

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4846

Heard in Montreal, July 13, 2023

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Locomotive Engineer B. Loggains of Cranbrook, BC.

JOINT STATEMENT OF ISSUE:

Following an investigation, Engineer Loggains was dismissed described as:
Please be advised that you have been DISMISSED from Company Service for the following reason(s):

For improper train handling on descending grade from Cranbrook to Fort Steele and Intentionally attempting to cover up an incident after failing to inform the CWR train crew of a collision and the proper authority, while working as the Locomotive Engineer on Train 2GPS-10, September 10, 2022. A violation of GOI Section 1 item 32.1 and the Rule Book for the T&E Employees, section 9, Item, 9.2 (b) and Conduct Unbecoming Offence under the Company's Hybrid Discipline and Accountability Guidelines.

Union's Position:

On September 10th, 2022, Ben Loggains was the Locomotive Engineer on train 2GPS-10 (Eastbound ballast load) on the Cranbrook Subdivision. The movement was on a descending grade (approximately 1%) travelling towards Fort Steele and the leading locomotive was running long hood lead in other words backwards. This resulted in Engineer Loggains facing and looking back out the small back window to see in the direction of movement while all the controls are behind him, including the speedometer. This position made it exceedingly difficult to monitor the speed of the train and air pressure.

Engineer Loggains experienced some difficulty in controlling the train and had to continually apply the air brakes and release them causing what is termed a false gradient approaching Fort Steele.

As Engineer Loggains' movement approached the cautionary limits at Fort Steele, he did not feel comfortable with how the train was handling and placed the train into emergency. About this time the crew saw the tail-end of CWR train stopped just inside of cautionary limits.

Engineer Loggains thought that contact was made with the CWR train at approximately five to six miles per hour and that the CWR train was moving the same direction at approximately two miles per hour. He understood that the contact was very light and caused no damage. The other two crew members weren't sure they had even contacted the other train. Nine days later Superintendent Gary Hole was reviewing a locomotive download regarding the emergency brake application and contacted Engineer Loggains to inquire about the trip and details around the emergency brake application. Engineer Loggains detailed the trouble he had handling the train and called back a short time later and explained that their train had also contacted the CWR train.

During the investigation, Engineer Loggains provided a detailed description of the difficulties he was experiencing, the fact that he was facing backwards and the problem with air brake pressure. The Company has not disputed these facts and has not considered them as mitigating factor. However, the Union contends that these are very important mitigating circumstances that must be considered prior to determining the appropriate discipline.

The Union further relies on CROA cases 4563 and 3965, in both cases of rear collisions the damage was catastrophic and in both cases the Arbitrators considered the mitigating circumstances and the grievors were reinstated. In this instant case there were no damages or injuries, based on these awards the Union contends that the discipline imposed is unjustified, unwarranted, and extreme. Engineer Loggains has twelve years of dedicated service and possesses a very positive work record and during the investigation was very forth wright and honest with his answers to very difficult questions. The Union contends he is not deserving of the ultimate penalty of dismissal.

For the foregoing reasons we respectfully request that the Arbitrator reinstate Locomotive Engineer Loggains without the loss of seniority and that he be compensated for lost wages with interest, benefits, and any stock options if applicable in relation to his time removed from service.

Company's 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 has proven and confirmed that Mr. Loggains was culpable for improper train handling on a descending grade and failing to inform the CWR train crew and proper authorities of a collision attempting to cover it up. The Grievor placed his train into emergency, making contact with a subsequent movement. If it had not been for the diligence of the local Superintendent, the Grievor had no intent of reporting the incident. This in itself is conduct that is not only deeply concerning but tears at the very fabric of what is an employee and employer relationship.

T&E employees work largely in unsupervised environments. They are trusted to not only work safely but to report any unordinary occurrences to the proper authority. In this particular case, the Grievor did neither. The Company maintains that the aforementioned conduct is absolutely deserving of a consequence such as dismissal.

The Union in their grievance do not dispute that the Grievor violated the rule outlined in the Employee Notification Letter issued, nor does the Union dispute that the investigation was anything but fair and impartial. Of note, the Union acknowledges the Grievor's error. The Company maintains that the safe course of action must always be taken.

For the foregoing reasons and those provided during the grievance procedure, the Company maintains that the discipline assessed should not be disturbed and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION:

(SGD.) G. Lawrenson

General Chair LE-W

FOR THE COMPANY:

(SGD.) L. McGinley

Director Labour Relations

There appeared on behalf of the Company:

J. Bairaktaris	– Director, Labour Relations, Calgary
L. McGinley	– Director, Labour Relations, Calgary

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
G. Lawrenson	– General Chairperson, LE-W, Calgary
C. Ruggles	– Vice General Chairperson, LE-W, Calgary
P. Boucher	– President, TCRC, Ottawa
B. Plant	– Local Chairperson, via Zoom
B. Loggains	– Grievor, via Zoom

AWARD OF THE ARBITRATOR

I – Background and Summary

- [1] The Grievor was employed by the Company since September 2011. For the last two years, he has worked as a Locomotive Engineer.
- [2] The Grievor was dismissed by the Company on October 5, 2022. His dismissal was due to both improper train handling and also failing to advise the Company of a collision with the rear end of a Continuous Welded Rail Train (CWR Train) operating in front of him.
- [3] For the reasons which follow the Grievance is allowed, in part.

II – Facts

- [4] On September 10, 2022, the Grievor was operating Train 2GPS-10 (the “Train”) eastbound, from Swansea to Fort Steele, B.C. Locomotive 5688 was pulling Train 2GPS-10.
- [5] The Train was 4400 feet long, and was heavy with a ballast load. Ballast is crushed stones to be placed under the railway track.
- [6] From Cranbrook to Fort Steele, Train 2GPS-10 had been following a CWR Train.
- [7] A CWR Train carries sections of track which are welded together to form one uninterrupted rail that is free of any joints, which may be several miles long. A CWR Train has specific handling instructions with the General Operating Instructions.
- [8] As they approached Fort Steele, the CWR Train was stopped ahead of Train 2GPS-10, in Cautionary Limits, which is a section of track where all trains and engines must move prepared to stop within half the range of vision of any equipment, switches and track units. It can be a busy area.
- [9] The Grievor was unable to stop his Train when approaching the Cautionary Limits and he explained it had not been “handling well”. Seeing the CWR Train, it was necessary for the Grievor to place the train into “emergency” to stop the train.
- [10] “Emergency” refers to an emergency brake application, which evacuates all of the air in the train’s air brake lines and causes all air brakes to apply rapidly on all the rail cars.
- [11] The locomotive download information from the train demonstrated the train was proceeding at 28 mph when the emergency brake application took place.
- [12] As an arbitrator in this industry, I have been made aware that an “emergency” stop is to be avoided, as it carries significant risks.
- [13] Unknown to the Company or to the crew of the CWR Train, the front end of Train 2GPS-10 collided with the rear end of the CWR Train during this emergency braking process. The CWR Train had just begun to pull away at the time of thos collision.
- [14] The Union maintains that Train 2GPS-10 was difficult to operate that day for three reasons: The first was that the Grievor was operating the Train “long hood lead”.

This meant that the Grievor's controls were in front of him, and he was turned looking out a small back window to operate the Train, to see in the direction of its movement. The Union maintained this made monitoring the speedometer and air pressure controls difficult. The second difficulty was that Train 2GPS-10 was carrying a "ballast" load, which was heavy. The third difficulty was that this heavy train was also moving on a descending grade as it came into Fort Steele.

- [15] During the Investigation, the Grievor stated that while he believed that his movement *did* make contact with the CWR Train, he did not think that it *would* when he was approaching, and that the contact was similar to making a "joint" between cars. He also did not believe contact with the crew would create a hazard due to the minimal amount of contact that was made. He described it as a "minor bump".
- [16] While the Company has questioned whether the contact was more intense than described, upon reviewing the transcripts of the Investigation, I am prepared to accept the collision was minor in nature.
- [17] The Grievor confirmed in the Investigation that he did not report the collision to the RTC, as required by the Rule Book for T & E Employees, nor did he stop to arrange an inspection or advise the CWR Train crew to do so, or advise the RTC of the contact. The locomotive download had no information that any collision had occurred.
- [18] Nine days later, while reviewing the locomotive download after a routine inspection, the Superintendent noticed the emergency brake application on locomotive 5688 and contacted the Grievor to discuss the trip and the need to place the train into "emergency".
- [19] At this point, the Company was still unaware that the Grievor had also collided with the back of the CWR Train on September 10, 2022.
- [20] The Grievor indicated to the Superintendent that the train was not "handling well" and that he had to "cycle brake" to maintain his speed. The Grievor indicated in the subsequent Investigation that he placed the Train into emergency because he "did not feel comfortable with the train's ability to stop short of the cautionary limits sign".

- [21] After that conversation concluded, the Grievor then called the Superintendent back a short time later, to tell him further details he had not relayed in the first conversation.
- [22] During this second conversation, the Grievor told the Superintendent that he had collided with the rear end of the CWR Train he had been following while coming into Fort Steele. He estimated he was proceeding at 5-6 mph at the time of the collision, as a “best guess” (as he could not see his instruments when facing backwards), and that the CWR Train was proceeding in the same direction at 2 mph.
- [23] An Investigation occurred. The Grievor agreed in the Investigation that he inappropriately handled the train on the descending grade, and that he had placed his Train into a “false gradient”.
- [24] A “false gradient” results when the automatic brake is primarily relied on to slow the train, rather than utilizing the dynamic braking capacity of the train. This “catching and releasing” of air brakes depletes the auxiliary reservoirs in a train, which reduces the effectiveness of the air brakes.
- [25] During the Investigation, the Grievor was asked why he hadn’t mentioned the collision to the Superintendent during their first call. He stated he did not do so, because “[h]e did not ask about the collision the first time we spoke. He only asked about the emergency brake application after we hung up I felt that it was important that he be made aware of the collision”.
- [26] As the Grievor had not advised anyone at the Company that a collision had occurred, it is curious that the Grievor would have expected the Superintendent to ask him about the collision in the first call, before the Grievor reported the collision.
- [27] The Superintendent created a Memorandum which was provided to the Grievor at the Investigation. The Superintendent stated that when he discussed the collision with the Grievor, the Grievor said he did not report it, because it was a “minor bump, and that there was “not damage to their train or the CWR Train as well as that they were having to stop and place their train into emergency at the exact location they had stopped as well as they were going to perform a pull by inspection anyways once the train departed Forst Steele they didn’t’ need to report it.”

- [28] When asked later in the Investigation why he did not report the collision, the Grievor stated he did not report because “I didn’t feel that there was an unsafe condition”. The Grievor stated he felt he was in compliance with Rule 11.2 of the Rule Book for T & E Employees, which required reporting and a full inspection when it is “known or suspected that contact between movements has occurred that could interfere with its “safe passage”.
- [29] The Grievor indicated that “when it happened” the CWR Train was “actively inspected” by his own crew as it was pulling away, so he considered the CWR Train was “inspected” as required by Rule 11.2. He indicated his movement was inspected at Fort Steele, although he acknowledged the RTC was not contacted that the train needed to be inspected, and that no one outside his crew was aware that the Train needed to be inspected.
- [30] It was the Grievor’s opinion that “without a doubt” there was no “unsafe condition” with the CWR Train, as the contact was minimal. The Grievor indicated he “did not suspect there was an unsafe condition affecting the train”, but he acknowledged he was aware that did not relieve the requirements of Rule 11.2 and that he was unaware of whether the CWR Train was ever inspected.
- [31] The Grievor stated he did not believe there was any conversation in the cab after contact was made with the CWR Train. It was his information that he did not discuss the collision with the crew.
- [32] A statement from the Conductor was put to the Grievor in the Investigation. At an early point in her statement, she stated she was unsure whether or not contact was made with the Train, however later in her statement she said she “felt a jolt similar to a run in” and again later said she was unsure if contact was made. She indicated that the crew discussed not reporting the incident:

“I asked him [the Grievor] what he thought we needed to do. We discussed that we saw no damage and that the train [the CWR Train] was 1 car length away. We thought that because we put in[sic] into emergency and that the train was going to be inspected both sides we felt at that time that nothing needed to be reported” (Q/A 37).

- [33] When this statement was brought to his attention, the Grievor then agreed the crew did discuss reporting the incident – since his Conductor had asked what was to be done now - and that the Grievor said he replied to her that “we would continue with the power move and inspect the train at the crew change”.
- [34] A conductor trainee was also part of the crew that day. That trainee was also interviewed as part of the Investigation. She stated that everyone went outside of the cab after the Train stopped, and that “everyone was pretty shaken up I think I said I need smoke”. She described herself as being “in shock and wasn’t sure what to do being a conductor trainee”.
- [35] It was not clear from this evidence what the Trainee was “shaken up” from - putting the train into emergency or from the contact with the rear of the CWR Train. She indicated she was not well-placed to see if the train had made contact with the CWR Train. While she indicated a conversation took place about reporting the contact with the CWR Train, she could not recall what was said and did not understand what was being said, given that she was a Conductor Trainee.
- [36] When the Grievor was asked whether “yourself and your crew actively decide not the [sic] report the collision?” (as the Conductor’s statement indicates the crew “actively decided” not to report the incident as there was “nothing to report”), the Grievor stated “No, we passively decided not to report the incident”.
- [37] I am satisfied the Grievor and the crew felt that – since no damage was apparent – and no safe passage of the CWR Train was affect (in their view at least), no report was necessary regarding the collision.

III – Arguments

- [38] The Company noted the Grievor works in a unique position of trust, largely unsupervised and that reliance is place on the Grievor by both the Company and the public to be vigilant to ensure the safe movement of railway equipment. The Company argued the Grievor failed in three respects: improper train handling; failure to stop short of equipment resulting in a collision; and failing to report the incident by concealing the facts.

- [39] It argued culpability under the test in *Wm Scott*¹ has been established; that it had just cause to assess dismissal; and that it was a just and reasonable response, given the circumstances.
- [40] It argued the Grievor had admitted to both contacting the CWR Train and putting his train into emergency. It noted the locomotive download demonstrates the improper train handling; that the Train was placed into emergency at 28 mph, which was very fast for a heavy ballast train; that the Grievor was aware he was following the CWR Train from Cranbrook and should not have been surprised with its position and been more vigilant; and that the Grievor should have reported the Train had been placed into emergency so it could be inspected and the next crew should have been advised.
- [41] Regarding the collision, the Company noted any type of collision is very serious and brings reporting requirements under federal regulations, so that proper inspections can occur.
- [42] It also argued that since the Trainee indicated that everyone was “shaken up” by the event, the Grievor must have downplayed his speed at the time of impact and that this was more than a “minor” bump.
- [43] While the Grievor stated he thought no hazard resulted from the contact with the CWR Train, the Company argued he had no way of knowing if that was the case or not, or if the long, heavy cargo on the CWR Train had shifted, causing a weight imbalance which could lead to derailment.
- [44] The Company argued the Grievor consciously chose not to report the incident, which was a deliberate act and not a momentary lapse of judgment. It argued the Grievor had no intention of reporting the incident and it would not have been discovered except for the diligence of the local Superintendent. It argued he failed to make an emergency broadcast and took no steps to protect the train and failed to advise RTC or management of the emergency braking action or the collision as required, which

¹ [1976] B.C.L.R.B.D. 98

is reckless misconduct. It urged he also failed to set a good example for the trainee on his crew by choosing not to report.

[45] The Union noted the issue in this case is quantum of discipline and whether dismissal was unjustified, unwarranted, and extreme.

[46] It argued that dismissal for improper train handling is excessive and that the Company's mistaken belief in a "cover-up" has caused it to move to dismissal for these events. It urged there was no evidence of a "cover-up", as the evidence of the crew was consistent with that of the Grievor: the crew was unsure of whether any contact had in fact occurred. Even if there were contact, it argued there was no damage or unsafe condition to either train. It also noted the Grievor's later comments regarding the contact was unsolicited and forthright and honest; there is no evidence of deception; and that there was a "new" allegation of an intentional cover-up that the Grievor was not given notice of prior to the Investigation.

[47] The Union urged that just cause for dismissal was not established for discipline, and that the Grievor should be given the benefit of the doubt against a cover-up due to this lack of evidence. The Union noted the Grievor had a positive work record with minimal discipline over eleven years, with only two suspensions in six of those years; that he scored well on efficiency tests and safety reports; and that he was a new locomotive engineer, which impacted his ability to operate the Train. It argued he answered the questions candidly and honestly and provided detailed reasons for his decisions and actions. The Union relied on **CROA 4563** and **CROA 3965** where the Arbitrators considered the mitigating circumstances and the grievors were reinstated. In those cases, the damage was catastrophic, while in this case the Union noted there were no damages or injuries. The Union also provided facts relating to certain cases currently under grievance or settled, as comparators.

[48] The Union requested the Grievor be reinstated and compensated for his time removed from service.

IV – Analysis and Decision

[49] The Company bears the burden of proof to establish that the misconduct at issue warrants the level of discipline assessed.

- [50] I am satisfied the first question in a *Wm. Scott* analysis has been established: there is cause for some form of discipline in this case. There are three actions of misconduct to consider in this case when assessing discipline: First, the Grievor mishandled this heavy train on a descending grade, resulting in false gradients and causing an emergency stop to be initiated at 28 mph. While there were certain mitigating factors, the Train was mishandled. Second, the Grievor struck the rear of the CWR Train – which I accept was particularly vulnerable, given its unique load. Third, he failed to report the contact. However, as was noted, I accept the contact was minimal.
- [51] This leaves the second and third questions from *Wm. Scott*: Is the discipline just and reasonable, and if not, what discipline should be substituted?

The Authorities

- [52] The Company and the Union each relied on several cases to support their arguments for quantum. Not all will be mentioned in these reasons, although all were reviewed.
- [53] As is usual when quantum is assessed, no two facts will ever be the same so precedents have limited value and each case must be determined on its own facts.
- [54] The Union relied on **CROA 4563** and **3975, 4720 3882** for quantum of discipline. In **CROA 4563** the crew had a legitimate reason for believing the train they were following was “miles away” and to have expected it had pulled away. The crew attempted to reach that train by radio but didn’t get a response. Moments later it became apparent the train had not pulled away and they saw the train around the curve in front of them. The train was put in emergency at 34 mph and the collision ensued, causing four rail cars to derail. In that case, the grievor “immediately and fully accepted responsibility for the error” (at p. 8), which was to assume the second train had pulled away, based on faint radio chatter. He was found to have been honest throughout.
- [55] The arbitrator found the relationship was “working” and that the Grievor’s relatively clear proven record justified a second chance. The grievor was reinstated, but without compensation.

- [56] There was no allegation in **CROA 4563** that the LE failed to report contact between movements or failed to take accountability for his mistake. In **CROA 4720**, the grievor's nine years of service were found to be "significant service" in this industry.
- [57] I accept there is a spectrum of service, with long-service to the Company being the most mitigating and short service being the least mitigating.
- [58] In **CROA 4720**, the Grievor's only discipline was a written reprimand in those nine years of service, for an attendance related issue. In that case, the grievor was also found to be forthright and honest; the incident resulted from an "inadvertent lapse of attention" (at p. 7) and he expressed "sincere remorse" in his statement, which were all mitigating. **CROA 3882** was also a decision involving the dismissal of a conductor for a tail end collision, which involved the derailment of several cars. There was no allegation of failing to report in that case and it can also be distinguished. **CROA 3975** is another case involving a train which rounds a corner and sees a train that was unexpected. A collision at a rate of 25 mph ensued derailing several cars. There were issues with the notice to attend the investigation and it was found the grievor could not know what was alleged against him. That case can also be distinguished.
- [59] While I recognize the Union has focused on cases which have similar fact patterns for rear end collisions, that collision must be combined with the other misconduct in this case, to appropriately assess discipline.
- [60] I have not considered the other examples of discipline provided by the Union that were either not grieved or are within various stages of the discipline process. Those examples are not appropriate comparators at arbitration, as it is not possible to know and understand all the facts and there exists no analysis of an arbitrator of the appropriate quantum. They are not relevant to a quantum assessment.
- [61] The Company relied on several cases where dismissal resulted from accumulation due to poor discipline records, rather than from the seriousness of the incident (**CROA 4416, 4489, 4783**). While **4783** is such a case, the arbitrator in that case noted that not being "forthcoming" until confronted with the video and "deceptive justifications" for failure to report are aggravating factors (at p. 9) for discipline.

However, in that case, it was the grievor's second failure to report in one year, which the arbitrator found demonstrated a 'blatant disregard' for the Company's accident reporting procedures.

[62] The Company also relied on **AH716**. While that is another example of the "arbitrary castigation" which accompanies dishonest conduct, that case did not involve a failure to report an accident, but time theft, which is different offence.

Application to the Facts

[63] I cannot agree with the Union that the allegation of Conduct Unbecoming was an allegation that must be included in the Notice to Appear. It is not unreasonable for that allegation to be made by the Company once an Investigation is known and all facts are gathered, as that allegation depends on the Grievor's actions, all of which may not be known at the time the Notice to Appear is issued. The allegation was included in the Grievor's Form 104 and in the JSI and was properly put into issue for this proceeding.

[64] To consider the *Wm. Scott* factors under the second and third questions, I have carefully reviewed the Investigation transcript, and its attachments, in addition to the other materials provided.

[65] In this case, I am satisfied that the misconduct attracts significant discipline. However, I am not satisfied that the Company has met the burden to establish dismissal was a just and reasonable response. Therefore, the third question arises from the *Wm. Scott* analysis, which is an exercise of discretion to substitute a lesser penalty for that imposed by the Company.

[66] I note this was not this Grievor's second failure to report an accident and I am not satisfied of the same level of 'blatant disregard' for the Company's procedures as was demonstrated in **CROA 4783**.

[67] I also cannot agree with the Company that because of the Trainee's response, the Grievor must be downplaying the speed and force of the contact. The evidence for that position is lacking. I accept the evidence is that the Grievor contacted the rear end of the CWR Train at a low speed of travel, while the CWR Train was pulling away. Neither of the two other crew contradicted that evidence. Their evidence was

they were unsure that contact even occurred. While the Trainee indicated she was “shaken”, it was not clear this was because of the contact with the CWR Train or the fact of the emergency brake application, so the implication does not necessarily follow from her evidence that the collision was more severe than was stated by the Grievor.

- [68] I cannot accept the Company’s characterization there was a “cover-up” by the crew, or collusion to hide the collision from the Company. There was a failure by the Grievor to report, but the evidence does not establish there was collusion – led by the Grievor – to hide the collision and I accept he did advise the Company of that contact. Had he not done so, the Company may not have found out a collision had even occurred, as the evidence of the two other crew members was equivocal.
- [69] I accept the Grievor and the crew mistakenly considered and assumed that the minimal contact did not damage either their train or the CWR Train and were acting on that assumption in making a decision to inspect their train. I agree with the Company that significant discipline must follow that fault assumption, as the Grievor made no efforts at all to ensure the CWR Train crew checked their load, or more closely examined the Train than the Grievor was able to do when it was already one car length away and moving away.
- [70] I also cannot agree with the Union that the factors in mitigating should act to vacate this discipline. Those factors – that the Train was operating long hood lead; carried a heavy ballast load; and was on a descending grade – act only as against the misconduct of improper train handling and the collision. They do not address the failure to report the collision.
- [71] The Grievor chose not to contact the RTC to report the contact – minor as it was – and not to contact the crew of the CWR Train so it could arrange for an inspection, and/or its cargo could be checked. That conduct attracts significant discipline.
- [72] While not excusing that failure, I recognize that the Grievor made that choice because he felt his Train would be subject to an inspection at crew change, and that “safe passage” was not impacted. However, his Train was not the only Train involved. The CWR Train was also involved. I do not accept the Grievor had a basis

for his assurance that there was 'no damage' to that Train, even given the minor contact. I find the "inspection" of the CWR Train by the Train crew was not in any way "thorough", as the CWR Train was pulling away at the time of contact and when the crew detrained it was already a car length away. The Grievor had no way of understanding what damage may or may not have acted on the vulnerable cargo from watching the CWR train pull away, or whether the cargo had shifted.

- [73] The Grievor admitted he was not aware of whether any inspection of the CWR Train in fact occurred. To not advise the CWR Train crew that they had been hit put that crew at risk. At the very least the Grievor should have contacted the CWR Train to tell them they had been contacted by his Train.
- [74] While I accept there was some mitigating factors in the crew's determination that "safe passage" was not impacted, I have found that was a false comfort, based on an assumption that should not have been made.
- [75] I further find the Grievor's failure to report the collision, combined with several of his statements, demonstrate a failure to take accountability or responsibility and a lack of insight into this mistake, leading to cause for significant discipline.
- [76] Locomotive Engineers have a key role in the operation of the railroad. Significant responsibility rests on their shoulders. They work largely unsupervised and are indeed in a unique position of trust to follow safety rules and so ensure safe passage of trains, as argued by the Company.
- [77] The trust which the Company places in such individuals must include trust in an employee's ability and willingness to take responsibility for their actions and be accountable for their mistakes. While there are several reasons for reporting, one aspect that prompt reporting demonstrates is insight that an error has occurred and accountability and responsibility for that error.
- [78] For example, it does not demonstrate accountability for an individual to report a collision nine days *after* contact with a train. I do not find a Grievor who is sincerely remorseful for a mistake would attempt to cover that mistake by not reporting it, or by asserting an explanation there was "no damage" to the CWR Train, when he had no knowledge the CWR Train was ever inspected.

- [79] A further example is the Grievor's comment that the Superintendent did not "ask" him about the collision, so he did not tell him about the collision in the first call. As the Grievor had not reported the collision it is unclear why he would have expected the Superintendent to ask him about the collision. That type of comment does not demonstrate the requisite level of accountability the Company legitimately expects.
- [80] I accept it was only when the Grievor realized from his conversation with the Superintendent that his emergency braking was known that he chose to advise the Company of the incident with the CWR Train. However, I also accept it would have been a worse situation for the Grievor if he denied anything had occurred – as he could have as his crew member's information was equivocal regarding the contact. That does act to his credit.
- [81] I accept that it is the failure of the Grievor to take responsibility for his actions by reporting the minor contact in a timely way – that has legitimately caused the Company significant concern in this case. This is a concern which is more significant than if improper train handling were the only misconduct. I further agree with the Company this is a serious failing for an eleven year employee, even though I disagree that dismissal was warranted.
- [82] Dismissal is the most severe form of discipline that an employer can impose. In labour relations, it is often asked whether the "trust relationship" between the employer and the employee is irrevocably broken by dishonest conduct, to support that choice.
- [83] I do not consider that in this case that trust relationship is irrevocably broken such that dismissal is an appropriate disciplinary response.

V - Conclusion

- [84] The degree of misconduct must always be placed in context.
- [85] Upon considering all of the facts and circumstances and reviewing the authorities provided, I find that dismissal in these circumstances is an excessive and unwarranted disciplinary response for an eleven year employee who had what I am prepared to accept was a minor rear end collision; in a situation where no damage to equipment or injury resulted; where there were mitigating circumstances in his

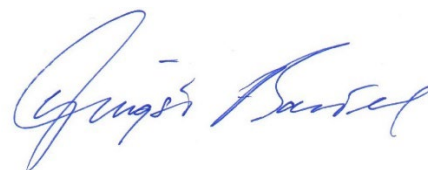
operation of the Train (being a heavy ballast train, operating “long hood lead” and on a descending grade); and where the Grievor had explanations for why he did not report the contact, including that the contact did not hinder safe passage.

[86] The Grievance is allowed, in part.

[87] A just and reasonable discipline response for this Grievor is to be reinstated, with no impact to his seniority or benefits, but also without compensation, and for his disciplinary record to reflect that his misconduct resulted in a lengthy suspension.

[88] I remain seized to address any issues with the implementation of this Award and to correct any errors or omissions to give it the intended effect.

November 10, 2023



**CHERYLYINGST BARTEL
ARBITRATOR**