

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

CASE NO. 5206

Heard in Calgary, September 11, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 10-day suspension assessed to Conductor Robert Self of Lethbridge, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation Mr. Self was assessed a 10-day suspension on July 26, 2023, for the following:

“In connection with your tour of duty on AKRL2LS, more specifically with your involvement in the run through switch on the east end of track 15 which was not properly lined for route on July 13, 2023, while employed as a Conductor in Lethbridge AB.

Summary of Rules violated:

- Rule Book for Train & Engine, Section 9, Subsection 9.1. Non-Main Track.”

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 the Company's failure to respond to the Step One appeal is a violation of Article 40.03 of the Collective Agreement and the Letter Re: Management of Grievances & the Scheduling of Cases at CROA.

The Union contends the Company has failed to meet the burden of proof or establish culpability related to the allegations outlined above.

The Union contends the Company has failed to consider mitigating factors contained within the record.

The Union further contends the discipline assessed is unjustified, unwarranted, arbitrary and excessive in all the circumstances. It is also the Union's contention that the penalty is contrary to the arbitral principles of progressive discipline. The Union disputes any reference to the Company's Discipline Policy, and the manner in which it has been in the instant matter.

The Union requests that the discipline be removed in its entirety, and that Mr. Self 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 disagrees with the Union's allegations pertaining to the local grievance response, Consolidated Collective Agreement Article 40.04 is clear in that the remedy for failing to respond is escalation to the next step. Based on the submission of the Union's final step

grievance, it is also clear the Union acknowledges Article 40.04 and has progressed to the next step of the grievance procedure.

The Company maintains the grievor's culpability as outlined in the discipline letter was established following the fair and impartial investigation.

Discipline was determined following a review of all pertinent factors, including those described by the Union.

Contrary to the position advanced by the Union, the Company maintains there is nothing arbitrary about the discipline assessed under the Company Hybrid Discipline & Accountabilities Guidelines. Violations are clearly listed and, following the fair and impartial investigation into this matter that determined culpability for the violations listed in the discipline letter, the grievor was assessed discipline in accordance with these Guidelines.

The Company's position continues to be that the discipline assessed was just, appropriate and warranted 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:
(SGD.) D. Fulton
 General Chairperson

For the Company:
(SGD.) F. Billings
 Director Labour Relations

There appeared on behalf of the Company:

A. Hinn	– Labour Relations Officer, Kansas City
S. Oliver	– Manager Labour Relations, Calgary
A. Weed	– Director Labour Relations, Kansas City

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Hnatiuk	– Vice General Chairperson, CTY-W, Mission
D. Larente	– Local Chairperson, CTY, Lethbridge

AWARD OF THE ARBITRATOR

Background, Issue & Summary

- [1] At the time of the events leading to this Grievance, the Grievor was employed as a Conductor in Lethbridge, Alberta. He had received his Conductor qualification on May 16, 2023.
- [2] On July 13, 2023, the Grievor was working as a Yard Service Helper on assignment AKRL2LS in Lethbridge. His crewmate was Yard Service Employee Brian Friesen, who was also the Foreman on that tour of duty.
- [3] At approximately 00:25 that day, at the start of this tour of duty, the switch on track 15 (the "Switch") was run through.
- [4] At the time of the run-through, YSE Friesen was operating the RCLS controls and the Grievor was on the foot well, preparing to detrain to line the switch.
- [5] The issues between the parties are:

- a. Does the Grievor have culpability for this run-through switch? Including
 - i. Did the Company expand the grounds for dismissal from its Form 104 by arguing the Grievor failed to properly communicate with his crewmate? and
 - b. If so, was a 10 day suspension just and reasonable discipline?
 - c. If not, what other discipline is just and reasonable and should be substituted by an exercise of this Arbitrator's discretion?
- [6] For the reasons which follow, the Company improperly expanded the grounds for dismissal by maintaining that the Grievor did not properly communicate to his crewmate. Even if they had not done so, however, the Grievor would not have been found culpable for this run-through switch.
- [7] Given that finding, it is unnecessary to address the Union's other arguments regarding the Company's failure to respond to the Grievance.

Analysis & Decision

- [8] The facts are not in dispute:
- a. Prior to the run-through, the Grievor and Mr. Friesen were both positioned on the platform of the locomotive.
 - b. Mr. Friesen was operating the RCLS, which was controlling the locomotive.
 - c. The Grievor noticed the switch was not lined for the movement. YSE Friesen admitted he did not notice the Switch was not lined for their movement.
 - d. YSE Friesen's explanation for not noticing the Switch was not lined was that he was "*thinking of future moves and did not realize that the track 15 switch was not lined for my movement*" (at Q/A 18).
 - e. Approximately three (3) cars away from the Switch, the Grievor stated to YSE Friesen that "*we need to get this switch*". That comment apparently did not cause YSE Friesen to look at that switch and to notice that the track 15 switch was not lined for the movement.
 - f. Neither did YSE Friesen make any comment back to the Grievor after the Grievor said "*we need to get this switch*".
 - g. Meanwhile, the Grievor went to the bottom of the step well to prepare to detrain.
 - h. YSE Friesen did not stop for the track 15 switch and it was run-through.

- i. YSE Friesen's explanation in his Investigation was:
- "I misunderstood this and I slowed down to 4 MPH for Conductor Self to Detrain. Not realizing at any point that the switch was against us because I thought he meant we had to line this switch back to normal once we had passed it to line us back for the lead for future moves"* (at Q/A 25).
- [9] The Company did not at any point in the Grievance procedure maintain that the Grievor did not properly communicate to his crewmate regarding this Switch. Neither did it suggest in its Form 104 that the Grievor failed to properly communicate to his crewmate. There is in fact rules relating to communication as between crewmates. Those rules were not set out in the Form 104.
- [10] The Union maintained the Company expanded its grounds for discipline by relying on the issue of communication at this hearing.
- [11] This argument is persuasive. The Grievor is entitled to know and understand the basis for the Company's discipline, as is the Union. It is well-settled in arbitral jurisprudence that the grounds for discipline cannot be expanded at a hearing: *Re USW and Aerocide Dispensers Ltd.* (1965) 15 L.A.G. 416. At p. 426.
- [12] The Company must rely on the grounds for dismissal which are set out in the Form 104. The Form 104 which sets out those grounds – in conjunction with the Investigation – aids the Union in determining how best to defend the Grievor against the allegations made.
- [13] The Grievance can be resolved on that basis alone and must be upheld. At this late point, the Company cannot maintain the Grievor failed to properly communicate with his crewmate.
- [14] However, *even if* the Company had properly raised lack of appropriate communication as a basis for discipline in its Form 104, this Grievance would still have been upheld.
- [15] CROR Rule 106 states:
- All crew members are responsible for the safe operation of movements and equipment in their charge and for the observance of the rules. Under conditions not provided for by the rules, they must take every precaution for protection. A utility employee becomes a crew member when working with any movement.*
- [16] Given that Rule, the Company is correct that even though he was not at the controls, the Grievor had a responsibility for the safe operation of this movement, as a member of this crew. However, that principle does not resolve the issues in

this Grievance. The question raised by this Grievance is whether the actions taken by this Grievor to communicate that the crew needed to “*get the switch*” amounted to his taking “*every precaution*” to protect this movement, in these circumstances.

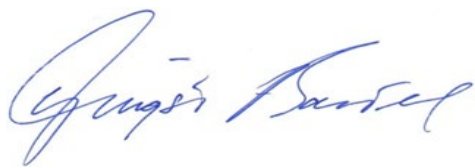
- [17] In my view, it did.
- [18] The Company bears the burden for establishing culpability. Even if it had raised the appropriate ground in its Form 104, that burden would not have been met in this case.
- [19] I cannot agree with the Company that the *fact* that a run through occurred supports that the Grievor did not take the appropriate action. That result does not necessarily follow. The Grievor is only one member of a two-man crew. The Grievor may take all reasonable measures he can take; and – given that he is not at the controls – those actions may still not result in avoidance of an accident.
- [20] The Company maintained the Grievor’s communication was unclear and could have been reasonably misunderstood. For several reasons, that argument is not compelling, either.
- [21] First, if the Company maintains the Grievor did not properly communicate that this Switch needed to be lined, it is incumbent on the Company to indicate what terminology *should* have been used. While the Company pointed out the Grievor was fresh from his training, it did not provide any evidence of any particular terminology he was trained to use when communicating that a Switch was to be lined. As the Union argued, there was no “*magic words*” in evidence that the Grievor should have said.
- [22] Second, YSE Friesen indicated he thought the Grievor meant to line the switch *after* the movement proceeded through it. That explanation is not compelling or reasonable. It does not serve to have the Grievor “*share the blame*” for the fact Mr. Friesen was not paying attention. in this industry there is a term for lining a switch back *after* a movement proceeds through it, which is to “*restore*” a switch. The Grievor did not say “*we have to restore this Switch*”; which would support the Company’s argument that responsibility for Mr. Friesen’s misunderstanding should be shared with the Grievor. Instead, the Grievor used the words “*get the switch*”, which does not support YSE Friesen’s misunderstanding.
- [23] Third, the switch was there to be seen by *both* crew members. They were standing next to each other on the locomotive platform. YSE Friesen does not explain why he did not “look” at the Switch when the Grievor made his statement. That would have been the appropriate course of conduct. His explanation of “thinking of future moves” does not go any distance to explain why he did not look at the Switch that

was there to be seen and realize it was not properly lined for the movement. The Grievor's statement should have triggered that type of reaction by YSE Friesen, at the very least. Had YSE looked at the switch that was there to be seen, he would have noticed it was not properly lined. His explanation does not support the Company's argument that the Grievor's comments were unclear and could be reasonably misunderstood.

- [24] While the Company argued the Grievor bore responsibility as he should have also yelled "*stop*", considering all of the details and the timing of how far the train traveled, that argument is not compelling. By the time the Grievor would have determined that YSE Friesen was not going to stop the movement, it would have been too late to avoid this run-through by any such statement.
- [25] As YSE Friesen did not make any comment to the Grievor, it was reasonable that the Grievor would consider YSE had seen the switch he had already seen by standing next to him, and would be stopping the train down so the Switch could be lined. It was YSE Friesen who bore responsibility for the fact that step was not taken and the run-through occurred. I am satisfied the Grievor's comment complied with Rule 106 for taking every precaution to protect this movement.
- [26] The Grievance is upheld. The 10 day suspension is vacated. The Grievor is to be made whole for his losses.

I retain jurisdiction to address any questions regarding the implementation of this Award; to correct any errors; and to address any omissions, to give it its intended effect.

October 7, 2025



CHERYL YINGST BARTEL
ARBITRATOR