

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

CASE NO. 5116

Heard in Montreal, December 10, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Conductor N. McKenna of Moose Jaw, SK.

JOINT STATEMENT OF ISSUE:

Following a formal investigation, Conductor McKenna was dismissed on June 14, 2023, for the following:

“In connection with your tour of duty on the E53-01 on June 1, 2023 and more specifically the events surrounding your failure to protect the point, resulting in shove movement through previously run through east end track 2 switch, causing a derailment at track 3 switch in Broadview Yard.

A violation of:

- T&E Safety Rule Book, T-0 Job Briefing
- Rule Book for T&E Employees, Section 12.3 Shoving Equipment”

Union's 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 the Company has failed to meet the burden of proof or establish culpability related to the allegations outlined above.

The Union contends the Company has failed to consider mitigating factors contained within the record.

The Union contends the discipline assessed is arbitrary, unwarranted, unjustified, and excessive in all the circumstances. It is also the Union's contention that the penalty and the Company's discipline policy is contrary to the arbitral principles of progressive discipline.

The Union disputes the application of the Hybrid Discipline & Accountability policy in the instant matter.

The Union requests that the discipline be removed in its entirety, and that Mr. McKenna be reinstated without loss of seniority and benefits and be made whole for all associated loss with

interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

Company Position

The Company disagrees and denies the Union's request.

The Company maintains that the Grievor's culpability as outlined in the disciplinary letter was established following a fair and impartial investigation.

Discipline was determined following a review of all pertinent factors, including those described by the Union. Moreover, the discipline was properly assessed, consistent with the Company's Hybrid Discipline and Accountability guidelines. The quantum of discipline assessed was not excessive nor unjust.

The Company maintains that no violation of the collective agreement, policies, procedures nor any legislation has occurred.

The Company's position continues to be that the discipline assessed was just, appropriate, and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed and respectfully requests that the Arbitrator be drawn to the same conclusion.

For the Union:
(SGD.) D. Fulton
General Chairperson

For the Company:
(SGD.) D. Zurbuchen (for) **F. Billings**
Director, Labour Relations

There appeared on behalf of the Company:

D. Zurbuchen – Manager, Labour Relations, Calgary

And on behalf of the Union:

R. Whillans – Counsel, Caley Wray, Toronto
D. Fulton – General Chairperson, CTY-W, Calgary
J. Hnaituk – Vice General Chairperson, CTY-W, Calgary

AWARD OF THE ARBITRATOR

Context and Issues

The facts and issues surrounding the above incident are set out in CROA 5058, dealing with the discipline of the Locomotive Engineer, and need not be repeated here.

Analysis and Decision

Having read the Briefs and heard the submissions of the Parties, I hereby order the following:

1. Mr. McKenna is to be reinstated without loss of seniority or benefits.

2. A 20-day suspension is to be substituted for Mr. McKenna's dismissal.
3. All time following the expiry of the 20-day suspension that has been substituted for the dismissal is to be recognized as pensionable service.
4. Mr. McKenna's disciplinary record is to be corrected. He will return to active service at Step 2 of the Company's Hybrid Discipline Policy. All time during which Mr. McKenna was inactive following the expiry of the 20-day suspension that has been substituted for the dismissal is to be recognized as active service for the purpose of the Company's Hybrid Discipline Policy.
5. The matter of compensation is remitted to the parties for resolution. In the event the parties are unable to agree as to the quantum of compensation, Arbitrator Cameron remains seized to determine that matter.

XX, 2024

**JAMES CAMERON
ARBITRATOR**