

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

**CASE NO. 4885**

Heard in Calgary, November 15, 2023

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of a thirty-day suspension assessed to Locomotive Engineer S. Cawdell of Cranbrook, B.C.

**THE UNION'S EXPARTE STATEMENT OF ISSUE:**

Following an investigation, Engineer Cawdell was assessed with a thirty-day suspension described as:

Please be advised that you have been assessed a thirty (30) day suspension from Company Service effective 0001 July 19, 2019 to 2359 August 18, 2019 for the following reasons:

For failing to stop your movement short of your authority and your requirement as instructed on OCS Clearance 454 to restore the South Siding Switch Spillimacheen on the Windermere Subdivision, resulting in your movement traveling past the South Siding Switch Spillimacheen, while working as the Locomotive Engineer on train 867-204 on July 18, 2019.

Summary of rules violated: Rule Book for Train and Engine Employees 2.2 (c), (v) (xii), 2.3, 15.2 (c) 15.5 (a)(b). Train & Engine Safety Rule Book T-0.

**Union's Position:**

The Union contends that the Company has failed to consider the mitigating circumstances as detailed within the investigation. Throughout the investigation, Engineer Cawdell detailed exactly what was taking place July 18, 2019. The Company did not dispute his explanation of the details and he took full responsibility for his error in judgement. Engineer Cawdell reported and took immediate action in protecting his movement with the RTC. The Union contends the discipline imposed is unjustified, unwarranted and extreme given the circumstances.

Further, the Union contends that even if Engineer Cawdell is found to be culpable the Company has not provided the burden necessary to impose the harsh penalty of discipline, the assessment of a thirty-day suspension is beyond what arbitral jurisprudence has recently contemplated.

The Union seeks an order that the thirty-day suspension be expunged from Engineer Cawdell's work record and that he be made whole for lost wages, with interest, as well as any lost

benefits in relation to his time withheld from service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company has denied the Union's request.

**FOR THE UNION:**  
**(SGD.) G. Lawrenson**  
General Chairperson, LE-W

**FOR THE COMPANY:**  
**(SGD.)**

There appeared on behalf of the Company:

F. Billings	– Assistant Director, Labour Relations, Calgary
S. Arriaga	– Labour Relations, Calgary
A. Harrison	– Manager, Labour Relations, Calgary
R. Araya	– Observer, Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
G. Lawrenson	– General Chairperson, Calgary
C. Ruggles	– Vice General Chairperson, Calgary

### **ARBITRATOR AWARD**

#### **Background, Issue & Summary**

- [1] The Grievor was a long-service employee, who worked as a Locomotive Engineer. He entered the Company's service in 1988; was severed in 1992 and returned in 1997. For the majority of his career, he had worked within the Cranbrook Terminal.
- [2] On July 18, 2019, the Grievor received a 30 day suspension for failing to restore the South Siding Switch Spillimacheen, resulting in the movement traveling past that switch and into the siding, for which he had no authority.
- [3] The issues in this Grievance are
  - a. Was the Grievor culpable for this action?
  - b. If so, was the discipline assessed excessive and unwarranted?; and
  - c. If so, what other discipline should be substituted?
- [4] Upon carefully considering all the circumstances and the jurisprudence, I am unable to agree the discipline was excessive or unwarranted. For the reasons which follow, the Grievance is dismissed.

## **Analysis and Decision**

### **Facts**

- [5] On July 18, 2019 the Grievor was called on Train 867-204, an extended run from Sparwood to Golden. On that day, he was working alongside Conductor Smith.
- [6] The crew had a number of restrictions on their clearance. In addition to item 5 relating to the South Siding Switch at Spillimacheen, they were also to protect against two foremen: Foreman Cody Durning between North Siding Switch Luxor and Station Name Sign Brisco; and Foreman Kevin Schmidt between Station Name Sign Brisco and North Siding Switch Sweeney.
- [7] The Grievor had operated through the limits of the first Foreman and were being governed by the instructions of the second Foreman (Schmidt).
- [8] By item 5, the crew was required to “approach the switch(es) indicated prepared to stop and restore them to normal position”. This switch was the South Siding Switch at Spillimacheen.
- [9] As the train ultimately proceeded through the switch and into the siding, I am satisfied the crew did not abide by this restriction. The result was this Train occupied track for which he had no authority.
- [10] When questioned, the Grievor indicated that he “came around corner to South Spillimachen and saw red target” and then tried to stop the train. He was unable to bring the train to a stop and so proceeded into the siding.
- [11] The Grievor stated he and the Conductor were focused on the later – and wrong restriction – which was trying to get track from Foreman Schmidt – instead of the Spillimachen switch (south).
- [12] The Grievor also stated he was aware he was coming towards Spillimachen – where there is a road crossing – as he blew his whistle appropriately at that crossing.
- [13] In terms of why he missed seeing the switch, the Grievor stated he was focused on the “restriction at North Spilly from the foreman and trying to get track from him” (Q/A 45).

- [14] The Grievor was unable to provide any other contributing factors to his failure to see what he knew was upcoming.
- [15] According to the Rule Book for Train & Engine Employees Section 15 – OCS item 15.5(b) Restrictions on Clearance, a radio broadcast was required to be made “on the standby channel between 1 and 3 miles in advance of each restriction stating the designation and restriction being approached”.
- [16] I am satisfied this radio broadcast did not occur.
- [17] The Grievor indicated this did not occur because “we were in communication with Foreman Kevin Schmidt at the time”.
- [18] In Conductor Smith’s interview, he stated he was speaking with Foreman Schmidt on the radio and “trying to get instructions from the north switch” as the approach was made to the South Siding Switch (Q/A 34; see also Q/A 35 to 39). He stated he was looking down dealing while with the Foreman and that restriction and that when he looked up the train was approximately 1500 feet from the switch, which was not lined for their route. Conductor Smith stated he “yelled the switch was red to my engineer” (Q/A 35-36) and that “when I looked up it was too late to stop in time” (at Q/A 39).
- [19] I am satisfied that it was Conductor Smith who looked up and *first* noticed the switch was red and yelled at the Grievor, but by the time he did so, it was “too late” to stop in time. I am also satisfied that when Conductor Smith yelled out, the Grievor “placed the train into emergency, went to idle and activated the dynamic and independent brake” (at Company Tab 8; Q/A 38).
- [20] I am further satisfied that – until Conductor Smith yelled at him that the switch was red – the Grievor had not noticed the red switch.
- [21] At Q/A 56, when asked if he had anything to add, he stated:

I am shocked and flabbergasted. Nothing like this has ever happened in my entire career. I do my utmost to do my job safely and still trying to figure out where the breakdown occurred. In the future I will be extra vigilant to prevent this from reoccurring.

### Arguments

- [22] The Company argued the discipline was just, appropriate, warranted and reasonable; was reasonable; was in line with the Company's Disciplinary Policy; and in line with the principles of progressive discipline. It pointed out the Grievor had been using the clearance format for many years and ought to have been more diligent. It argued an infraction of 'this kind' was a serious rule violation, warranting significant discipline. For its assessment, it relied on **CROA 2935**; **CROA 4689**; and **CROA 4216**; **CROA 1198** and **CROA 3900**. It noted that Grievor had traveled more than 1100 feet into a siding for which he had no authority, and that track could have had an opposing movement, resulting in tragedy. It also pointed out the Grievor failed to call out the restriction one to three miles ahead, as required. It maintained 30 days was the appropriate discipline for this error.
- [23] In its Rebuttal argument, the Company noted the Grievor 'forgot all about' his restriction, which was not an 'honest mistake' as argued by the Union. It pointed out that no matter what was going on in the cab, the Grievor maintained the obligation to understand which clearances he was approaching and to address them appropriately. The Company pointed out that the crew also had a restriction at North Siding Spillimacheen by the same Foreman. That Foreman could have been in the process of moving machinery and crew members into that siding to exit the main track, to allow the Grievor to pass. The Grievor was not approaching in control of his movement and prepared to restore switches, as required.
- [24] The Union argued the Company was unable to establish cause for discipline and even if so, the discipline was excessive and unwarranted, being a substantial financial penalty, which should be reduced. It argued that it was a "busy cab" that day, and the Grievor's situation must be considered in view of that reality. It relied on **CROA 2588** as its only authority. It noted the crew immediately stopped their train upon entering the siding and that the Grievor had provided a forthright explanation that he was "looking at Foreman's restrictions and planning to stop at North end"<sup>1</sup>. Conductor Smith indicates that he had the movement instructions from

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<sup>1</sup> Union's Brief; para. 26

the Foreman in front of him and was on the radio with that foreman and looking down. The Union argued the Grievor showed sincere remorse and was honest and forthright during the Investigation.

- [25] In its Reply, it pointed out that the siding was not within the Foreman's limits and that authority was not required to occupy a siding, so the Grievor's movement did not exceed his authority and this was not akin to 'occupying track without authority' as argued by the Company. Rather, the crew had a clearance past the North Siding Switch Spillimacheen, and permission from the Foreman to that switch. It argued that Authority to occupy non-main track is not required by any of the Rules cited in the Form 104 provided to the Grievor. It argued the Company's cases were distinguishable: In **CROA 2953** the Grievor had operated on another subdivision, which did not occur here; in **CROA 4689**, the movement proceeded onto the mainline, which did not occur here; in **CROA 4216** had left a switch in reverse; and unlike in **CROA 1198**, the reversed switch he was approaching only affected his movement; the Grievor could have "pulled all the way clear into the siding and restored the switch and essentially fulfilled the requirements of the clearance".<sup>2</sup>

*The Wm. Scott Questions*

- [26] The often quoted analysis from *Re Wm. Scott & Co* requires a determination of three questions, as noted in the *Summary* section.
- [27] The first is culpability.
- [28] I am satisfied it is part of the core duty of a Locomotive Engineer to know and understand the clearances under which he or she works and to address each clearance issue as it occurs. I have no difficulty in finding the Grievor culpable for failing to properly stop his train before the switch. The Company has met its burden of proof to establish the Grievor failed to stop to align a switch as required, which placed him where he was not supposed to be. I take the Company's point that as the Foreman also had a restriction regarding the North Siding Switch, he could very well have been moving equipment or personnel into the siding to allow the Grievor's

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<sup>2</sup> Union Reply at para. 11

train to pass; that this failure to stop and align a switch as required by his clearance did result in a significant safety violation, as it placed the train in an area where that train was not supposed to be.

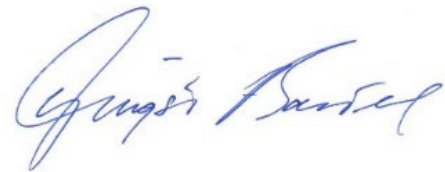
- [29] The second question requires consideration of mitigating – and aggravating – factors in considering an appropriate level of discipline.
- [30] An important factor under the second question is the nature of the offence.
- [31] I accept this offence was a significant and serious violation in this industry, with potentially tragic consequences. Had personnel or equipment been in the siding into which the Grievor operated his train, this could have been a terrible tragedy. His clearance required him to stop and prevent his train from going into that siding and he did not do so.
- [32] While all crew members have a responsibility for safe operation of the train, I am further prepared to find that the nature of this offence goes to the core duties and expectations which the Company reasonably holds for a Locomotive Engineer: To operate the train safely and with an alertness to all upcoming restrictions of which he has been made aware, whether or not his Conductor is occupied with other tasks.
- [33] Regarding the appropriate level of discipline, the jurisprudence provided does not support the exercise of discretion to reduce this penalty. The Union relied on **CROA 2588** as its only authority. That is a case where the Grievor entered the limits of a Foreman without permission. He was assessed 30 DM *and* a 32 day suspension, which was reduced to 20 demerits *and* a 14 day suspension, which even when reduced is a significant level of discipline.
- [34] In that case, an additional “unfit” manager in the cab was engaged in unnecessary conversation and argument with the crew; the brakesperson (who would normally call out restrictions) had been moved out of the cab due to the presence of the manager; and it was a complex and difficult assignment with many restrictions. The arbitrator found there was “too much going on in the cab”. The grievor in that case had been a “good employee of twenty-four years’ service” without any “cardinal rules infractions”.

- [35] I cannot agree that this case is a situation which is analogous to that case. The facts in that case are much more distracting than what was going on here. Even with that level of distraction, the arbitrator assessed a penalty of 20 demerits and a two week suspension. This Grievor also has a more significant disciplinary record than the grievor in that case.
- [36] In this case, the Grievor's record is an aggravating factor for discipline. While much of his record has attendance issues, the Grievor does have a previous issue with failing to comply with a clearance to 'restore all switches'. That occurred in July 2013. As the Grievor was then off work between January 2014 and February 2018 (as he was dismissed for accumulation), the "working" time between those occurrences is less than it appears. This was the *second* violation relating to switches in less than eighteen working months.
- [37] This also casts some doubt on the Grievor's claims he will be diligent in aligning switches in future.
- [38] I am unable to agree with the Union that this was an "honest mistake". As with the Arbitrator in **CROA 4689**, I find this was significantly more than an error in judgment.
- [39] It is a basic responsibility that a Locomotive Engineer must have situational awareness; must be diligent for restrictions and must not to be distracted by what another employee in the cab is doing. Such an employee must remain focused and able to address the next upcoming restriction, which is an important and safety-critical task.
- [40] The Grievor failed in these requirements. While the Union noted the busyness of the cab and the conversation with the Foreman ahead, I have difficulty with this explanation. It was Conductor Smith who was handling the conversation with the foreman and focused on that task. As an experienced Locomotive Engineer, the Grievor would be expected to continue to safely operate the train even when radio chatter is occurring. I have difficulty accepting the Grievor was reasonably distracted by the radio conversation of Conductor Smith, as that would be an expected event in the cab of a locomotive.



- [41] I also cannot agree the Grievor accepted “full” responsibility as argued by the Union. He stated he was trying to speak to the foreman ahead, when it was actually the Conductor who was handling that task. He also stated he ‘came around the corner and saw the switch’ , but I am satisfied he did not notice the switch until Conductor Smith called out to him to stop.
- [42] Even immersed in his own tasks, Conductor Smith had greater awareness of where the train was than the Grievor who was physically operating the controls.
- [43] While I agree had the call outs been made as required that would have assisted the Grievor to understand what was occurring, he also bore responsibility to make those call outs, so that is not a mitigating factor.
- [44] I am satisfied this case supports the imposition of a significant disciplinary penalty: as supported by **CROA 2953** (engineer; operating train beyond authorized limits; 90 day suspension; mitigated to 30 days by Company due to long service and clear discipline record; *30 days found to be “within appropriate range of discipline”*); and **4689** (engineer; failure to wait for second train to clear as instructed; dismissed from service; 3.5 years of service; discipline free; more than a simple error in judgment found when negligently reviewed clearance and did not notice need to wait for second train; lack of proper job briefing; no sufficient excuse; *55 day suspension*).
- [45] Considering all of these factors, I am satisfied a 30 day suspension was a reasonable disciplinary response and that this is not a case which would attract discretion to reduce that reasonable penalty.
- [46] The Grievance is dismissed.

March 1, 2024



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**CHERYL YINGST BARTEL**  
**ARBITRATOR**