

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

CASE NO. 5127

Heard in Calgary, January 14, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

UNITED STEELWORKERS, LOCAL 1976

DISPUTE:

The assessment of 30 demerits and dismissal of Mr. Adonis Ntwari.

JOINT STATEMENT OF ISSUE:

▪ On December 7, 2022 the Company issued Mr. Ntwari 30 demerits in connection with “your failure to follow calling procedures; specifically, your failure to follow the US Rest Rules when calling crew on DH03173T3S.”

▪ As a result of this assessment of discipline, the Company activated 30 demerits that had previously been assessed and deferred on April 15th, 2022. Mr. Ntwari was consequently dismissed for accumulation of demerits and a culminating incident.

▪ The Union filed a grievance. The Company declined the Union’s grievance.

Union Position:

The Union takes the following position:

▪ The discipline issued was excessive, the Union is of the belief that issuing 30 demerits and activation of 30 previous deferred demerits for this event is unjust.

▪ The discipline and financial hardship assessed to Mr. Ntwari as a result of his dismissal from the Company does not support the purpose noted. Mr. Ntwari made a commitment to the Company that he would take all necessary steps to avoid any future instances from occurring.

▪ As a full and final resolve, the Union requests Mr. Ntwari be reinstated with Canadian Pacific Kansas City with full benefits and seniority, and that he be reimbursed for all lost wages.

Company Position:

The Company cannot agree with the Union’s position nor the requested remedy.

The Company maintains that the Grievor was appropriately dismissed for an accumulation of demerits in accordance with the Company’s Hybrid Discipline and Accountability Guidelines and in further consideration of his poor discipline record constituting a culminating incident warranting dismissal. Culpability was established after a fair and impartial investigation and the Grievor was assessed thirty (30) demerits for the November 1, 2022 incident. Consequently, the thirty (30) demerits that had been deferred following the incident on March 22, 2022 were activated and added to the Grievor’s record in accordance with the language on his form 104.

The Company maintains that discipline was assessed after a review of all the factors, including those the Union have described as mitigating. The discipline was assessed in line with the Company's Hybrid Discipline and Accountability Guidelines and the principles of progressive discipline. As such, the Company maintains dismissal was appropriate, warranted and just in all the circumstance and cannot see a reason to disturb the discipline assessed.

Accordingly, the Company respectfully requests the Arbitrator dismiss the Union's grievance in its entirety.

For the Union:
(SGD.) J Howell
 Chair Board of Trustees

For the Company:
(SGD.) L. McGinley
 Director, Labour Relations

There appeared on behalf of the Company:

S. Scott – Manager Labour Relations, Calgary
 A. Harrison – Manager, Labour Relations, Calgary

And on behalf of the Union:

N. Lapointe – Area Coordinator, Montreal
 J. Howell – President Board of Trustees, Winnipeg
 N. Lapointe – President Local 1976, Montreal
 S. Rybuck – Observer, Winnipeg

AWARD OF THE ARBITRATOR

[1] On December 7, 2022, the Grievor was issued 30 demerits for failure to follow calling procedures, and follow the US Rest Rules when calling the crew on DH03173T3S. He was assessed 30 demerits for that alleged misconduct. That discipline has been grieved in this case.

[2] That assessment, however, also activated 30 demerits which had previously been issued to the Grievor, in April of 2022. That discipline was not grieved when it was assessed.

[3] The time to grieve that discipline was when it was *assessed* in the first place, and not when it is *activated* later. That time is long past.

[4] Given that the 30 demerits from April of 2022 have now been activated, the Grievor was sitting at 105 demerits as of December of 2022 (after he was assessed the 30 demerits for calling the crew on DH03173T3S).

[5] Under the Brown System, dismissal occurs at 60 demerits.

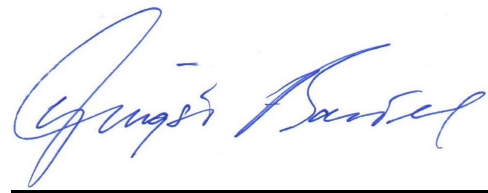
[6] What this practically means for this Grievor is that *even if this Grievance were totally successful*, and no discipline was found reasonable; and the 30 demerits were then subtracted from the Grievor's discipline record, the Grievor would still be sitting at 75 demerits (105 – 30) and he would *still* be subject to dismissal under the Brown System.

[7] There is no basis on which an Arbitrator can exercise any discretion to substitute a different discipline that will allow the Grievor to return to his employment with the Company, even if this Grievance were entirely successful.

[8] Given that situation – and after discussion of the appropriate resolution with the Union at the hearing - the Grievance is dismissed.

I retain jurisdiction for any questions relating to the implementation of this Award. I also remain seized to correct any errors; and to address any omissions, to give this Award its intended effect.

March 7, 2025



**CHERYL YINGST BARTEL
ARBITRATOR**