

# IN THE MATTER OF AN ARBITRATION

BETWEEN:

**TEAMSTERS CANADA RAIL CONFERENCE**  
(the "Union")

- and -

**CANADIAN PACIFIC KANSAS CITY RAILWAY**  
(the "Company")

## **DISPUTE**

Appeal of the 20 Demerits assessed to Conductor William Ryan of Vancouver, BC.

## **JOINT STATEMENT OF ISSUE**

Following an investigation Mr. Ryan was assessed 20 Demerits on October 8, 2020 "For failing to maintain 3 points of contact while riding the platform of your locomotive commencing down the south B Lead in the Coquitlam Yard, Mile 111.9 Cascade Subdivision during your tour of duty on V94 on September 14th, 2020. A violation of T&E Safety Rule Book item T-24, Riding Equipment."

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

### **UNION POSITION**

The Union objects to the inclusion of Appendix B in the investigation as it is vague and lacking information.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above based on the lack of reference to 3 points of contact within Train & Engine Safety Rule Book T-24 paragraph 2 vs. paragraph 3 as Mr. Ryan was not on the side of equipment, on the ladder or in the stairwell.

The Union contends the discipline assessed is unjustified, unwarranted, and excessive  
The Union contends the Company has not considered the following mitigating factors:

1. Mr. Ryan only removed his hand for a brief moment to light a cigarette;
2. Rule T-24 lends to confusion;
3. Mr. Ryan committed to compliance; and,
4. No incident or injury occurred.

The Union requests that the discipline be removed in its entirety, and that Mr. Ryan 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 disagrees and denies the Union's request.

The Company maintains the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation. Discipline was determined following a review of all pertinent factors, including those described by the Union. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in the circumstances.

Based on the foregoing, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION:

Signed

Dave Fulton  
General Chairperson  
TCRC CTY West

April 30, 2023

FOR THE COMPANY:

Signed

Lauren McGinley  
Assistant Director, Labour Relations  
CPKC

**Hearing: By video conference. May 11, 2023**

**APPEARING FOR THE UNION:**

Ken Stuebing CaleyWray – Counsel  
Jason Hnatiuk TCRC – Vice General Chairman CTY West  
Doug Edward TCRC – Sr. Vice General Chairman CTY West  
Brad Wiszniak TCRC – Vice General Chairman CTY West  
Jeremy Quick TCRC – Local Chairman CT Division 320  
William Ryan – Grievor – Regina, SK

**APPEARING FOR THE COMPANY:**

Diana Zurbuchen, Manager Labour Relations  
Chris Clark, 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, William Ryan, began his employment with Canadian Pacific Railway as a Conductor in the Regina Terminal on September 10, 2018. The Grievor had also worked in Moosejaw and Coquitlam BC.

[3] On September 14, 2020, the Grievor was working as Conductor on Train V94 in Coquitlam from 17:30 hrs through to 01:20 hrs. At approximately 19:00 hrs that evening, Trainmaster Rebecca Tardiff observed the Grievor traveling westward in front of the tower while not maintaining three points of contact while riding on the lead locomotive of his movement.

**POSITION OF THE PARTIES**

[4] The Company maintains that the Grievor confirmed he knew and understood the requirements of him when reporting for duty.

[5] The Company maintains that the portion of the rule highlighted in yellow makes clear the applicability of the rule in this incident providing:

#### T-24 Riding Equipment

1. Use the side ladder of the lead end of equipment on the engineers side whenever possible and observe the direction of travel.
2. It is permissible to ride the platform of a locomotive, or other equipment with a designated riding platform (e.g. passenger cars).
3. It is permissible to ride the platform of the leading end of a tank car with the employees feet outside of the rail and body positioned outside of the handrail.
4. It is permissible to ride the end platform of a car only on the trailing end of a movement.
5. It is prohibited to move from one car to another car while moving. (unless equipment is designed for movement between cars i.e. locomotives ,passenger cars, rail grinding train, etc.)
6. Always maintain at least 3 points of contact using only designated handholds when riding equipment and ensure your body is facing the ladder or stairwell, prepared for slack action.
7. The following is prohibited, do not ride:
  - the lead end platform or front ladder of equipment except as noted in #3 above or when operating a handbrake on cars rolling under their own momentum;
  - on the deck of a flat car, bulkhead or centerbeam;
  - middle ladder on a tank car;
  - on any equipment while entering, inside, or leaving any building or structure;
  - on the roof of any rolling stock or on the lading of any car;
  - inside the end cage of equipment;
  - inside a gondola; or
  - between cars unless operating a handbrake on cars rolling under their own momentum.
8. Avoid riding on the bottom step of equipment when going over road crossings at grade.
9. When conditions permit ride on the opposite side of an adjacent track where equipment is present.



[6] The Company maintains that cause was clearly established to assess discipline following the fair and impartial investigation into the matter. The assessment of 20 Demerits was an appropriate outcome, given the culpability established and in consideration of the Grievor's short Company service. The Grievor confirmed in his statement, that he did not maintain the required 3 points of contact when he removed his hand in order to light up a cigarette, resulting in his violation of T&E Safety Rule Book, Item T-24 Riding Equipment.

[7] The Company acknowledged that the Grievor claimed he had a different interpretation of the rule as it sounds like it is talking equipment on a ladder or stairwell and does not mention how to ride the platform of the unit. However, the Company submits that his claim is without merit. As highlighted in the above, the rule is very clear that 3 points of contact must be maintained when riding equipment. There is no exception or exclusion to this rule, whether riding the platform of a unit or otherwise.

[8] The Company submits that it has put in place every possible safeguard to ensure compliance with the Rules and Instructions and there are measures set in an effort to achieve 100% adherence to avoid accidents and injury. It must be able to rely on all of its employees to independently exercise appropriate due diligence and judgment in the performance of their safety critical positions. This is especially critical for running trades employees as they often perform their duties largely unsupervised.

[9] Each day, employees must make decisions about how to do the right thing. The Grievor's actions demonstrate that he continued to ignore the rules governing his safety critical position, in spite of prior behavior correction through the disciplinary process. It says the facts are clear, as the Grievor confirmed in his statement, that he did not maintain the required 3 points of contact when he removed his hand in order to light up a cigarette, resulting in his violation of T&E Safety Rule Book, Item T-24 Riding Equipment. With culpability established that the Grievor failed to properly maintain his three points of contact while riding the moving equipment, the Company maintains that the 20 demerits assessed for this incident was appropriate and warranted, given the circumstances.

[10] CPKC submits that a review of the Grievor's disciplinary record in his only sixteen months of service, it is clear that he was beginning to build a record of non-compliance with Company rules and requirements as this was his fourth disciplinary infraction in his short tenure with the Company. He previously accepted an Admission of Responsibility and Formal Reprimand in connection with his missed call for duty on August 30, 2019. He was issued 20 demerits on January 28, 2020 for failing to ensure the route to be used was lined correctly, resulting in a run through switch. Less than two months later he was issued a 20 day suspension for failing to give properly car lengths during a shoving movement, damaging the stop block and a customer's unloading ramp. The Company maintains it has been fair and progressive in its approach to assessing discipline and as such, the 20 demerits assessed was neither excessive nor unjustified given the culpability established.

[11] The Union maintains that Mr. Ryan was subject to surreptitious monitoring by Trainmaster Rebecca Tardif. Ms. Tardif observed the crew traveling westward in front of the tower. Mr. Ryan was riding on the end platform of his locomotive, protecting the point. Trainmaster Tardif claims to have observed Mr. Ryan not maintaining 3-points of contact while riding the movement.

[12] The evidentiary record does not indicate how close or far Trainmaster Tardif was from the Grievor when making her observations. Moreover, her subsequent memo makes no mention of the duration of time for which the Grievor was alleged to have not maintained 3-points of contact. Trainmaster Tardif asked the crew to stop their movement and directed Mr. Ryan to come and speak to her about her observation. Mr. Ryan explained that at his previous terminal of Moose Jaw, the rule was not understood to be applicable when riding the end platform of a locomotive. Trainmaster Tardif coached Mr. Ryan on the application of the rule. Mr. Ryan provided his commitment to comply with the interpretation provided.

[13] During the investigation the Grievor was questioned regarding his understanding of what he said when the matter was brought to his attention by Trainmaster Tardif:

I had a different interpretation of the rule, T24 sub 6 sounds like it is talking equipment on a ladder or stairwell and does not mention how to ride the platform of the unit.

T-24 Riding Equipment

Always maintain at least 3 points of contact using only designated handholds when riding equipment and ensure your body is facing the ladder or stairwell, prepared for slack action.

I was riding on the platform of the locomotive and holding onto the railing and then I went to light a smoke where I took my hand off for a brief second

After the talk with Trainmaster Tardif, I reviewed the rules and saw where my confusion laid and I now understand that I need three points of contact riding the platform

[14] The Union argues that the Company responded to this grievance on January 20, 2021, declining the grievance. However, the grievance response speaks to another employee, Mr. Jones, but does not address Mr. Ryan, the requirements of Rule T-24 or explain the use of efficiency testing as an opportunity to assess discipline.

[15] The Union submits that the discipline stems from one single, brief incident. Mr. Ryan riding the end platform of the leading locomotive. Mr. Ryan was holding the handrail, save for momentarily removing his hand to light a cigarette. This is the sum total of the incident that the Company asserts justifies the penalty of 20 demerits or as the Union maintains a penalty that is 1/3 of a dismissal. It says that this disciplinary response is grossly excessive considering the nature of the alleged infraction. The Train & Engine Safety Rule Book T-24 paragraph 2 states: It is permissible to ride the platform of a locomotive. This paragraph does not mention any need for 3 points of contact when riding the end platform of a locomotive.

[16] When considering the interpretation of Train & Engine Safety Rule Book T-24 paragraph 6, the Union argues that the language focuses on ladders and stairwells stating: It refers to always maintain at least 3 points of contact using only designated handholds when riding equipment and ensure your body is facing the ladder or stairwell.

[17] Mr. Ryan was not riding on the side of the equipment, on the ladder or in the stairwell. As an overall submission in this matter, it is the Union's position that the Company has not established that Mr. Ryan acted in an egregiously unsafe fashion. The Grievor explained his good faith understanding, prior to the e-test, that he understood the three-points-of-contact requirement was specific to riding on a ladder or in the stairwell. The September 14, 2020 incident is completely absent distinguishing evidence of any injury, damage or otherwise any specific prejudice to the Company. This was the first recorded efficiency test failure for T-24. Mr. Ryan has no previous discipline with regard to riding equipment.

[18] The Union maintains that in the circumstances, there is no evidence that would elevate the matter to warranting any response other than corrective coaching. The September 14, 2020 incident presented the ideal opportunity for the Company to properly utilize the Proficiency test policy to identify and educate the employee on the very minor infraction.

[19] In reply to the Company's submission that the Grievor continued to ignore the rules governing his safety critical position, in spite of prior behavior correction through the disciplinary process is inaccurate and misleading. It says that the Grievor's record reflected discipline for one prior, unrelated operating rules infraction. There is no pattern, no "continuing to ignore" rules whatsoever and no prior discipline or failures for T-24 or 3 points of contact.

## **ANALYSIS AND DECISION**

[20] The Company maintains that cause was clearly established to assess discipline following the fair and impartial investigation into the matter and that the assessment of 20 Demerits was an appropriate outcome, given the culpability established and in consideration of the Grievor's Company service.

[21] The Company submits that it has put in place every possible safeguard to ensure compliance with the Rules and Instructions and there are measures set in an effort to achieve 100% adherence to avoid accidents and injury. It must be able to rely on all of its employees to independently exercise appropriate due diligence and judgment in the performance of their safety

critical positions. This is especially critical for running trades employees as they often perform their duties largely unsupervised.

[22] I find that in this case the Grievor is a short service employee who has chosen to work in multiple terminals in Canada to maintain his employment. Most recently he relocated from Saskatchewan to Coquitlam, BC. All of the discipline except an earlier attendance case were under Grievance and heard by this arbitrator on the same day that this grievance.

[23] I agree with the Company's efforts to ensure every possible safeguard to ensure compliance with the Rules and Instructions and there are measures set in an effort to achieve 100% adherence to avoid accidents and injury. I have personal experience riding across switches in yards and the resulting side to side shifting which requires an employee's attention to ensuring safety on a locomotive platform. This experience occurred most recently when riding and observing a proposed change to coal train operation from Sparwood to Golden BC. It was part of an arbitration process during which I was briefed on safety rules and procedure to ensure my safety before entraining the locomotives for an assignment in 2016. On that view of the assignment for the arbitration, I rode the lead locomotive for approximately seven hours.

[24] I agree with the Company's interpretation of the rule if it is in fact interpreted and taught to employees in that fashion of a consistent basis across Canada. The Grievor maintained it was not enforced by the Company, in this manner, in Saskatchewan. I find that the rule distinguishes between locomotives, equipment and cars. The application of the rule may be misunderstood subject to teaching and application.

[25] In this case Trainmaster Rebecca Tardif was observing the Grievor on September 14, 2020 during his tour of duty on V94. The Trainmaster brought the interpretation of the rule to the Grievor's attention immediately. In the Trainmaster's memo it stated:

Mr. Ryan was coached on always maintaining three points of contact while riding equipment or on the platform of the engine.

William understood the conversation and moving forward he will follow proper procedure about three points of contact while riding equipment.

[26] The Trainmaster's memo clearly indicated she took immediate action to correct the violation and coached the Grievor. It indicated that he understood and was allowed to return to work. He was not removed from service or told that the matter would be progressed further. However, on September 28, 2020 the Grievor received a notice of investigation for violation of the rule while on XTR RS2 not V94. The error was noted by the Grievor's Union representative at the investigation. On October 8, 2020 the Grievor was assessed with 20 demerits for the violation on V94.

[27] On November 22, 2020 the Union filed a grievance at Step 1 of the grievance process. The Company responded to this grievance on January 20, 2021, declining the grievance. However, the grievance response speaks to another employee, Mr. Jones, but does not address Mr. Ryan, specific failure or requirements of Rule T-24. It does not explain the use of efficiency testing as an opportunity to assess discipline when he had already been coached to the apparent satisfaction of Trainmaster Tardif. The Company declined the grievance on April 28, 2021. The Union submits that in its grievance response CP offers no answer to the Union's challenge regarding the assessment of formal discipline in the context of this specific efficiency test.

[28] The Union argues that the Company has failed justify the assessment of any discipline in the circumstances. The discipline stems from one single, brief incident of Mr. Ryan riding the end platform of the leading locomotive. Mr. Ryan was holding the handrail, save for momentarily removing his hand to light a cigarette.



[29] After carefully reviewing the submissions of the parties, I agree with the interpretation of the rule as proposed by the Company and violation of the rule as interpreted by the Company may result in discipline subject to the following issues applicable to this grievance.

[30] The Company submits that the Grievor was assessed the reasonable quantum of discipline and that he was also provided a fair and impartial investigation. The Company relies on *Sheet Metal Workers' International Association, Local 473 v. Bruce Power LP*, 2009 CanLII 31586 (ON LRB) in support of its position.

[31] In *Sheet Metal* supra, Arbitrator Gee, in contrast to this dispute, found Bruce Power's rule was clearly stated. The grievors were all aware of their conduct being in violation of the rule in question. The grievors had all taken training on the Bruce Power Code of Conduct yearly for the past several years. She reviewed company training material. She noted the rule audit of 5000 employees in contrast to the 6 employees who were disciplined by Bruce Power.

[32] The language of the rule in the case before me sets out distinction between levels of compliance required on locomotives, equipment, cars and stairwells. I find that the language can be confusing unless clearly explained to new employees in the initial training they receive. It can also be confusing if enforced differently in different locations, as explained by the Grievor regarding his experience in Saskatchewan. No evidence was provided to cast doubt or indicate that his explanation or his understanding and experience was untrue.

[33] The Company's evidence is that an efficiency test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge. Testing is to ensure rules and operating practices are clearly written and understood.

[34] In this case Trainmaster Rebecca Tardiff observed the Grievor traveling westward in front of the tower while not maintaining three points of contact while riding on the lead locomotive of his movement. The TM took immediate action coaching the Grievor and indicating that he then understood the requirement of the rule. She did not question the validity of the Grievor's original understanding. As a result I have difficulty with the Company's decision to conduct a further investigation after the coaching without hearing further from Trainmaster Tardiff.

[35] My concern is increased further by the Company's error in the notice of investigation stating the incident was in connection with XTR RS2 rather than the actual V94. It is further increased by the Company's error in its grievance on January 20, 2021, declining the grievance while addressing the conduct of employee, Mr. Jones. It did so without addressing any of the issues raised in the grievance on behalf of Mr. Ryan. As a result I cannot find that the Company has met its burden to establish the assessment of 20 demerits in addition to the coaching provided by the Trainmaster at the time of the incident.

[36] In view of the foregoing the grievance is allowed and the discipline will be remove from the Grievor's discipline record.

[37] I remain seized with respect to the application and interpretation of this award.

Dated at Niagara-on-the Lake, this 29<sup>th</sup> day of August, 2023.

A handwritten signature in black ink, appearing to read "Tom Hodges", is written over a light blue grid background.

Tom Hodges  
Arbitrator