

IN THE MATTER OF ARBITRATION

BETWEEN

TEAMSTERS CANADA RAIL CONFERENCE (TCRC)
(the Union)

And

CANADIAN PACIFIC RAILWAY COMPANY (CP)
(the Company)

DISPUTE:

Appeal of the 20 day suspension assessed to Conductor Colin Commodore of Red Deer, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation Mr. Commodore was issued a 20 day suspension (10 days served, 10 days deferred), which was described as “For failure to properly release 3 points protection resulting in a rollback causing damage to equipment.

Summary of Rules Violated:

T&E Safety rule Book Section T-27 (Safe Work Procedure: Releasing 3-point protection)

T&E Rule Book Section 12 - 12.6 Shoving Equipment

T&E Rule Book Section 2 - General Item 2.2 a)

T&E Rule Book Section 2 - General Item 2.2 v)

CROR 106.”

UNION POSITION

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding all of the allegations outlined above. The Union further contends the discipline assessed is unjustified, unwarranted, and excessive in all of the circumstances, including 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 Union requests that the discipline be removed in its entirety, and that Mr. Commodore is made whole for all associated loss with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION

The Company does not agree with position of the Union.

The Company maintains the Grievor’s culpability was established following the fair and impartial investigation. The Grievor’s lack of intention to violate the rules violated does not negate the severity of the violation. Before discipline was assessed the Company duly considered all mitigating and aggravating factors.

With respect to the grievance process, the remedy for failing to respond is escalation to the next step, which the Company received and has responded to.

The Company maintains the assessment of a 20 day suspension with 10 days deferred was appropriate, warranted and just in all the circumstances.

Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion

FOR THE UNION:



Dave Fulton
General Chairman
TCRC CTY West

FOR THE COMPANY:



Chris Clark
Manager Labour Relations
Canadian Pacific Railway

March 02, 2022

Hearing: March 30, 2022 - By videoconference

FOR THE UNION:

Doug Edward – Sr. VGC, CTY West
Dave Fulton – GC, CTY West
Ryan Finsson – VGC ,CTY West
Colin Commodore - Grievor

FOR THE COMPANY:

Chris Clark, Labour Relations
John Bairaktaris, Director Labour Relations

AWARD

JURISDICTION

[1] The parties agree I have jurisdiction to hear and resolve this dispute with all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*. This is an Informal 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.

BACKGROUND

[2] The initial facts giving rise to this matter are that on September 13, 2019, the Grievor was called as Engineer Trainee working assignment A32-13 at the CN Interchange in Red Deer. While the assignment was attempting to lift the west track of the CN interchange, their movement rolled back and contacted yard locomotives at the north end of the yard.

[3] While at the controls of the Locomotive, with coach, Engineer Styles, in the Conductor seat, the Grievor made a first attempt to move forward (southward) which was unsuccessful. The movement travelled in the opposite direction (northward). Engineer Styles advised the Grievor to

apply air brakes to stop the movement while he went to investigate the 2nd unit which he found not loading properly.

[4] After a brief discussion with the Assistant Trainmaster, the crew attempted to cut off some cars in an effort to gain better momentum. On this second attempt, the movement again moved backwards contacting the stationary CN locomotives. When Engineer Styles returned to the lead locomotive, he noticed that the Grievor had not returned the generator field switch to the correct position after previously applying 3 point protection. This resulted in the 2nd unit not employing sufficient power and the reason for the roll back.

[5] The Company relies on CROA Cases 4630,4638,3845,3848 and 3844. The Union relies on Etobicoke General Hosp. and Nurses' Association (1977) 15 L.A.C. (2d) 172; CROA Cases 4492, 4622, 1677, 4620, 4630, 4687 and 4769.

ANALYSIS AND DECISION

[6] The Company maintains that a fair and impartial investigation was conducted on September 26, 2019. The investigation confirmed that the Grievor understood the requirements of T-27 Safe Work Procedure. Releasing 3-point protection the Grievor did not take care in determining how much room was available at the north end of the track. He was aware of the grade at the CN Interchange, and did not check to see if the power on his train was loading properly before making his second attempt to lift the track. Based on the findings of the investigation, the Grievor was assessed a 20-day (10 deferred) suspension on October 11, 2019.

[7] The Union maintains that a 20-day suspension is clearly excessive given the facts. It says the Form 104 contains many alleged violations that are simply not borne out on the evidence. The Company has improperly "piled on" and exaggerated the incident. It says the Company has failed to consider all the relevant mitigating circumstances as set forth in the grievance correspondence.

[8] The Company argues that, in addition to his carelessness, the Grievor acknowledged his requirement to be conversant and comply with all rules and when in doubt, always take the safest course of action. In the instant matter, it argues that it does not appear that the Grievor's culpability is in dispute, only the quantum of discipline assessed.

[9] The Union argues that the Grievor was in training at the time under the supervision and instruction of a Locomotive Engineer who received no discipline for the incident. The Grievor had not been at this location in the past three years and it was the first time as a Locomotive Engineer Trainee. Curtis Picher, Trainmaster, who attended the incident noted in his memo of September 14, 2019 that the Grievor was forthright and accountable for his failure to immediately know what was done wrong.

[10] As the Union submitted in the Grievance process, the Grievor was a Locomotive Engineer Trainee. Trainees can make mistakes. Supervising Engineers are provided to avoid those mistakes. That is why they have supervised training. The Union argues that the Company has been unfair in assessing discipline only to the Grievor for:

- The T-27 Safe work Procedure.
- Releasing 3-point protection
- Not determining how much room was available at the north end of the track.

[11] The Company's Book of Documents, Employee Report, and Accident Report sections indicates the individual actions of the Locomotive Engineer, the Grievor and the Crew in the

incident. However, I find it significant that regarding responsibility for determining how much room was in the track it indicates:

The **crew** was not aware how much room there was in track behind cars and did not go back to check. **Emphasis Added**

[12] Clearly the Company recognizes the responsibility of a Crew and the role of a supervising Locomotive Engineer for a Trainee. Those mitigating factors do not appear to have been considered in this case.

[13] The Union also argues that there was no intent to violate the rules. A review of the the Company's Book of Documents, Employee Report, and Efficiency Testing section indicates 294 Tests of the Grievor with a 98.9 pass rate. Prior to the incident of September 13, 2019 the Grievor passed a 3 Point test on January 1, 2019. Following the incident, the Grievor was again tested for the rule on January 28, 2020 by Curtis Picher the Trainmaster at the September 13, 2019 incident. He reported a pass of the rule in that test.

[14] Given all of the foregoing, I find the assessment of a 20-day suspension excessive. The discipline will be reduced to 15 demerits. The Grievor will be compensated accordingly.

[15] I remain seized with respect to the intent and application of this award.

Dated this 6th , day of June, 2022.

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

Tom Hodges
Arbitrator