

**IN THE MATTER OF AN AD HOC ARBITRATION**

**BETWEEN**

**TEAMSTERS CANADA RAIL CONFERENCE (TCRC)**

**And**

**CANADIAN PACIFIC RAILWAY COMPANY (CP)**

**DISPUTE:**

Appeal of the 20 demerits and subsequent dismissal of Conductor Rick Sobry of Saskatoon, SK.

**JOINT STATEMENT OF ISSUE**

Following an investigation Mr. Sobry was assessed 20 demerits and was dismissed for the following:

“in connection with your failure to report your delay to the RTC during your tour of duty on train 299-26 TC, resulting in your crew being on duty over 12 hours. A violation of Rule Book for T&E Employees, Section 2.2 While On Duty, Items (ix) & (x) and Section 11.1 Reporting Delays. This is also a violation of your Conditional Offer of Continued Employment signed September 1, 2020, specifically but not limited to items 2 and 6 (a).

As a result of the above referenced discipline you are hereby **DISMISSED** from Company Service for the accumulation of 70 demerits under the Hybrid & Accountability Guidelines.”

The parties agree that CROA rules apply including item 14 of the Memorandum of Agreement Establishing the CROA&DR.

**UNION POSITION**

For all the reasons and submissions set forth in the Union’s grievances, which are herein adopted, the following outlines our position.

The Union contends that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. The Union asserts:

- The investigating officer commencing the formal investigation had direct involvement on when the alleged incident occurred, causing the investigation to be tainted by his prejudice when questioning a witness on the formal record prior to removing himself as the investigating officer.
- Appendix D, Download of CP8829, does not meet the standard required to be used as evidence.
- Appendix D, Download was incomplete. The Company failed to provide the full copy of the download despite the Union's specific request.
- Question 31 was hypothetical.
- Questions 29, 32, 33, and 34 were unfair and leading.
- Question 36 was asked and answered at Question 31.
- The investigating officer adds new evidence following Question 31. This new evidence was not included with the Notice of Investigation and was outside the scope of the investigation.
- Questions 41 and 42 regarding the new evidence were outside the scope of the investigation.

The Union contends the Company has failed to meet the burden of proof required to sustain the allegations made during the formal investigation and in the Employee Notification Letter dated December 31, 2020, including:

- Rule Book for Train & Engine Employees Section 2.2, Items (ix) and (x) are general rules, and no evidence has been provided.
- Rule Book for Train & Engine Employees Section 11.1 is not applicable as the crew were in direct contact with their immediate supervisor, the Assistant Trainmaster on duty.

The Union further contends the Company has failed to establish the abovementioned incident warranted dismissal, or that it constitutes a culminating incident worthy of discharge. The Union submits Mr. Sobry's dismissal is unjustified, unwarranted, and excessive in all of the circumstances, including significant mitigating factors evident in this matter including:

- Mr. Sobry walked into the station at 20:18 and showed off duty only 2 minutes later, despite entering delays and completing his work 15 minutes later at 20:35.
- The record shows the crew was in constant communication with the Assistant Trainmasters and the yard crew in an attempt to yard their train expeditiously.

The Union requests that the discipline be removed in its entirety, and that Mr. Sobry be reinstated without loss of seniority and benefits and be made whole for all associated loss with interest.

## **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 following the 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. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances.

Regarding any contentions that the burden of proof was not met, there are no exceptions to Rule 11.1 Reporting Delays. The Grievor was required to promptly advise the RTC of delays to his train. He did not.

As outlined by his 104, the dismissal was the result of an accumulation of demerits – progressively assessed. Additionally, the Grievor was indeed in violation of his Last Chance Agreement.

Accordingly, the Company maintains no violation of the Collective Agreement has occurred and seeks that the discipline assessed should not be disturbed.

Without precedent or prejudice to the Company's aforementioned position, it is incumbent on the Union to provide detailed information on alleged lost wages, benefits, and interest. The Company cannot properly respond to this request when the Union is vague and unspecific on what constitutes "made whole".

FOR THE UNION:

Signed  
Dave Fulton  
General Chairman  
TCRC CTY West

FOR THE COMPANY:

Signed  
Francine Billings  
Assistant Director, Labour Relations  
CP Rail

April 3, 2023

**Hearing:** April 13, 2023 - By video conference

**APEARING FOR THE UNION:**

Ken Stuebing, Counsel, Caley Wray  
Doug Edward, Sr. VGC CTY West  
Jason Hnatiuk, VGC CTY West  
Jared Matteis, LC, Sutherland  
Rick Sobry, Grievor

**APEARING FOR THE COMPANY:**

Sharney Oliver, Manager Labour Relations  
Diana, Zurbuchen, Manager, Labour Relations

## **AWARD OF THE ARBITRATOR**

### **JURISDICTION**

[1] This is an Ad Hoc Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. The protocols entered into by the parties provided for submission of detailed briefs filed and exchanged in advance of the hearing. At the hearing, the parties reviewed the documentary evidence and made final argument. Awards, with brief written reasons, are to be issued within thirty days of the hearing. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the Canada Labour Code.

### **BACKGROUND**

[2] The Grievor entered Company service in Wilkie, Saskatchewan in March 2011. He is a qualified Locomotive Engineer.

[3] On November 28, 2020, the Grievor was called as a conductor in turn combination service (TCS) for train 299-26. When a train is called in TCS, they are required to be on duty for up to 12 hours. If a TCS crew is on duty for greater than 12 hours, it would be considered an over hours violation.

### **SUBMISSIONS OF THE PARTIES**

[4] The Company submits that multiple disputes have been caused by over hours violations. As a result, the parties have been to Arbitration numerous times and are currently in the process of going through the Federal Courts on the Union's "Contempt of Court" challenge. Accordingly, CP maintains that each time there is a violation of a crew's 10 or 12 hours, it is taken seriously. Where required the employee, or employees, who may have been responsible for contributing to the over hours may be investigated and discipline could result. The Rule Book for Train and Engine Employees Section 11 – Operation of Movements states:

#### **11.1 Reporting Delays**

The conductor must ensure that the RTC is promptly advised of any known condition which may delay their main track movement.

[5] On November 28, 2022, the crew of the 299-26 went over their 12 hours by delay associated to the Grievor's train stopping at the Cautionary Limit sign on mainline track. This delay was not reported to the Rail Traffic Controller (RTC) as required by rule.

[6] As a result Munib Ahmad, Assistant Trainmaster filed the following memo regarding the incident:

#### **MEMORANDUM TO FILE**

**TO:** DYLAN KNORR

**FROM:** MUNIB AHMAD

**SUBJECT:** 299-26

**DATE:** NOVEMBER 28 2020

As soon as I ended the 1915 call, I called 299 on radio and inquired if they were in already upon which Cndr Sobry stated that they were held out by yard. I asked them how long have they been held out and why they had not called me. Cndr Sobry then stated 20-25 mins and then remained silent. He did not answer as to why he had not called me.

I then immediately called yard and asked why they were holding 299 which was tight on time, Yard responded that they are just shoving back now and will clear in couple minutes and that they were not aware of 299 being tight on time. I called 299 back and told them that yard was clearing in couple minutes and they can start pulling. In the mean time I got my safety gear on and went out to have them lined up on west end and take derail off. While I was on my way 299 called me again that yard was having issue and that they were still held out. I then instructed them to come in on the main line and leave power on. When I asked yard, they reported that they initially made joint which came apart while stretching and then could not shove back due to power not charging. Their H/E was under over pass and also had brief comm loss.

Cndr Sobry then walked in at 20:18 and stated that they are over twelve and will tie up accordingly.

Munib Ahmad – Assistant Trainmaster Sutherland

[7] The Company maintains that the Grievor was aware of the requirement to inform the RTC of his delay and failed to do so. The fair and impartial investigation established culpability for a violation of Rule 11.1.

[8] The Company maintains that the Grievor's train was not in the yard or terminal. They were not at the terminal working under the instructions of the ATM. Rather, they had received yarding instructions from the ATM, but had not acted on them as they were delayed on the main line. The RTC was not provided notification of the delay from the Grievor. Had the RTC been given the particulars of the delay, these would have been escalated as per the processes in place.

[9] The Company submits that there is nothing productive or safe about sitting on the mainline waiting for someone to reach out to you, rather than performing your duties as required. It says the Grievor violated Rule Book for Train and Engine Employees Section 11 – Operation of Movements – Rule 11.1. There is no exception within the rule book that states, an employee can ignore this requirement if you have contacted an ATM and received yarding instructions. The tie up confirms the crew booked off 5 minutes over their 12 hours on duty that is a direct result of the Grievor's decision to not escalate the delay as required by Rule. The Grievor confirmed he is familiar with the rules contained within the Rule Book for Train and Engine Employees. The rules read:

2.2 While on Duty

(ix) work in the most productive manner;

(x) communicate as quickly as possible to the proper authority any condition which may affect the safe operation of a movement and be alert to the company's interest and join forces to protect it;

[10] The Company argues that the Grievor was in a dismissible position. To suggest otherwise would disregard the Grievor's discipline record in its entirety. It says any assessment of discipline would result in the Grievor's employment relationship. CP submits that in January of 2020, he was placed on a continued employment agreement with strict attendance related terms which the Grievor voluntarily signed. In May of 2020, he served a 30 Day Suspension for leaving a main line switch in reversed position. Just two months prior to the incident at hand, the Grievor served a 20 Day Suspension. He and his Union signed yet another continued employment agreement – an agreement that required the Grievor to comply with all of the Company's rules, policies, procedures and work practices.

[11] The Company maintains that culpability was established and confirmed non-compliance to the agreed upon terms signed by both parties. It says that last chance agreements must have meaning behind them, particularly when an employee has been given multiple opportunities at reforming his behavior. Without the meaning behind them, there would be no weight to the significance of such terms. If the last chance terms the Grievor himself personally signed for could not change the Grievor's behavior, what more could the Company possibly do at this point. CP maintains that there is no other conclusion to draw than the fact the employment relationship is irreparable.

[12] Despite the last chance the Company says the Grievor continued to show a disregard for his accountabilities and responsibilities of a CP employee. The Company says it cannot tolerate the Grievor's continued lack of compliance, given the Safety Critical functions required of his role in the railway industry. Since 2017, the Grievor had been unable to go discipline free for any length of time. Despite having been given opportunity, the Grievor's repetitive failure to adhere to Company Policy and Procedures demonstrate the Grievor's behavior remains unchanged.

[13] CP maintains that a crew going over their hours is not only taken seriously by the Company, but also time and time again, the Union has highlighted its severity. Considering their documented position on this issue, CP argues that it is difficult to understand how they cannot support the Company taking action in this instance.

[14] The TCRC submits that at 18:55, while approaching Sutherland, the crew requested yarding instructions. The crew contacted Assistant Trainmaster (ATM) Abraham Idogho and were advised that there was an active PPZ zone held by an RCLS crew and they were aware the train was approaching. Conductor Sobry immediately attempted to call the RCLS crew but received no response. At 19:08, the RCLS Yard Crew finally responded to advise that their assignment was experiencing air issues and would let train 299-26 know when they could proceed into the yard.

[15] The Union submits that at approximately 19:30, ATM Ahmad contacted Conductor Sobry and asked if train 299-26 was yarded. Conductor Sobry advised that their movement was held out of the yard on account of the RCLS Yard Crew's difficulties. Immediately, ATM Ahmad questions the RCLS crew on "why they were holding 299 which was tight on time?" At 19:41, ATM Ahmad revises the yarding instructions and advises

Conductor Sobry to pull the train down the mainline to the station and leave the power on. This involved having to line cross over switches and further delaying the train. ATM Ahmad stated that while he was on my way 299 called me again that yard was having issue and that they were still held out. The ATM then instructed them to come in on the main line and leave power on. The Union argues that regardless of this statement the crew was not lined up. At 19:52, train 299-26 arrived at the outer main track switch. The crew pulled the train up to Sutherland Station and stopped. Both crew members immediately began securing the train and locomotives.

[16] The crew completed securing their train and walked into the Sutherland Station at 20:18 hours. At this point, the crew had been on duty for 12 hours and 3 minutes. The Union argues that the crew was addressed by ATM Ahmad and advised to tie up under 12 hours or the locomotives will be downloaded and a formal investigation will be taken. In threatening the crew with a formal investigation. ATM Ahmad was reading directly from a text sent by Trainmaster Knorr. Of course, by this point the crew was already over 12 hours on duty, Mr. Ahmad's threat placed the crew in an impossible situation. The crew commenced tying up their wage claim and tied up 2 minutes later.

[17] The Union objected to this investigation into this matter in its entirety as Trainmaster Knorr was in direct conversation with ATM Munib when Mr. Sobry walked into the station to tie up. Trainmaster Knorr had threatened Mr. Sobry with a download of the power and subsequent investigation if they reported off duty in over 12 hours. As such the investigating officer is not impartial, and this investigation is unfair. The Union's maintains that the objection is obviously well-founded given the text message between Mr. Knorr and Mr. Ahmad. It is obvious that Mr. Knorr had direct involvement and could not act as impartial fact-finder in this matter.

[18] In spite of this proper objection, the Union argues that Investigating Officer Knorr did not immediately recuse himself. Instead, the Union maintains that he asked two narrow and leading questions of a witness, Trainmaster Ahmad, then adjourned the statement. It says the investigation had already been prejudiced by Mr. Knorr, given his directly involvement in the November 28, 2020, circumstances and the leading questions put to Mr. Ahmad. However, CP opted not to discard and re-do the statement that Mr. Knorr had undertaken. The investigation was resumed and completed on December 15, 2020, with Assistant Superintendent Jason Leedhal acting as Investigating Officer. The Grievor attended with his representative and answered all questions put to him in a forthright fashion.

[19] Regarding the objection and Trainmaster Knorr's involvement in the investigation the Company maintains that TM Knorr was not a witness or participant to the incident. He was not present at the terminal, he did not provide evidence in the form of a memorandum and he was not observing the crew directly. Most importantly, CP says TM Knorr was not on the locomotive of train 299, when the Grievor sat idle and ignored his responsibility under Rule 11.1 to advise the RTC of the delay. The Company maintains that the questions asked of ATM Ahmad were also asked in LE Chmil's investigation. ATM Ahmad's responses did not change, nor were the questions objected to.

[20] The Company acknowledged the Union's concerns and addressed the situation by providing a different investigating officer. When Assistant Superintendent Leedahl took

over the investigation, there were no additional concerns raised. Neither the Union, nor the Grievor gave any indication that this was not a sufficient resolution to their objection.

## **ANALYSIS AND DECISION**

[21] The Company submits multiple disputes have been caused by over hours violations. As a result, the parties have been to Arbitration numerous times and are currently in the process of going through the Federal Courts on the Union's "Contempt of Court" challenge. CP maintains that each time there is a violation of a crew's 10 or 12 hours, it is taken seriously. Where required the employee, or employees, who may have been responsible for contributing to the over hours may be investigated and discipline could result.

[22] In this case an investigation was conducted and the crew of train 299-26 were disciplined. In the Grievor's case it resulted in his dismissal.

[23] In determining whether the penalty imposed by the employer was excessive or inappropriate the Company relies on Wm. Scott & Company Ltd., [1977] 1 Can LRBR 1 (Weiler) in determining whether the penalty imposed by the employer was excessive or inappropriate. Beyond the often referred to list of mitigating factors Chairman also stated:

The board does not wish it to be understood that the above catalogue of circumstances which it believes the board should take into consideration in determining whether disciplinary action taken by the company should be mitigated and varied, is either exhaustive or conclusive. Every case must be determined on its own merits and every case is different, bringing to light in its evidence differing considerations which a board of arbitration must consider.

[24] In this case I find the circumstances are significant. The parties have been in dispute over the issue of rest numerous times and are currently going through the Federal Courts regarding rest. It is not unreasonable to assume that sensitivities to the related rules and collective agreement provisions are high.

[25] The basic facts are largely not in dispute. On November 28, 2020, Conductor Sobry was ordered for train 299-26 in Turnaround Combination Service (TCS). This assignment commenced at 0815 with the crew deadheading to Wynyard, Saskatchewan and operating train 299-26 to Sutherland as a single tour of duty.

[26] Ten hours and 40 minutes later, at 1855, the crew requested yarding instructions as they approached their home terminal. At that time Assistant Trainmaster (ATM) Abraham Idogho advised that there was an active PPZ zone held by an RCLS crew and they were aware the train was approaching. Conductor Sobry attempted to call the RCLS crew but received no response until 1908.

[27] At approximately 1930, ATM Ahmad contacted Conductor Sobry and asked if train 299-26 was yarded. Conductor Sobry advised him that their movement was held out of the yard on account of the RCLS Yard Crew's difficulties. At 1941, ATM Ahmad revises the yarding instructions and advises Conductor Sobry to pull the train down the mainline to the station and leave the power on the train. The Union argued that this involved having to line cross over switches and further delaying the train.

[28] In reviewing the sequence of events above, I find that between 1855, when the crew requested yarding instructions, and 1941 when ATM Ahmad revised the instructions, the crew was experiencing a significant 46 minute delay. They knew they would be over 12 hours on duty in less than 30 minutes but took no action. They did not contact the RTC as required or a Trainmaster.

[29] At 1952, train 299-26 arrived at the outer main track switch. The crew pulled the train up to Sutherland Station and stopped. Both crew members began securing the train and locomotives. The crew then walked into the Sutherland Station at 20:18 hours. At this point, the crew had been on duty for 12 hours and 3 minutes.

[30] The Union maintains that the crew was told by ATM Ahmad to tie up showing under 12 hours or the locomotives will be downloaded and a formal investigation will be taken. In threatening the crew with a formal investigation the Union claims that ATM Ahmad was reading directly from a text sent by Trainmaster Knorr. At this point the crew was already over 12 hours on duty and the Union argues that ATM Ahmad's threat placed the crew in an impossible situation.

[31] In response to the Union references of the threatening text message from Trainmaster Knorr advising of a download and investigation, the Company maintains that when a rule violation occurs, it should not come as a shock that an investigation may follow. Often, it is immediately communicated to the employees involved. It says that this situation is no different. I find this explanation problematic given that the crew was already on duty over twelve hours and Trainmaster Knorr would initially proceed as the investigating officer until the Union objected.

[32] Railway investigations are generally intended to be informal, but still be fair and impartial. It is also generally recognized by arbitrators that railway disciplinary investigations under the terms of a railway collective are not intended to elevate the investigation process to the formality of a full-blown arbitration. What is contemplated is an informal and expeditious process. Those understandings, are generally coupled with the requirement that the investigating officer meet minimal standards of impartiality. In this case, given the situation, I find the use of Trainmaster Knorr as the investigating officer was inconsistent with any concern for ensuing an unbiased investigation.

[33] The Company submits that dismissal was an appropriate outcome, given the Grievor's employment standing. Even a lesser quantum of demerits such as 10 Demerits would have resulted in dismissal. Additionally, the Grievor's Conditional Offer of Continued Employment dated August 28, 2020 must be considered. The agreement was in response to the Grievor's culpability following a fair and impartial investigation in connection with serious safety violations including reaching over a knuckle to open an angle cock and removing a handbrake from the ground which was above shoulder height. The Company says it deemed these violations as warranting dismissal but in an act of managerial leniency, offered the Grievor an additional employment agreement to prove his ability to reform and redeem the Company's confidence.

[34] The Company maintains that last chance agreements must have meaning behind them, particularly when an employee has been given multiple opportunities at reforming his behavior. Without the meaning behind them, there would be no weight to the significance of such terms. If the last chance terms the Grievor himself personally signed

for could not change the Grievor's behavior, what more could the Company possibly do at this point? There is no other conclusion to draw than the fact the employment relationship is irreparable.

[35] In Ad Hoc 712, Arbitrator Hornung upheld the dismissal of an S&C Maintainer who was also subject to last chance terms of employment. Arbitrator Hornung affirmed the Arbitrator's limited jurisdiction in last chance agreements, stating the following upon review of the terms of the agreement:

The LCA provides that a breach of its conditions is to be considered just cause for termination. Equally, it restricts my jurisdiction to the determination of whether a breach of the LCA existed and, if so, excludes my prerogative to impose a lesser penalty. The agreement of the parties, as set out in the LCA, ought therefore to be enforced according to the clear intentions expressed. For that reason, I dismiss the grievance

[36] I find the facts and circumstances of this case significantly different from Ad Hoc 712. In that case Arbitrator Hornung found the Grievor's repeatedly falsified records. Furthermore he gave his reasons for entering the false report as being "an error in judgement" and a "mistake" brought about by "personal issues". The Grievor's unenviable disciplinary record in that case included a previous suspension, in April 2018, for entering false Regulatory Testing into RailDocs without completing the tests.

[37] In this case the Grievor has a significant disciplinary record. However it does not include issues of failing to report incidents such as this. In addition the circumstances mitigate away from holding the Grievor totally responsible for the working over 12 hours.

[38] In his statement, the Grievor provided the following:

I realize now that by not immediately informing the ATM and RTC when I was held out by the yard, that it impacted the company's ability to potentially get me off duty under 12 hours. As I talked to Abe about the over 12 a few days ago, he informed me about a conference call he had with Tina Sheaves and him taking the blame for us being over 12, as he said he could have done a better changeover with Munib. It was never my intention to tie up over 12 hours to get the extra money, I felt I followed all the instructions by the ATM and I don't know why at 1930 we were not told to yard mainline to potentially get us off under 12 at that time.

[39] Assistant Trainmaster Abraham Idogho was called into the statement and asked for his recollection of this conversation. The Union submits that Mr. Idogho also accepted responsibility for the crew going over 12 hours, and the steps that could have been taken in order to ensure that the crew of Train 299-26 were able to yard their train in a timely manner stating:

I can't remember the exact date, Mr. Sobry came to me and wanted to talk about what happened with the over 12. As a manager I felt like I should listen to what he has to say. He told me what happened which is basically that he went over 12 and they had a statement with Dylan

and he believed Munib wasn't telling the truth. I didn't bother to ask him what Munib lied about, what I told him there isn't any incentive for Munib to lie. So at that point I told him that there was a learning opportunity and I said for me I had a conversation the next day with Adam Smith and Dylan Knorr and I got feedback for what I could have done better. Even if I gave Mr. Sobry yarding instructions for over an hour before the time is up, I still should have called the yard and told the yard that 299 was coming in the yard and was tight on time. That is what I told Mr. Sobry something I learned based on the feedback I received from my bosses, that we could done better.

[40] It is not in dispute that terminal has a local management that oversees train movements. They also manage arriving trains. The local management is responsible for determining if and how a train should be yarded and for getting the arriving crew off duty with instructions. Assistant Trainmaster Abraham Idogho was part of the local management overseeing the arrival of the Grievor's train that evening. After reviewing all the evidence I find it is clear that a better job could have been done of managing the arrival of train 299-26 that evening. That said, it does not relieve the crew on 299-26 from taking action to avoid unnecessary delays.

[41] In response to the Union references of the threatening text message from Traimaster Knorr advising of a download and investigation. The Company maintains that when a rules violation occurs, it should not come as a shock that an investigation may follow. Often, it is immediately communicated to the employees involved. It says that this situation is no different. I disagree. The Union has alleged the crew was threatened with an investigation of discipline if they booked off duty beyond 12 hours of duty. It is clear that fitness for duty and rest to ensure such fitness are issues over which the parties appear to have significant disagreements. In my opinion, rest provisions should not be used by train crews as threats or negotiation leverage regarding workload by crews while on duty. Similarly, investigations and discipline should not be used as threats or leverage by managers.

[42] The Company argues that the Grievor was in a dismissible position. To suggest otherwise would disregard the Grievor's discipline record in its entirety. It says any assessment of discipline would result in the Grievor's employment relationship. However, the Locomotive Engineer on the Grievor's train did not receive 20 demerits and was not dismissed. I find his last three disciplinary incidents significant. However, in the last incident he receive a significant unpaid suspension rather than demerits and thereby appearing to avoid dismissal. Neither employee can be said to have an exemplary discipline record in this case. The Company indicated that the Grievor was placed under an agreed Last Chance Agreement to give him the opportunity to restore Company Confidence. I do not find that this is a case to take that opportunity away from him.

[43] After carefully reviewing the relevant evidence and the respective submissions of the parties I find, there was just cause for discipline but not for discharge. I find that this incident does not demonstrate the Grievor has a lack the necessary rehabilitative potential, or that he cannot comply with the requirements of a safety critical workplace.

Accordingly, I am prepared to exercise my discretion to reinstate the Grievor and to substitute a lesser penalty than discharge.

[44] The Grievor will be reinstated without compensation or loss of seniority. Time out of service will be as unpaid suspension. A one day compensation will be appropriately made to ensure the Grievor's ability to remain in the pension plan.

[45] I remain seized of the implementation and interpretation of this award.

Dated at Niagara-on-the-Lake this 17<sup>th</sup>, day of July 2023

A handwritten signature in black ink, appearing to read "Tom Hodges", enclosed in a thin black rectangular border.

Tom Hodges  
Arbitrator