

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

CASE NO. 5044

Heard in Montreal, May 15, 2024

Concerning

BOMBARDIER TRANSPORT CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The assessment of a 60-day suspension assessed to Conductor Éric Labrèche.

JOINT STATEMENT OF ISSUE:

Mr. Labrèche receives a 60-day suspension as shown in his discipline letter as follows;
« Cette lettre est en référence à l'enquête tenue le 5 octobre 2022, concernant les événements qui ont mené à la violation de la règle 42 sur la subdivision de St-Hyacinthe.

Cette enquête a révélé que vous avez franchi les limites de la règle 42 sur la subdivision de St-Hyacinthe sans avoir la permission adéquate du contremaître REM. De plus suite à cette infraction vous avez omis d'appliquer les mesures d'urgence conformément à la règle 125. Aussi suite aux changements des conditions de travail vous n'avez pas tenu une nouvelle séance de job briefing selon l'IGE section 8 article 12.1. L'enquête nous a aussi démontré un manque au niveau de votre connaissance du territoire ainsi que de la règle 42 (d). Ceci aurait pu avoir des conséquences graves pour la sécurité des travailleurs protégée par la règle 42.

Pour ces motifs, nous avons décidé de vous imposer 60 jours de suspension sans solde qui sera purgée du 21 septembre au 19 novembre 2022 inclusivement. Votre retour au travail se fera donc en date du 20 novembre 2022. Cette mesure disciplinaire demeurera inscrite à votre dossier pour une période 730 jours de calendrier, suivant la signature de cet avis.

Soyez avisé qu'au prochain manquement, en fonction de son degré, des mesures disciplinaires supplémentaires pourraient être imposées. »

UNION'S POSITION:

For all the reasons and submissions set forth in the Union's grievance which are herein adopted, the Union believes the Company has excessively discipline to Mr. Labrèche.

As provided in the Union's grievances the Union nor does Mr. Labrèche deny the incident, what the Company has chosen to do is ignore the mitigating circumstances. As shown within the statement the RTC appears to not be familiar with the territory, seemed confused and provided incorrect information. Had the RTC provided the needed and necessary information the crew would have then known where exactly they were travelling and could have then adhered to any restrictions.

Mr. Labrèche believe his Engineer had a full understanding of the instructions.

Once the mistake happened the crew received immediately the authority from the Foreman which led the crew to believe they no longer needed to apply any emergency broadcast.

As the Union has further argued the Company in their own discipline letter state that Mr. Labrèche had lack of knowledge on the territory as well as had a lack of understanding Rule 42. Instead of providing education on the Rule, providing more familiarization on the territory the Company instead chose to issue a heavy-handed suspension for 2 months without wages.

Discipline may be warranted but not 60-days of unpaid suspension, the Union believes education should be at the forefront rather than punitive discipline.

The Union request that the 60-day suspension assessed be expunged or at least substantially reduced and Mr. Éric Labrèche be compensated all loss wages with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY'S POSITION:

The Company disagrees and denies the Union's request. As mentioned in our Step 3 grievance response, the Company maintains its position regarding the fact that Mr. Labrèche did not hold a proper job briefing with his locomotive engineer when the routing changes had been communicated to them by the RTC and also, Mr. Labrèche did not apply the emergency broadcast procedure especially after such a critical rule violation. As a reminder, the train operated on 739 feet of track without the foreman's authorization.

The Company agrees that maybe more familiarization trips could be useful to reinforce Mr. Labrèche's knowledge of the territories, but the fact remains that he worked on that area for many months before he went to work on CP line for a while and chose to come back on CN line.

FOR THE UNION:

(SGD.) W. Apsey

General Chairperson, CTY-E

FOR THE COMPANY:

(SGD.) A. Ignas

Industrial Relations Lead

There appeared on behalf of the Company:

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| C. Trudeau | – Counsel, Fasken, Montreal |
| A. Ignas | – Industrial Relations Canada, Toronto |
| C. Henripin | – Human Resources, Business Partner, Montreal |
| J. F. Brault | – Assistant General Manager Alstom, Toronto |

And on behalf of the Union:

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| R. Whillans | – Counsel, Caley Wray, Toronto |
| W. Apsey | – General Chairperson, CTY-E, Smiths Falls |

AWARD OF THE ARBITRATOR

Context

1. The grievor was the Conductor on a train that entered, without permission, onto a portion of the track that was under the control of a Track Foreman. The train exceeded the track permission by some 700 feet, although fortunately no injury or damage was caused. The grievor was disciplined with a 60 day suspension, which the Union contests as being excessive in the circumstances.

Issues

A. Was the 60 day suspension reasonable in the circumstances?

B. If not, what was the appropriate discipline?

A. Was the 60 day suspension reasonable in the circumstances?

Position of the Parties

2. The Company submits that the grievor, a Train Conductor, was on a train which entered on to a portion of the track without authority, thereby causing a critical rule violation (Rule 42). The Company also invoked Rule 106 (crew responsibilities) when he failed to ensure understanding the Rail Traffic Controller's instructions, Rule 12.1 of the General Engineering Instructions, which requires a job briefing every time conditions change and Rule 125 (Emergency Communications), for failing to follow Emergency Communication Procedures.

3. The Company argues that injury or death could have been the consequences of the grievor's failure to follow the Rules cited above, which are in place to avoid these very situations.

4. The Company submits that the 60 day suspension is entirely reasonable and should not be disturbed.

5. The Union and the grievor admit the Rule 42 violation, but submit that the instructions from the Rail Traffic Controller were not clear. The grievor submits that by the time they realized the Rule 42 violation, they had received new instructions from the Track Foreman, so did not believe that Rule 125 applied.

6. The Union and the grievor strongly submit that the discipline imposed is highly excessive in the circumstances, given both the facts of the case, as well as the jurisprudence.

Analysis and decision

7. The Union and the grievor admit the Rule 42 violation. As noted by Arbitrator Keller in **CROA 3472**:

“Rule 42 is a cardinal rule. Violations of this rule can result in significant danger not only to the train crew but to those working within the limits. That there were none at this time does not exclude the possibility”

8. Given the violation of a cardinal rule, some form of discipline is required, whether one follows a corrective or disciplinary approach. The issue here is whether the discipline imposed by the Company is reasonable.

9. The Union notes that in his eleven years of service with the Company, the grievor has no discipline at all, let alone discipline related to safety.

10. It notes that the grievor was candid and direct in his testimony and showed remorse. It notes further that the engineer takes full responsibility for the infraction:

“Eric Labrèche, un bon travaillant et coéquipier j’aimerais bien qu’il soit disculper car on ne peut pas lui reprocher seulement le manque d’expérience dans ce genre de situation, je serai le seul responsable pour cette événement” (Q 33, Tab 1, Union documents).

11. It argues that the RTC was not clear in his instructions, having to repeat them multiple times. It argues further that Daniel Lapierre, a thirty-eight year Instructeur de règlement, found the signals and signage in place in the area of the infraction were less than clear (see Q and Rs 1-5, Tab 3, Union documents). It notes that this testimony was not challenged by the Company.

12. The Company argues that the root cause of the incident is the failure of the grievor to ensure proper understanding of the RTC instructions. It notes that he has been a Conductor for four years, and should never have proceeded without this clarification. He admits not having understood the instructions and instead relying on the apparent understanding of the engineer. The reality is that the engineer was not clear either about the instructions.

13. The Company argues that this is not a single infraction, but multiple ones, as set out above.

14. The jurisprudence cited by the Parties shows a range of discipline, depending on the facts of each case, with the particular aggravating or mitigating factors.

15. The Company argues that significant discipline is appropriate, as set out in the following cases.

16. In **CROA 4250**, an engineer with twenty-nine years of seniority and only 215 total demerits, of which 85 were for rules infractions, was dismissed for having occupied a track without authority. Arbitrator Schmidt substituted a suspension without compensation, despite having doubts about the candour of the grievor.

17. In **CROA 3472**, Arbitrator Keller found that the 45 demerits imposed on the grievor should not be reduced, given the Rule 42 infraction and the lack of candour of the grievor. This was the case despite the fact that the grievor had been discipline free for the last twelve years.

18. In **CROA 4651**, Arbitrator Sims upheld a 45 demerit penalty for a rule 42 infraction, despite an argument about distractions at the time of the incident.

19. The Union argues that the discipline is excessive, in light of the following cases.

20. In **SHP 720**, Arbitrator Hodges provides a good overview of the Brown system and a review of the motivation of CP to move to suspensions, rather than demerits, for major offences. In that decision involving a failure to establish blue flag protection, the Arbitrator found that a two week unpaid suspension was excessive for a thirty-seven year employee with a clean disciplinary record. He substituted a penalty of a three day deferred suspension.

21. In **CROA 2588**, Arbitrator Picher dealt with the discipline of an engineer who had entered a track without authority and been disciplined with 30 demerits and a 32-day unpaid suspension. He found that the crew had been inappropriately distracted by a supervisor and reduced the penalty to 20 demerits and a two week unpaid suspension.

22. In **CROA 2161**, Arbitrator Picher dealt with a brakeman who had passed a red signal without obtaining permission from the Foreman working on the track. He reduced the three month suspension to 30 days, given the grievor's twenty-four years of service and clean discipline record.

23. In **CROA 1943**, Arbitrator Picher dealt with an engineer who proceeded for 23 miles without authority. The Company had imposed a six month suspension, which was reduced to 40 demerits. The arbitrator considered the grievor's fifteen years of service with no discipline, together with the fact that the MBS system was relatively new in that area.

24. In light of the facts and jurisprudence set out above, I find the 60 day suspension excessive in the circumstances. Here, the grievor was candid, unlike in **CROA 4250** and **3472**. He had no discipline on his record, as in **CROA 2161** and **1943**.

B. If not, what was the appropriate discipline?

25. While I find a 60 day suspension excessive, I also find that the grievor is deserving of a significant penalty in light of the number and severity of the infractions.

26. I give significant weight to the Company's argument that the grievor failed to intervene, despite not understanding the RTC's instructions. He assumed, wrongly, that the engineer had understood. The grievor's train was in a complicated environment, as identified by Daniel Lapierre, when they were ordered to execute a new, and

complicated, “up and back” or “see-saw” movement. It is not surprising that the grievor and the engineer were unclear on what exactly they were being asked to perform. However, if he had intervened to request a further clarification from the RTC, it is entirely possible that the entire Rule 42 infraction would have been avoided. Given the risks involved with proceeding without certainty, he should have spoken up.

27. Taking into account the mitigating and aggravating circumstances identified above, I find that a 30 day suspension without pay is appropriate. The jurisprudence mentioned above shows penalties which are both more and less harsh than the penalty selected. There is even one case, **CROA 2161**, with an identical penalty.

28. The grievor should be made whole, with the exception of the 30 day suspension.

29. I remain seized with respect to any issues of interpretation or application of this Award.

June 7, 2024



JAMES CAMERON
ARBITRATOR