

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

**CASE NO. 5034**

Heard in Calgary, April 11, 2024

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the 20–day suspension assessed to Conductor C. Lumsden of Revelstoke, British Columbia.

**JOINT STATEMENT OF ISSUE:**

Following an investigation, Mr. Lumsden was assessed a 20–day suspension described as: “For the lining of the main line switch without authority, causing an occupancy on the mainline and the signal to drop on the work train while working as the Conductor on train 400–29RC, July 1, 2021. A violation of the Rule Book for Train & Engine Employees Section 4, Item 4.2 (a) (e) and Section 17, Item 17.1 (b).”

**UNION POSITION**

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above.

The Union contends the discipline assessed is unjustified, unwarranted, and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

It is also the Union’s contention that the penalty is contrary to the arbitral principles of progressive discipline.

The Union disputes the application of the Hybrid Discipline & Accountability policy in the instant matter.

The Union submits the Company in failing to respond to the Union’s 2nd step grievance has violated the Collective Agreement. The Union seeks an order from the Arbitrator regarding the same.

The Union requests that the discipline be removed in its entirety, and that Mr. Lumsden is made whole for all associated loss with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

**COMPANY POSITION**

The Company disagrees and denies the Union’s request.

The Union suggests the Company has effectively failed to respond to the local grievance and in doing so allegedly failed to fulfill the requirements of the Collective Agreement. While the

Company cannot agree with the Union's allegations pertaining to the local grievance response, Consolidated Collective Agreement Article 40.04 is clear in that the remedy for failing to respond is escalation to the next step. Based on the submission of the Union's final step grievance, it is also clear the Union acknowledges Article 40.04 and has progressed to the next step of the grievance procedure.

The Company maintains that following a fair and impartial investigation, the Grievor was found culpable for the reasons outlined in his form 104 and the discipline was properly assessed in keeping with the Hybrid Discipline and Accountability Guidelines. Accordingly, the Company cannot see a reason to disturb the discipline assessed.

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.) D. Fulton**

General Chairperson, CTY-W

**FOR THE COMPANY:**

**(SGD.) F. Billings**

Asst. Director, Labour Relations

There appeared on behalf of the Company:

- R. Araya – Officer, Labour Relations, Calgary
- D. Zurbuchen – Manager, Labour Relations, Calgary

And on behalf of the Union:

- R. Church – Counsel, Caley Wray, Toronto
- D. Fulton – General Chairperson, CTY-W, Calgary
- J. Hnatiuk – Vice General Chairperson, CTY-W, Mission
- J. Lind – Local Chairperson, Div. 657, via Zoom
- C. Lumsden – Grievor, via Zoom

**AWARD OF THE ARBITRATOR**

**Background and Issue**

- [1] The Grievor is employed as a Conductor. He entered Company service on February 2, 2020. He was qualified as a Conductor in September of 2020.
- [2] This Grievance was filed from an assessment of a 20 day suspension for the Grievor's actions in improperly lining a switch, when he had no authorization to do so.

**Facts**

- [3] On July 1, 2021, the Grievor was called for service as Conductor on Train 400-29RC, from Revelstoke to Field, B.C. He was to work that assignment with LE Laderoute. The crew reached Golden, B.C. and took control of their train and began their assigned switching duties to ready to depart. The ATM advised the crew they would be taking over

for the crew on a work train (that was incoming) and park it into Track 7. The job briefing assigned the Grievor the task of lining tracks 5 and 6 switches for lead and Engineer Laderoute was to prep track 7 for the work train.

- [4] According to the Grievor's evidence at the Investigation, he "heard the work train broadcast the signal at Hill. I was trying to be proactive to line them in, when I got to the main line switch the lock was on the ground.... I lined the switch for the work train not realizing that they were in the block yet".
- [5] His evidence was that the lock was on the ground when he got to it, and the top part was hanging in the keeper hole but not locked, as it was defective, and that he was "confused because of the high security lock not being present, making it seem like a yard switch".
- [6] The Grievor admitted he did not communicate his intent to either his LE or the Mountain Sub RTC before throwing the switch. He admitted he did not have any authority to line that switch and he also understood what happens when a main line switch is thrown prior to the block being occupied.
- [7] The LE confirmed that he and the Grievor did not job brief that the main track switch at hill would be reversed by the Grievor, and he was not aware that this was the Grievor's intent. His evidence was that by the time he got to Connor, it was "too late" as the switch had already been reversed and the work train crew was talking to the RTC on the radio.
- [8] As a result of this change to the switch, a track occupancy was created. Therefore, the signal that covers that block reacted to the reverse of that switch by dropping the permissive signal to a stop signal This forced the work train to stop abruptly, which I am satisfied raised the risk of a derailment and track damage.
- [9] While the Company argued this could have also set up the work train crew for a Rule 439 violation, presumably the Company would have considered the circumstances of the last minute signal change, and not found culpability for the crew only having a short time to obey that unusual signal.
- [10] The Grievor had no prior discipline assessments on his record during his short career of less than a year as a qualified Conductor.

## **Arguments**

- [11] The Company argued that the rules surrounding hand-operated switches are some of the most important rules for a Conductor. It argued the Grievor clearly violated several rules and made several mistakes.
- [12] It noted that T&E Rule Book Section 14.4 requires that track switches be left lined and locked except in certain specific circumstances, which were not evident here, as this train was not even in the block yet; that the Grievor did not have authority to line the switch; that the Grievor failed to communicate what he had done over the radio, as per T&E Rule Book 4.2, communication requirements; failed to follow his own job briefing; failed to communicate any intent to line the mainline switch and failed to communicate to his LE and the work train that he had done so; and failed to realize the work train was not in the block yet. It argued the Grievor had rushed critical job duties and that his confusion regarding basic rules of switches was a “recipe for disaster”, with very real potential to cause catastrophic damage. It argued the fact this damage did not occur does not lessen the severity of the violation.
- [13] While the Grievor stated he was trying to be proactive and that he was confused due to the lock being broken, the Company argued this latter excuse does not even make sense, as any switch can have switch locks. His assumption that only mainline switches have locks was incorrect. The Company noted that mainline and yard switches have different colour targets and that all the Grievor had to do was look at the colour to understand what type of switch it was. It argued the Grievor’s inexperience did not excuse his failure to make that proper assessment, as he knew – or should have known – the switch he was lining.
- [14] It argued the Grievor’s actions demonstrated issues with competency and judgment and that the Company must be able to depend on Conductors carrying out their duties with due diligence and good judgment. It noted that lining mainline switches without permission can cause collisions and derailments. It argued it showed leniency by only assessing a 20 day suspension and that the suspension was consistent with principles of progressive discipline, given the serious nature of the offence; and was proportional.

- [15] The Union argued there was no justification for a 20 day suspension; it was not a progressive response; and that this case did not have the aggravating factors of the jurisprudence relied on by the Company. It argued the Grievor had only qualified as a Conductor in September of 2020, as he was laid off during his training. It pointed out he had no prior assessments of discipline and that his efficiency testing rating was 97.56% pass rate, including a pass for handling switches only seven days before.
- [16] It argued the Grievor's actions were "inadvertent", resulting from the Trainmaster advising the work train was approaching, and the Grievor's intent to line switches for that arrival and so assist that train. It argued the Grievor did not realize the work train was not already in the block and felt he was expediting its arrival to "keep things moving" and also because he was "confused" about the switch being a yard switch, given that the security lock was not present. It pointed out the work train *did* stop safely and there was no damage to equipment. It argued that the LE could not be contacted by radio, as he was not inside the LE with access to a radio.
- [17] It argued T&E Rule 4 is not applicable, as the crew's movement did not enter the main track. It also pointed out that the Grievor took ownership of his mistake and demonstrated forthrightness. It argued for a substantial reduction in the penalty, to be consistent with fairness and arbitral standards.
- [18] In Reply, the Company noted that culpability was not in dispute. It pointed out it took the Conductor seven months to qualify as a Conductor, due to his layoff, instead of the usual six months. It noted the Grievor was unaware of whether the work train was in the block, *because* he failed to communicate with that work train. It argued that a rush to complete tasks resulting in confusion is a cause for concern, as it leads to mistakes, which in this industry can be catastrophic. It also argued the Grievor's inexperience should not have been a factor, as he had close to two years experience with lining main track switches and so was not unfamiliar with that task. It noted that the LE did not say he did not have a portable radio or unable to communicate, and that there was a job briefing done, which did not include the Grievor lining the mainline switch. It also pointed out that the track occupancy dropped all signals within that section of track, and that Rule 4 could not have been more clear. It argued the Union had not substantiated its argument that progressive

discipline was not followed, as the Grievor was properly assessed the suspension for his first major violation, under the Company's disciplinary policy.

- [19] In its Reply, the Union argued that the Company's disciplinary policy was under grievance and that this Grievance must be assessed on just cause standards. It noted that the failure to conduct an emergency broadcast was not noted on the Form 104. It also argued CP's recitation of facts distorted and omitted certain facts from the record, including a lack of evidence that the Grievor was "only" to line tracks 5 and 6 from the job briefing; and that the Grievor was led to believe this was a yard switch, not a mainline switch, due to the broken lock, and why that was not rectified to avoid these types of issue. It argued that the concerns for a Rule 439 violation by the work train crew were speculative, as they were able to stop before the signal. It also noted the Grievor was not disciplined for not communicating that he had lined the switches in tracks 5 and 6. It also distinguished the Company's jurisprudence.

### **Analysis and Decision**

- [20] It is a CORE Safety Rule of the Company that "job tasks are to be performed only by individuals who are qualified and authorized to perform them". The T&E Rule Book, section 4.2 states that crew members are required to "communicate and understand...(e) when hand operated switches are lined and/or locked, confirming the route to be used". By Section 17.1(b), a movement must not foul or enter CTC, "except by signal indication, permission or written authority from the RTC".
- [21] Lining switches is a core responsibility for Conductors, who must take that action within the strict confines of the rules. The Grievor was not too inexperienced to know and understand the fundamental rules relating to switches in this industry.
- [22] From a review of the evidence, several facts are clear: The Grievor was a qualified Conductor; he lined a switch he was not authorized or instructed to line, and had no authority to line, and in doing so he impacted on incoming work train and stepped outside of what was discussed in the job briefing. He also chose to take these actions without communicating either his intent to do so – or that he had done so – to his own LE, the work train crew, or the RTC. He made no attempt to contact the LE, so whether or not the LE could have received that broadcast is immaterial.

- [23] It is not compelling that the broken lock would led the Grievor to consider this was a yard switch. As noted by the Company, yard switch and mainline switches have different colours to denote their different purposes. The presence – or absence – of a lock is not one of the ways in which those switches are to be distinguished. As a qualified Conductor, the Grievor would be expected to know and understand how to distinguish between a yard switch and a mainline switch.
- [24] Cause for discipline is established.
- [25] Turning to the second question in a *Re Wm. Scott & Co.*<sup>1</sup> analysis, the nature of the offence is relevant. Whether or not catastrophic consequences occurred in this case, lining a switch without authority to do so, and failing to communicate that action to an incoming work train or even a fellow crew member, is a significant and serious offence in this industry. It is the switches which physically direct a train onto a particular course. It is readily apparent that the actions taken by the Grievor in this case constituted significant and serious errors, which had potentially devastating implications. That is an aggravating factor for discipline.
- [26] In **CROA 4660**, it was held to be a “serious mistake” when a RTC was not focused on the job, as it was “incumbent on the grievor to be completely focused on what he was doing”. The arbitrator also noted that case that it was an aggravating factor that the offence went to the “core of an RTC’s duties”, and his failure was a serious mistake and warranted the discipline imposed”, quoting from that principle as recognized in **CROA 4613**<sup>2</sup>.
- [27] That same lack of focus is apparent in this case, coupled with a lack of judgment or forethought into the implications of lining a switch before the train had entered the block. Lining switches is also a “core” duty of a Conductor, so that same principle is applicable as aggravating in this case. Lining switches are part of the core duties of a Conductor.
- [28] Several of the authorities relied upon by the Company have more serious issues and consequences than in this case. For example, in **CROA 4592** , a Conductor inexplicably lined a switch in front of a train where he was positioned to do a pull-by, causing that train to careen into the train he had just come off of (which was in a siding) which resulted

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<sup>1</sup> [1976] B.C.L.R.B.D. 98

<sup>2</sup> At p. 5.

in a head on collision, causing injuries to both crews. His only explanation for that action was “muscle memory” confusion which he suggested was caused by working on paperwork right before he prepared to do the pull-by, which work referred to lining switches. In that case, his discharge was upheld.

[29] That case does not have facts which are analogous to the facts in this case and is not persuasive for a discipline decision.

[30] **AH772** is an analogous case regarding the level of appropriate discipline. It involves an incident where a Grievor with four years’ experience lined a switch without proper authority. In that case, the Grievor noted he “forgot”, which is similar to the inexplicable excuses given by this Grievor for his actions, neither of which were compelling. In **AH772**, the Grievor was discharged. At arbitration, the arbitrator noted that this type of rule violation “can lead to catastrophic consequences”; that “proven violations of such rules can result in termination of an offending employee *on the first offence*, given the facts and circumstances of each case”<sup>3</sup>; and that “clear thinking and consideration of applicable rules is crucial at all times”.<sup>4</sup> In that case, the arbitrator found it mitigating that multiple officials were giving and changing instructions to train crews in the congested yard, and that some crews were expressing confusion and so found it appropriate to reinstate the Grievor, however time served (2.5 years) served as a lengthy unpaid suspension for that misconduct.

[31] The Union relied on the Grievor’s testing record, although this is not a case involving an efficiency test, so that record is not persuasive. The Union also relied on one decision – **CROA 4486** – which is a Rule 115 violation involving a short service employee with no prior record, who was discharged. While the Grievor’s inexperience was considered, the discipline substituted for discharge remained a three week suspension, which – like the discipline in this case – is significant.

[32] In that case, the Grievor failed to properly check the track for extra cars, despite the warning of his experienced LE to do so, and decided there was room for 30 cars by glancing down the track (but was unable to see the length of it, or around a curve). The

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<sup>3</sup> Emphasis added.

<sup>4</sup> At paras. 16 and 24.



track was in fact occupied and the movement resulted in a run through of a switch and a derailment and sideswipe. The accident was found to have been caused by the negligence of the Grievor in not following Rule 115 and the advice of his LE.

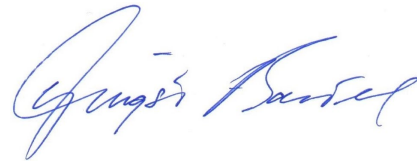
[33] That case is supportive of the Company's position that carelessness and negligence is deserving of a sanction of significant discipline, even if the Grievor was inexperienced.

[34] Considering all of the facts and circumstances and the authorities and submissions, including the lack of a compelling reason for a Grievor to violate basic safety rules, the discipline of a 20 day suspension was a just and reasonable disciplinary response.

[35] The Grievance is dismissed.

I retain jurisdiction for any issues of remedy; to correct any errors; and to address any omissions to give this Award its intended effect.

June 17, 2024



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