

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

**CASE NO. 5045-46-47**

Heard in Montreal, May 15, 2024

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the assessment of disciplines to Matt Bull as follows;

1. 30 demerits for no communication to detrain and maintain 3-points of contact;  
**CROA 5045**
2. 30-demerits fail to release all handbrakes; **CROA 5046** and
3. Dismissal for accumulation of 90 demerits; **CROA 5047**.

Separate grievances were filed in relation to each of the above incidents and while related, each should be considered separate and evaluated on its own merits.

**JOINT STATEMENT OF ISSUE:**

**1. 30 Demerits T-11 Entrain/Detrain Equipment – CROA 4045**

Mr. Bull was assessed discipline as noted in his Form 104 dated September 20, 2022 as follows,

*Formal investigation was issued to you in connection with the occurrence outlined below to develop all the facts and circumstance in connection with the referenced occurrence:*

*“Your tour of duty on 130-28 more specific the alleged failure to communicate intent to detrain the locomotive and not maintaining 3 points of contact as observed by Assistant Trainmaster Syrek on August 29, 2022 in Windsor Yard.”*

*At the conclusion of that investigation, it was determined the investigation record as a whole contains substantial evidence that you violated the following:*

- *T-11 – Entraining and Detraining Equipment*

*In consideration of the decision stated above, you are hereby assessed with 30 Demerits as well as meeting with Supt/GM and 1 day rules evaluation with Road Foreman.*

*In the event that you have any incidents within 6 months of the issuance of this letter, the discipline noted herein may be activated. In the event the discipline is activated, please note that your employment status is in jeopardy. Any further incident, which may occur where you may be found culpable, may result in your dismissal from Company service.*

### The Union's Position

As submitted within our grievances, the Union's position is that any discipline assessed in this matter is excessive and the Company has not shown that Mr. Bull was in fact in violation of T-11.

Mr. Bull rebutted the Company's position that he did not have 3-points of contact and further advised that the movement was stopped. The Company could have as an appendix the locomotive download which would have provided evidence one way or the other, they chose to not submit. The employee does not have to communicate when getting off stopped equipment.

As noted, if in fact Mr. Bull had violated T-11 (which we say he has not) then as provided in the Company proficiency test process as well as Arbitrator Simms award 4621, all that was required would be to educate Mr. Bull on any proper process. He would have received this at time of alleged fail as well as the Company in the Form 104 required him to attend a 1-day rules evaluation as well as meeting with the Superintendent, there was never any reason to all assess excessive discipline of 30-demerits.

The Union requests that the discipline assessed to Mr. Matthew Bull be expunged and he be compensated all loss of wages with interest for statement day. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

### The Company's Position

The Company disagrees and denies the Union's request.

The Company maintains the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation – the Company simply cannot agree with the Union's contentions to the contrary. Discipline was determined following a review of all pertinent factors, including those that the Union describe as mitigating as well as aggravating factors including the Grievor's employment history and discipline standing. The Company's position continues to be that the discipline assessed was just, appropriate, warranted in all the circumstances.

The Company maintains its rights to utilize proficiency tests which it is mandated to conduct as part of its safety management program and assess discipline as required for failed tests.

Based on the foregoing, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

### **2. 30 Demerits T-14 Hand Brakes CROA 5046**

Mr. Bull was assessed discipline as noted in his Form 104 dated May 13, 2023 as follows,

Formal investigation was issued to you in connection with the occurrence outlined below:

“Your tour of duty H88-19 and your alleged failure to ensure all handbrakes were removed as observed by Assistant Trainmaster Sheridan on April 19, 2023.”

*Formal investigation was conducted on April 27, 2023, to develop all the facts and circumstance in connection with the referenced occurrence. At the conclusion of that, investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following:*

- *Train & Engine Safety Rule Book – T-14 Hand Brakes*

*Please be advised that you are disciplined record has been assessed with thirty (30) demerits.*

*As a matter of record, a copy of this document will be placed in your personnel file.*

### The Union's Position

For all the reasons and submissions set forth in the Union's grievances and will be relied on at all steps of the grievance and arbitration process, the Union contends any discipline assessed in this matter is excessive, with education obviously not at the forefront.

As seen from the Managers memo and investigation the Manager purposely applied a handbrake in hopes that Mr. Bull might miss it, simply put entrapment. From this entrapment Mr. Bull I excessively assessed 30 demerits and then dismissed from this excessive assessment. It is clear education was not at the forefront but punitive discipline was.

As seen in the Managers memo he educates Mr. Bull, receives his commitment moving forward but we still see the heavy-handed discipline in order to dismiss the employee.

In the end this comes down to a proficiency test and the Company's own policy states, “A proficiency test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge. Testing is NOT intended to entrap an employee into making an error but is used to measure proficiency (knowledge and experience) and to isolate areas of noncompliance for immediate corrective action. Proficiency testing is also not intended to be a discipline tool. While this may be the corrective action required, depending on the frequency, severity and the employee's work history, education and mentoring will often bring about more desirable results.”

In CROA Case No. 4621, Arbitrator Sims expressly warned that “not every efficiency test failure should be considered a candidate of discipline. Were that to be the case, there would be too great an opportunity for arbitrary, discriminatory, or targeted discipline.”

We believe in this case Mr. Bull was clearly targeted as why was the Conductor never part of any aspect of the investigation and/or Proficiency testing that day.

The Union requests that the discipline assessed to Mr. Matthew Bull be expunged and he be compensated all loss of wages with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

### The Company's Position

The Company disagrees and denies the Union's request.

The Company maintains the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation – the Company simply cannot agree with the Union's contentions to the contrary. Discipline was determined following a review of all pertinent factors, including those that the Union describe as mitigating as well as aggravating factors including the Grievor's employment history and discipline standing. The Company's position continues to be that the discipline assessed was just, appropriate, warranted in all the circumstances.

The Company maintains its rights to utilize efficiency tests which it is mandated to conduct as part of its safety management program and assess discipline as required for failed tests.

Based on the foregoing, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

### **3. Dismissal Accumulation of Demerits CROA 5047**

Mr. Bull was dismissed from Company Service as provided in his Form 104 dated May 13, 2023 as follows,

*Please be advised that in light of your May 11, 2023 assessment of discipline, you are hereby DISMISSED from company service from an accumulation of 90 Demerits under the Hybrid Discipline and Accountability Guidelines.*

#### **The Union's Position**

For all the reasons and submissions set forth in the Union's grievances and will be relied on at all steps of the grievance and arbitration process, the Union further relies on its positions put forth in Union File 528L-659 (the assessment of 30 demerits which leads to this dismissal).

As can be seen from Mr. Bull's discipline file in the span of approximately 1 year he is subject to targeted e-testing resulting in heavy handed discipline from the Company. If it appears to the Company that this employee might be having difficulties, was the aspect of bringing him in for further training and mentoring ever looked at? Rules are rules but the application of such in a real setting is how one learns and applies those rules, by bringing him in for further retraining would have given positive reinforcement of all aspects. Instead allow the employee to continue as he did and just keep piling on the discipline so we can wave the progressive discipline in front of an arbitrator to justify what the outcome had become, his dismissal.

We believe in this case Mr. Bull was clearly targeted as why was the Conductor never part of any aspect of the investigation and/or Proficiency testing that day. The Company simply entrapped this employee in order to fail and then dismiss.

The Union requests Mr. Matthew Bull be reinstated forthwith and he be compensated all loss of wages with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

#### **The Company's Position**

The Company disagrees and denies the Union's request.

The Company maintains the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation – the Company simply cannot agree with

the Union's contentions to the contrary. Discipline was determined following a review of all pertinent factors, including those that the Union describe as mitigating as well as aggravating factors including the Grievor's employment history and discipline standing. The Company's position continues to be that the discipline assessed was just, appropriate, warranted in all the circumstances.

The Company maintains its rights to utilize efficiency tests which it is mandated to conduct as part of its safety management program and assess discipline as required for failed tests.

Based on the foregoing, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

**FOR THE UNION:  
(SGD.) W. Apsey**

General Chairperson, CTY-E

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

Asst. Director, Labour Relations

There appeared on behalf of the Company:

- A. Harrison – Manager, Labour Relations, Calgary
- D. Zurbuchen – Manager, Labour Relations, Calgary

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- W. Apsey – General Chairperson, CTY-E, Calgary

## **AWARD OF THE ARBITRATOR**

### **CROA 5045: 30 Demerits For No Communication To Detrain And Maintain 3-Points Of Contact**

#### **Context**

1. The grievor is a short service Conductor, with less than 2 years of seniority. At the time of the incident, he had 30 demerit points. None of the demerits dealt with an improper dismount or a failure to properly communicate. He had multiple successful E-tests with respect to 3 point contact prior to the incident and after the incident, successfully passed a retest on the same day.

#### **2. Issues**

- A.** Did the grievor dismount from a moving train?
- B.** If so, did he fail to properly communicate with the engineer?
- C.** Did the grievor dismount without using a three point contact?
- D.** Is the 30 demerit point discipline assessed reasonable in the circumstances, and if not, what discipline is reasonable?

**A. Did the grievor dismount from a moving train?**

3. A determination of whether the grievor dismounted from a moving train is important, as the requirement to communicate differs whether the train is moving or stationary.

**Position of the Parties**

4. The Company relies on the observation and memo to file of Assistant Trainmaster Syrek (see Tab 5, Union documents). It also relies on the questions and answers of Mr. Syrek, which confirm the content of his contemporaneous memo (see Tab 6, Union documents). His memo and testimony are consistent that the grievor got off a moving train.

5. The Company argues that the testimony of the grievor is equivocal with respect to the movement of the train.

6. The Union argues that the grievor confirmed that the movement was stopped in front of the office when he got off the train. If the Company wished to contest the movement, it could have examined the engineer or obtained the electronic records about the train movement, which it failed to do.

7. The Union argues that the Company has failed to meet its burden of proof.

**Analysis and decision**

8. While the Union is correct that the Company could have obtained further evidence by obtaining the electronic records or questioning the engineer, it is not required to do so. The electronic records would show when the train was in movement, but not when the grievor de-trained. The engineer may or may not have observed the grievor at the precise moment he got down from the train.

9. Ultimately, a decision needs to be made on the basis of the existing evidence. Here, that evidence comes only from Assistant Trainmaster Syrek and the grievor.

10. In his memo AT Syrek notes: "On August 29<sup>th</sup> I observed Mr. Bull on the 130-28 at 1224, while pulling up to the office, failed to communicate his intent to detrain the

locomotive on the Conductor's side...should have taken the safest course of action, which would have been to wait until the locomotive came to a stop, since his engineer (Randy Bannerman) knew they were stopping out front of the GYO..." (see Tab 5, Union documents).

11. The language of the memo clearly indicates that the train had not come to a complete stop when the grievor detrained.

12. The investigation confirms the content of the memo when Mr. Syrek is questioned:

Q1. Do you stand by your memo that you wrote regarding Mathew Bull working 130-28?

A1. Yes I do.

Q2. Did you witness Mathew Bull not maintain 3 points of contact while detraining in Windsor on 130-28?

A2. Yes I saw Mr. Bull not maintain 3 points of contact while detraining.

Q3. Was the train completely stopped before Mathew Bull detrained?

A3. No it was not.

13. As will be discussed with respect to the issue of the three point contact, Mr. Syrek is able to describe each hand and foot hold of the grievor.

14. Mr. Syrek is clear that the train was in movement when the grievor got off.

15. In contrast, the grievor uses language which is less clear and more conditional:

Q20: Before you detrained was it acknowledged that the speed was below 4MPH?

A20: it felt like the movement came to a stop when I got off.

Q21: Going back to question 20 there was acknowledgement that the train was below 4MPH. Is this correct?

A21: I don't think there was any acknowledgement, as I did not think I needed it as the movement was stopped.

#### Union Questions

Q1: When you detrained the movement what location did you detrain?

A1: Right beside the yard office.

Q2: In Appendix B ATM Syrek stated Randy Bannerman knew they were stopping in front of the office, Is this true?

A2: Yes.

Q3: When you got off the movement was it stopped?

A3: it felt it was stopped when I got off.

Investigating Officer Questions

Q25: To union question 3 you answered you felt like it stopped, so you do not know for a fact it was stopped or were just guessing?

A25: I felt like the movement came to a complete stop that's why I detrained (underlining added).

16. On a balance of probability, I accept the testimony of Mr. Syrek that the train was in movement when the grievor detrained, as it is both clear and consistent. The testimony of the grievor is much less clear and definitive.

17. In **CROA 4445** Arbitrator Silverman found the Trainmaster specific and detailed in his testimony and declined to accept that he had fabricated details to implicate the grievor. As in **CROA 4445**, I find here that there was no evidence led to suggest that Mr. Syrek would have any reason to fabricate details to implicate the grievor.

**B. If so, did he fail to properly communicate with the engineer?**

18. The Train and Engine Safety Rule Book T-11 Entraining and Detraining Equipment (see Tab 5 Company documents) notes the following:

"2. Always communicate the intent to the locomotive engineer (includes RCLS operator) prior to entraining or detraining moving equipment. The locomotive engineer must acknowledge only the intention of entraining or detraining the movement and then ensure speed is 4 mph (or less if requested) at the entraining or detraining location.

Always communicate to the locomotive engineer once you are safely entrained or detrained." (underlining added)

19. The Parties appear to agree that this requirement to communicate with the engineer only applies to moving equipment. The Union sought and obtained



confirmation from Clayton Wright, Technical Training Instructor that this requirement does not apply to stationary equipment (see Tab 4, Union documents).

20. However, given my finding above that the train was in movement, the T-11 requirement to communicate with the engineer will apply.

21. These requirements were at the heart of the memo from Mr. Syrek:

MEMORANDUM TO FILE - Matthew Bull 1017279

On August 29<sup>th</sup> I observed Mr. Bull on the 130-28 at 1224, while pulling up to the office, failed to communicate his intent to detrain the locomotive on the Conductor's side I heard this on the main line radio channel (91-91), and also observed the conductor get off the equipment without 3 points of contact.

Mr. Bull and I had a conversation in the GYO immediately after where I asked how he believed he had got off the equipment and if he used 3 points of contact when stepping off. He said that he believed he had done so. I then told him that he had stepped off the locomotive with one hand on the hand rail, one hand on the radio on his chest, one foot on the step, and the other foot hanging off to detrain. I explained to him the importance of 3 points of contact and asked him why he had his radio in his hand. He said he was going to let the engineer know that he was "Off and Clear." I asked Mr. Bull what channel he was on because I didn't hear him on the mainline. Mr. Bull said "I forgot that my radio was off." I then inquired as to why his radio was off, and he said he had turned his radio off when he was inside the cab of the locomotive looking for his ID card and that he had forgotten to turn it back on once he was back on the point. I then told him that he should not be taking any action without having his radio on and communicating his intent to the locomotive engineer and that as soon as he had realised his radio was off he should not have proceeded in the manner that he did and should have taken the safest course of action, which would have been to wait until the locomotive came to a stop, since his engineer (Randy Bannerman) knew they were stopping out front of the GYO, and then he could turn his radio back on and effectively communicate that to his engineer.

22. When the grievor was questioned whether he had communicated with the engineer, he indicated that there had been a job briefing in the cab but that he had not informed the engineer by radio before detraining as his radio was off:

Q18: If your radio was off while detraining and you told Assistant Trainmaster Syrek that you were going to let the engineer know you were off and clear, how did you follow the rule T-11 Entraining and Detraining?

A18: Once I got off the engine I turned my radio on and told my engineer that I was off and clear.

Q19: The rule states you need to let your engineer know your intent of detrain ahead of time, did you do this?

A19: We had a job briefing with the engineer in the cab that I was going to get off at the office. I attempted to let him know but my radio was off.

23. Both the memo from Mr. Syrek and the testimony of the grievor confirm that no communication was made by the grievor to the engineer prior to detrain. This is contrary to T-11 for moving equipment.

24. The fact that the grievor attempted to contact the engineer by radio and the fact that Mr. Syrek was listening for such a communication both buttress the previous finding that the train was in movement, as there would have been no such requirement for stationary equipment.

25. Accordingly, I find that the grievor failed to comply with T-11.

### **C. Did the grievor dismount without using a three point contact?**

26. Train and Engine Safety Rule Book, T-11 Entraining and Detrain Equipment (Tab 5, Company documents) requires 3 point contact:

“8. Use 3 points of contact on steps, ladders, railings, or handrails when entraining or detrain any piece of equipment or structure, maintaining a firm grip.”

27. The memo of Assistant Trainmaster Syrek (see Tab 5, Company documents) clearly states that he observed the grievor infringing this rule:

“I...also observed the conductor get off the equipment without 3 points of contact.

Mr. Bull and I had a conversation in the GYO immediately after where I asked how he believed he had got off the equipment and if he used 3 points of contact when stepping off. He said that he believed he had done so. I then told him that he had stepped off the locomotive with one hand on the hand rail, one hand on the radio on his chest, one foot on the step, and the other foot hanging off to detrain. I explained to him the importance of 3 points of contact and asked him why he had his radio in his hand. He said he was going to let the engineer know that he was “Off and Clear.”

28. Mr. Syrek confirms this during the investigation (Tab 6, Company documents):

Q2. Did you witness Matthew Bull not maintain 3 points of contact while detraining in Windsor on 130-28?

A2. Yes I saw Mr. Bull not maintain 3 points of contact while detraining.”

29. The grievor’s explanation was less than definitive that he had abided by the rule:

Q21: Going back to question 20 there was no acknowledgement that the train was below 4MPH. Is this correct?

A21: I don’t think there was any acknowledgement, as I did not think I needed it as the movement was stopped.

Q22: How did you maintain 3 points of contact getting off if you had your radio in your hand?

A22: My radio was on my belt and the mic on my vest. Once I got off the engine I attempted to let the engineer know I was off.

Q23: Going back to the memo from Assistant Trainmaster Syrek he stated you “had stepped off the locomotive with one hand on the hand rail, one hand on the radio on his chest, and one foot on the step, and the other foot hanging off to detrain. Would this be maintain 3 points of contact?

Union objects to the self-incriminating question as to the purpose of this investigation is to determine the facts.

Investigating officer: Noted and it is relevant to the investigation for the facts.

A23: No that would not be, but I feel like I was maintaining 3 points of contact while getting off the engine (underlining added).

30. Mr. Syrek details his observation clearly and consistently. The grievor merely gives an impression: “I feel like I was maintaining 3 points of contact...”. There is no explanation from him denying that he had his hand on the radio and one foot hanging off to detrain.

31. I find the version of Mr. Syrek more compelling and find, therefore, that the grievor breached T-11 concerning maintaining 3 points of contact.

**D. Is the 30 demerit point discipline assessed reasonable in the circumstances, and if not, what discipline is reasonable?**

Position of the Parties

32. The Company notes that it engaged in progressive discipline, as the grievor had previously been assessed a Written Reprimand, 10 Demerits and 20 Demerits, all in the short space of 1 year, 9 months of service.

33. It argues that the 30 demerit penalty, together with a meeting with the GM/Superintendent and a one day rules evaluation with the Road Foreman was reasonable and appropriate in the circumstances.

34. It argues that discipline can be appropriate, even if it arises in the course of efficiency testing (see AH 695).

35. The Company cites the following jurisprudence:

- i. **CROA 4728C**, where Arbitrator Hornung ordered a 10 day suspension for a failure to broadcast prior to detrainning;
- ii. **CROA 4193**, where Arbitrator Picher upheld a 20 day demerit for improperly detrainning and handling a switch;
- iii. **CROA 4456**, where Arbitrator Silverman upheld a 3 day suspension for an entraining/detraining error;
- iv. **CROA 4237**, where Arbitrator Picher replaced a 20 demerit penalty with an unpaid suspension for a 10 month period;
- v. **CROA 4806**, where Arbitrator Flaherty imposed a caution for a T-11 detrainning violation.

36. The Union argues that the penalty imposed is grossly excessive in the circumstances.

37. It submits that the purpose of Efficiency testing is not discipline, but education. It submits that the counselling received, together with the meeting with the Superintendent and the rules refresher with the Road Master were amply sufficient corrective measures.

38. It notes that the grievor was re-tested the same day and passed the subsequent e-test. When the e-testing history of Mr. Bull is examined, he has passed 121 of 128 tests, and all tests with respect to T-11.

39. The Union cites a plethora of cases for the proposition that E-testing is intended to be corrective rather than punitive in most cases (see, for example, **AH 695, AH 811, CROA 4098, CROA 4722**). It argues that in the absence of “frequency, severity and the employee’s work history” corrective coaching is the appropriate response to an E-testing failure (see **AH 860**). It cites a number of cases where arbitrators have found that written warnings or minimal demerits or suspensions were all that were required (see **CROA 4722, CROA 4744, CROA 4456, CROA 4622**).

#### Analysis and decision

40. It is clear that Train and Engine Safety Book Rules, including T-11, have been promulgated in order to ensure safety, as much as possible, in an inherently dangerous environment. Employees have every reason to strictly adhere to them for their own safety, and the safety of their fellow employees. Momentary departures from the Rules can result in permanent injury or death.

41. The question is how best to encourage and enforce compliance with those Rules.

42. The Efficiency Test Rules themselves note that they are primarily a non-disciplinary educational tool:

A efficiency test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee’s knowledge. Testing is NOT intended to entrap an employee into making an error, but is used to measure efficiency (knowledge and experience) and to isolate areas of non-compliance for immediate corrective action, efficiency testing is also not intended to be a discipline tool. While this may be the corrective action required, depending on the frequency, severity and the employee’s work history, education and mentoring will often bring about more desirable results.

43. Multiple arbitrators have considered the matter. As Arbitrator Moreau noted in **AH 695**:

Proficiency testing of employees (of Efficiency tests) is rooted in Transport Canada's Safety Management System Industry Guideline. It is a tool used to evaluate an employee's compliance with rules, instructions and procedures and to isolate areas of non-compliance for immediate corrective action. From the Company's perspective, the corrective action can take the form of verbal counselling through to disciplinary action. The Company also notes that these proficiency tests are often conducted randomly without the employee's knowledge.

I note once again that the two infractions that were brought to the grievor's attention arose as part of the Company's typically unannounced proficiency tests. It is worth noting that these tests, as noted in the Company's own policies, are meant to be corrective in nature with the infraction being immediately brought to employee's attention once they are discovered. That is what occurred once again in this case.

44. Arbitrator Yingst-Bartel in **AH 860** found that there was a threshold requirement of "frequency, severity and the employee's work history" to be considered, before corrective counselling was no longer appropriate and discipline could be imposed.

45. Here, the grievor had no previous history of e-testing failures with respect to T-11. On a same day re-test, he was successful. The severity of the incident was not extreme, as the train, while in movement, was in the process of stopping and must have been going slowly. However, the grievor's work history is not long, and he does have 30 existing demerits.

46. It is noteworthy that the jurisprudence cited by the Company for similar violations ranged from a caution, to a 3 day suspension, to 10 or 20 demerits. It does not cite any cases which have imposed 30 demerits.

47. The Union has cited cases where grievors with far worse records have received written warnings (see **CROA 4722, CROA 4744**).

48. In my view, the imposition of 30 demerits was not reasonable. In all the circumstances, a written warning, together with the counselling already provided, would have been sufficient.

49. Accordingly, the grievance is allowed and the 30 demerits set aside, to be replaced with a written warning.

## **CROA 5046: 30 Demerits Fail To Release All Handbrakes**

### **Context**

50. The grievor was assessed 30 demerit points as a result of an Efficiency Test, in which he is alleged to have failed to remove a hand brake.

51. Four cars were left on a Main Line. The first car had a hand brake on. The fourth car had a hand brake placed on it, as part of an Efficiency Test.

52. The grievor removed the hand brake on the first car, but did not check the fourth car. Two additional cars are required to be checked after the car with the last hand brake applied.

53. The Parties contest whether the second car had a hand brake on.

54. The Parties further contest whether the penalty was appropriate in the circumstances.

### **55. Issues**

**E.** Did the second car have a handbrake on, requiring the grievor to check the fourth car as well?

**F.** Was the penalty imposed unreasonable, and if so, what penalty should be imposed?

**E. Did the second car have a handbrake on, requiring the grievor to check the fourth car as well?**

### **Position of the Parties**

56. The Company takes the position that the first two cars had hand brakes on, and therefore the grievor was required to check the fourth car. It relies on the observation, contemporaneous memo and testimony of the Assistant Train Master. The grievor failed to check the fourth car and missed the hand brake which had been applied. In failing to do so, he breached Rule T-14.

57. The Union takes the position that the grievor was informed by the Conductor that only the first car had a hand brake applied, he checked the next two cars and there was no requirement to check beyond the third car.

### Analysis and decision

58. Train and Engine Safety Rule Book T-14 (see Tab 22, Union documents) requires additional verification to be done when removing hand brakes:

“4. When releasing hand brakes check at least two cars beyond the last hand brake found to ensure there are no more hand brakes applied.”  
(underlining added)

59. There is no disagreement between the Parties about the requirement. The only issue is whether the second car had a hand brake applied, such that there was a requirement to check the fourth car. The fourth car had a hand brake applied by Train Master Sheridan as part of an E-test.

60. The memo to file of Assistant Trainmaster Sheridan (see Tab 20, Company documents) reads as follows:

#### **MEMORANDUM TO FILE Matthew Bull 1017279**

On April 19th 2023 at approximately 1400 in the afternoon, I Aaron Sheridan did a set up test on H88 (T14 Hand Break Failure/ CRT14R) at the Federal White Customer on the Galt Sub.

I applied a handbrake on the GNTX 297256 at the west end of the car which was the fourth cart left on the main track, while the crew went into the customer.

At approximately 1445hrs I could heard conductor Bull ask for 3-point protection then shortly after stated “breaks free”, not mentioning how many cars breaks released and or extras checked. As the train started to pull I could hear the sound of a break as the car came towards me. I stopped the crew at the Lefarge customer and asked the crew to check the 4th gondola (the GNTX 297256) for a handbreak.

After meeting up with the crew, I spoke with conductor Bull and advised him that I had applied the handbreak and asked him if he checked the extra cars. Conductor Bull stated that he may have overlooked checking the extra cars. I reminded Matthew that since Josh VanEck (H88 Foreman) applied the handbreaks it was good practice to double check either way.

Going forward Condcutor Bull gave me his commitment to Home Safe and to be more vigilant.



61. The testimony of Mr. Sheridan (see Tab 21, Company documents) is set out as follows:

**Union Questions to Aaron Sheridan Assistant Trainmaster:**

Q1: When you applied your test handbrake. Did you apply it to the fourth car?

A1: That I did.

Q2: Did you add the test brake to a car in which a conductor would be required to check?

A2: That I did.

Q3: How did you verify that it was a car that would be required to check for additional brakes?

A3: First two (2) cars left on the main line I checked to see if the handbrakes were applied, which they were.

Q4: In reference to investigating officers second question, can you describe how the handbrake looks when it's in the applied position?

A4: My validation is, made sure chain was not lose, was in locked position.

**Investigating officer questions to Aaron Sheridan:**

Q1: How many handbrakes were applied to the train prior to you applying a test brake?

A1: Two (2)

Q2: How did you confirm that two (2) brakes, as per your answer to my question #1. Were applied?

A2: Looked at the handbrakes, they were in the applied position.

Q3: Do you stand by your memo and the accuracy of its information?

A3: I do.

62. It is noteworthy that Mr. Sheridan “looked at the handbrakes”, “made sure chain was not lose (sic), was in locked position”. His testimony does not indicate that he did anything beyond a visual inspection of the hand brake wheel and chain. It does not indicate that he grasped the chain, to determine how loose or tight it might be. It does not indicate that he verified the brake shoes, to determine that they were in contact with the wheel, effectively braking the car.

63. This contrasts with the testimony of the grievor, who was informed that there was a single car with a hand brake on, and then states he visually confirmed the correct

position of the pistons and that the brake shoes were not applied to the wheel on the next two cars:

Q14: Do you have a clear understanding when releasing handbrakes the requirement is to check at least two (2) cars beyond the last brake found?

A14: Yes

Q15: Did you check at least (2) cars after the last brake applied was found?

A15: Yes

Q16: Did you validate the handbrakes were removed?

A16: The ones I checked, they were.

Q17: Did you apply the handbrakes in question?

A17: No, Conductor Van Eck did.

Q18: Did you confirm with this conductor the number of brakes that were applied?

A18: When I talked with Josh (conductor Van Eck) he told me, he applied one (1) handbrake. I then removed this handbrake and checked two (2) cars.

Q19: What is your process for validating handbrakes are removed?

A19: Make sure chain is down (can see white part).

Q20: Have you ever performed a No1A Brake Test?

Union Objection: This question is not on point. The employee is here to answer questions to the alleged failure to remove handbrakes, which is not related to the question asked.

Investigating Officer: Noted. Pertains to the investigation.

A20: Yes.

Q21: While confirming, During a No1A Brake test that all brakes have been released. Do you make sure the chain is down?

A21: Yes – the chain is down

Q22: would you agree, that in all cases confirming brakes have been released it is best practice to ensure correct position of pistons and visually confirming brake shoes are not applied to the wheel?

A22: Yes.

Q23: Did you visually confirm in this case that the pistons were in the correct position and the brake shoes were not applied to the wheel?

A23: Yes.

Q24: did you check the 4<sup>th</sup> gondola (the GNTX297256) Hand brake in question. For a handbrake?

A24: No, I took off the handbrake off the first car and checked two (2) as required.

Q25: Did you confirm and announce how many cars brakes released and or extras checked?

A25: Yes.

Q26: In question 15 – Did you check at least two (2) cars after the last brake applied was found. In appendix B you stated you may have overlooked check the extra cars. Is this correct?

A26: No.

Q27: Did you have a conversation with Assistant Trainmaster Sheridan regarding a handbrake left applied by Aaron Sheridan?

A27: Yes, after I took the brake off. I spoke with him outside the power.

Q28: Your answer to question 27, Are you referring to the brake that assistant Trainmaster Sheridan applied?

A28: Yes.

Q29: Do you understand that these rules and procedures are put in place to reduce train accidents across the territory?

A29: Yes, I understand that

Q30: Are you familiar with rule book for Train and Engine employees - Section 2, item 2.2(a), which reads: Safety and willingness to obey the rules are of the first importance in the performance of duty. If in doubt, the safe course must be taken.

A30: Yes, I understand that

Q31: Are you familiar with the rule book for Train and Engine employees - section 2.2 item (V), which reads in part:

"Be conversant with and comply with this rule book, the CROR, the GOI and each applicable time table, operating bulletin, safety rule, policy and instruction"?

A31: Yes

Q32: Do you understand that CP expects its employees for follow the rules at all times and if they are unsure of how to apply a specific rule the must seek clarity?

A32: Yes

Q33: Do you have anything you wish to add to this statement?

A33:No (underlining added).

64. How tight or loose the hand wheel chain is may be a matter of opinion and judgment, and indeed, it may vary from car to car. However, the acid test is whether the brake shoes have been applied against the wheel. The grievor testified that the brake shoes of the second car were not applied.

65. Moreover, he testified that he only took the hand brake off the first car:

A24 "No, I took off the handbrake off the first car and checked two (2) as required".

He never removed a handbrake from the second car, either before or after the intervention of Mr. Sheridan.

66. Indeed, the only other handbrake he removed was on the fourth car, after the train was stopped by Mr. Sheridan:

Q27: Did you have a conversation with Assistant Trainmaster Sheridan regarding a handbrake left applied by Aaron Sheridan?

A27: Yes, after I took the brake off. I spoke with him outside the power.

Q28: Your answer to question 27, Are you referring to the brake that assistant Trainmaster Sheridan applied?

A28: Yes.

67. The Company could have had the Conductor testify as to the number of handbrakes applied. It did not, relying solely on the testimony of Mr. Sheridan.

68. The Company has the burden of proof in any discipline case. I find that it has not met that burden here. I find that there was no handbrake applied on the second car and that consequently, Rule T-14 was respected by the grievor.

69. I wish to emphasize that this finding in no way impugns the honesty of Mr. Sheridan. In my view, he honestly, but mistakenly, believed that the handbrake had been applied and set up the E-test accordingly. Given my findings on the facts, the E-test was not validly applied.

**F. Was the penalty imposed unreasonable, and if so, what penalty should be imposed?**

70. Given my finding above, no discipline can be imposed. Accordingly, the 30 demerits imposed here should be removed from the record of the grievor.

**CROA 5047 Dismissal For Accumulation Of 90 Demerits**

71. Given my findings in **CROA 5045** that the penalty should be reduced to a written warning, and my finding in **CROA 5046** that the penalty should be removed entirely, it is clear that the termination of the grievor's employment for accumulation of demerit points cannot stand.

72. The grievor should be reinstated with no loss of seniority. He should be made whole, with no loss of wages or benefits, less any monies earned in mitigation.

73. The Parties are directed to deal with the issue of remedy, but should there be unresolved issues, I remain seized, together with respect to all questions of interpretation or application of this Award.

June 17, 2024



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**JAMES CAMERON  
ARBITRATOR**