

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

**CASE NO. 4689**

Heard in Edmonton, June 12, 2019

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the dismissal of Conductor J. Boles.

**JOINT STATEMENT OF ISSUE:**

Following an investigation, Conductor Boles was dismissed from Company service on February 12, 2018 as shown in his CP Form 104 as follows:

“Formal investigation was issued to you in connection with the occurrence outlined below: “In connection with the operation of your assignment Train 100-12 on the date of January 15, 2018”.

A formal investigation was conducted on January 23, 2018 to develop all the facts and circumstance in connection with the referenced occurrence. At the conclusion of the investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following:

- Train and Engine Rule Book Section 15.5, Restrictions on Clearance
- Canadian Rail Operating Rules Section 304, Restriction Before Leaving

This letter will advise and confirm that you have been dismissed from Company Service effective February 12, 2018.”

The Company unilaterally reinstated Mr. Boles on a leniency basis on May 7, 2018.

**The Union's Position**

The Union's position that the outright dismissal of Conductor Boles is excessive and unwarranted.

There is no dispute that the crew did enter the main track in error of what their clearance provided. How two crew members missed this aspect on their clearance must bring some sort of

concern and maybe changes in order. Conductor Boles provided why he believed he missed the second engine on the clearance and what could be done in the future so maybe this time of incident might not happen again.

Mr. Boles accepted his responsibility and acknowledged the education he has received to move forward.

The Company was in position to discipline Mr. Boles, but an outright dismissal was excessive. The facts of the investigation do not warrant, nor justify this quantum of discipline.

The Union requests that the discipline assessed to Mr. Boles be removed in its entirety and that he be made whole with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

### The Company's Position

The Company maintains the dismissal was appropriate given the severe nature of the Grievor's error and rule infraction.

The Company maintains that the Grievor was a qualified Conductor who had been using the current clearance format since April 2016. As such, the Grievor ought to have been more diligent in fulfilling his duties and ensuring the clearance form was thoroughly reviewed, understood and confirmed.

Further, the Union's grievance requests the Company reinstate the Grievor back into Company service. As previously stated in grievance correspondence and the Union's Position, the Grievor was reinstated May 2018.

The Company disagrees with the Union's position and denies their request. Alternatively, the Company requests the Arbitrator rules in favor of a time served suspension without compensation.

### **FOR THE UNION:**

**(SGD.) W. Apsey**

General Chairperson

### **FOR THE COMPANY:**

**(SGD.) D. Zurbuchen**

Labour Relations Manager

There appeared on behalf of the Company:

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|--------------|--|
| D. Zurbuchen | – Manager, Labour Relations, Calgary             |
| D. E. Guerin | – Senior Director, Labour Relations, Calgary     |
| D. McGrath   | – Manager Labour Relations, Calgary              |
| P. Sheemar   | – Observer, Human Resources Coordinator, Calgary |

And on behalf of the Union:

- |              |                                     |
|--------------|-------------------------------------|
| D. Ellickson | – Counsel, Caley Wray, Toronto      |
| W. Apsey     | – General Chairperson, Smiths Falls |

### **AWARD OF THE ARBITRATOR**

The facts are not in dispute. Nor does the Union dispute that the conduct of the Grievor should attract discipline. The only issue is the severity of the discipline imposed.

On January 15, 2018, the Grievor's train (100-12) was operating on the Mactier Subdivision. Prior to departing south at Mactier, the Grievor and his Engineer were issued a clearance which explicitly required that they wait at the South Siding Switch Mactier for the arrival of two trains heading north on the single track, prior to departing south on the same track. They waited for the first train to clear the track but failed to note in their TGBO that they were to wait for a second train to clear before leaving the siding. After the first train passed, they left the siding and headed in the direction of the oncoming train. After they departed the siding, they called the RTC to give their pull and switch time and were asked if "*they had met both trains yet?*" The Grievor then – for the first time - carefully reviewed the clearance and realized that there was a second train to meet. He called out an emergency broadcast and the RTC advised them to stop their locomotive.

Following an investigation, the Company dismissed the Grievor from his employment on February 12, 2018. It unilaterally reinstated him on May 5, 2018, with his record reflecting an 85-day unpaid suspension.

No one disputes the seriousness of the Grievor's error nor the grave consequences that could have occurred had his train met head-on with the oncoming train. As stated, the only issue is the severity of the punishment levied.

The Grievor is 35 years old, has one child and has been employed with the Company for 5 ½ years; however, given layoffs, he only worked full time approximately 3½ years. Although he had some informal letters on his record, there was no discipline imposed. For our purposes here, he has a discipline free record.

In mitigation, the Union argues that: besides a discipline free record, the Grievor took full responsibility for his actions; the incident was a one-off event; and, the Grievor was contrite and made it clear that he learned his lesson. Further, the Union points to the Company's decision (**Union Exhibit; Tab 11**) where Conductor Batstra committed a similar error on June 30, 2017. According to his investigative statement, he missed a similar restriction in the TGBO relative to meeting a single oncoming train at the South Siding Switch at Mactier. He was assessed a 30-day suspension without pay. The Union, relying, *inter alia*, on **AH 905 & CROA 4400** argues that therefore only a 30-day suspension is warranted and reasonable.

In this case the Grievor was contrite, forthright and accepted responsibility. His conduct did not show a reckless disregard for the train movements but rather a serious lapse in his job performance. Nevertheless, his error was very serious. The consequences could have been a head-on collision.

I acknowledge the principle of equal discipline for similar disciplinary conduct - and agree with the central thesis of the cases, referred to me by the Union, that adjustments

should be made where uneven and discriminatory application of discipline is apparent. While the ambit of discipline assessable is constrained by the suspension applied in his case, it is not fully evident that the circumstances here are on all fours with those of Conductor Batstra. It is trite to say that each case depends on its own circumstances.

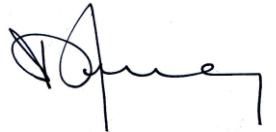
The difficulty in this case is that while it was not reckless disregard, the Grievor's negligence was substantially more than a simple error in judgment. He failed to do what constitutes one of the most essential parts of his job, that is: to review the specific instructions in his clearances and discuss the same with his crew prior to setting out.

By comparison, Conductor Batstra had forty years of service; the Grievor far less. The Grievor's train was carrying dangerous goods. The instructions on the Clearance were clear and apparent. Batstra conducted a "job briefing" with his crew prior to departing and missed one train. The Grievor did not conduct a proper job briefing and was responsible to account for the safety of two. This is particularly concerning. The Grievor acknowledged that he knew he was required to stop for one train. In such case, he should have known from a reasonable, non-negligent, reading of the clearance certificate and a proper job briefing that there was a second train as indicated on the clearance. Unlike the evidence available in the Batstra case, the Grievor – at best - only perused the certificate (Q. 18 - 20) and did not follow the directives of T&E 15.5. While reflecting candour and responsibility, there is nothing in his Investigative Statement which constitutes a sufficient excuse for his conduct.

While I am somewhat constrained by the suspension imposed on Mr. Batstra, having regard to the aggravating circumstances as discussed above, I believe a 55-day suspension is a reasonable response. The Grievance is allowed in part. The Grievor's suspension will be reduced to 55 days and he shall be made whole as required.

I shall retain jurisdiction with respect to the interpretation, application and implementation of this award.

July 4, 2019

A handwritten signature in black ink, appearing to read "R. Hornung", written over a horizontal line.

RICHARD I. HORNUNG  
ARBITRATOR