# CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

# CASE NO. 5140

Heard in Montreal, February 12, 2025

Concerning

**VIA RAIL CANADA Inc.**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The Dismissal of Mr. J. Browning for alleged violation of the VIA Rail's Drug and Alcohol Policy.

**JOINT STATEMENT OF ISSUE:**

The union contends that Mr. Browning assessed discipline was excessive. The Corporation alleges that the employee "knowingly" violated the Drug and Alcohol Policy prior to reporting for duty. The employee admitted to consuming marijuana the evening before reporting for duty, but was unfamiliar with the requirements to abstain for a minimum of 24 hours. In addition, at the time of the incident there was no evidence of impairment with respect to the employee. The Corporation also accuses the employee of "breaking the bond of trust" with the Corporation by his actions whereas Mr. Browning and his fellow crew-member alerted the proper authority of their violation of CROR Rule 33 on their own. That in turn led to the subsequent Post-Incident Controlled Substance test. In addition, the discipline was not served until 29 days following the investigation in breach of Article 16.4 of Collective Agreement 1.4. the Union requests that Mr, Browning be returned to duty with no loss of seniority and benefits. In addition, it is requested that the employee be made whole for all lost wages.

The Corporation contends that the dismissal be appropriate in the circumstances. Mr. Browning admitted contravening the rule prohibiting the consumption of drugs for a minimum of 24 hours prior to duty or expected duty, pursuant to the Corporation's Canada's Alcohol, Drugs and Medication policy **(Policy).** Mr. Browning is a new employee with less than a year and a half of service. He was therefore recently introduced to the Policy. The fact that he willingly and admittedly contravened the Policy shows a disregard for critical safety rules.

The Corporation refers to the response to the Step 3 Grievance. The corporation further relies on the discipline letter, the formal investigation and all relevant circumstances.

| **For the Union:** | **For the Company:** |
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| **(SGD.) P. Hope** | **(SGD.) R. Coles** |
| General Chairperson | Specialist Director, Employee Relations |

There appeared on behalf of the Company:

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| C. Trudeau | – Counsel, Fasken, Montreal |
| T. Drouin-Shannon | – Senior Advisor, Employee Relations, Montreal |

And on behalf of the Union:

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| K. Stuebing | – Counsel, Caley Wray, Toronto |
| D. Dunn | – Vice General Chairperson, Brantford |
| J. Browning | – Grievor via zoom |

## AWARD OF THE ARBITRATOR

### Context

1. The Grievor was a Locomotive Engineer with approximately 1.5 years of seniority with the Company. His discipline record was clear, prior to the present incident, which led to the imposition of 15 demerits for speeding in October 2023. It also led to the Grievor being Alcohol and Drug testing, which is the subject of the present matter.

2. Although not directly relevant to this matter, the Grievor had previously worked for CN for 8 years with a clean discipline record.

### Issues

A. Was the discharge communicated in a timely manner?

B. If so, was the termination reasonable in the circumstances?

### A. Was the discharge communicated in a timely manner?

### Position of Parties

3. The Union argues that the termination was communicated to the Grievor 29 days after the investigation, contrary to the Collective Agreement. Article 16.4 is mandatory, such that a failure to respect the 28-day delay or to obtain an extension, will result in any discipline being void.

4. The Company argues that its only obligation was to come to a decision on termination and to communicate it to the Grievor within a reasonable time. As this happened within 29 days, the decision was communicated within a reasonable time. It argues further that the Collective Agreement draws a distinction between discipline, which must be communicated within 28 days, and discharge, where no such time line exists.

**Analysis and Decision**

5. Article 16.4 sets out time lines for when discipline must be assessed following a LE's investigation:

> A hearing shall be held and the locomotive engineer advised in writing of the decision within twenty-eight (28) calendar days from the date of the locomotive engineer's statement, unless as otherwise mutually agreed. No discipline will apply if the discipline is not assessed within twenty-eight (28) days from the date the locomotive engineer's statement is completed; however, when a Corporation Officer requests an extension in time limits, such extension shall not be unreasonably withheld. In addition, should locomotive engineers be absent from service on the last day for the Corporation to render a decision, such as due vacation, illness, etc., the time limits will be automatically extended by seven (7) days beyond the date the locomotive engineers return to service. (emphasis added)

6. The Company argues at paragraphs 45-56 of its Brief that a distinction should be drawn between “discipline” and “dismissal” for the purposes of the time lines in article 16.4. It notes that both terms are used in article 16.2, and in the CROA Rules at article 4. It relies on a decision of this arbitrator in **CROA 4889** for the proposition that each term in a collective agreement must be given meaning.

7. It argues that as no time line is present for “dismissals”, the only requirement is for the Company to act within a reasonable delay.

8. For the reasons that follow, I find that the Union objection that discipline must be mandatorily assessed within 28 days should be maintained.

9. Firstly, in determining the meaning of a particular article, the Collective Agreement must be read as a whole and in a manner to avoid conflicts. As this arbitrator set out in **CROA 4889**:

> In Local 401 v Real Canadian Superstore (2008), 172 LAC (4th) 289, the Alberta Court of Appeal set out multiple guiding principles of interpretation:
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> > 15 **First principles require that the Arbitrator interpret the salient provisions in the context of the Agreement as a whole and in a manner that avoids conflicts or internal inconsistencies within the Collective Agreement. The parties are presumed to have drafted an agreement that avoids such inconsistencies.** It follows that the interpretation which accords with that end reflects the parties' true intent (D.J.M. Brown, Q.C. and D.M. Beatty, *Canadian Labour Arbitration*, 4th ed., looseleaf (Aurora, Ont.: Canada Law Book Inc., 2006) at para. 4:2120).
> >
> > 20 **The articulation of the issue, in this case, namely whether Article 30.12 trumped Article 30.17 or *vice versa*, was a serious error that impacted on the assessment of the competing positions. The proper analysis is to discern first and foremost whether the two provisions are compatible. That is to say, whether, mindful of the entire Collective Agreement, the two Articles can comfortably be read in a reconcilable fashion. After all, they need not conflict. To proceed on the assumption that one must trump the other is fatal to the integrity of the decision under review.**
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> Brown and Beatty's Canadian Labour Arbitrations sets out similar principles:
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> > "Another related general guide to interpretation is that in construing a collective agreement, it should be presumed that all of the words used were intended to have some meaning. As well, it is to be presumed that they were not intended to be in conflict. However, if the only permissible construction leads to that result, resolution of the resulting conflict may be made by applying the following presumptions: special or specific provisions will prevail over general provisions."

10. A review of articles 16 and 17 of the Collective Agreement reveals that there is frequent usage of the term "discipline" to include the term "dismissal".

11. The general heading of article 16 makes reference to "Investigation-Discipline". There is no separate provision for the investigation of "dismissals".

12. Article 16.10 refers to: "An appeal against discipline assessed may be made in accordance with the grievance procedure…" Again, there is no separate provision for appeals against dismissal.

13. Article 17.1 sets out the grievance procedure:

> "An appeal against discharge, suspension, demerit marks in excess of thirty (30) and restrictions including medical restrictions shall be initiated at Step 3 of this grievance procedure. All other appeals against discipline imposed shall be initiated at Step 2 of this grievance procedure."

14. The most serious sanctions, including discharge, are heard at a later stage than less serious sanctions, which are heard at a lower level. The language includes discharge as a form of discipline: "All other appeals against discipline…"

15. Article 17.2 references appeal to arbitration "against discipline imposed, which is not settled under Article 17.1 (c)" (the 3rd step). Again, all forms of discipline which have gone to the third step may be referred to arbitration, including dismissals.

16. Thus, the Parties have used "discipline" as a term including "dismissal" in multiple places in the Collective Agreement.

17. Secondly, an examination of the article in question shows the same use of the term. Article 16.4 refers to the general requirement for a hearing to be held and a decision communicated within 28 days of the LE's statement. No distinction is drawn between forms of discipline. The requirement is general.

18. Thirdly, accepting the Company's argument would mean that discipline for minor events would be tightly controlled by the language of article 16.4, while the most serious form of discipline would be left to what the Parties would find to be

"reasonable". That seems highly unlikely. The Company argument that more serious events may require additional time to investigate is addressed by a request for an extension of time, where "such extension shall not be unreasonably withheld". Here no such request was made.

19. Fourthly, such an interpretation would also lead to the temptation to overcharge, by dismissing rather than suspending an employee, merely to avoid time constraints. It seems unlikely that the Parties would have intended such an outcome.

20. Fifthly, any Labour law practitioner, whether as representative, advocate or arbitrator, will have heard and used the expression: "Discharge is the capital punishment of discipline". The common understanding of the term is that discharge is a form of discipline.

21. Given a global review of articles 16 and 17, and a particular review of article 16.4, I find that the Parties must have understood that discharge was just the most serious kind of discipline, and included in the meaning of "discipline".

22. Accordingly, I find that the current discipline did not meet the timeline in article 16.4 and therefore, pursuant to the express terms of the article: "No discipline will apply…"

23. A similar provision was considered by Arbitrator Picher in **CROA 4072**, where he dealt with mandatory time limits for imposing discipline:

> "For reasons it best appreciates, the Company did not respect the time limits provided in the foregoing article. **As is evident from the language of the provision, its failure to notify Mr. Santiago within the mandatory time limits is to "result in no discipline being assessed**."
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> On that basis, therefore, the grievance must be allowed. The Arbitrator directs that the grievor be compensated for any period of suspension, being made whole for all wages and benefits

> lost and that his disciplinary record be expunged to contain no reference to the incident of April 22, 2011."

**B. If so, was the termination reasonable in the circumstances?**

24. Given my finding above that the discipline is void, there is no need for me to decide whether the termination was reasonable for a violation of the Company's Alcohol and Drug Policy. Any decision made would necessarily be obiter dictum.

25. The Parties are also aware of, or participating in, a policy grievance on CPKCR's 28-day ban on drugs, being heard before Arbitrator Clarke. That decision, involving competing scientific evidence and a full debate on the issues of the right to privacy versus the need for safety, will inform any decision to be made on Via's Alcohol and Drug Policy.

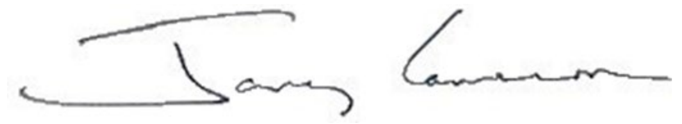
26. Accordingly, I decline to go further than necessary in this matter, as the discipline has already been found to be untimely and therefore void.

**Conclusion**

27. The grievance is upheld. The grievor is reinstated without loss of seniority and to be made whole, less mitigation.

28. I remain seized for any questions of interpretation or application of this Award.

**March 19, 2025**



**JAMES CAMERON**
**ARBITRATOR**