

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

CASE NO. 4669

Heard in Calgary, February 13, 2019

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 30 day suspension of Conductor S. Veinot of Winnipeg, Manitoba.

THE UNION'S EXPARTE STATEMENT OF ISSUE:

Following an investigation Mr. Veinot was issued a 30 day suspension described as Failure to ensure all hand brakes had been removed from train 411-27 resulting in delay to train. The Company did not respond to all of the Union's grievances.

The Union contends that the investigation was not conducted in a fair and impartial manner per the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Mr. Veinot be made whole.

The Union contends the Company has failed to meet the burden of proof required to sustain formal discipline regarding the allegations outlined above. In the alternative, the Union contends that Mr. Veinot's 30 day suspension is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter. It is also the Union's contention that the penalty is contrary to the arbitral principles of progressive discipline.

Accordingly, the Union requests the discipline be removed from Mr. Veinot's employment record, and he be made whole for all associated loss with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

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the circumstances, including significant mitigating factors evident in this matter. It is also the Union's contention that the penalty is contrary to the arbitral principles of progressive discipline.

The Company maintains that the discipline issued to Mr. Veinot for failing to remove the handbrake on the tail end car on May 27, 2016 was justified in all of the circumstances.

Further, the Company maintains that the investigation of Mr. Veinot was conducted in a fair and impartial manner and to date no grounds have been provided by the Union to indicate otherwise. The Grievor indicates his failure to remove the handbrake on the tail end car of his train in the investigation dated June 6, 2016. The Grievor's failure to remove the handbrake was detected at mile 35.4 of the Carberry Subdivision ultimately "resulting in delay to train."

FOR THE UNION:

(SGD.) D. Fulton

General Chairman

FOR THE COMPANY:

(SGD.) W. McMillan

Labour Relations Office

There appeared on behalf of the Company:

- W. McMillan – Labour Relations Officer, Calgary
- J. Bairaktaris – Director, Labour Relations, Calgary

And on behalf of the Union:

- M. Church – Counsel, Caley Wray, Toronto
- D. Fulton – General Chairman, Calgary
- D. Edward – Senior Vice General Chairman, Calgary
- W. Apsey – General Chair, Smiths Falls
- W. Edel – Local Chairman, Winnipeg
- S. Veinot – Grievor, Winnipeg

AWARD OF THE ARBITRATOR

The grievor was initially hired in 2004 in the Company's Engineering Services Department. He became a Conductor in 2007 and then qualified as a Locomotive Engineer in 2012.

On May 27, 2016, the grievor was working on the Carberry Subdivision on Train 411-29 (not 411-27 as indicated above), starting at 16:30. The train was headed westward between Winnipeg and Brandon, Manitoba. Before departing Winnipeg, the crew for train 411-29 performed their regular pre-departure duties. After retrieving the power from the shop track, the crew proceeded to the west end of the train where they tied on, coupled

the hoses and charged up the air brakes. The Car Department had left hand brakes applied to the west end of the track where the grievor had tied on. The grievor walked along the west side of the train and removed the handbrakes that had been applied.

The grievor was assigned to apply and test the Sensing and Braking Unit (SBU) on the last car at the end of the train, a Scale Test Car. The Scale Test Car is a smaller car used to calibrate railway scales. While performing the SBU test on the Scale Test Car, the grievor noticed that the brake shoes were retracted from the wheels at one end of the car on the north side. This confirmed to the grievor that the hand brake had been released.

It was explained that single rail cars typically do not have two hand brakes as found on a Scale Test Car. Only container rail cars with more than one platform (and the old cabooses) have two handbrakes installed on both sides of the car.

The grievor indicated in his statement that he was unaware that the Scale Test Car had two hand brakes:

Q 24: Do you understand that it is a good practice when you're handling a specific car to check the car for handbrakes or any other defect that may be apparent?

A: I agree that is a good practice, I didn't notice the handbrake, and I know by practice the carmen inspecting the track are required to place the handbrakes on the end where the engines tie on. I did find handbrakes and released them from the West end as expected. I also did observe that the brake shoe was away from the wheel on the North side so I did not have any other concerns. We also passed a scanner at mileage 13.4 without any alarms, as well as we had a pull by inspection by Trainmasters Barnes and Al Ross without exceptions noted. I also want to note that the scale test car actually has 2 handbrakes on it, one on the North side for the North side wheels and one on the South side for the South side wheels. I have never in my career seen a handbrake set up such as this, and I never at any time

during the SBU test had reason to go to the South side of the car. When we were stopped by the scanner the hot wheels were on the South side.

Train 411-29, as noted in the grievor's statement, then proceeded to a pull-by inspection by Trainmaster Barnes on the south side and Trainmaster Ross on the north side of the movement. It is not disputed that both Trainsmasters, in the normal course of their duties, would have inspected the train as it went by and radioed the results to the Conductor, in this case the grievor. They would have confirmed, according to the Union, that everything was in order, including the release of the hand brakes.

Train 411-29, as further noted above in the grievor's statement, passed a hot box at mile 13.4 and then a second one at mile 35.4. The hot box at mile 35.4 triggered an alarm bell on the tail end of the train. The crew stopped the train and started their inspection immediately to see what had caused the bell to ring.

While conducting his inspection of the stopped train, the grievor discovered that a second hand brake located on the south side of the Scale Test Car had been applied. The grievor removed the hand brake on the south side of the Scale Test Car and made sure it was properly released. There was no damage to the wheels of the Scale Test Car as a result of the failure to release the hand break on the south side of the Scale Test Car. The train carried on to Brandon without incident.

The Company noted in its submissions that the grievor confirmed at his interview his familiarity with all the relevant rules and regulations, including the CROR and the GOI.

In particular, the Company noted that the grievor acknowledged that he was familiar with GOI section 4, item 7.2, dealing with the release of hand brakes which reads:

- a) Hand brakes have the ability to provide far more brake shoe force than air brakes. To avoid damaging wheels, handbrakes must be fully released prior to moving equipment. Refer to T& E Safety Rule Book Item T-14 for additional information.
- b) Unless unintentional movement of the equipment can be prevented with the locomotive brakes, hand brakes must not be released until the air brake system is sufficiently charged and a sufficient Automatic Brake reduction made to prevent movement while the handbrakes are released.

The Company notes that the grievor spent a considerable amount of time around the tail end of the Car in order to conduct the SBU test. Given the relatively smaller size of the Scale Test Car, the Company submits that it is unlikely that the grievor would not have noticed that the brake shoes were also applied to the south side of the car had he been attentive and performed a proper inspection.

The Company further submits that the arbitral jurisprudence is clear that the failure to properly release handbrakes merits discipline. The Company noted the comments of the arbitrator in **SHP-637** where the potential consequences of failing to release brakes is set out:

Having reviewed the evidence, the arbitrator is satisfied that the grievor and his workmate did, contrary to their obligation as employees, failed to identify and correct the handbrake on a car within the body of train M30131-04 during the course of their inspection. *The fact that the handbrake on the car was not released did, it cannot be disputed, create a circumstance of some peril, as overheating of the wheel could have led to a collapse of the equipment and a possible derailment. Fortunately that was avoided by the vigilance of the Company's hotbox detector system. (italics added)*

The Company also submits that the likelihood of a derailment was similarly evident in this case. Indeed the facts, overall, support a finding that there was a higher potential for peril in this instance. The handbrake was applied on the tail end car where the potential to heat up is much greater than a brake that is left on elsewhere on the train. The Company submits that this was a serious error on the part of the grievor and deserves a meaningful disciplinary response. The thirty demerits imposed by the Company was not unreasonable under the circumstances.

The Union submits as an initial matter that the investigation was not fair and impartial. In particular, it notes that the Company did not provide any evidence as to what extent the Winnipeg Car Department was involved in applying the hand brakes to the tail end Scale Test Car. Nor was there any evidence provided about what the Trainmaster's observed as part of their pull-by inspection, or about the absence of a reading from the first hot box at mile 13.4.

The Company, in response, properly points out that no objection about the fairness of the investigation was raised in the Union's Ex Parte statement of issue. Further, I note that the Union's correspondence at the Step 1 Appeal and Step 2 Appeal also does not suggest any concerns about the fairness of the investigation. The Union also did not raise any specific objections when asked at the investigation if there were any concerns over the manner in which the investigation had been conducted. Although the investigation was not lengthy, it appears that the key issue of the grievor's involvement in the incident and his knowledge of the applicable rules was properly addressed. In my view, the

investigation meets the requirement, as noted in **CROA 2073** “...for an informal and expeditious process by which an opportunity is afforded to the employee to know the accusations against him, the identity of the accusers, as well as the content of their evidence or statements, and to be given the opportunity to provide rebuttal evidence in his own defence.”

Turning to the merits, I note that in **CROA 4381** (cited by Arbitrator Sims in **CROA 4621**), the Company had imposed a 10 day suspension for failing to properly apply a vertical wheel hand brake. Arbitrator Silverman in **CROA 4621** dealt with that offence, and a further offence for which the grievor in that case was dismissed, and substituted 20 demerits for the two offences. In **CROA 4553**, the Company’s assessment of 15 demerits was upheld where the grievor admitted that he missed a few handbrakes after inspecting the air brake application and performing a SBU test. In **SHP 637**, Arbitrator Picher upheld the imposition of discipline in a case where the grievor and his workmate failed to identify and correct a handbrake. Similar to the facts in this case, the hot box detector picked up the omission in **SHP 637**, thereby avoiding an equipment collapse and a possible derailment. Of note are his comments with respect to the disciplinary response to these types of infractions:

“While it is true that a written reprimand appears to be the presumptive discipline for the failure to release handbrakes, in Mr. Howie’s case this was a second occurrence within a period of two years, which would justify the greater level of discipline.

I accept the Company’s position on the importance of ensuring proper inspection and release of handbrakes, as outlined in GOI, section 4, article 2. I further accept that the grievor, who had been a conductor for almost ten years at the time of the incident,

had “...never in my career seen a handbrake set up such as this” (Q 24). On the other hand, as the Company accurately pointed out, the failure to release handbrakes is a slippery slope that may lead to a flat wheel and possible derailment. Similar to **SHP 637**, it was fortunate that the hot box detector system eventually picked up the error before any equipment damage occurred.

Under the circumstances, and given his responsibilities for the safety of the entire train as a crew member, it is my view that the grievor should have taken the step of walking around the tail end to see if there were any further brakes that required attention on the Scale Test Car. This was the last opportunity to ensure that all the brakes were properly released before the movement started westward. The two Trainmasters were not in a similar position to the grievor to do a close walk-around inspection of the Scale Test Car. Accordingly, the grievor’s failure to release the brakes that were engaged on the south side of the Scale Test Car merits discipline.

The 30 day suspension, however, is out of line with the typical disposition for this type of offence. The grievor had no recorded record at the time the discipline was imposed. He was honest and cooperated at the investigation. Given the presumptive discipline for a first offence of failing to release handbrakes, and bearing in mind the principles of progressive discipline, a written reprimand is the more appropriate response when all circumstances are considered.

The grievance is upheld to the extent that the 30 day suspension shall be removed from the grievor's record and substituted with a written warning. The grievor shall be otherwise made financially whole. I shall retain jurisdiction should a dispute arise with respect to the amount owing to the grievor.

February 25, 2019



JOHN M. MOREAU, Q.C.
ARBITRATOR