - the Company pointed out that Mr. Gilroy as manager had multiple reports and many expense claims to address.

[55] The Grievor submitted his first claim for 1101 km mileage expenses, arising from August 18, 2023, in early September 2023. That claim was rejected. After that rejection, the Grievor failed to take any steps to clarify whether the expense he had claimed was appropriately claimed. He asked no questions of his Union or of his manager, Mr. Gilroy at that point in time. As earlier noted, it is relevant that the Grievor had *previously* been disciplined and had received coaching for inaccurate mileage expenses. He was told he should ask for clarification from his Union or a manager when he was confused about making expense claims.

[56] Despite that coaching, the Grievor made no attempts to determine what the difficulty was with his *initial* expense he submitted for 1101 km. While the Union argued the Grievor was not *told* why that claim was rejected, neither did the Grievor *ask* why it was rejected, so it could be corrected and resubmitted. If the Grievor had questions of what could be claimed; or why his claim was not accepted, or if he ever did not understand the comments which he received from the Company, it was his responsibility to seek further clarity before submitting that claim again.

[57] It was not the Company's responsibility to make those inquiries. In **AH863**, it was noted that it is an employee's responsibility to ensure his or her claims are accurate and legitimate.

[58] Given the direction already given to the Grievor; and the fact the Grievor is responsible for the legitimacy of his expense claims; I am prepared to accept that it was the Grievor's responsibility to ensure his claims were legitimately made; it is not the Company's obligation to "catch" those claims that are not.

[59] In fact, in this case the Grievor had *already* been coached to seek that clarification, as part of an earlier discipline. Yet there was no explanation offered by the Grievor for why he failed to make any inquiries of his Union or his manager after his claim was

rejected this *first* time, so he could address whatever error occurred and then resubmit, as he had been coached to do.

[60] While the Union argued the Grievor *reduced* his claim before resubmitting it the *second* time, this is not accurate. Both the first and second times, the Grievor submitted a claim for 1101 km.

[61] In this case, the Grievor chose to a) wait three weeks and b) submit the same expense claim for the same amount, three weeks later, in mid-October of 2023.

[62] There was no explanation offered for why the Grievor made this choice to resubmit this same rejected claim *again,* when he had not sought clarification for why it was rejected the *first* time. That is the actions the Company takes issue with.

[63] While the Union argued the Grievor *did* make inquiries to determine why his claim was being rejected and did not get a helpful response, that inquiry was not made until *after* the Grievor had submitted his expense claim this *second* time, on October 18, 2023 after it was rejected again. That was his first inquiry. That was one time too late. That second claim was also rejected. His claim was not reduced by him to 921 km until October 23, 2023, which was the *third* time it was submitted (QA 47), which claim was also rejected.

[64] The Grievor was ultimately found entitled to claim 770 km, which he did on November 3, 2023.

[65] The Union representative had no answer to an inquiry from this Arbitrator as to "why" the Grievor did not make his inquiry to the Company, after the *first* time his expense claim was rejected, *before* he chose to submit it the second time, so whatever issue there was with that claim could be addressed. Upon a close review of the Investigation transcript, the Grievor did not provide that explanation either.

[66] It is careless and negligent behaviour to resubmit the *same* claim a second time after it has *already* been rejected the first time, instead of making efforts to determine why the claim was rejected and correcting that claim.

[67] That lack of effort shows disregard for the duty of "clarity and candor"[9] the Grievor owed to the Company.

[68] The inference which an adjudicator is drawn to from the lack of credible explanation and the Grievor's actions and inactions, is that the Grievor was acting carelessly and negligently for determining if he was entitled to claim the amounts he was asking be paid to him from the Company. Rather than make the effort to determine *why* the claim was rejected, the Grievor chose to just resubmit it.

[69] That is not the only issue for this Grievor, however, which becomes apparent from a wholistic review of the Investigative transcript.

[70] At the Investigation, the Grievor was non-responsive to multiple questions when asked for his knowledge of Article 16 of the Collective Agreement, and for "*why*" he thought he was entitled to be reimbursed for this claim.

[71] Those questions included questions regarding a very confusing claim made by the Grievor for a laundry expense he submitted, <u>*even though he was commuting from his home*</u> at the relevant time.

[72] The Grievor never explained "why" he felt he could claim a laundry expense, when he was living at home at the time. His answer was that when he was told he was not entitled to the laundry claim, he had that claim removed. However, that answer does not address the issue of *why* he made that claim in the first place, which was the question.

[73] While that claim was not large, it is the lack of any entitlement – or even any reason why the Grievor *thought* there could be entitlement – that is the issue.

[74] The Grievor also had great difficulty even admitting to *knowledge* of Article 16 of the Collective Agreement itself, for what could be claimed by him. He was questioned several times on how he *determined* what he *was* entitled to, given he denied knowledge of the Collective Agreement. The Grievor offered no satisfactory explanation of how he knew what to claim, given his denial of knowledge regarding his Collective Agreement entitlements. If the Grievor truly did <u>not</u> understand the obligations of the Collective Agreement, then he was careless and negligent for understanding obligations he should

[9] As described in **CROA 4198**.

have been aware of before he appropriately issued expenses claims, for which he may – or may not – be entitled. If we *was* aware of those obligations, then he was not truthful in his Investigation.

[75] Either way, doubt is cast on the Grievor's credibility.

[76] The Grievor's lack of an understanding for what could – or could not – be claimed is further evidence of a lack of candor, carelessness and negligence for the important task of seeking money in reimbursement from the Company.

[77] A non-responsiveness to questions was not the only credibility issues facing this Grievor in this Investigative transcript. He also made a disturbing "about face" in an answer after a break for consultation with his union representative.

[78] The Grievor's mileage claims included mileage which he had claimed for actually *starting* to drive to Calgary. While text messages were offered by the Grievor to support that he was to drive to Calgary, those messages are inconclusive and did not support the Grievor's position he was instructed by his Foreman to physically leave for Calgary.

[79] After initially giving several answers that he was directed by his Foreman to be "ready" and "prepared" to go to Calgary on August 18, 2023 as an explanation for his mileage, the Union and the Grievor took a break to consult. After that break, the Grievor came back and *changed* those answers, stating instead that he was instructed by his Foreman to actually "*drive to*" Calgary, rather than simply be "*prepared*" to go to Calgary (to support the amount of mileage claimed).

[80] There is no credibility in a changed answer after consultation with a Union representative.

[81] Given the Grievor's significant credibility issues and lack of credible explanations, I am satisfied that the evidence of Mr. Gilroy is to be preferred, which is that there was no reason for the Grievor to have been traveling to Calgary on August 18, 2023. While the Union pointed out the Grievor's Foreman was not called to provide evidence, that individual is no longer employed by the Company and neither are the text messages offered by the Grievor conclusive of the direction, as argued by the Union. Further, the Grievor's evidence on this instruction is simply not credible.

[82] However, and in any event, Mr. Gilroy was the *manager* who ultimately directed the work His evidence is persuasive of what work was to be performed that day, and is preferable to the evidence given by the Grievor (after consulting with his Union) that he was instructed to *drive* to Calgary. While the Union argued the Company did not call on Mr. Gilroy, the Company did file a memo from Mr. Gilroy into evidence as Appendix #1. It is well-accepted in processes which follow CROA's model that evidence can be documentary. It was Mr. Gilroy's evidence that he was advised by the Foreman that all employees were told to be prepared to head to Chilliwack on August 18, 2023. While hearsay, so is the Grievor's evidence of what he was told by the Foreman. I did not find the Grievor's evidence credible nor his text messages convincing. Adjudicators can accept hearsay. I am prepared to accept the evidence of Mr. Gilroy.

[83] However - and in any event – even if the Grievor were believed that his mileage claim was believed by him to be legitimate based on his instructions, it is what the Grievor chose to do in submitting that claim that is in issue in this case.

[84] The Union argued the Company has not demonstrated there was an "intent" to deceive in the Grievor's actions of seeking reimbursement, and without that intent, there can be no culpability. It argued clear and cogent evidence is required, which is not demonstrated in the facts of this case.

[85] A fraudulent intent to deceive is not the only basis for culpability for inappropriate claims for money made to the Company. Culpability can be established for actions which demonstrate carelessness and negligence for obligations the Grievor is expected to know and understand when seeking monetary amounts from the Company. That would include seeking proper reimbursement for expenses: **CROA 4198** and **5010.** While the Company relied on **CROA 5010**, **CROA 5009** is also appropriately considered, as that involved the first offence for the same Grievor as noted in **CROA 5010**.

[86] The Union relied on **CROA 4198**. In that case, the grievor was reinstated without compensation. While the Grievor was not found to have been acting fraudulently in that case, his carelessness was still found to be culpable, and to attract serious discipline:

> The above remarks [where fraud was not found] should not be taken to suggest that the grievor was not subject to any discipline. The material before me amply

> confirms that the grievor was plainly negligent, if not reckless, in the manner of which he handled his wage claim and, arguable, in allowing his name to stand on the spareboard when he was in fact away on an extended leave of absence. I find it difficult to square that carelessness with the grievor's fundamental obligation of clarity and candor to his employer in respect of his availability for work and the receipt of any wages based on that availability (at p. 6).
>
> …
>
> While I am satisfied that a serious degree of discipline is justified, given the grievor's carelessness, I believe that this [sic] an appropriate case for the reinstatement of a relatively junior employee with no prior disciplinary record (at p. 7)

[87] In **CROA 5009** and **5010**, this Arbitrator considered discipline for the same individual for two instances of making incorrect wage claims.

[88] In **CROA 5009**, the grievor was assessed a 45 day suspension by the Company for an improper wage claim submission for two days on which he was on strike, which discipline was upheld. Like the Grievor in this case, the grievor in that case had no explanation for not recalling he was on strike and not entitled to wages. The Grievor's explanations for how that occurred lacked credibility. While fraud was also not properly put in issue in that case, it was determined that the Grievor was "*negligent and reckless and demonstrated a significant lack of due care and attention and diligence in making his time claims*". Just cause for some form of discipline was established, for the two incorrect claims.

[89] In **CROA 5010**, the same grievor again made incorrect entries for wage amounts he was not entitled to a few short months later, and had failed to check his crewmates timekeeping claims made on his behalf, even though his employment was precarious. He again claimed he made a "mistake". It was found that to be diligent *"an employee – and especially an employee in a precarious employment position due to a past timekeeping discrepancy – must ensure that every timekeeping record … was made correctly and accurately*" (at para. 18). Dismissal was upheld.

[90] As was also noted in that case, it is not the "*amount*" at issue that determines the discipline, but the underlying actions or inactions in an industry where individuals must be relied upon to accurately and carefully make their submissions for payment – or

repayment. While "honest mistakes" can be made, whether that has occurred is always a matter to be considered on the evidence.

[91] I am not satisfied the Grievor in this case made an "honest mistake". As noted in **CROA 4820**, the Grievor had the option of submitting his claim as an "IP" claim, which would have routed that claim to an auditor to determine entitlement. The Grievor was unable to provide a credible explanation for submitting the same claim twice. I am satisfied the Grievor was negligent, careless, reckless and demonstrated a lack of due care and attention and diligence when making this expense reimbursement claims. On the second occasion, the Grievor carelessly and negligently submitted a receipt for a second time, that had already been rejected, waiting a few weeks to do so, without any explanation or without making any effort to determine why the claim was not allowed or correcting it before he resubmitted it.

[92] This case can be distinguished from **AH776**, relied upon by the Union. In that case, the Grievor's medical condition impacted his actions, which is not the case here. Neither is **CROA 3409** relevant, given that fraud has not been claimed by the Company.

[93] Upon careful review of the evidence, the Company has satisfied its burden to establish the Grievor's actions were culpable and that discipline was warranted.

[94] That raises the second question in a *Wm. Scott* framework, which is whether dismissal was a just and reasonable response.

[95] Both mitigating and aggravating factors are relevant to assessing this question.

[96] Looking first at the nature of the offence, claiming monies to which an employee is not entitled – which would include re- submitting a rejected claim without changing that claim - is significant misconduct in this industry, where the Company must maintain trust in an employee's ability to properly claim for reimbursement.

[97] As earlier noted, that is the case whether or not fraud is either alleged or established: **CROA 4198**; **CROA 5009**; **CROA 5110**.

[98] There was no evidence of provocation to explain the Grievor's choices. This is also not the first time the Grievor has been disciplined for inappropriate expense claims, which is an aggravating factor. Two aspects of the Grievor's situation are particularly

concerning. The first is the Grievor's disciplinary record. At 45 demerits, the Grievor's employment was precarious even before this event. Second, the Grievor's unresponsiveness to fair and reasonable questions during the Investigation was troubling and impacted his credibility, as did his changed answer after his break with his Union. That Investigation also supported not just a lack of effort to determine his proper entitlement, but also a lack of understanding and accountability for his own actions. His carelessness for understanding what could be claimed under the Collective Agreement as an explanation is not credible, given he is a 10 year employee. The Grievor has nine years of service, which is his only mitigating factor of any substance.

[99] The Union argued that dismissal was excessive for this one event and was a non-progressive "jump" from the previous assessment of 10 demerits. The Grievor's underlying discipline record at the two different times is relevant to an assessment of an appropriate level of discipline, as is the fact this is the *second* offence for this Grievor for negligent mileage claims. In August of 2023, the Grievor was in a precarious position that he was not in when he had been assessed 10 demerits in March of 2022. Between the events of March of 2022 and August of 2023, the Grievor has been assessed 35 demerits and a 20 day suspension. This was also now the Grievors *second* similar offence relating to mileage claims, in the face of coaching, although there were no details of that first issue.

[100] The Company did have a legitimate concern that its earlier discipline had "missed the mark" in changing this Grievor's behaviour. It is not the case therefore that this single "event" unreasonably vaulted this Grievor to dismissal, as was argued by the Union. When discipline was assessed in August of 2023, the Grievor sat at 45 active demerits, with a second issue relating to incorrect mileage claims. Under the Brown System, dismissal occurs at 60 demerits. Given that position, it is an unescapable reality that *any* assessment of discipline of 15 demerits or more would place the Grievor into a dismissed state, no matter what the offence. In the words of the Company's representative, "all roads lead to dismissal".

[101] However, the Company did not choose to issue demerits and dismiss the Grievor for accumulation. The Company chose to discharge the Grievor. It is that decision which

has to be assessed for its reasonableness. While I am convinced that a significant level of discipline is owed for the Grievor's actions – and inactions – in this case, I have not been convinced that outright dismissal was warranted, on these facts.

[102] While carelessness and negligence is culpable conduct and worthy of significant discipline – and while the same result of discharge will *practically* occur with any assessment of 15 demerits or greater – how that point is reached; and whether that process was reasonable; are important issues. In this case, the Company has not met its burden to establish that outright dismissal of the Grievor was a just and appropriate disciplinary response. That response must be reserved for the most serious of cases.

[103] While this carelessness was significant, it did not justify dismissal. While this is a *second* instance, unlike in **CROA 5009** and **5010** the circumstances of the first offence are unclear. As the first incident only attracted 10 demerits, presumably it was not similar to that in **CROA 5009** and **5010**, where the first offence was very serious, attracting a 45 day suspension from the Company; and a second serious offence occurred quite quickly, demonstrating the Grievor did not learn from his earlier discipline.

[104] That leaves the question of what discipline is appropriately substituted.

[105] I agree with the Company that issues where reporting is done carelessly or negligently are of significant concern, in this industry. I also agree that as a 10 year employee, this Grievor showed a remarkable lack of understanding which is concerning. The jurisprudence supports that a lack of diligence, carelessness and negligence in submission of a monetary claim is of significant concern to the Company and supports significant discipline.

[106] The same concerns noted in **CROA 5009** apply to such submissions: The Company "*depends on a significant level of care and attention by its employees*" (at para. 51) for its expense reimbursement system to function as intended, as with its Honour System of pay. In that case, the Grievor sought pay for two days where he was on strike. A 45 day suspension was upheld. That case is more serious than what is at issue in this case.

[107] The Company's concerns with the Grievor's repeated misconduct - despite previous coaching - are legitimate. The Grievor failed to seek clarification after his first claim was rejected, as he was instructed to do. His resubmission of the same claim unchanged was reckless and confounding. This Arbitrator also has significant concerns with his explanations and did not find his evidence credible on a number of fronts. The Grievor demonstrated a repeated lack of insight or responsibility and a very confusing lack of knowledge for how his claims should be made, which are all aggravating factors.

[108] An assessment of demerits that would allow the Grievor to maintain his employment would only occur if this assessment were less than 15 demerits, or if a suspension were substituted. Given the level of trust the Company must maintain in the Grievor's ability to properly and carefully consider what he is entitled to and to carefully submit his expenses for reimbursement to avoid overpayment; and given the Grievor's significant disciplinary record and credibility issues, I cannot agree that an assessment of *less* than 15 demerits would be sufficient discipline. That level of demerits would be too lenient for the significant carelessness and negligence demonstrated by the Grievor's evidence in this case. Neither is this an appropriate case to attract discretion to substitute a suspension, to allow the Grievor to return to his employment, given the significant credibility concerns, including the "changed answer" during his Investigation. A significant level of demerits are warranted.

[109] From a review of the evidence and jurisprudence; and the aggravating and mitigating factors; and given the Grievor's disciplinary record and lack of credibility; I am satisfied that 30 demerits would be a just and reasonable response for the Grievor's careless and negligent actions.

Conclusion

[110] The Grievance is allowed, in part.

[111] The discipline of dismissal is vacated and discipline of 30 demerits is substituted.

[112] Under the Brown System, after this assessment the Grievor sits at 75 demerits. As dismissal occurs at 60 demerits, the Grievor remains in a dismissed state, even after this substitution of demerits for dismissal .

I retain jurisdiction to address any questions relating to the implementation of this Award. I also remain seized to correct any errors; and address any omissions; to give it the intended effect.

The patience of the parties and the Grievor with the delay in issuing this decision; which was due to this Arbitrator's heavy CROA schedule over the last several months; is both acknowledged and appreciated.

DATED and ISSUED at Wheatland County, Alberta, this 6th day of March, 2025.

CHERYL YINGST BARTEL, B.A., L.L.B., L.L.M. (Lab. Rel. & Empl.)
ARBITRATOR

APPENDIX: EX PARTE STATEMENTS OF ISSUE OF THE PARTIES

EX PARTÉ STATEMENT OF ISSUE OF THE COMPANY

DISPUTE

The dismissal of S&C Helper Chris Robinson of Lumby, BC.

STATEMENT OF ISSUE

Chris Robinson was dismissed from Company service for reasons as follows:

“Please be advised that you have been DISMISSED from company service for the following reasons:

A formal investigation was completed on November 28th, 2023 in connection with “your expense submissions claimed in August and November of 2023”. At the conclusion of your investigation, your culpability was established for your repeated submission of inappropriate expense claims which you were not entitled to as per Article 16 of the IBEW Wage Agreement.

Notwithstanding that the above mentioned violation warranted dismissal in and of itself, based on your previous discipline history, this violation also constitutes a culminating incident which warrants dismissal.”

COMPANY POSITION

The Company disagrees with the Union’s contentions and the Union’s request.

The Company maintains that following the fair and impartial investigation, the Grievor was found culpable for the reasons outlined in his form 104. The Company maintains that culpability was established and there was just cause to assess discipline to the Grievor. The Company’s position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances

The Company maintains the Grievor has been investigated on numerous occasions for time and expense submissions and continued to intentionally submit expense claims that he wasn’t entitled to. The Grievor had been coached numerous times on his expenses and made no attempt to seek clarification. These actions have created a breakdown of trust in the employee/employer relationship.

For the foregoing reasons and those provided during the grievance procedure, the Company requests that the Arbitrator uphold the dismissal.

EX PARTE STATEMENT OF ISSUE OF THE UNION

DISPUTE:

The dismissal of S&C Helper Chris Robinson of Falkland, BC for alleged “repeated submission of inappropriate expense claims”.

UNION POSITION:

On November 28, 2023 S&C Helper Chris Robinson of Falkland, BC was required to attend an investigation in connection with his “expense submissions claimed in August and November of 2023.”

Following the investigation, the Company terminated Mr. Robinson’s employment.

It is the Union’s position that Mr. Robinson engaged in no conduct worthy of any discipline and the Union puts the Company to the strict proof of its allegations. The Union requests that Mr. Robinson be reinstated to his former position without loss of seniority, seniority rights, benefits, pension, and that he be made whole for all lost earnings, with interest

In the alternative, if the Arbitrator finds that Mr. Robinson engaged in any conduct worthy of discipline, the penalty of termination is entirely excessive and unreasonable and Mr. Robinson ought to be reinstated into employment.

Further, the Union denies that the present incident constitutes “a culminating incident which warrants dismissal.”