

IN THE MATTER OF AN AD HOC ARBITRATION
BETWEEN
TEAMSTERS CANADA RAIL CONFERENCE (TCRC)
And
CANADIAN PACIFIC RAILWAY COMPANY (CP)

DISPUTE

Appeal of the 20 Demerits assessed to Conductor Craig Fossum of Calgary, AB.

JOINT STATEMENT OF ISSUE

Following a formal investigation, Mr. Fossum was issued 20 Demerits on April 7, 2021 for the following:

In connection your tour of duty on Train 201-25, specifically the recorded rule violation by Trainmaster Mike Diduck whereby you failed to remove handbrakes off train on February 26, 2021; a violation of Train & Engine Safety Rule Book T-14 Hand Brakes.

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

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 that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. The Union contends:

- Mr. Fossum was the only member of the crew formally investigated and disciplined regarding the failure to remove hand brakes.
- The investigation was held 27 days after the fact.

The Union contends the discipline assessed is discriminatory and grossly excessive in all of the circumstances, including mitigating factors evident in this matter including:

- After making the coupling, Engineer Watters requesting Mr. Fossum inspect the mid-train remote locomotive to ensure the Engineer's seat and automatic brake handle were properly secured, possibly contributing to Mr. Fossum forgetting to remove the hand brakes.
- The movement was brought to a stop almost immediately, travelling on half a car length. No incident occurred.
- Mr. Fossum took ownership of the mistake, expressed remorse, and provided his commitment to being more focused on his performance.

The Union submits the Company has engaged in the unreasonable application of the Efficiency Test policy and procedures, resulting in the discriminatory and excessive assessment of discipline.

With respect to the Company's objections regarding:

- the alleged vagueness of the Union's request that the grievor be made whole,
- the Union's positions remain unchanged. The Union further considers these matters to be res judicata.

The Union requests that the discipline be removed in its entirety, and that Mr. Fossum is made whole for all associated loss with interest.

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 the fair and impartial investigation – the Company simply cannot agree with the Union's contentions to the contrary. Discipline was determined following a review of all pertinent factors, including those that the Union describe as mitigating. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances.

In regards to the Union's allegations that the statement was not fair and impartial, the Company cannot agree and moreover the Union did not object during the statement; to object only during the grievance procedure unfairly prejudiced the Company.

Regarding the Union's allegation on the proficiency/efficiency test policy, this matter has been adjudicated repeatedly at CROA. The Company maintains that this policy has been properly applied and in no way resulted in discriminatory or excessive discipline.

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.

Without precedent or prejudice to the Company's aforementioned position, it is incumbent on the Union to provide detailed information on alleged lost wages, benefits, and interest. The Company cannot properly respond to this request when the Union is vague and unspecific on what constitutes made whole.

FOR THE UNION:



Dave Fulton
General Chairperson
TCRC CTY West

FOR THE COMPANY:



Francine Billings
Asst. Director, Labour Relations
Canadian Pacific

April 3, 2023

Hearing: April 12, 2023 - By video conference

APEARING FOR THE UNION:

Ken Stuebing, Counsel, Caley Wray
Jason Hnatiuk, VGC CTY West
Doug Edward, Sr. VGC CTY West
Craig Fossum, Grievor

APEARING FOR THE COMPANY:

Allan Cake, Manager Labour Relations
Lauren McGinley, Assistant Director 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. The parties have agreed that I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

BACKGROUND

[2] The Grievor, Craig Fossum, commenced his employment with the Company on December 3, 1994. Over the course of his career with CP, Mr. Fossum worked in Thunder Bay, Moose Jaw, Smiths Falls and Calgary.

[3] On February 26, 2021, Mr. Fossum was working in Alyth yard Calgary as Conductor on Train 201-25. During his tour of duty he travelled lite engines to lift a cut of railcars and proceeded to double up his train. The Grievor cut the train line in, got in a crew bus which drove him to the headend of the train where he prepared for departure out of the yard. As the train was departing, qualified employees performed a pull by inspection. During the inspection, it was discovered that the portion of cars still had the handbrakes applied. The train was brought to a stop, the handbrakes were removed, and the train continued to depart.

[4] The Company maintained that the Grievor did not release all of the handbrakes on the cars he lifted for his train nor did he check two cars past the last released handbrake on those cars prior to getting into the crew bus. Mr. Fossum was provided with notice to appear at an investigation on March 25, 2021.

SUBMISSIONS OF THE PARTIES

[5] The Company submits that during the Grievor's statement, he confirmed that he knew and understood the rules he was to be governed by as a Conductor. More specifically, GOI Section 4, Item 2.4 Releasing Handbrakes at Q&A 31 as well as T&E Safety Rule Book T-14 Hand Brakes. When asked whether he released all of the handbrakes on the cars in PT03 he stated "No". When asked if he checked two past the last handbrake released in PT03, he stated "No". As a result, the Grievor violated GOI, Section 4, Item 2.4 and T-14 of the T&E Safety Rule Book.

[6] The Grievor held the position of Conductor and had failed to release all hand brakes on his train causing a delay. The Grievor left three handbrakes partially on in the middle of the train. Hand brakes left on can cause damage and potential for derailment.

[7] Based on the totality of the evidence and the Grievor's own acknowledgment, the Company maintains that the Grievor was culpable for violation of the aforementioned rules that those violations warrant some form of discipline, and that the discipline assessed was reasonable in all the circumstances.

[8] At the time of this issuance of discipline, the Grievor had a formal reprimand and fifteen (15) demerits of active discipline on record, meaning he was at Step 2 in progressive discipline handling for non-major infractions. In accordance with the Hybrid Discipline & Accountability Guidelines, the Grievor was properly issued twenty (20) demerits for his third non-major infraction on record. The Company maintains that the evidence provided in the notice to appear or during the statement was not objected to within nor was it mentioned in the grievance correspondence or the JSI.

[9] The Company maintains that the Union's statement that this incident is completely uncharacteristic of the Grievor is inconsistent with a review of the Grievor's discipline record in both the Company and the Union's submissions. At the time of this assessment of discipline, April 7, 2021, the Grievor was at the 3rd step in progressive discipline for non-major infractions with an AOR Formal Reprimand and 15 Demerits active on his record. In accordance with the principles of progressive discipline and the Company's Hybrid Discipline & Accountability Guidelines, the Grievor was appropriately issued 20 Demerits for this infraction.

[10] The Union acknowledged that the Grievor forgot to remove the handbrakes from track PT03 after making the coupling and inspecting the mid-train remote. Train 201-25 was brought to a stop and handbrakes were removed, then the train continued with its departure. It says there was no damage to any equipment as a result of this brief incident.

[11] The Union argues that nearly a month after this incident, Mr. Fossum was summoned to appear at an investigation. Though referenced in the Notice to Appear, the Company did not include the Rule Book for Train and Engine Employees in the Investigation. Nor did it reference this Rule Book at any time in the investigation.

[12] The TCRC maintains that the Company did not provide any evidence of any damage to the cars while departing P-Yard. Nor is there a memo from Road Foreman Hearld who was present. At his statement, Mr. Fossum acknowledged that Mr. Diduck's memorandum was an accurate depiction of events. He confirmed Mr. Diduck's memo step by step during his statement. The memo provided:

Memo to File

Craig Fossum - 688314

Handbrakes not released ex PT03 for train 201-25

March 24, 2021

At approx. 1330k on Friday, February 26th, Mr. Fossum was working as the conductor on 201-25 at the west end of P-yard. Required work event consisted of coming lite engines ex PT03 to PT08 to perform a planned headend lift of railcars ex PT08, and lifting the track back to PT03 which was the tailend thru portion of the train that had previously tied down in PT03 for the incoming glycol to receive it's S&M #1 brake test. Upon completing the double up back onto PT03 and confirming the joint had been made, conductor Fossum cut the train line in. After cutting in the train line, conductor Fossum got into a crew bus and proceeded up to his headend. With qualified personnel in position to perform a pull by inspection of 201-25's departure it was found that the railcars still had

the handbrakes applied on the portion of railcars coming out of PT03. Train was brought to a stop and handbrakes were removed and train then continued with their departure. Thanks,

Mike Diduck
Terminal Trainmaster – Calgary

[13] The Union maintains that the Grievor was forthright in admitting that, owing distractions, he inadvertently neglected to check and release the handbrakes in PT03. Mr. Fossum notes that their train “was brought to a stop less than a car length as the brakes were discovered within seconds of starting to pull”. The Grievor explained that the crew was instructed to stop the train. Road Foreman Hearld and Austin Bucholtz removed the handbrakes. Road Foreman Hearld then instructed the crew to call him once they got to Field.

[14] When asked what he discussed with Mr. Hearld, Mr. Fossum recalled that how he missed the handbrakes on the train. At the time of the incident the Grievor said he didn’t know how to answer him because he simply forgot. He mentioned that he was shocked that he had missed them and the Grievor expressed his embarrassment over the situation. Mr. Fossum is seen to have expressed remorse and immediately take ownership of this inadvertent incident. At the close of his investigation, the Grievor reiterated his remorse stating:

I regret and I am embarrassed that this incident took place I have pride in the job that I do. Moving forward I will strive to be more focused in the performance of my duties.

ANALYSIS AND DECISION

[15] The Union argues that there is no aggravating basis on which Mr. Fossum should be assessed anything more than a written reprimand in these circumstances. I disagree with that position. The Grievor is a long service employee. His train was departing west out of Calgary to Field BC. I find that his experience and discipline record should have been the foundation for establishing a high attention to detail and awareness of the potential harm from failing to release handbrakes.

[16] I find the Union’s suggestion that other duties may have distracted him is concerning. There are many pre-departure duties that can cause distraction if a conductor allows them to do so. The rules require a safety critical attention to detail in order to ensure a safe operation. In this case the Grievor failed a fundamental pre-departure requirement. Had it not been for others a derailment was possible.

[17] In CROA 4553 Arbitrator Moreau addressed the issue of potential derailment was avoided but significant discipline upheld based on the specific facts of the case:

After considering all the facts, I am of the view that the grievor failed to properly inspect the locomotive during his 1A inspection of the train and that there is cause for discipline. This is not an instance of simple inadvertence but rather a more serious lapse by the grievor in the performance of his duties. The importance of proper brake inspections cannot be understated. This case is similar in my view to SHP–637 where Arbitrator Picher also dealt with a similar situation involving a failure to identify handbrakes. He states:

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.

[18] In this case the Grievor failed to perform his duty to release the hand brakes. The error was corrected through the attention of others. Significant discipline was warranted.

[19] Arbitrators have considered the individual facts and established a wide range of discipline including 15 demerits in the similar facts of CROA 4533. In that case he upheld the 15 demerits assessed.

[20] In view of all of the forgoing the Grievance is allowed in part. The discipline will be reduced to 15 demerits.

[21] I remain seized of the implementation and interpretation of this award.

Dated at Niagara-on-the-Lake this 17th, day of July 2023

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, somewhat stylized font.

Tom Hodges
Arbitrator