CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5207

Heard in Calgary, September 11, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Conductor Robert Self of Lethbridge, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation Mr. Self was dismissed on February 22, 2024, for the following: "A formal investigation was conducted on February 14, 2024 in connection with "your tour of duty as the return-to-work driver on February 10, 2024 and the derailment on A- Track." Following the formal investigation, your culpability was established with the CK31-10 shove movement which resulted in hard coupling onto cut of cars at 13 mph derailing 11 cars on February 11, 2024. A violation of the following:

[1] Rule Book for T&E Employees section 2, Item 2.2 (a)
[2] Rule Book for T&E Employees section 12 Item 12.3
[3] GOI Section 13 Item 1.6 (a)"

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 that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. For these reasons, the Union contends that the discipline is *void ab initio* and ought to be removed in its entirety and Mr. Self be made whole.

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 submits that Mr. Self was wrongfully held from service in connection with this matter, contrary to Article 39.06 of the Collective Agreement.

The Union requests that the discipline be removed in its entirety, and that Mr. Self be reinstated without loss of seniority and benefits and 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.

Company Position

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 disagrees and denies the Union's request that the discipline be removed and that Mr. Self be reinstated and made whole.

The Company maintains the grievor's culpability as outlined in the discipline letter was established though the presentation of credible evidence through a 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, Issues and Summary

[1] The Grievor is a short-service employee, based in Lethbridge, Alberta. He was hired in January of 2023. He became qualified as a Conductor in May of 2023.

[2] This is the second of two Grievances heard relating to this Grievor, at the September 2025 CROA Session. Both Grievances relate to incidents in his first year of service. In the first Grievance, **CROA 5206**, the Grievance was upheld and a 10 day suspension was vacated.

[3] The incident underlying this second Grievance took place on February 11, 2024.

[4] On that date, the Grievor was working modified duties driving a Company vehicle as a crew bus driver within the Lethbridge terminal. No details were provided by either the Company or the Union as to what the Grievor's modifications were.

[5] On that day, CK31 yard crew was required to pull 63 cars out of track 5 and make a joint in A track.

[6] Given communication difficulties between the RCLS Operator Control Units in that Yard if they were too far apart, the Grievor was assisting the crew of CK31 by providing car counts.

[7] It was not disputed the crew had permission for the Grievor to assist them in protecting the point of this movement, given these communication difficulties. It is also not disputed the Grievor provided the car counts for this joint from his vehicle.

[8] While the evidence was the Grievor made car counts in quick succession and told the crew they were coming in "hot" or too fast, a collision ultimately occurred. The partial download evidence demonstrated the coupling was attempted at approximately 13-14 mph. As a result, a number of cars derailed, although there was no direct evidence of the extent of that derailment.

[9] At the Investigation, the Union requested full disclosure of all evidence which "*has been utilized by, or is in the possession of the company, and which may have a bearing on determining responsibility*".

[10] That information was not provided to the Union. Instead, incomplete download information was provided. The Union argued the incomplete download evidence it received "*does not indicate how the yard crew handled the movement, nor does it specify how far the movement travelled, the selected speed, or which brake was used*" (at para. 67). It further argued it was "*impossible to determine if and when the train brake was applied from the information provided. This inability to verify*

the crew's response to inter alia, Mr. Self's car counts and communications that they were coming in hot" (at para. 70).

[11] The Union raised a preliminary issue that the Investigation was not fair or impartial as incomplete download evidence was provided.

[12] The issues between the parties are:

a. Was the Investigation process fair and impartial?

b. If so, was culpability established for discipline?

c. If so, was dismissal a reasonable disciplinary response? and, if not

d. What discipline should be substituted by the exercise of this Arbitrator's discretion?

[13] For the reasons which follow, the Union's preliminary objection is upheld. The Grievance is allowed. The Investigation process was not fair or impartial, given that incomplete download evidence was provided to the Union, without an explanation by the Company for why certain important evidence was not included.

[14] The dismissal is *void ab initio* and so vacated, regardless of whether it was warranted or not. The Grievor is to be reinstated and made whole for any losses.

Analysis and Decision

Arguments

[15] The Union maintained a preliminary objection that, as evidence was not provided, the Union was denied his rights to "*meaningfully assess the available evidence*". It argued this lack of evidence rendered the discipline *void ab initio.* Alternatively, the Union maintained the Grievor was not responsible for the collision or derailment. It argued he had provided accurate car counts, and that he told the crew on more than one occasion that they were coming in too fast, given its tonnage. It argued the speed of the movement was the causal factor of the collision and not the Grievor's car counts. It argued dismissal was excessive discipline for counting cars from a vehicle.

[16] At the hearing, the Company representatives had no explanation for why the complete download evidence was not provided. The Company maintained that culpability was established through a fair and impartial process. It argued that 13 mph was "*ridiculously fast*" for this shove movement. It pointed out the Grievor had admitted to the rule violation for protecting the movement within a vehicle; and was a short-term employee. It argued his conduct was inexcusable and that dismissal was warranted, given that he had committed two rule violations in his short service.

[17] It should be noted that as **CROA 5206** vacated one of those incidents of discipline, the Grievor did not have any discipline on his record at the time of these events.

[18] The Company also pointed out that an appropriate job briefing was not conducted. It urged that this crew should have discussed how the Grievor was going to obtain car counts, for eg. "*I will go down to "X" and you bring the train down that far; then I will got to "Y*", etc., so the Grievor would not lose situational awareness, which it argued occurred in this case. It argued that had a proper job briefing been done by this crew, the shove could have been done safely. While it noted the Grievor's remorse, it maintained dismissal was warranted.

Analysis

[19] The evidence established the Grievor provided car counts to this joint on several occasions, without being able to see the joint; that he lost visibility of the tail end of the shove movement (at Q/A's 26-30); and that he did not get out of the vehicle to observe the movement and make the coupling, when he reached the joint; but had "*turned around and looked out the back window*" (Q/A 30-33).

[20] Providing car counts from a vehicle is a breach of Section 12.3(a)(i) of the *Rule Book for Train and Engine Employees*: *"Employees are prohibited from…providing shove protection from within a vehicle".*

[21] The Grievor failed to exit his vehicle to observe the movement; lost visibility of the tail end of the movement; and did not discuss with his crewmates how this length of movement would be counted by him.

[22] However, there is also an important question of process in this dispute. That question must be addressed before assessing the Grievor's conduct.

[23] The importance of the Investigative process to this expedited arbitration process has been emphasized by multiple Arbitrators in this industry. Very recently, in **CROA 5201**, this Arbitrator stated:

> *In the expedited arbitration process overseen by this Office, the Investigation process holds an importance which is unmatched in other industries. Combined with the Grievance Procedure, the Investigation process serves to create the evidentiary record for the Arbitrator, given that witness evidence in this process is rare.*
>
> *Having a factual record created by the parties allows multiple cases to be heard each day of the three-day monthly CROA session, which gains considerable efficiencies for the parties, in resolving their disputes.*
>
> *However, it is also well-accepted by Arbitrators in this industry and appointed by this Office that - given its importance - the Investigation process must be conducted in a manner which is both fair and impartial:*

> ***CROA 4866****. Both the Collective Agreement and arbitral jurisprudence have developed the elements of such a process (*at paras 42 to 44).

[24] It is well-accepted in this industry that the "*requirement of a fair and impartial investigation is a substantive right cast in terms of a mandatory obligation*": **CROA 1561.**

[25] Due to its importance to arbitral decision-making, Arbitrators are careful to guard the integrity of the Investigative process.

[26] As noted by Arbitrator Picher in **CROA 3322** *"[i]t is well settled that a violation of these provisions amounts to the denial of a substantive right, the consequence of which is to render any discipline void an initio, regardless of the merits of the case*" (at p. 4); see also *Teamsters Canada Rail Conference v. Canadian national Railway Company* 2021 SKCA 62, upholding the Arbitrator's decision in **CROA 4558**, which also involved a lack of disclosure to the Union.

[27] In **CROA 3322**, the Arbitrator discussed the reason for this result as follows:

> [*t]he reason for that firm rule is to safeguard the integrity of the expedited grievance and arbitration process established within the railway industry and the Canadian Railway Office of Arbitration.* (at p. 4).

[28] He also stated:

> *Needless to say, irregularities at the investigation stage, particularly those which depart from the standard of full and fair disclosure…have the inevitable effect of undermining the integrity of the entire grievance and arbitration process so vital to the interests of both parties* {at p. 5).

[29] In this case, the Company did not dispute that the download provided to the Union was incomplete. In particular, that download was missing key data on the air brake system.

[30] The Company representatives at the hearing were not aware of the reason why the full download evidence was not provided to the Grievor as part of the Investigation.

[31] The download evidence in this case is important information which has a bearing on the Grievor's responsibility for this accident. The Grievor maintained he gave the appropriate car counts and it was the *crew* who was operating the Train too quickly, who was responsible for this collision. The information from the train's download for when and how the brakes were applied to the Train – to verify how the crew responded to the Grievor's car counts – is important and key information

to determine whether the Grievor was also responsible for the collision which occurred.

[32] That download evidence was incomplete and was not provided to the Union when it was requested. The Company was required to either provide that evidence, or to explain why it could not be provided.

[33] Given the importance of this information and the failure of the Company to explain why it was not provided when requested, the Investigation was not fair or impartially conducted.

[34] The discipline which arose from that failed Investigatory process is rendered *void ab initio.*

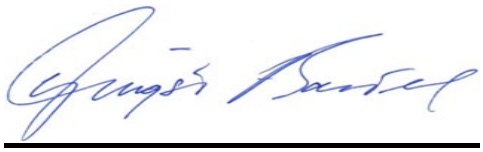
[35] Since this Arbitrator has upheld the Union's preliminary objection, it is not necessary to address the Union's alternative position that the termination of the Grievor's employment was unjustified; or the Company's arguments that dismissal was not excessive. The discipline cannot stand, regardless of the merits. .

[36] While the Grievor is to be reinstated, he should not take from this finding that this Arbitrator did not have significant concerns with how he conducted himself on February 11, 2024. This finding is a determination that evidence was not appropriately provided to the Union as required in this expedited arbitration regime; and not a determination the Grievor acted appropriately.

[37] The Grievance is upheld. The discipline has been rendered *void ab initio* as the result of an unfair Investigatory process.

[38] The Grievor is to be reinstated and made whole from his losses.

Jurisdiction is reserved for any questions arising from this remedial direction; for any questions involving the implementation of this Award; to correct any errors; and to address any omissions, to give it the intended effect. Should remedial direction be required, the Office is directed to schedule that matter on an expedited basis, at a Session over which this Arbitrator presides.



October 7, 2025

CHERYL YINGST BARTEL
ARBITRATOR