

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

CASE NO. 5058

Heard in Edmonton, June 13, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Dismissal of Locomotive Engineer B. Trevors of Moose Jaw, Saskatchewan.

JOINT STATEMENT OF ISSUE:

Following a formal investigation conducted on June 8, 2023, Mr. Trevors was issued a Form 104 on June 14, 2023, notifying him that he had been dismissed from Company service for the following reason(s):

“In connection with your tour of duty on the E53-01 on June 1, 2023, and more specifically the events surrounding your failure to protect the point, resulting in shove movement through previously run through east end track 2 switch, causing a derailment at track 3 switch in Broadview Yard.

A violation of:

T&E Safety Rule Book, T-0 Job Briefing Rule Book for T&E Employees, Section 12.3 Shoving Equipment”

UNION'S POSITION:

The Union asserts the facts were established during the investigation that indicate Engineer Trevors was working under the direction of the Conductor. The Company failed to produce any evidence that would support their position that he failed to protect the point of his movement. The evidence and memos presented during the investigation all indicate that the conductor was positioned in such a manner which would allow the point to be observed.

The Union submits Mr. Trevors had no doubt that the cars would fit in the track and that from his location he could not possibly see if his Conductor was protecting the point. It is common ground that during switching operations there must be a certain amount of trust between crew members which allows a Locomotive Engineer to rely on the directions of the conductor. Q&A 33-38 clearly describe the directions, communications and information Mr. Trevors received.

Within the 104, it states in part Mr. Trevors was dismissed for Job Briefings which was never asked in the investigation, only the meaning of the rule was discussed. It is clear from Locomotive Engineer Trevors answers that there was discussion on the task and amount of room in the track.

Further, Section 12.3 Shoving equipment in the T&E rule book was not violated by Engineer Trevors; it states you must be on the point while shoving unless seen or known to be clear. This was established in all memos and the investigation that Conductor McKenna was in a position to see room for 25 cars to the rear, at least, that is what was relayed to Engineer Trevors.

For these reasons the Union contends that the discipline imposed is unwarranted, unjustified, and extreme in all circumstances.

The Union respectfully requests the Arbitrator reinstate Locomotive Engineer Brett Trevors without loss of seniority and that he be compensated for lost wages with interest, and benefits for his time removed from service.

COMPANY 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 and that a lack of conducting a quality job briefing and to ensure the movement was properly being protected and complying with rule 12.3 shoving equipment was the cause of a run through switch and derailment – 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.

Rule 12.3 shoving equipment clearly states that unless the track to be used is known to be clear, a crew member must be on the leading piece of equipment or on the ground in a position to observe the track to be used and give signals or instructions necessary to control the movement. The Company's position is simple, it was established the track was not known to be clear as it was accessible from the opposite end of where the crew was entering, there was no possible way someone was riding the tail end, and that a proper job briefing would have ensured the conductor was in a position to observe the track to be used and give signals to the movement to stop prior to it going out the other end, subsequently running through a switch and causing a derailment.

The Company's position continues to be that the discipline assessed was just, appropriate, warranted given all the circumstances.

The Company maintains the discipline was properly assessed in keeping with the Hybrid Discipline and Accountability Guidelines. Furthermore, this assessment of discipline is in line with the principles of progressive discipline.

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 Chairperson, LE-W

For the Company:
(SGD.) F. Billings
 Director, Labour Relations

There appeared on behalf of the Company:

L. McGinley	– Director, Labour Relations, Calgary
S. Scott	– Manager, Labour Relations, Calgary
S. England	– Manager, Labour Relations, Kansas City
A. Harrison	– Manager, Labour Relations, Calgary

And on behalf of the Union:

- | | |
|--------------|-------------------------------------|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| G. Lawrenson | – General Chair, LE-W, Calgary |
| C. Ruggles | – Vice General Chair, LE-W, Calgary |
| K. Ingalls | – Local Chair – via zoom |
| B. Trevors | – Grievor – via zoom |

AWARD OF THE ARBITRATOR

Analysis and Decision

Background, Issue & Summary

- [1] The Grievor is a Locomotive Engineer (“LE”). At the time of this incident, he had just over eight years of service with the Company.
- [2] On June 1, 2023, the Grievor was ordered as the LE on Train E53-01 at Broadview, Saskatchewan. A Conductor was also assigned to that work and there was a trainee with the crew on that date as well. That Train derailed during a shoving movement.
- [3] This Grievance was filed against the Grievor’s dismissal for an alleged breach of T&E Safety Rule Book, T-0 Job Briefing and Rule Book for T&E Employee, Section 12.3 Shoving Equipment.
- [4] This is the second of two Grievances relating to this Grievor, heard at the June session of CROA. In **CROA 5057**, a 40 day suspension for failing to perform a passing inspection was set aside due to a procedural fairness issue which occurred during the Investigation.
- [5] This Grievance has raised an issue regarding the level of communication which is required between crew members for each member to meet his or her obligations to ensure the point is protected during a shoving movement, as required by Section 12.3.
- [6] The issues between the parties are:
- a. Is the Grievor culpable for failure to protect the point? and, if so,
 - b. Was the discipline of dismissal a just and reasonable response?
- [7] For the reasons which follow, while the Grievor was culpable for failure to protect the point given the circumstances of this case, his dismissal for these actions was excessive and

therefore unreasonable. Discretion is appropriately exercised to substitute appropriate discipline.

Relevant Provisions

T&E Safety Rule Book

I. Before performing any job, a job briefing led by the foreman/conductor must be held to ensure that all employees involved have a clear understanding of:

- The task to be performed;
- Your individual responsibility; and
- Situational awareness concerns

Additional verbal job briefings must be carried out as necessary, while the work progresses or as the situation changes.

Rule Book for T&E Employees

Section 12.3 SHOVING EQUIPMENT

(a) On non-main track, when equipment is shoved by an engine or is headed by an unmanned remotely controlled engine:

(i) **unless the portion of track to be used is known to be clear, a crew member must be on the leading piece of equipment or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the move.** Employees are prohibited from engaging in unrelated tasks while providing shove protection, and from providing shove protection from within a vehicle; and

(ii) unless the unmanned engine is leading, and all rules applicable to public crossings for headlights, whistles and bells, are complied with at all crossings, such movement must not approach to within 100 feet of any crossing unless such crossings are manually protected until the crossing is fully occupied; or in the case of a protected crossing, a crew member is on the leading car to warn persons standing on, or crossing, or about to cross the track.

(b) **In paragraph (a), “the portion of track to be used is known to be clear” only when a qualified employee:**

(i) **can observe the portion of track to be used and has radio contact with the locomotive engineer; and**

(ii) **sees the portion of track to be used as being clear and remaining clear of:**

- **equipment;**
- **a red or blue signal between the rails;**
- **track units; and**

- **derails and switches not properly lined for the movement.**

(iii) sees the portion of track to be used as having sufficient room to contain equipment being shoved.¹

When a non-main track that has been seen to be clear and no access to that track is possible by another movement, the track may be considered as “known to be clear”. When it can be confirmed that other movements are not on duty or will not be performing work in the non-main track to be used, the requirement of “known to be clear” of equipment can be considered to be fulfilled continuously.

Facts

- [8] This crew’s assignment on June 1, 2021 was to switch out bad orders from tracks 2, 3 and 4 in the Broadview yard. In doing so, a derailment occurred at a track 3 switch.
- [9] It is not disputed the crew performed a Job Briefing for this work, although there is a dispute as to whether it complied with the T&E Safety Rule Book, Rule T-0.
- [10] The Grievor was called to an Investigation of this incident, which occurred on June 8, 2023.
- [11] At that Investigation, the Conductor’s statement – taken June 1, 2023 - was entered into evidence. The Conductor stated he walked to the East end of the yard and while was down there, he looked at the East end of QB02 to see if it had room for 25 cars. There is then some scribbling out of words in the statement and the incomplete sentence “track 2 to make room for 12 BO’s”. There is then more scribbling out of words in the statement. He then states “Told Engineer to come back 12 lot behind. He did we stop [sic] went back to switching pulled track 2 to get on tail end Brett [the Grievor] said he felt something and went back to inspect. Told Brett about the car on the ground. He dialed up RTC and I secured the track 2”.
- [12] The Grievor’s statement taken that same day was also entered into evidence. The Grievor stated:

Switching Bad order cars out of 3 tracks. Conductor said earlier in the shift [unknown word] enough room at the east end to shove 25 cars, got told to shove back 12. Later on I pulled Track 2 to get the conductor and trainee on the point and felt a tug. Stopped for the conductor to inspect and found out we derailed. I called the RTC and advise what happened and secured the train.

¹ Emphasis Added

- [13] The Trainee's statement was also entered into evidence. It likewise had been taken on June 1, 2023. The grammar used by the trainee has been maintained in this quotation. Unfortunately, certain parts of this statement that may be relevant are unintelligible:

We got our TGBO &DoB @ 11:45 and walked out to the Head End of the Lead Loco. Had a job briefing. The task @ hand was discussed the switch list was observed. We set off same. BIO's out of Track 2,3,4. I was @ arm's length with the coach trying to understand the order & Direction of our moves according to the tasks. We were to set off our car. I was mostly preoccupied with trying to understand how this was to be performed. At a certain point Nathan [Conductor] explained we needed to walk east to visually look. We both [unintelligible] 5,4,3,2. Nathan said there was lots of room to move car back to set off bad/orders & to [unintelligible] & cut. During our last two cars to switch Nathan asked to [unintelligible] @ arms length to the east end. When he felt he could push back in Track 2 he asked the Engineer to come back. We continue to go East but I didn't really understand what was going on until I seen the derail car & didn't fully understand how it happen until Nathan explained that the last car just passed the last switch & came back with its back axed in the adjacent track. But Nathan got the engineer to stop as soon as he knew something was wrong with the movement.

- [14] The most orderly and complete picture of the order of work performed and how this derail occurred is contained in the statement of the Trainmaster for Sask South. His statement is based on what he was told by the crew when he arrived, after the derail occurred. It was also dated June 1, 2023. He stated:

At 1623 I received a call from the OC Director that E53-01 had derailed in Broadview. Upon my arrival the crew informed me on what transpired. They were switching cars out QB02E/3E/4E/5E. While switching they had shoved QB05E eastward while protecting the point. They then walked over to the East end of QB02E to verify the amount of room that was remaining in that track. Mr. McKenna [Conductor] noted that he had room for 25 cars. He confirmed this with his Engineer and Trainee at the time. Mr. McKenna and his trainee then walked to the west end of the yard. After completing some switching between 3E/4E/5E they tied onto QB02E and proceeded to shove the track Eastward as they knew they had room for 25 cars. They were only shoving back 12 Flat cars. Mr. McKenna counted down their 12 cars and stopped the movement. They secured the track, cut off, and proceeded to go back to switching 3E/4E/5E. Once they were done switching out 3E/4E/5E they proceeded to tie back onto QB02E. They were going to pull the track westward to put Mr. McKenna on the point so they could shove the track further back eastward as he was unsure how much room was left from the previous 25 cars. As they were pulling the track westward the engineer felt a tug. They came to a stop and Mr. McKenna walked to the east end to find the CP 521866 derailed

and contacting QB03E. When the crew had shoved QB02E eastward without being on the point they had run through the QB02E switch on the east end unknowingly. When they pulled the track westward the CP 521866 travelled half down QB02E switch on the east end unknowingly. When they pulled the track westward the CP 521866 travelled half down QB02E and half down the lead subsequently derailing at the QB03E switch then contacting the car that was at the east end of QB03E which is where Mr. Trevors felt the tug.

- [15] The Grievor stated he was not aware how many cars were in track 2, as he was not given a switchlist; and that when performing the Job Briefing, the crew “talked about what cars needed to be switched but never talked about how many cars were in the tracks that we were switching” (Q/A 25). He also indicated he could not see the Conductor and Trainee in his mirror before he initiated the shoving movement, and was unaware how much time it would take them to walk 3500 feet to the East End of the movement (Q/A 26).
- [16] In terms of radio communication, the Grievor’s evidence was he was told to “back 12 cars lots of room” and that *earlier in his shift* he had been told there was room for 25 cars (Q/A 28). The radio communication was in fact “come back 12 lot behind”. The Grievor states he remembers he was told to “move backwards 12 cars and that there was lots of room behind me as we discovered earlier in the shift”(at Q/A 30). When asked how many cars was “lot behind”, the Grievor stated he was told there was room for 25 cars and that the crew shoved “only” shoved 12 cars in (Q/A 31).
- [17] The Grievor stated that because of a curve, he could not see the entire length of the track, 3500 feet back (Q/A 35), and he stated he believed he had the information he needed (Q/A 36).
- [18] The Grievor was shoving 12 “flat cars”. A “flat car” is approximately 100 feet in length, which is 40% longer than a regular train car (Q/A 20). The Grievor’s evidence was he was not aware how long flat cars were, as he was taught that each car is 60 feet long (Q/A 20).

Factual Findings

- [19] From a review of this evidence, I am satisfied the following occurred: The Conductor had looked at track 2 from the East end earlier during this work. He considered it had room

for “25 cars”. However, a car is not a unit of measure, especially when the cars being pulled are not the same length as a regular car of 60 feet. The Conductor then walked to the West end of the yard.

- [20] When the cars in Track 2 were subsequently shoved later during the work, after further switching, the Conductor did not place himself at the East end of the track or on the leading edge of the equipment to protect the movement on the subsequent move. Instead, he chose to rely on his earlier - and incorrect - conclusion there was sufficient room for “25 cars” without contact with the track 2 switch.
- [21] As the Conductor was not “on the point” when giving this direction, the Conductor did not notice the switch at the East end of track 2 and did not consider that the movement could run through that switch during a later shoving movement.
- [22] No radio communications occurred between the crew as to where the Conductor and the Trainee had positioned themselves, or what they could – or could not – see. The Conductor then told the Grievor to come back ‘12 cars’ and the Grievor shoved the cars back. It was only noticed later that in doing so, the movement ran through the track 2 switch, which caused a derailment.

Decision

- [23] In summary, the Company has argued that the discipline was just, reasonable, warranted, progressive and consistent with its disciplinary policy and was taken upon consideration of the relevant factors. It noted the Grievor’s poor disciplinary record, and the seriousness of this event. The Union has argued the ultimate discipline of dismissal was excessive, unjust and unwarranted on the facts of this case, where the Grievor appropriately relied on his crewmate for instructions. It argued that reliance was reasonable and expected, and further, that the track was “known to be clear”, given the Conductor’s earlier assessment, so that the Conductor was not required to be placed at the point to protect this movement.

- [24] Further specifics of the parties' arguments will be addressed in the body of this Decision and in the context of the framework established in *Re Wm. Scott & Co*². The two questions to be asked when assessing discipline under that framework are:
- a. Is culpability for discipline established; and, if so
 - b. Was the discipline assessed just and appropriate and therefore reasonable?

Was Culpability Established?

- [25] While the Union provided the Grievor's E-Test record and filed this Arbitrator's Award in **CROA 4866**, this was not a breach of rules observed during an E-Test.
- [26] All members of the crew have an obligation to protect the point. That is established in Section 12.3 of the Rule Book for T&E Employees. As noted above, that rule states in (i) that unless the portion of track to be used is *known to be clear*, a crew member is to be "on the leading piece of equipment or on the ground, in a position to observe the track to be used and to give signals or instructions necessary to control the move. That rule also sets out that "known to be clear" as a concept means not just clear of not just equipment, but also switches which are not aligned appropriately for the movement: 12.3(b)(ii).
- [27] The Company argued the point was not properly protected in this case, leading to this derail. The Union argued the Grievor was entitled to rely on the Conductor's information, given that the Conductor was the individual giving the signals to the Grievor, and since the track was "known to be clear" to the crew. With respect to the Union's able argument, there are two difficulties with its position.
- [28] First, it is no answer in this case to state this track was "known to be clear". That was not the case. The derail which occurred demonstrated that there was a switch which run through. The concept of "known to be clear" includes switches not properly aligned. Track 2 was therefore not "known to be clear" when it had a switch which was capable of causing a derail.

² [1976] B.C.L.R.B.D. 98

- [29] Second, I am satisfied it was the Grievor's responsibility to know and understand whether his crewmates had positioned themselves properly at the East End of the movement in order to protect the point. The Grievor did not have – and did not appropriately seek – this critical information. The Grievor stated he could not see the Conductor or the Trainee in his mirror. He could also not see down the length of the track, given a curve in the track. Even given these physical restrictions, his evidence was that he did not ask the Conductor if that crew member was on the point or able to observe the point from where he positioned himself (Q/A 33), when that individual gave him instructions to shove his movement.
- [30] The Grievor had to have been aware the Conductor and Trainee were not on the leading edge of the equipment, as there had been no radio communications for them to entrain, yet he did not ask any questions to determine their location, to determine for himself that the point was protected. The location of the Grievor and the Trainee could have been confirmed in one radio call.
- [31] Reliance cannot be placed on a crew member in the abstract. Sufficient information must be gathered in order *to determine if that reliance is warranted*. Knowing *where* the Conductor was placed was a piece of key and important information for the Grievor to have, to comply with Section 12.3. The Grievor was not aware of whether the Conductor was in a position to protect the point and neither was that point “known to be clear” given the switch causing the derail. Therefore, the Grievor did not have any *basis* on which to rely on the Conductor's information that the point *was* being protected and it was therefore *safe* to make a shoving movement.
- [32] To fail to make those inquiries – when he was not aware *where* those individuals were - breached Section 12.3 and was culpable behaviour.
- [33] There is a second aspect of culpability of the Grievor, on the facts of this case.
- [34] That the cars the Grievor was shoving were 40% longer than the normal train car length of 60 feet should have been apparent to the Grievor with his naked eye and put him – and the rest of the crew - on notice that these were not “regular” cars. It was the Grievor's responsibility to understand how long the cars were that he was shoving *in feet*, and to seek an accurate indication from his crewmates of whether *that length* would fit into the

track length available, before making this movement. There was a misunderstanding of this crew as to how long a “car” was, that could again have been addressed in a simple radio transmission.

[35] The reference to “25 cars” did not give to the Grievor “all the information he needed” as he maintained in his Investigation (Q/A 36). A “car” is not an accurate unit of measure, when the cars being pulled are 40% longer than a regular car length. Had the Grievor had knowledge of the *length* of the equipment he was shoving, or asked his Conductor for a term of measure regarding distance that was in feet and not just a reference to “cars”, he would have understood that – at 100 feet each – the cars he was shoving may not have fit into the space available, given that a regular car was only 60 feet.

[36] This was further culpable behaviour.

[37] The reason that being in a position to protect the point is critical is demonstrated by the facts in this case. Had the Conductor been on the point – and confirmed as such by the Grievor - he should have noticed the switch and that the movement would be in peril of a derail, if he continued, given its length.

[38] I am in further agreement with the Company’s position that the Job Briefing was required not just at the beginning of this work, but throughout. Part of that Job Briefing should have been that the crew should communicate with each other to ensure the point was protected, which did not occur.

[39] In summary, I am satisfied the Grievor was not entitled to rely on the Conductor’s lack of information as to his location, or whether he was protecting the point, or on the Conductor’s information there were “25 cars” length of room available.

[40] The Grievor’s culpability is established.

Was the Discipline Just and Reasonable?

[41] The next question under the *Re Wm. Scott & Co.* framework is whether the discipline assessed – which in this case was the ultimate discipline of dismissal - was just and reasonable.

- [42] Several factors are addressed by arbitrators to determine this question. Those factors can be mitigating, aggravating or of a neutral effect. The category of factors however is not “closed”. While jurisprudence can offer some guidance, no two fact situations will ever be identical.
- [43] One of the factors in *Re Wm. Scott* that is universally applied is the severity of the incident. Many incidents of misconduct in this industry are significant and serious, given that it is a highly safety sensitive industry, involving the movement of heavy industrial equipment. I am satisfied that a derail in a trainyard is a significant incident, although in this case there is no evidence the derail was caused by a collision at a significant speed or that it caused considerable damage or injury.
- [44] While the Company argued discipline was assessed in accordance with its Hybrid Disciplinary Policy, this fact only addresses the *consistency* of the Company’s application of discipline, which is only one factor to be addressed. If the Company does not apply its discipline consistently, then it could be found that discipline is discriminatory.
- [45] However, the application of the Hybrid Disciplinary Policy does not determine that the discipline is either appropriately progressive or just and reasonable. That is a multi-faceted inquiry.
- [46] A further factor is the Grievor’s disciplinary record. That is an objective document that is to be considered. The Company has argued this record is aggravating. Given the Company’s position, it is appropriate to delve deeper into this factor. The Grievor was previously dismissed for absenteeism in January of 2017 and had difficulties with this issue between 2012 and 2017. He was reinstated on a leniency basis in October of 2017. Since that time, he was discipline free until August of 2020, when he received a formal reprimand, for failing to properly ride equipment. He received a further 10 demerits in December of that year for absenteeism. In 2021, he had one incident of discipline, being a 10 day suspension (reduced from 20 days by arbitral Award) late in that year, for failure to conduct a passing inspection. In 2022, he likewise had one formal reprimand for absenteeism.
- [47] In 2023 the Grievor had three incidents of discipline. The most serious discipline of 40 days was set aside in **CROA 5057**, due to an incident of procedural fairness. Prior to that,

he had two incidents of a fairly minor nature (formal reprimand and 10 demerits; for absenteeism and train handling respectively). Those incidents occurred in 2023, prior to this incident in June 2023.

- [48] I cannot agree with the Company that this record demonstrates significant issues with following safety rules and procedures, over an eight year career. While I would agree that the Grievor does have several incidents of discipline, several of those incidents relate to absenteeism, which does not involve compliance with safety rules. Further, a significant incident of recent discipline was set aside in **CROA 5057**. That changed this Grievor's record, and has resulted in that record being less aggravating than it was at the time discipline was assessed.
- [49] Reviewing the jurisprudence, failing to protect the point is considered a significant safety issue, which attracts a requisite measure of significant discipline, but the particular facts and circumstances must be considered. The Company relied on **CROA 4746**, where an employee with 16 years' service had a record which was "fraught" with disciplinary suspensions (four suspensions of five days each in the course of 18 months). This was the most recent case relied upon by the Company. The grievor in that case believed he had lined the switch correctly when he had not, resulting in a collision when his movement entered into a storage track. He was dismissed, which the arbitrator converted to a reinstatement without compensation, but with significant conditions.
- [50] However, that case was more serious than this case. The Grievor sent his movement into a stationary track at 12 mph, and the consequences of that collision were significant, including an engineer who broke his arm and was off work for 5 months. The Grievor also had a repetitive failure *to follow safety rules*, which was aggravating and can also be distinguished from the situation in this case.
- [51] **CROA 4454** involved a grievor of only one year service, which is not analogous to this case, where the Grievor had eight years of service.
- [52] The Company also relied on **CROA 4419**, where an LE of seven years' service was discharged. He only had 10 demerits on his disciplinary record. The grievor also manipulated his throttle in a manner which contributed to the collision. It also led to a very serious collision, which substantial financial losses. There were also minor injuries and

the grievor had brought a Nintendo gaming device to work and used it during his tour of duty. The Arbitrator did not find that misconduct warranted dismissal. The grievor's conduct was found to be "extremely reckless" and a "breach of trust", which is more significant than the conduct in this case. Despite what was described as a "critical error", the Arbitrator found that the conduct was "not properly elevated to the degree of recklessness such that the employment relationship is beyond redemption"³. The Arbitrator reinstated the grievor in that case, but without loss of seniority or compensation.

- [53] **CROA 3845** is a dated case, having been decided 14 years ago, in 2010. In that case, the Grievor was a Conductor and had been suspended when his movement was involved in a side collision. While the Grievor did not have any discipline record, he was only a junior employee of two years' service, which is not analogous to this case in terms of service. He was assessed a 15 day suspension.
- [54] The Union relied on several cases, including **CROA 4251**, which involved discipline of a Conductor for not protecting the point of his movement, resulting in a sideswipe collision. A 30 day suspension was found excessive in that case and 15 demerits were substituted, given the Grievor's length of service and his prior disciplinary record, which demonstrated he had only received "minor demerits on two prior occasions". That is not analogous to this case, where the disciplinary record of the Grievor is more extensive. The Union also relied on several earlier cases, where the Company was still applying demerits instead of suspensions for various misconduct, and where there were distinguishing features, such as in **CROA 3845**, where the Grievor had never previously been involved in any rule violation. In **CROA 4455**, a Conductor was assessed of 20 demerits – or 1/3 to dismissal under the Brown System – where one car derailed and the Grievor's disciplinary record was "unenviable".
- [55] Considering these factors, and upon review of the jurisprudence provided by the parties, I am not convinced that it was a just and appropriate response for the Company to dismiss the Grievor, when he failed to make the appropriate communications to ensure the point

³ At p.3

was protected. As in **CROA 4419**, I do not consider that this rose to a degree of recklessness that would warrant that response.

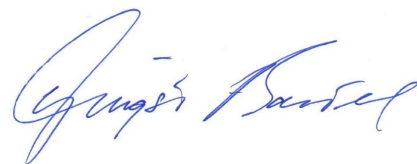
[56] The Grievance is upheld, in part. Dismissal was an excessive and unwarranted disciplinary response on the facts of this case.

[57] I consider this is an appropriate case for the exercise of my jurisdiction to substitute an appropriate remedy. The following is to apply:

- a. The Grievor is to be reinstated;
- b. A 20 day suspension is to be substituted for the Grievor's dismissal;
- c. The Grievor's disciplinary record is to be corrected;
- d. The Grievor is to be "made whole" for the difference between the 20 day suspension he should have served, and the dismissal he was assessed. That calculation is remitted to the parties for their determination, considering the usual impacts of deduction for mitigation;
- e. Should the parties be unable to agree, either party can approach the Office and request to have that matter scheduled for resolution at a CROA session over which I preside.

I remain seized with jurisdiction to address the amount of the compensation owing, should the parties be unable to agree. I also remain seized to correct any errors; and to address any omissions, to give this Award its intended effect.

July 30, 2024



CHERYL YINGST BARTEL
ARBITRATOR