

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

CASE NO. 4832

Heard in Edmonton, June 21, 2023

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Locomotive Engineer Ashley Chater, of Saskatoon, SK, appealing the assessment of twenty (20) demerits for “Your involvement leading up to train Q1365130 being placed into an emergency brake application at mile 126.07 Wainwright Sub, November 1, 2017, a violation of Form 8960 G 1.2 while you were working as Locomotive Engineer; including 2 violations of CROR 14(L) at mile 127.21 and mile 126.1 Wainwright sub during this emergency event.”

THE COMPANY’S EXPARTE STATEMENT OF ISSUE:

On November 01, 2017 the grievor was working as the Locomotive Engineer on train Q13651-30. While approaching a stop signal at station Heath, the grievor placed her train into emergency, stopping approximately 3 car lengths short of the stop signal.

A review of the download of the grievor’s train led the Company to allege that the grievor had failed to properly forward plan and handle the train leading up to the stop signal at Heath which resorted her to placing the train into an emergency brake application. The download further showed that the grievor had allegedly failed to comply with CROR 14(L) during her tour of duty. Accordingly, the grievor was required to attend a formal investigation resulting in the assessment of 20 demerits.

The Union’s position is that the discipline assessed to the grievor should be void ab initio, and that it is excessive, unwarranted and unnecessary and should be expunged from her record and that an alternative form of action, such as a coach and counsel be substituted in its place.

The Company disagrees with the Union’s contentions and denied the request as the grievor was culpable for his [sic] actions and disciplined accordingly.

**FOR THE UNION:
(SGD.)**

**FOR THE COMPANY:
(SGD.) D. Houle (for) D. Klein
Senior VP Human Resources**

There appeared on behalf of the Company:

- L. Dodd – Manager, Labour Relations, Montreal
- F. Daignault – Director, Labour Relations, Montreal
- A. Hernandez Gutierrez - Labour Relations Associate, Edmonton
- S. Grewal – Senior Manager, Engine Service, Labour Relations, Edmonton

And on behalf of the Union:

- K. Stuebing – Counsel, Caley Wray, Toronto
- K. C. James – General Chairperson, Edmonton
- P. Boucher – President, Ottawa
- C. Gesbrecht – Local Chairperson, Saskatoon
- T. Russett – Senior Vice General Chairperson, Edmonton
- A. Chater – Grievor

AWARD OF THE ARBITRATOR

- [1] The Grievor is a Locomotive Engineer. This Grievance concerns the reasonableness of the assessment of 20 demerits for train handling violations which occurred on November 1, 2017, while she was operating train Q1365130 (the “Incident”).
- [2] In addition to the 20 demerits for train handling violations, the Grievor was also assessed 25 demerits for violating CROR Rule 439 - failing to properly blow the whistle at two train crossings, to protect the crossings.
- [3] For the reasons which follow, the Grievance is dismissed. The assessment of 20 demerits in this case was not excessive, was warranted and is a just and reasonable disciplinary response.

I - Background

- [4] Some background information is relevant to provide context to this violation and to understand its seriousness.
- [5] The railway industry is one of the most highly safety-sensitive industries in this country. The Company’s trains carry hazardous goods and pass through and around populated areas and near major highways.
- [6] To ensure the safe operation of its business, the Company is not only governed by its own internal safety rules, but by government legislation and rules which apply to

all railways, which are known as the Canadian Railway Operating Rules (CROR). An ability to follow rules which support the safe operation of trains in this industry is critical.

- [7] I accept that a Locomotive Engineer - as the operator of a train - must shoulder considerable responsibility for ensuring the safe operation of a train. Part of that responsibility includes not just having knowledge of the safety rules, but the ability to handle a train in a manner which contributes to its safe passage.
- [8] A train is braked by both Dynamic Braking (which brakes the locomotive alone) and air brakes (which can apply a braking force to the individual railcars). The Dynamic Braking system (DB) has various levels, ranging from DB1 (which is the lightest braking force) to DB8 (which is the heaviest braking force).
- [9] A key and fundamental part of a Locomotive Engineer's job is in understanding and using both systems to control a train.
- [10] Placing a train into "emergency" is a last resort for stopping a train. The DB and train brakes are applied simultaneously, creating safety hazards associated with the resulting excessive braking forces.
- [11] The subdivision in which the Grievor was operating is controlled by Centralized Traffic Control (CTC). This is a system of signal lights that authorize and coordinate train movements and control the flow of traffic. This system allows trains traveling in the same direction and in different directions to use the same rail lines, and to meet and pass each other through the use of sidings.
- [12] An understanding of – and willingness to obey - the CTC system is also a key and fundamental aspect of a Locomotive Engineer's role.
- [13] As heavy freight trains need considerable time to come to a complete stop, the CTC system provides warnings to Locomotive Engineers miles in advance of an upcoming "stop" signal. This is done through two advance signals: an "Advanced Clear to Stop" and then a "Clear to Stop". These warning signals provide time to an Engineer to plan to bring a train to a controlled stop by applying appropriate braking forces as that train approaches that signal.

[14] Stop signals are governed by CROR Rule 439. That Rule states:

439. Stop

Stop-Stop. Unless required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

[This Rule also has a picture of a “Stop” signal which is not reproduced]

[15] A train may need to come to a stop for an oncoming train to pass into a siding, for example, allowing trains moving in opposite directions to pass each other. There may also be something else on the other side of the “Stop” signal, such as people on the track, or equipment. A “Stop” signal provides “protection” to whatever is on the other side of it.

[16] Certain information can be “downloaded” from the locomotive’s event recorder after an incident. This download provides information to the Company relating to the operation of the train, at precise points in time. Video footage is also available from the locomotive cab.

[17] The Locomotive Engineer’s Manual pertaining to train handling (CN Policy 8960) states in Sections A and G:

Locomotive engineers are responsible for proper locomotive and train handling. They are expected to do everything possible to conserve fuel and minimize brake and wheel wear

...

This policy will standardize best practices for train handling throughout CN....
The following general practices apply throughout this policy:

- (i) Use forward planning for planned stops and speed control;
- (ii) Make only incremental/gradual throttle and brake adjustments; (requires incremental, gradual throttle and brake adjustments);
- (iii) Control speed using throttle manipulation to the greatest extent possible.
- (iv) Select and adjust the throttle, dynamic brake, and air brake in a manner which minimizes in-train and track-train forces.
- (v) Allow slack to gradually adjust within the train before increasing throttle, dynamic brake or air brake applications.

II - Finding of Facts

The Grievor

- [18] The Grievor began her employment with the Company in June of 2010 as a Conductor. She has worked out of the Saskatoon Terminal for her entire career.
- [19] The Grievor qualified as a Locomotive Engineer on July 15, 2014. The Grievor had approximately three and a half (3.5) years experience as a Locomotive Engineer at the time of this incident, and a further four years of experience as a Conductor before that. She therefore had a total of seven and a half (7.5) years of experience in the railway industry at the time of the Incident.
- [20] The Grievor worked exclusively on the same subdivisions during her career. I accept she was familiar with the track over which she was traveling and with the grades – both uphill and downhill - in this subdivision.
- [21] The Grievor's employment is governed by Agreement 1.2 between the Company and the Union, which governs Locomotive Engineers on the CN Western Seniority District in Canada (the "Agreement").
- [22] Between July 21, 2014 (shortly after she became a Locomotive Engineer) and November 2017 (when she was assessed a total of 45 demerits for this incident), the Grievor had five other disciplinary events. She had been assessed two written reprimands, a five day suspension, and 10 and 15 demerits.
- [23] The suspension was for booking off unfit while on call. The two written reprimands were early in her career, relating to missing calls. The other demerit incidents related to: Failure to perform a "shop tract test" in accordance with the Locomotive Engineer Operating Manual (which provides the details of the responsibilities of a Locomotive Engineer); and a rule violation related to her failure to respond to a Hot Box Detector. This is a track side hazard detector which warns train crews of possible defects with their equipment.

The Incident

- [24] On November 1, 2017, the Grievor was working as the Locomotive Engineer on train Q13651-30. The train was moving eastward on the Wainwright subdivision. The train was 8824 feet in length and weighed 8158 tons (over 16 million pounds).
- [25] At mile 129.4, the Grievor received an “Advanced Clear to Stop” signal.
- [26] What that signal told the Grievor was that she must *be prepared to stop* - not at the next signal, but at the signal after that. The Grievor was aware that the “Stop” signal would be at mile 126, which was at the east end of Heath, 3.4 miles ahead. Another train was approaching the Grievor’s train, traveling east to west in the opposite direction and was preparing to take the siding just west of the signal at Heath, prior to meeting the Grievor’s train, which was why the Grievor’s train was required to stop.
- [27] At the time of passing this Advance Clear to Stop signal at mile 129.4, the train was traveling at 56 miles per hour.
- [28] There is no suggestion the Grievor would not have been able to bring her train to a stop in 3.4 miles had appropriate braking forces been applied.
- [29] At mile 128.1, which was 1.3 miles further down the track after the Advanced Clear to Stop signal, the Grievor encountered a second CTC signal. This signal was a “Clear to Stop” signal. What *this* signal told the Grievor was that the next signal she would encounter – in 2.1 miles - would be a “Stop” signal.
- [30] At the time the Grievor’s train passed the “Clear to Stop” signal, the Grievor’s train was traveling at 45 miles per hour. The terrain at that point was uphill and the train had been slowed 9 miles per hour by the terrain. The Grievor had not applied any braking forces to the train between the two signals.
- [31] At the point of encountering the “Clear to Stop” signal at mile 128.1, the Grievor knew she would be encountering a “stop” signal in 2.1 miles. This meant the Grievor was in a situation where she would have to apply enough braking force to slow her train from 45 miles per hour to a complete “stop” in 2.1 miles.

- [32] I accept that the Grievor should have been “taking air” (applying a braking force to the individual railcars with the air brakes) to slow the train at this point, to bring her speed down further.
- [33] The train then moved to a descending grade, where terrain would cause the train to increase speed.
- [34] At mile 127, which was just over one mile further past the second signal - and approximately one mile in advance of where the Grievor was going to have to stop - the train was still traveling at 35 miles per hour.
- [35] The train’s speed had therefore only reduced by 10 miles per hour since the last signal.
- [36] At this point, the Grievor was in DB1, which is the *lightest* application of the Dynamic Brake that can be used. There were a further seven levels of locomotive braking available to the Grievor at that point in time, as well as air brakes on the individual rail cars to apply braking force to this train.
- [37] The Grievor did not move out of DB1 to slow her train. I accept the Grievor should have been using the full application of the DB at this point, being DB 8, as more of the train was cresting the hill ahead of the train, which created more force and speed on the train as a whole.
- [38] At mile 126.75 - which was less than $\frac{3}{4}$ of a mile before the Grievor reached the “stop” signal - the Grievor was *still operating the train in DB1* and was traveling at 34 miles per hour. The Grievor took minimal braking application until mile 126.75, on a full descending grade.
- [39] This meant that over $\frac{3}{4}$ of a mile, the Grievor had only slowed her train by one mile per hour. The Grievor now had track of less than one half the length of her train available to her, to bring her train to a Stop at mile 126.
- [40] The Stop signal would also have just come into view. At this point, the Grievor moved the DB from 1 to 8. The terrain was now a full descending grade.
- [41] Twenty seconds after she moved the DB from 1 to 8, the Grievor applied the full service of the Automatic Brake, which was full braking force, to the railcars.

- [42] At mile 126.07, just .07 of a mile before the “Stop” signal”, the Grievor was operating the train at 17 miles per hour. She then had to apply the Emergency Brake to stop the train.
- [43] At mile 126.02, three car lengths from the Stop signal, the Grievor’s train came to a stop.
- [44] The train stopped roughly 100 feet before the stop signal instead of the 300 feet required by Rule 439.
- [45] In the one minute and 43 seconds from the time the Stop signal came into view - which was .75 of a mile before the actual signal - the Grievor slowed her train from 34 miles per hour to a full stop.

The Grievor’s Explanations

- [46] An investigation was held on November 20, 2017. At that Investigation, the Union objected that the Conductor involved in the Incident had a “Partners in Prevention” meeting on November 14, 2017, which the Grievor was not present at. The Union representative also stated that the Conductor-in-Training in the locomotive cab had a “Coaching” session and was not investigated.
- [47] At the Investigation, the following facts were established:
- The Grievor had seen the advanced clear to stop signal at mile 129.4; she was aware what it meant; she stated she was prepared to stop at the next signal.
 - she was aware she was required to stop due to a meet with another train that was taking the siding at Heath;
 - she had also seen the Clear to Stop signal at mile 128.2; she was aware that signal meant she had to stop at the *next* signal;
 - she was of the requirements of CN Policy 8960;
 - she was aware the manner in which she stopped was “not common or ideal, and I do not normally stop like this”;
 - her explanation was that she misjudged her location and seasonal conditions and that with her train at 7700 plus tons, she thought her speed was going to come down better and that her train “would have had a better braking response than it did”;
 - her plan “did not work out as intended; I misjudged as previously stated”;

- she could not recall if the Stop signal was called out in the cab;
- the Stop signal was obscured around a bend;
- the descending grade was .5%;
- she sounded the whistle 3 times over 7 seconds prior to the crossing at mile 127.21; instead of 4 times over 20 seconds before the crossing;
- she completely “missed” sounding the whistle at the crossing at mile 126.124 as she was “focusing on stopping the train” at mile 126

[48] When asked at the end of the interview if she had anything to add, the Grievor stated:

Yes, although I did not stop in a manner as per CN policy, I had a plan and was enacting it at Heath. The plan did not work out as expected and I had to react to this situation by placing my train into emergency to prevent a rule violation by passing a stop signal. Going forward, I will use this incident as a valuable learning experience and do my best to comply with the Rules and Company policy. I am thankful this event was not more serious than it was.

[49] No other explanation was offered for why the Grievor did not take a more aggressive approach to braking earlier to bring her train to a controlled stop in response to the signals, such as using DB levels 2 through 7 or starting to apply braking forces earlier.

[50] The Grievor’s failure to blow the whistle violated CROR Rule 14. She was assessed 25 demerits for that violation. That violation is not before me.

III - Arguments

[51] The Company argued:

- forward planning is the most “fundamental and basic requirement” for a locomotive engineer; the Grievor put herself, her crew and the public at incredible risk by failing to appropriately forward plan;
- there were no obstructions to sight lines; she knew the Stop signal was approaching, was familiar with the territory; and there was nothing unexpected during the Grievor’s tour of duty;
- this was a “panic stop”, which was predicated on the Stop signal coming into the Grievor’s view at mile 126.75; it was not a “controlled stop” as required, but an “uncontrolled stop”;

- the emergency stop was preventable; it was only “sheer luck” the Grievor’s train stopped in time; another train was approaching the Grievor’s train from the opposite direction and was preparing to take the siding and the consequences could have been dire;
- her actions demonstrated a complete lack of forward planning and were negligent;
- the Grievor was “chasing the signals” which means she was banking on the fact she would get a “proceed” signal instead of a stop signal at Heath;
- this is a very dangerous practice with potentially dire consequences;
- it was “extremely concerning” that the Grievor had such little regard for important safety rules and could not even “blow her whistle” to protect a crossing because she was in “panic mode”;
- the Grievor had a fair and impartial investigation; the Conductor was not investigated and the Grievor’s rights were not impacted; as the Locomotive Engineer, the Grievor has responsibility for train handling, not the Conductor;
- the Grievor was negligent in her duties as planning to stop was her responsibility and she put herself, her crew and the public at incredible risk; and
- the Grievor’s record demonstrates two previous train handling violations which indicate a pattern of behaviour and an alarming disregard for the most basic rules;

[52] The Company relied on **CROA 2073, 4416, 4498, 4769, 4770** and **CROA 4664**.

[53] The Union argued the discipline was excessive and inappropriate and that the Grievor’s substantive participatory rights were breached:

- the Grievor was not given a fair and impartial Investigation: the same Investigating officer who interviewed her also had an informal discussion with the Conductor and obtained information used against the Grievor without telling her that information; it is “inconceivable” this information was not obtained;
- the same Investigating officer should not have conducted the Grievor’s investigation and the “Partners in Preventing” session of the Conductor, as that individual was no longer impartial and did not have an open mind and was no longer impartial;

- the Grievor should have been notified of the Conductor's "Partners in Prevention" meeting and was not;
- the preponderance of the Grievor's prior discipline was "minor" in nature;
- the Advanced Clear to Stop signal meant to the Grievor that she would be stopping at Heath and she was "ready to stop her train at the next signal";
- there is no evidence the Grievor failed to forward plan; she had a plan to approach the east end of Heath but as she approached the train was not "responding as expected"; this was the Grievor's first opportunity to assess whether the train was responsive or not and when it did not respond she quickly required a heavier braking application;
- the Grievor was aware of the descending grade but her plan "did not work out as intended";
- the Grievor was taking action to slow her train - the Grievor was gathering up slack in DB1 for a ¼ mile; the Grievor's train did slow by 22 mph between mile 129.4 and 126.75 (over 2.5 miles); the Grievor used terrain as part of her plan to slow her train; the Company did not put to the Grievor its argument she was "chasing the signal"; even if she was doing so, she had a plan and was aware the signal was coming up; the Grievor's train did not stop out of "sheer luck" but did to her active steps;
- the train stopped well short of the Stop signal; there was no delay in service or damage to equipment;
- she missed blowing the whistle at the crossings because she was focused on stopping the train at mile 126;
- the Grievor was discriminated against by being found solely liable;
- the assessment of 20 demerits was unjustified as: the violation was "miniscule"; the Grievor used the best train handling practices known to her; the Grievor's inexperience played a part; a coaching letter would be the appropriate corrective action as the Grievor should not be expected to be as knowledgeable as a locomotive engineer with decades of service; the Grievor's previous discipline did not relate to train handling matters; there is no pattern of behaviour; the Grievor had 12 months of discipline free service and 20 demerits had been removed; the discipline is punitive and excessive; and
- the Company's jurisprudence is distinguishable

[54] The Union relied on **CROA 1561, 2721, 3975, 4082, 3975, 3322, 3322, 4558**, and *TCRC v. CN 2021 SKCA 62*.

IV - Analysis and Decision

The Investigation

[55] Reading through the Investigation interview, I cannot agree with the Union that the Investigating Officer did not have an open mind, did not exercise good judgment or was not impartial, or that there was “prejudgment” of the Grievor’s case.

[56] While the Union suggested there was impropriety in the treatment of the Conductor, the Union provided no evidence of that claim. The evidence was to the contrary: The Investigating officer indicated in the Interview that the Conductor had *not* been investigated but was coached. Coaching is not discipline and the Grievor does not have any participatory rights to the Conductor’s coaching session: **SHP660**.

[57] I cannot agree the Company “must” have gained information from the Conductor in the coaching session that was used against the Grievor and should have been put before her. The Union did not point to what evidence this was. The Company had specific timed information on the Grievor’s actions from the download from the train, as well as the video footage.

[58] Neither do I find there has been any discriminatory discipline. As the Locomotive Engineer operating the train, the Grievor bore responsibility for forward planning appropriately and for bringing her train to a controlled stop. The Conductor did not have that responsibility as that individual was not at the controls.

[59] The Union has also argued the Company did not put its argument that the Grievor was “chasing the signals” to the Grievor in the Investigation. I do not find the Company is required to place all of its “arguments” before the Grievor as part of the Investigatory process. She was entitled to know the “evidence” on which the Company relied, which she did: **CROA 3322**. How the Company *used* that evidence to develop its arguments is something that is disclosed with the exchange of Briefs, not at the Investigatory stage.

[60] I find the investigation process was fair and impartial and met the requirements as outlined in the CROA jurisprudence cited by the Union.

The Wm. Scott Questions

[61] Turning next to consideration of the Incident, *Re Wm. Scott & Co*¹ requires an arbitrator to ask three questions when assessing discipline: a) is there cause for discipline? If so, b) was the discipline assessed was excessive? and if it was c) what discipline should be substituted that is fair and reasonable?

[62] Precedents have only limited value in a *Wm. Scott* analysis. When assessing the reasonableness of discipline, each case is dependant on its own unique facts and circumstances and no two cases will be the same. For example, in **CROA 4145**, the Grievor had twenty-four (24) years of service and was disciplined for speeding. **CROA 3581** also relates to discipline for a negligent rate of speed within a rail yard. Those fact situations are distinguishable from this case.

[63] For the following reasons, I have no difficulty in determining the Grievor has given the Company cause for discipline, in answer to the first *Wm. Scott* question. The Grievor has violated Rule 439 by failing to stop 300 feet away from the signal.

[64] The Union argued the Grievor should not be expected to act as a Locomotive Engineer who had “decades of experience”. I do not find this argument compelling.

[65] I accept that seeing and obeying CTC signals is a fundamental part of the job of *any* Locomotive Engineer, regardless of their seniority. I do not find it unreasonable for the Company to expect all qualified Locomotive Engineers to notice the signals that are there to be seen; to know how to react to them appropriately; and to control the speed and braking of the train and execute a controlled stop, when those signals demand that action. If an individual feels they are inexperienced at stopping a train, that would be a good reason to apply *more* aggressive braking forces earlier, rather than *less* braking forces later.

[66] The Grievor is not an employee in her first months of service, or even in her *first year* of service, or an employee new to the Terminal and so unfamiliar with the

¹ [1976] B.C.L.R.B.D. 98 at p. 6 forward

territory. The Grievor had spent her entire career operating on the same subdivisions, which career spanned a total of 7.5 years as both a Conductor and Engineer. She had 3.5 years of experience as a Locomotive Engineer at the time of this incident which was sufficient for her to be able to appropriately make and execute a plan to stop a train.

[67] It is also not evident that it was inexperience that resulted in the Grievor's actions, in this case. The Union's argument would be strengthened if the Grievor's explanation had given detail to demonstrate inexperience played a role in her decision-making. However, she did not.

[68] I find the Grievor's explanation to be vague and unconvincing.

[69] The Grievor never outlined what her "plan" was, only that she "had a plan" which "didn't work out". That is not an explanation. The Grievor's explanation for the late application of braking forces was that she had "misjudged her location and seasonal conditions" and that she "thought the speed was going to come down better. When I took the air, I thought that with my train being DP, it would have had a better braking response that it did". She stated her "first" opportunity to assess whether the train was "responsive" to her braking was shortly before the "Stop" signal at Heath. The Grievor was not responsive to the inquiries of *why* she did not apply more aggressive braking forces earlier.

[70] The difficulty for the Grievor in relying on this explanation is that she did not even *apply* a braking force beyond DB1 to her train until she was less than $\frac{3}{4}$ of a mile *from where she had to stop*. The Grievor did not apply *any* air brake – or even any DB braking force *beyond DB1* - until she had already passed both the signals and the "stop" signal had come into view. I accept that well prior to approaching Heath, the Grievor *should* have been applying braking forces which would have allowed her to bring the train to a controlled stop 300 feet before the signal at Heath – *or to notice then if her train was not responding as she expected*. She did not do so and gave no explanation why not.

[71] If the Grievor had a plan like she said she did, it was incumbent on her to give details of that plan during the Investigation process. To establish she had an appropriate

forward plan, the Grievor was required to provide considerably more detail than that she “misjudged” and her train was “not responding as expected”. She did not explain, for example, why she stayed in DB1 so long, and did not use DB levels 1 through 7 to assist her in bringing this train to a stop. She did not explain why she did not apply more aggressive braking forces than DB1 earlier than she did.

[72] While the Union noted the train did slow between mile 129.4 and mile 126.75 (by 22 mph) slowing a train moving 56 mph down to 34 mph and only using DB1 to do so, when you are now $\frac{3}{4}$ of a mile away from a stop signal, is not a “plan” to stop. Even if terrain was part of the Grievor’s plan – as the Union argued – that terrain was not effective in sufficiently slowing the train to allow the Grievor to stop.

[73] The Grievor’s explanation simply does not give any insight to *why* she did not apply a force greater than DB1 at an earlier point to bring her train to a controlled stop, when she was well aware three miles before that point that she would have to stop. Rather, she waited until close to the “stop” signal to apply those forces which were – not unexpectedly by that point – insufficient.

[74] It is therefore no answer for the Grievor to suggest that the train did not *respond* properly to braking forces, when the Grievor failed to even *apply* braking forces at a point where they could have been effective in executing a controlled stop.

[75] The Company has urged the Grievor was “chasing the signals” by anticipating she would get a “proceed” signal, until she saw the stop sign and realized she would have to stop. It argued this is *why* the Grievor failed to take the appropriate action to bring her train to a stop.

[76] Considering all of the circumstances - including the Grievor’s failure to provide a credible explanation for her failure to heed the signals and apply any aggressive braking forces until shortly before the “stop” signal - I am drawn to the same conclusion that the Grievor in this case was “chasing the signals”. I find there is no other credible explanation offered for the actions of the Grievor in staying in DB1 so long, and in failing to slow her train at an earlier point. “Chasing the signal” explains the Grievor’s failure to apply *any* significant braking force until the “stop” signal could be seen. I am satisfied if the Grievor had not been “chasing the signals” she

would have been applying more aggressive braking forces well before she did and she would have had a credible explanation for why those forces were not applied. That her “plan didn’t work out” is a grossly insufficient explanation.

- [77] The Grievor ignored the signals that were there to be seen, hoping the signals would turn and she would not have to stop her train. I find she had no intent to stop her train until the “stop” signal actually came into view and she realized she would not get a “proceed” signal.
- [78] The Union has argued the Company’s positions of negligence in failing to plan and “chasing the signals” are inconsistent. I disagree. The Grievor can be found to have failed to plan, *because* she had chosen to “chase the signals”.
- [79] “Chasing the signals” is very dangerous practice when you are “chasing” that signal with a train that weighs more than 16 million pounds, in a situation where there is on oncoming train.
- [80] The answer to the first *Wm. Scott* question is “yes”. I find the Grievor’s conduct demonstrated a gross failure to plan and constituted a significant train handling violation, and a violation of CROR Rule 439, which gave the Company cause for significant discipline.
- [81] Turning to the question of whether the discipline was excessive, there are several factors to be considered. Those factors can be aggravating, mitigating or neutral in effect. *Wm. Scott* notes several of those factors, but also emphasized that the list is not exhaustive; an arbitrator has a broad discretion to consider any factor she considers relevant in assessing the reasonableness of discipline.
- [82] The listed factors in *Wm. Scott* include the seriousness of the offence, the Grievor’s level of service (longer service is mitigating), the Grievor’s discipline record, the level of accountability and remorse; whether there are any circumstances negating intent (intent is aggravating); and whether the action was provoked.
- [83] I accept that this violation was a significant and serious one, in what is a highly safety-sensitive industry. I also accept that a fundamental requirement of a Locomotive Engineer – and a crucial safety requirement – is to stop a train.

Locomotive Engineers must be able to control their trains and obey the signals to bring that train to a controlled stop. They are the last line of defence. While this places considerable responsibility on those employees, that is the nature of that role.

- [84] The nature of the offence and its fundamental relationship to the job of a Locomotive Engineer is a significant and aggravating factor for discipline.
- [85] The Grievor's record is mixed. The Company has argued a pattern and the Union has argued the previous discipline does not have anything to do with train handling and is minor in nature.
- [86] It is the disciplinary "record" that is considered in assessing discipline. Previous discipline is relevant *whether or not* it directly relates to the exact same type of offence. Where an offence *does* relate to the same type of offence, it demonstrates that the previous progressions of discipline have failed to teach and therefore supports an even stronger disciplinary response.
- [87] I disagree with the Union that the Grievor's previous discipline is not relevant or is "minor" in nature. The Grievor ignored a hot box warning. This is not a "minor" offence. A hot box warning indicates to a Locomotive Engineer that there is a problem with their equipment.
- [88] The Grievor's record also had a 25 demerit suspension for failing to blow the whistle during this Incident. Blowing a whistle protects a crossing. It is a serious obligation. It is no explanation that the Grievor failed to blow the whistle because she was too busy responding to a situation of her own making.
- [89] The employee's explanations are also a relevant factor, as they relate to intent. If intent is found, that is an aggravating factor. As noted above, I find the Grievor's explanations for her actions to be vague and unconvincing and to be lacking in detail and I have also concluded she was "chasing the signals". "Chasing the signals" demonstrates intent which is an aggravating factor for discipline.
- [90] In all of the circumstances of this case, I find the Company's assessment of 20 demerits (or 1/3 of the way to dismissal under the Brown System) for the Grievor's

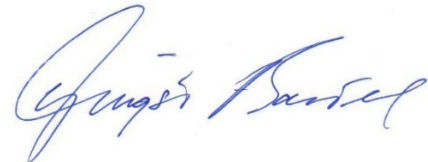
failure to forward plan appropriately and for her actions in “chasing the signals” was not excessive or unwarranted and was in fact lenient.

[91] The answer to the second *Wm. Scott* question is therefore “no”, the discipline was not excessive. The third *Wm. Scott* question therefore does not arise.

[92] The Grievance is dismissed.

[93] I remain seized to address any issues in the implementation of this Award and to correct any errors or omissions to give it its intended effect.

August 21, 2023



CHERYL YINGST BARTEL

ARBITRATOR