AH825

IN THE MATTER OF AN ARBITRATION UNDER THE *Canada Labour Code, RSC 1985, c L-2.*

BETWEEN:

Teamsters Canada Rail Conference

(TCRC)

-and-

Canadian Pacific Railway Company

(CP)

Grievance re R. Mellquist 40-day suspension

Arbitrator: Graham J. Clarke
Date: April 4, 2023

Appearances:

TCRC:

K. Stuebing:	Legal Counsel
D. Fulton:	General Chairman CTY West
D. Edward:	Sr. Vice General Chairman CTY West
J. Hnatiuk:	Vice General Chairman CTY West
L. Inverarity:	Local Chairman – Moose Jaw
R. Mellquist:	Grievor

CP:

S. Oliver:	Labour Relations Manager, CP Rail
T. Gain:	Legal Counsel Litigation & Labour
P. Sheemar:	Labour Relations Manager, CP Rai

Arbitration held via videoconference on March 22, 2023.

Award

BACKGROUND

1. On March 22, 2022, the parties signed a Memorandum of Settlement (Appendix 2) revising the arbitration process in Article 41 of their collective agreement. The arbitrator agreed to hear 4 Ad Hoc cases in 2022 and a further 8 in 2023 on the condition that the parties would plead no more than 2 cases per day.

2. On July 16, 2020, CP suspended Conductor Mellquist for 40 days. CP argued it had proper grounds due to Mr. Mellquist "walking between rails"[1]:

> In connection with your tour of duty on July 1, 2020 while working as the Conductor on train K54-29 while reversing the movement in Moose Jaw yard you were found to be walking between rails of the C-lead track; putting yourself at risk for injury. A violation of T&E Safety Rule Book T-20 On or About Tracks.

3. The TCRC contested the fairness of the investigation as well as the appropriateness of a 40-day suspension for the July 1, 2020 incident.

4. For the following reasons, the arbitrator substitutes a 5-day suspension for the original 40-day suspension. This award also examines several objections the parties raised.

CHRONOLOGY OF EVENTS

5. **July 1, 1986**: CP hired Mr. Mellquist.

6. **July 1, 2020**: Date of the "walking between rails" incident.

7. **July 2, 2020**: CP sent Mr. Mellquist its Notice of Investigation[2] and related documentation, including memoranda drafted by CP managers.

[1] TCRC Exhibits; Tab 8; Form 104
[2] TCRC Exhibits; Tab 3

8. **July 9, 2020**: CP took Mr. Mellquist's Statement[3]. The arbitrator will reproduce a significant portion of that Statement to provide the necessary context for the various objections the parties raised:

> Q6 Have you had sufficient opportunity to read and review the items of evidence that will be entered as formal record of this investigation?
>
> A Yes
>
> Q7 Do you have anything you wish to refute, rebut or comment on any of the information contained in the aforementioned items of evidence?
>
> A Will be handled through the body of the investigation, see union note below.
>
> **Union Note**
>
> T-20 (13)
>
> 13. When duties require you to cross a track, walk directly across the track at a right angle (90-degrees). Employees must look both ways prior to each track and apply a 90-Degree principle when conditions permit.
>
> The T.C.R.C. feels it MUST be made clear that contrary to the accounts from Mr. Heintz and Mr. Gavde (Appendices B and C); Mr. Mellquist was at no time being followed by his own movement in the track that he crossed. It is the opinion of the T.C.R.C. that Mr. Mellquist was complying with T-20 in this instance.
>
> • Mr. Mellquist took the most direct route to cross the track safely while maintaining his position ahead of the movement to make the joint without placing himself foul of the oncoming movement.
>
> • The close proximity of the turnouts on the lead made it unsafe to cross at a 90-degree angle while staying in position to make the joint.
>
> • Mr. Mellquist had to cross over C-lead before he was to close to the cars he had just set off.
>
> • 4 seconds to cross a track is not excessive in this situation.
>
> • In this instance conditions did NOT permit "the 90-degree principal" and Mr. Mellquist took a couple extra steps to ensure his safety once crossing to the adjacent track.
>
> **Union Objections**
>
> Appendix B is misleading in that it states that Mr. Mellquist "proceeded to walk between the rails for 10 feet with his back to the following movement. "

[3] TCRC Exhibits; Tab 7. The arbitrator will reproduce the text "as is" from the Statement.

The movement was travelling down A Lead into MA07 … Mr. Mellquist crossed MCLD to get to the joint he was making .. At no point was Mr. Mellquist “In front of the movement” with his back turned.

Appendix C is misleading in that it states that Mr. Mellquist “took about 8 steps between the rails before completely crossing to the north side; all while the movement continued shoving westward behind him.”

The movement was travelling down A Lead into MA07 … Mr. Mellquist crossed MCLD to get to the joint he was making ... At no point was Mr. Mellquist “In front of the movement” with his back turned.

…

Q12 Referring to Appendix B, Memorandum from ATM Austin Heintz, it states, as follows. You were observed walking between the rails for approx. 10 ft while reversing your movement to a joint is this correct?

Union objection: see objection from question 7

2nd objection

Union objection: Dave Hariniuk - Local Chairperson, TCRC 510 - The Union objects to this question under Article 39.05 of the Consolidated Collective Agreement, specifically asking the employee to admit responsibility

Company officer: Objection duly noted. Please answer the question.

A as per the objection, however I would like to note I was not walking down the same track as per my movement.

Q13 Referring to Appendix C, Memorandum from Trainmaster Jayen Gavde, it states, as follows. You were observed taking approx. 8 steps between the rails before completely getting across to the North side, is this correct?

Union objection: see objection from question 7

2nd objection

Union objection: Dave Hariniuk - Local Chairperson, TCRC 510 - The Union objects to this question under Article 39.05 of the Consolidated Collective Agreement, specifically asking the employee to admit responsibility.

Company officer: Objection duly noted. Please answer the question.

A as per the objection, however I would like to note I was not walking down the same track as per my movement.

Q14 Referring to Appendix D, snapshots from camera recording July 01, 2020 from 10:40 to 10:41, you are seen walking between the center of the tracks . Is this correct?

Union objection: Dave Hariniuk - Local Chairperson, TCRC 510 - The Union objects to this question under Article 39.05 of the Consolidated Collective Agreement, specifically asking the employee to admit responsibility.

A according to the appendix

Q15 Referring to Appendix E, T-20 revised per System Revision Document, item 3 it clearly states "Never walk or stand foul of a track between the rails or on the shoulder tie ends, unless there are no other viable options available and it is safe to do so. Is this correct

A that is correct, union would like to put emphasis on unless there are no other viable options available and it is safe to do so

Q16 Referring to Appendix F, Moose Jaw NE entrance GYO July 01,1040 (Digital Video Recording), did you walk between the rails on C-lead track?

Union objection: Dave Hariniuk - Local Chairperson, TCRC 510 - The Union objects to this question under Article 39.05 of the Consolidated Collective Agreement, specifically asking the employee to admit responsibility.

Company officer: Objection duly noted. Please answer the question.

A yes, when I started to cross over the track, I looked back and decided that I needed to go a little bit further so as not to be foul of the oncoming movement once I had crossed the track. I took a couple extra steps before exiting the track to ensure I was not placing myself in front of the oncoming movement at the pinch point of the turnout as well my safe footing from debris. I immediately crossed out at the clearing point between the two tracks and before I was too close to the cars, I had left in MCLD to safely cross. The Track I crossed (MCLD) was blocked by the secured equipment I had just placed (to the west) and by my return movement coming down A Lead into MA07 (To the east). I was between the rails (C Lead) for 4 seconds while making my way to the joint being made in MA07. I was at no point between the rails of the track that the movement was occupying.

…

Q19 Can you please explain why you failed to comply with this rule (T20) on July 1, 2020 putting yourself in a dangerous position while being observed walking between the rails?

Union objection: Dave Hariniuk - Local Chairperson, TCRC 510 - The Union objects to this question under Article 39.05 of the Consolidated Collective Agreement, specifically asking the employee to admit responsibility.

Company officer: Objection duly noted. Please answer the question.

A please refer to answer # 16

Unit note – T20 item 13, when duties require you to cross a track, walk directly across the track at a 90-degree angle .Employees must look both ways prior to each track and apply a 90- degree principle when conditions permit. In this instance Mr.Mellquist made a judgment call after starting to cross and decided to take a couple extra steps to ensure he was not crossing into the pinch point of the turn out, as well as foul of his oncoming movement.

Refer to appendix D – photo time slot, 10:41:11

Mr. Mellquist then steps out at the point where he would not be in conflict of the oncoming movement...IE the clearing point between the 2 tracks

Refer to appendix D – photo time slot, 10:41:15

As per appendix D it took Mr. Mellquist 4 seconds to cross over the rails in MCLDX

Q20 Do you understand by "briefly" walking between the rails you put yourself in a very dangerous situation?

Union objects as this is a leading question

Company officer: Objection duly noted. Please answer the question.

A I feel that I did not put myself in danger, as I took a few extra steps to ensure my safety in footing when crossing over the tracks.

Q21 What can the Company expect from you the next time you are in a similar situation and being governed by Train and Engine Safety Rule Book T20, On or about tracks?

A I will walk to the joint and then begin my movement and apply 90 degree principle.

…

Q23 Do you have anything you wish to add to this investigation?

A No

Q24 Are you satisfied in the manner in which this investigation has been conducted?

A Let the record speak for itself. I am not qualified to answer this question. This will be determined during the grievance procedure, if necessary, after my Union has researched this matter fully to ensure all my rights have been upheld.

9. **July 16, 2020**: CP issued its Form 104[4] and imposed a 40-day suspension which included time served while held out of service:

> Please be advised that your discipline record has been assessed with a 40 Day Suspension from Company service without pay (effective 2202 July 2 to 2201 August 11, 2020) which includes time already served while held out of service for the following reason(s):
>
> In connection with your tour of duty on July 1, 2020 while working as the Conductor on train K54-29 while reversing the movement in Moose Jaw yard you were found to be walking between rails of the C-lead track;. putting yourself at risk for injury. A violation of T &E Safety Rule Book T-20 On or About Tracks. (sic).

10. **March 9, 2023**: The parties put their respective positions in a Joint Statement of Issue (JSI)[5].

PROCEDURAL ISSUES

Mr. Mellquist's Statement

11. CP took issue with some of the TCRC's comments during Mr. Mellquist's Statement[6].

12. As the extensive extracts cited above should illustrate, the arbitrator found that Statement unhelpful. Several of the questions were technically leading. The arbitrator has previously noted the challenges for those posing questions[7]:

> 12. The TCRC disputed the IO's use of leading questions to argue that he had already determined culpability. It is true that the phrase "is that correct?" suggests more of a cross-examination approach than an investigative one. But the IO is entitled to direct the employee's attention to something specific, such as the wording of item 2.3 in Form 8960, in order to set the context for a question (QA12). This then led to legitimate questions about what LE Carson had done and why (QA 13-14).
>
> 13. Laypeople, including inexperienced lawyers, seem to have difficulty formulating open ended questions. They often fail to start questions with words like "who", "what", "when", "where" and "why". But this frequent challenge,

[4] TCRC Exhibits; Tab 8
[5] TCRC Exhibits; Tab 1
[6] CP Brief; Paragraph 51; CP Rebuttal; Paragraphs 25 and following.
[7] CROA 4664

> absent more, did not convince the arbitrator in this case that the investigation ceased to be fair and impartial.

13. Nonetheless, the questions did direct Mr. Mellquist to the evidence and provided him with a chance to give his version of the facts. That opportunity for a grievor to put evidence into the Record is crucial to this expedited arbitration process.

14. The Statement created during the parties' negotiated investigation process is designed to avoid the need for the parties to call witnesses and have them testify in accordance with the evidentiary principles applied in administrative hearings. The arbitrator previously commented on the process in CROA 4608[8]:

> 26. An investigation under the parties' expedited arbitration regime is intended to be more informal than the process which might take place before an administrative tribunal. It is neither a criminal investigation nor a process conducted by experienced legal counsel.
>
> 27. **It is rather an opportunity for both parties to ensure this Office's record contains the material facts should a later hearing be necessary. As a process designed to eliminate to a large extent the need for this Office to hear oral evidence, it allows each party to ask questions and to have the employee answer those questions**. The TCRC posed questions to Mr. Madubeko near the end of the interview to ensure the record contained other facts it considered essential.
>
> (Emphasis added)

15. A footnote to the above citation from CROA 4608 adds: "The parties are similarly entitled to pose questions and receive answers from witnesses". This can occur, for example, when one or more managers, or other employees, provide evidence.

16. In this Statement, the TCRC, via its repeated objections and reference back to its QA7 Note, seemly answered most of the questions posed to Mr. Mellquist[9]. The only detailed answer Mr. Mellquist gave was to Q16. This procedure would never happen at a regular arbitration. If the TCRC wanted to object to a question, or put a position on the record during a witness's testimony, then the witness would usually have to leave the room to avoid, however innocently, receiving the answer to a proper question.

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[8] CROA 4608

[9] See as well QA15 where it appears the TCRC answered the question ("that is correct, union would like to put emphasis on…").

17. Similarly, the TCRC seemingly objected to every question asking Mr. Mellquist to comment on the facts. The objection occurred on the basis that it would require him "to admit responsibility".

18. What is the result? The arbitrator has little evidence from Mr. Mellquist about what transpired on July 1, 2020. Instead, the TCRC put in the evidence via its repeated reference to its own Note.

19. At arbitration, the TCRC then relied on that same Note when pleading its case[10]. In AH828[11], a recent case between these same parties, the arbitrator commented on a TCRC objection about two partially identical memoranda from CP managers:

> 20. The arbitrator reminds the parties that evidence is not a group project. An arbitrator wants to know what a witness personally recalls. Anything else is essentially unhelpful hearsay. In regular arbitration, the parties usually ask for an order excluding witnesses who are not testifying to avoid them discussing their evidence together.

20. The Statement in the Record limited the evidence available to the arbitrator. For example, railway arbitrations require arbitrators to review the Statement to get a sense of an employee's cooperation and, where relevant, their remorse. Arbitrators frequently rely on a grievor's candour, or lack thereof, when evaluating the appropriate penalty, as occurred in AH794[12] [Footnotes omitted]:

> 23. No one now disputes that Mr. Vigario deserved some discipline. But the cases CN put forward to support the discipline it assessed do not satisfy the arbitrator of the reasonableness of assessing 25 demerits for a first offence.
>
> 24. Instead, for the following reasons, the arbitrator has decided to reduce the penalty to 15 demerit points.
>
> 25. First, the arbitrator in CROA 4549 concluded that a conductor deserved 15 demerit points for running through a switch and causing two cars to derail. The grievor's candour was one of the elements the arbitrator considered in reducing the penalty to 15 demerit points. Mr. Vigario, who accepted that he was in charge of the movement, did not attempt to deny his errors which led to the derailment.

[10] See the TCRC's Brief at paragraphs 46-52.
[11] AH828: Teamsters Canada Rail Conference v Canadian Pacific Railway Company, 2023 CanLII 24771
[12] AH794: Teamsters Canada Rail Conference v Canadian National Railway Company, 2022 CanLII 95947

21. By comparison, Mr. Mellquist's Statement provides little assistance to the arbitrator. Fortunately, the arbitrator notes that this Statement was an anomaly compared with the three other cases heard during this March 22-23, 2023 session, including a separate grievance also involving Mr. Mellquist.

Did the TCRC expand its case?

22. CP alleged[13] that the TCRC, by raising efficiency tests (ETs), pleaded a different case from the one on which the parties had agreed in the JSI:

> 1. The Company objects to statements made in the Union's brief submissions in reference to:
>
> - Efficiency Testing and the Company's actions around a failed efficiency test
>
> - Efficiency Tests resulting in targeted discipline
>
> 2. The Union is expanding their allegations. Plainly missing from the Joint Statement of Issue is any reference to efficiency testing and the Company's procedures and processes relating to E-tests or how they would have resulted in targeted discipline.
>
> 3. Throughout the grievance correspondence there is only a reference to efficiency testing in the Step 1 grievance – where they refer to the incident as – for all intents and purposes, an e test failure.
>
> 4. There is an extreme prejudice to the Company when at Arbitration the thrust of the Union's whole argument relies on Efficiency Testing and Jurisprudence relating to them. A review of the jurisprudence cited by the Union – specifically the Joint Statement of Issue for those cases – indicated that at arbitration, the Parties had a clear understanding that Efficiency Tests and the associated Company policies would make up a portion of the discussions – See Tab 1 of the Rebuttal Submission.

23. The TCRC referred the arbitrator to its Step 1 grievance[14], where it wrote:

> Testing is NOT intended to entrap an employee into making an error, but is used to measure efficiency (knowledge and experience) and to isolate areas of noncompliance for immediate corrective action. Efficiency testing is also not intended to be a discipline tool. - Therefore the TCRC finds this investigation to be neither fair nor impartial.

[13] CP Rebuttal; paragraphs 1-4.
[14] TCRC Exhibits; Tab 9; Page 43/165

24. The TCRC did not point to any other references in the Record to ETs either in the Statement, the Step 2 materials or in the JSI.

25. The arbitrator agrees with CP that the TCRC took a new position in its Brief despite the parties' agreed upon JSI. A vague reference to an ET in a Step 1 grievance, and nothing else thereafter, does not justify filing a Brief which focussed mainly on the arbitral case law examining ETs.

26. There are several reasons for this conclusion.

27. First, the parties' expedited arbitration process is not equipped to handle surprises, whether from pleading a new issue or disclosing new documentation only when the parties exchange their Briefs[15]:

> 29. Since there was no objection to the timing of the disclosure to Dr. Snider-Adler's report (Expert Report), the arbitrator will not comment further on that specific aspect of the case. However, from a systemic point of view, the arbitrator reiterates the concerns previously expressed about the late filing of medical information. This impacts the success of the parties' railway model and an arbitrator's ability to ensure a fair hearing. This same concern exists if a party waits until just prior to an arbitration before obtaining clearly relevant medical or expert evidence.

28. Second, as noted in AH689[16], a vague one-off reference does not then allow a party to plead a different case at arbitration [Footnotes omitted]:

> 31. The arbitrator agrees with the sentiments expressed by these experienced railway arbitrators. The situation may well be different in regular arbitration where the parties have not negotiated the types of procedures which exist in this expedited regime. A regular labour arbitration system can also take many days to hear a single grievance, which allows for more leeway than does the parties' expedited regime in this case.
>
> 32. **The parties benefit from an extremely efficient expedited arbitration system. In order to obtain those benefits, they have negotiated clear provisions which require that all issues be identified and discussed during the grievance procedure. A vague oral reference to alcohol and 3**

[15] AH810: Teamsters Canada Rail Conference v Canadian Pacific Railway Company, 2023 CanLII 8754
[16] AH689: Canadian National Railway Company (CN) v International Brotherhood of Electrical Workers System Council No. 11, 2019 CanLII 123925

> **AA meetings during the investigation, especially given the IBEW's burden of proof for prima facie discrimination, infra, was insufficient for CN to know that Mr. S alleged that his rights under the CHRA had been violated. Documentation was only produced for this issue roughly 18 months after Mr. S's termination**.
>
> 33. **There is further prejudice which can arise from the addition of a new issue close to the arbitration date. CN could not explore that issue during its investigation or conduct a timely supplementary investigation**. The arbitrator notes further that the CHRA contains time limits for complaints.
>
> 34. **The IBEW expanded its grievance beyond that which was discussed throughout the grievance procedure. The arbitrator accordingly upholds CN's objection**. This conclusion, however, would not apply to situations where a party was willfully blind to a clear duty to accommodate situation.
>
> (Emphasis added)

29. Third, by pleading a different case, the TCRC obliged CP to use its limited rebuttal time to address an entirely new issue not found in the JSI. This is not only disruptive to the other party which had to prepare to plead 4 cases in just 2 days, but it deprives the arbitrator of a succinct rebuttal about the agreed-upon issues in the case.

30. Fourth, the TCRC provided no evidentiary support for its suggestion that an ET had taken place. The TCRC asked no questions of ATM Heintz or Trainmaster Gavde despite receiving their memoranda with the Notice of Investigation[17]. Instead, the TCRC's Note simply put in "evidence" contesting certain points in CP's managers' memos. The arbitrator notes that in other recent cases, including for AH828 which was heard during the same March 22-23, 2023 2-day session, the parties' JSIs clearly referenced the ET issue[18].

31. Accordingly, the arbitrator will examine this case as a discipline case without reference to the nuances which might have been relevant had an ET occurred.

Did CP conduct a fair and impartial investigation?

32. In the JSI, the TCRC alleged that CP did not conduct a fair and impartial investigation:

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

[17] CP Exhibits; Tab 4
[18] See AH828 as well as AH811.

> Mr. Mellquist was provided with an opportunity to retire prior to the investigation. Further, questions 12, 13, 14, 16, 19 and 20 were objected to within the investigation and as identified within the Step 1 appeal.
>
> For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Mr. Mellquist be made whole.

33. The arbitrator dismisses this objection. The TCRC and CP had previously been having discussions regarding Mr. Mellquist's possible retirement. One cannot ignore this context[19] when evaluating the TCRC's objection.

34. The arbitrator has already commented above on the objections the TCRC made to the IO's questions during Mr. Mellquist's Statement.

35. CP respected its investigation obligations under article 39 of the collective agreement (CA).

DID CP HAVE GROUNDS TO DISCIPLINE MR. MELLQUIST?

36. CP satisfied the arbitrator that it had grounds to discipline Mr. Mellquist for walking between the rails. The Record contains video captures showing where Mr. Mellquist was walking. Mr. Mellquist's explanation for his actions is limited mostly, if not entirely, to QA16.

37. The relevant parts of T&E Safety Rule Book T20 (On or About Tracks)[20] read as follows:

> Revised T&E Safety Rule Book Rule T-20
>
> …
>
> 3. Never walk or stand foul of a track between the rails or on the shoulder tie ends, unless there are no other viable options available and it is safe to do so.
>
> …
>
> 13. When duties require you to cross a track, walk directly across the track at a right angle (90- degrees). Employees must look both ways prior to each track and apply a 90-Degree principle when conditions permit.

[19] CP Exhibits; Tab 13
[20] TCRC Exhibits; Page 26/165

Best Practice:

When walking ahead of a movement, ensure you check the position of the movement often and never foul the track.

38. CP has legitimate concerns about employee safety. Given the risk of accidents in a railyard, some of which have been fatal in the past, CP can discipline employees who do not respect the safety rules.

39. The main issue in this case concerns the severity of that discipline.

SHOULD THE ARBITRATOR SUBSTITUTE A DIFFERENT PENALTY?

40. Subject to any specific penalty for an infraction that the parties have negotiated into their CA, the *Canada Labour Code*[21] (*Code*) sets out arbitrators' remedial authority for disciplinary matters:

> 60 (2) Where an arbitrator or arbitration board determines that an employee has been discharged or disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject of the arbitration, the arbitrator or arbitration board has power to substitute for the discharge or discipline such other penalty as to the arbitrator or arbitration board seems just and reasonable in the circumstances.

41. At arbitration, the parties put forward their best arguments to support their respective positions. The *Code* then requires the arbitrator to determine i) whether to intervene and, if so, ii) the just and reasonable penalty.

42. In AH827[22], the arbitrator commented on the content of employee discipline records. CP and the TCRC put into the Record discipline tables for Mr. Mellquist, but, for some reason, they are not the same. For example, the TCRC's table includes an 8/30/2018 "Informal Handling" notation[23]. No such notation occurs in CP's discipline table for Mr. Mellquist[24].

43. Conversely, the TCRC's table includes multiple references to the automatic reduction of demerits points. No such notation exists in CP's table. It would be helpful,

[21] RSC 1985, c L-2
[22] AH827: Teamsters Canada Rail Conference v Canadian Pacific Railway Company, 2023 CanLII 25331
[23] TCRC Exhibits; Page 8/165.
[24] CP Exhibits; Page 24/138.

given the observations made in AH827, if the parties could agree on an employee's disciplinary record.

44. Mr. Mellquist's record does include some elements which remain relevant to this case. In its Brief for this July 1, 2020 incident, CP emphasized Mr. Mellquist's 1/23/2019 20-day suspension[25] for striking a bridge with his company vehicle. That vehicle ended up resting on its side after the accident. CP also highlighted a 2013 "Employment Contract", which was essentially a "Last Chance Agreement" and which remained part of his disciplinary file.

45. CP had the burden of demonstrating the reasonableness of a 40-day suspension in this case. It failed to put forward any comparable cases in support of a suspension of that magnitude. However, the arbitrator found helpful one case CP put forward, CROA 4728[26], when considering the issue of appropriate discipline.

46. In the circumstances, and considering the limited information available from the employee Statement in this case, the arbitrator concludes that Mr. Mellquist merited a 5-day suspension for his actions. The arbitrator agrees with the TCRC that this situation did not justify CP holding Mr. Mellquist out of service under article 39.06 of the CA.

DISPOSITION

47. For the reasons set out herein, the arbitrator orders CP to reduce Mr. Mellquist's original 40-day suspension to one of 5 days and compensate him accordingly.

48. The arbitrator remits this compensation question to the parties and remains seized for any related issues.

SIGNED at Ottawa this 4th day of April 2023.

Graham J. Clarke
Arbitrator

[25] CP Exhibits; Page 24/138.
[26] CROA 4728