

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

**CASE NO. 5129**

Heard in Calgary, January 14, 2025

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the 20 Day Suspension assessed to Conductor Logan Kerkhoff of Medicine Hat, AB.

**JOINT STATEMENT OF ISSUE:**

Following a formal investigation Mr. Kerkhoff was assessed a 20 Day Suspension on March 21, 2023, for the following:

“In connection with your tour of duty on train 2243-04 March 6, 2023 and more specifically failure to perform a passing train inspection of train 242-05, while employed as a Conductor in Medicine Hat AB.

Summary of Rules violated:

Train & Engine Safety Rule Book, T-0 Job Briefing

Rule Book for T&E Employees, Section 2.1 Reporting for Duty

Rule Book for T&E Employees, Section 2.2 While on Duty

Rule Book for T&E Employees, Section 11.7 Inspecting Passing Movements

CROR Rule 110 Locomotive Engineer Precautions.”

**UNION 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's failure to respond to the Step Two appeal in a timely fashion is a violation of Article 40.03 of the Collective Agreement and the Letter Re: Management of Grievances & the Scheduling of Cases at CROA.

The Union contends that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is void ab initio and ought to be removed in its entirety and Mr. Kerkhoff be made whole.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above.

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

The Union submits the Company has engaged in the unreasonable application of the Efficiency Test policy and procedures, resulting in the arbitrary, discriminatory, unjustified, unwarranted, and excessive assessment of discipline. The Union further contends the discipline does not conform with the principles of progressive discipline.

The Union requests that the discipline be removed in its entirety, and that Mr. Kerkhoff is 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 Union suggests the Company has effectively failed to respond to the Step 2 grievance and in doing so allegedly failed to fulfill the requirements of the Collective Agreement. While the Company cannot agree with the Union's allegations pertaining to the local grievance response, Consolidated Collective Agreement Article 40.04 is clear in that the remedy for failing to respond is escalation to the next step. Based on the submission of the Union's final step grievance, it is also clear the Union acknowledges Article 40.04 and has progressed to the next step of the grievance procedure.

The Company disagrees with the allegation that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. There is no evidence to substantiate the claims that the Union has made that the Investigating Officer did not conduct himself in a fair and impartial manner.

The Company maintains the grievor's culpability as outlined in the discipline letter was established following the fair and impartial investigation. The Grievor himself confirmed in the investigation statement that he did not conduct a passing train inspection.

The Union submits that the Company engaged in unreasonable application of the Efficiency Test policy and procedures. The Company disagrees. CROA jurisprudence has long supported that discipline may be assessed following a formal investigation in connection with a rules violation that may have flowed from efficiency testing.

Discipline was properly assessed after considering all mitigating and aggravating factors and that the quantum of discipline assessed to the Grievor was in no way excessive or unwarranted.

Based on the foregoing, the Company can see no violation of the Collective Agreement. Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests that the Arbitrator be drawn to the same conclusion

#### **For the Union:**

**(SGD.) D. Fulton**

General Chairperson, CTY-W

#### **For the Company:**

**(SGD.) F. Billings**

Director, Labour Relations

There appeared on behalf of the Company:

F. Billings	– Director Labour Relations, Calgary
S. Arriaga	– Manager Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
D. Fulton	– General Chairperson, CTY-W, Calgary
B. Wiszniak	– Vice General Chairperson, CTY-W, Regina
L. Smith	– Alt General S/T, CTY-W, Medicine Hat

T. Stehr	– Local Chairperson, CTY, Medicine Hat
L. Kerkhoff	– Grievor, Medicine Hat (via zoom)
V. Linkletter	– Vice General Chairperson, RCTC, Calgary (observer)

## **AWARD OF THE ARBITRATOR**

### **Issue**

[1] At the time of these events, the Grievor was employed as a Conductor. He worked out of the Medicine Hat Terminal. He had approximately 4 years of service and had no discipline on his record. He was disciplined for failure to perform a passing Train inspection on a meet with Train 242-05 on March 6, 2023. This Grievance was filed against that discipline.

[2] The issues in this case are:

- a. Was the Grievor culpable for some form of discipline;
- b. If so, was the discipline assessed just and reasonable; if not,
- c. What discipline should be imposed as a just and reasonable response, by the exercise of this arbitrator's discretion.

[3] For the reasons which follow, the Grievance is dismissed.

[4] It is directed that this Award be read with **CROA 5134** for any precedential use.

### **Background**

[5] This is the second dispute which involves what has been described as a disturbing pattern of manipulative “*gamesmanship*” for important safety obligations, for two crews, both based in Medicine Hat. The second dispute was resolved in **CROA 5134**. In that case, actions of an LE were at issue. This case involves the actions – and responsibilities - of a Conductor, who is not physically in control of a train, but yet works under important and independent obligations.

[6] The facts are largely not in dispute.

[7] On March 6, 2023, the Grievor was called for Train 2243-04, commencing duty at 00:20 from Medicine Hat, traveling westward on the Brooks Subdivision. The LE on this

tour was Ms. Fraser. LE Fraser's evidence was that she had made five trips in the past three years on the Brooks Subdivision, as she usually worked on the Maple Creek Subdivision (Q/A 26).

[8] While the discipline imposed on LE Fraser was not before this Arbitrator, her actions/inactions in this case are relevant factual background to assess the actions of the Grievor.

[9] The Train to which this crew was assigned was over 4,000 feet in length. During their tour of duty, the crew was required to move into a siding at Monogram, to wait for a meet with Train 242-05, which was heading eastward on the same track. That siding was over 11,000 feet in length (more than two miles long), which was more than double the length of the Train.

[10] Moving into – and stopping – in a siding are not unusual situations in this industry, given that the track accommodates traffic moving in both directions.

[11] When Train 2243-04 arrived in Monogram, the weather was snowy and - given the hour – it was dark outside.

[12] The evidence of LE Fraser was that she stopped in the siding *at the point that her train had cleared*. Given the length of this Train and the length of this siding, that means LE Fraser stopped this Train approximately halfway into the siding, or at the “East End”, as described by the Grievor (Q/A 34).

[13] The signal to continue on this trip was located at the *West* end of the siding, almost a mile down the siding.

[14] The download evidence indicated the train was stopped at that location in the siding for 14 minutes. After stopping for 14 minutes, LE Fraser then pulled the Train down towards the signal.

[15] The Grievor's evidence was he did not know why the train started to pull down toward the signal 14 minutes after entering the siding. His answer was: “*I did not know, we did not have a discussion*” (Q/A 35). At Q/A 20, the Grievor was asked about whether a “predeparture job briefing” occurred. The Grievor stated that briefing did occur and that

“[o]n the arrival to Monogram, the signal indication which was medium to stop and how *we needed to be prepared to stop at the west end of Monogram*”.

[16] It is unclear if this was the predeparture job briefing or the arrival in Monogram, but the effect is the same. The crew did not discuss any change to the plan to stop at the *West* end of the siding, rather than in the middle, as LE Fraser did.

[17] None of the crew ever detrained to perform a passing train inspection of Train 242-05. There was in fact not even any *communication* between the crew about performing the passing train inspection of Train 242-05.

[18] At Q/A 29 when asked if he attempted to detrain to perform a passing train inspection “*after your train had come to a complete stop...*”, the Grievor answered “*No, I did not as our train did not come to a complete stop at Monogram during the meet with Train 242-05*”. That is not correct, as the train download evidence established the Train *did* come to a complete stop at Monogram – for 14 minutes – to make this meet.

[19] At Q/A 32, the Grievor clarified this answer that “*the time the meet took place* *we were not stopped so I wasn’t aware we had to stop to perform a passing train inspection*” (emphasis added). Ms. Fraser’s evidence was she “*didn’t know*” if the layout and terrain at the Siding was a safe location to conduct that inspection (Q/A 31). There is no evidence from her Investigation that she ever discussed that issue with the Grievor, who was familiar with the geographical layout, as he had been working on the Brooks Subdivision for 6 months (at Q/A 25). I am satisfied this was a safe location to perform a passing train inspection. I am satisfied Train 242-05 passed Train 2243-04 while it was slowly moving down toward the signal, given Foreman Ellis’s evidence, discussed below.

[20] When asked if he had anything to add to the Investigation, the Grievor stated “*My intent was never to avoid performing a passing train inspection*” (Q/A 48). Given that answer, the Grievor was aware that could be perceived as an intent, from his evidence.

[21] Given the Grievor failed to even discuss that obligation during this tour of duty – and before or during the 14 minutes in the siding – and failed to ask any questions of why the Train was stopped or why it then chose to “*pull down*” towards this signal as Train 242-05 approached, this statement is less than convincing.

[22] No explanation was offered for why that plan was not followed to proceed to the West signal and instead the Train “*stopped short*” in the siding for 14 minutes.

[23] Unknown to the crew, Road Foreman March Ellis was riding on train 242-05, which was the train passing on the main track. Foreman Ellis’s evidence was that when his train approached where Train 2243-04 was waiting in the siding at Monogram, Foreman Ellis saw Train 2243-04 in that siding and also noticed there were no employees positioned on the ground to perform a passing train inspection on 242-05. He also noticed that Train 2243-04 was moving westward at a slow speed.

[24] I am satisfied what Road Foreman Ellis saw was when LE Fraser decided to “pull down” towards the signal, because Train 245-02 was approaching. Road Foreman Ellis recorded a failed Efficiency Test and discussed with the crew what should have occurred.

[25] The Grievor was disciplined “*in connection with your tour of duty on train 2243-04 March 6, 2023 and more specifically the failure to perform a passing train inspection of train 242-05...*”

### **Relevant Provisions**

#### **CROR Rule 110 Inspecting Passing Trains and Transfers**

- (a) *When duties and terrain permit, at least two crew members of a standing train or transfer and other employees at wayside must position themselves on the ground on both sides of the track to inspect the condition of equipment in passing trains and transfers...*
- (b) *Employees inspecting the condition of equipment in a passing freight train or transfer must, when possible, broadcast the results of the inspection. (emphasis added).*

...

#### **Rule Book for T&E Employees, Section 11.7**

##### **Crew Inspecting**

*When stopped, and duties and terrain permit, all crew members must position themselves on the ground on both sides of the track to inspect the condition of equipment in passing movements. ... (emphasis added).*

- (a) *Employees inspecting must, when possible, broadcast the results of the inspection.*

...

*T&E Safety Rules and Safe Work Procedures**T-0 Job Briefing*

1. *Before performing any job, a job briefing led by the foreman/conductor must be held to ensure that all employees involved have a clear understanding of:*

*The task to be performed;*

*Your individual responsibility; and*

*Situational awareness concerns*

*Additional verbal job briefings must be carried out as necessary, while the work progresses or as the situation changes.*

**Arguments**

[26] The Company argued that the discipline was assessed consistently with its discipline policy; and was just and reasonable on these facts and circumstances. These included the actions/inactions of this Train crew in stopping in the siding for 14 minutes, well short of the signal. It argued that timing was sufficient to have performed a passing train inspection. It relied on the deliberate nature of the misconduct, as it alleged the crew had placed themselves into a position to not carry out their important job obligations. It argued the Grievor is responsible as Conductor for the train's "overall operations" and that they were to be prepared to stop at the *West* end of the siding, not the *East* end. It argued that job brief was not followed and no discussion was undertaken. The Company disputed this was not an obligation solely for the LE. It argued that performing passing train inspections was an important and fundamental safety measure in this industry, attracting significant discipline in the jurisprudence. It pointed out the discipline assessed was consistent with its disciplinary policy, which lists failures to perform passing train inspections as "major" offences.

[27] The Union placed considerable emphasis on the fact this was a failed Efficiency Test. It argued the framework developed by this Arbitrator in **AH860** has not been satisfied on these facts and the Grievor should not have been assessed discipline. It pointed out the Grievor had a good test record, and no discipline on his record, and an educative approach should have been taken. It further argued that the Grievor had not

contravened any requirements to perform this inspection, as Train 2243-04 was “*moving*” at the time of the meet, and no culpability was established as a condition precedent for a passing train inspection on the ground was not fulfilled. It also argued that even if there was a Rule contravention, the imposition of a 20 day suspension was not just and reasonable, but excessive.

### **Analysis and Decision**

[28] The Union took issue with the Company’s late reliance on a certain example in its submissions. That objection was well taken. An Arbitrator must rely on evidence for their decisions. Examples without any context or evidence are irrelevant. No reference has been made to that example and it was not relied upon in resolving this dispute.

[29] I am satisfied the importance of passing train inspections in this industry has already been well-recognized in the jurisprudence without this example and this Arbitrator likewise understands the importance to the Company of its employees performing such inspections to catch any issues that may occur with a Train. An example of what can be found on such inspections is unnecessary, given that recognition.

[30] While there are several different types of passing train inspections, I am satisfied that the best form of passing train inspection in this situation is done from the ground, with each member of the crew taking up position on either side of a passing Train. This is the type of passing train inspection that is at issue in this case. Obviously that is only possible if the crew’s train is stopped. The question raised in these two disputes is whether a train crew can position themselves in such a manner in a siding that this obligation is avoided. As noted in **CROA 5134**, they cannot.

[31] As a preliminary point, the Union has argued the Company expanded its grounds for discipline by arguing the actions were deliberate and/or manipulative. I cannot agree. The Company disciplined the Grievor for his actions “*in connection with*” this tour of duty. The Company put in issue the Grievor’s failure to perform the job inspection. It cited rules related to the job briefing and the requirement to perform passing train inspections. The Company also asked for the Grievor’s rationale for not discussing where the Train was stopped, given it was stopped for 14 minutes. The Grievor gave an answer he did not



perform a passing train inspection because the Train was “moving”. The Company is entitled to challenge that explanation by arguing an inference should be drawn of deliberate and/or manipulative actions, based on the evidence, including that the Grievor’s own inactions/actions led to that state. Those are in fact inferences that an Arbitrator can always draw from evidence.

[32] In addition, I cannot agree the Grievor or the Union are “surprised” or prejudiced that the Company argued the actions - or in this case inactions - were taken deliberately and/or manipulatively to avoid performing a passing train inspection, given the questions asked and the Grievor’s answers. The Grievor in this case noted he never “intended” not to perform a passing train inspection, which implies that he knows that one possible inference is that he did so intend to avoid that obligation. I therefore cannot agree the Grievor’s motivation was not a live issue in the Investigation or that this argument took the Union by surprise.

[33] For the reasons outlined below, I am satisfied that the Grievor failed in his obligations; that his inactions were deliberate and manipulative and were designed to avoid an important safety obligation; and that those actions were not appropriately addressed through education or coaching under an Efficiency Test protocol and properly attracted discipline.

[34] The Union maintained this was a failed Efficiency Test, attracting the framework in **AH860**, and that culpability was not established.

[35] The question to be addressed in an Efficiency Test framework is whether the behaviour should attract an educative and coaching response, or a disciplinary response. That is the broad question at issue. The factors to be considered are the frequency of the alleged misconduct, the severity of the actions/inactions at issue; and the employee’s work history. Each case will turn on its own facts for the weight to be given to each factor. The more severe the misconduct, the greater will be the weight for a disciplinary approach, both to address and to deter misconduct. Considering all of the factors and the circumstances of this case, I am unconvinced this is an appropriate situation for the application of a coaching or educative response. While the Grievor had no disciplinary record, he was a fairly short service employee. His efficiency record was likewise positive,

although over only four years of employment. Comments were positive. However, not only did the Grievor in this case fail to perform his important safety obligation, but the manner in which it was avoided was part of a concerning pattern of manipulation to avoid important safety duties.

[36] An educative response for what is found to be manipulative behaviour (as further discussed below) would not only fail to address the important safety issues raised by this case, but would also fail to address the important aspect of deterrence. As noted, this was not the only case heard in the January 2025 CROA Session from a Medicine Hat crew, which involved this type of behaviour.

[37] The bulk of the jurisprudence relied on by the parties regarding the importance of passing train inspections in this industry – and the appropriate discipline for such - has already been analyzed in **CROA 5134**. That analysis is adopted here, although will not be repeated.

[38] Considering all of the factors, I am satisfied the severity of the incident in this case far outweighs the other two factors and supports a disciplinary response, rather than coaching or education to not be manipulative. The misconduct was appropriately addressed in a disciplinary framework.

[39] Under a disciplinary analysis, the first question is culpability.

[40] CROR Rules and the T&E Rule Book outline the requirements that this type of “on-the-ground” inspection is to be performed “*when duties permit*”, which is when the crew’s train is “*stopped*” or “*standing*”.

[41] LE Fraser and the Grievor were both aware the Train was to be stopped for a meet in the siding and would be required to wait in the siding for the approaching train to pass. Both were also aware of the obligations to perform a passing train inspection when duties permitted, and when a train is “stopped”. Both crew members were also aware of their obligation to position themselves on the ground to perform a passing train inspection where their duties permitted. Stopping for a meet is not an unusual situation in this industry. That it was a dark and snowy night did not change that obligation.

[42] LE Fraser stated she '*stopped short*' - as this behaviour has been described – and then pulled down to “*see the indication of the signal*” (Q/A 35). LE Fraser’s discipline is not at issue in this dispute. The relevant aspect for this Grievance is that there was no explanation given by LE Fraser to the Grievor for why she could not have “*pulled down*” to see the signal when she entered the siding, rather than “*stopping short*” for 14 minutes at a point halfway into the siding, then only pulling down when the meet was expected. There was no evidence any reasoning for her actions was ever discussed with her Conductor in the cab, given the Conductor’s evidence that the crew was to be prepared for the signal at the *other* end.

[43] I am satisfied that performing the inspection was not only part of this crew’s duties, but could have been performed in this situation, as their duties *did* “permit” that inspection to be performed, had they chosen to stop at the West end of the siding. The Train in this case was able to – and did – stop in the siding while waiting for this meet. I am satisfied that the “conditions precedent”, as described by the Union, were in fact satisfied in these circumstances: The duties of this crew *did* permit them to stop at an appropriate location and perform a passing train inspection, but the choice was made to stop the Train “*short*” for 14 minutes while waiting for the approaching train. It was being “*stopping short*” that prevented that inspection from occurring.

[44] As in **CROA 5134**, the crew’s own actions/inactions squandered the opportunity this crew had to perform a passing train inspection. As noted in **CROA 5134**, “*stopping short*” is a “*disturbing*” pattern of behaviour, described in that decision as “*gamesmanship*” and playing “*fast and loose*” with a Train crew’s important safety obligations, (to use the vernacular).

[45] Upon review of all of the evidence, I am satisfied this crew was engaged in the same pattern discussed in **CROA 5134** of deliberately positioning themselves to avoid performing a passing train inspection, by manipulating their movement to “*stop short*” and then only “*move*” when the meeting train approaches.

[46] While not physically operating the Train, I am further satisfied the Grievor was complicit in this pattern of behaviour. The Grievor had important and independent obligations as part of this crew that should have seen this crew perform the passing train

inspection from the ground that day, which obligations were not met. These obligations included a) performing a job briefing of where the Train was to stop in the siding. The Grievor had knowledge a meet was to occur; and also that an on-the-ground inspection was required when duties “permitted” and when the train is “stopped”; b) inquiring *why* the Train had been stopped in the middle of the siding, instead of in position at the Western end, to perform the required inspection; and c) failing to direct the LE to move the Train to the signal and move into position to perform the inspection, rather than remain “stopped short”. I am satisfied the Grievor failed in all three of the obligations. No job briefing was performed for why the Train had “*stopped short*” a mile back from the signal and no discussion occurred of how the passing train was to be inspected if so. The Grievor was aware that the Train was not stopped at the signal, close to where the meet would occur and of the implication of doing so, given he was a four year employee in this industry. The Grievor was also aware that this was a safe location to conduct a passing train inspection (Q/A 31). Had there been any question on a job briefing about the safety of the location, the Grievor could have advised LE Fraser it was safe, but no such discussion occurred.

[47] He failed to instruct the LE to pull up to the signal and stop at a point which allowed a passing train inspection to occur, rather than at a point where it did not.

[48] Neither is this a situation where the Grievor tried to influence an appropriate movement by the LE, which directions were not respected by that LE, or where it took 15 minutes to reasonably stop this Train so time did not permit such an inspection.

[49] While the Grievor was not physically in control of this Train, these independent responsibilities – had they been carried out - would have put this crew into position to perform the required inspection. The inference which is inevitable on these facts is that the Grievor was well aware of the implications for not performing a passing train inspection when the Train “*stopped short*”. His lack of any discussion or action when that occurred demonstrated he was complicit in this disturbing pattern. As is clear from the reasoning in **CROA 5134**, it is no answer to suggest a train is “*moving*” so the inspection cannot be performed, when it is the actions – or inactions – of the crew that resulted in that movement.

[50] Put another way, manipulation is not explanation. That misconduct ignores that operating the Train was not the only job obligation the crew had that day.

[51] Avoiding important job obligations by this type of manipulation is an issue of not just safety but integrity. Closely associated with integrity is accountability and responsibility for behaviour or “insight” that a mistake was made.

[52] The crew risks this type of explanation being an aggravating factor for discipline, as it demonstrates considerable lack of insight into this crew’s responsibility during that tour of duty; and lack of integrity for job performance. Issues of safety and the need for integrity are two touchstones for Arbitrators when considering issues of discipline, given the high stakes in this industry.

[53] I am satisfied that on these facts, both crew members were complicit, although for different reasons.

[54] The next question is whether the discipline chosen by the Company was just and reasonable.

*Was the Discipline Just and Reasonable?*

[55] The jurisprudence offered in this case was largely analyzed in **CROA 5134** and that analysis will not be repeated. Passing train inspections are recognized as important safety obligations by Arbitrators in this industry. The jurisprudence supports that deliberate misconduct is serious and significant misconduct that must be disciplined and deterred.

[56] As noted in *Wm. Scott*, there are multiple factors to consider, and the category of factors is not closed. In addition to those cases analyzed in **CROA 5134**, the Union offered **CROA 3712**. In that case, no deliberate misconduct was found. That is not this case.

[57] As noted in **CROA 5134**, operating the train was not this crew’s only obligations that day. The importance of integrity was discussed in **CROA 5134**. Integrity is important for the Company in assessing discipline, but the jurisprudence also demonstrates it is an important consideration for Arbitrators when reviewing conduct and assessing the reasonableness of discipline, given that running trades employees must work

unsupervised in this highly safety-sensitive industry and the Company must place considerable trust in their ability to perform their jobs appropriately, even when no one is watching.

[58] Considering the nature of the offence, it is significant and serious, given the deliberate and manipulative nature of what has occurred. The Union pointed out the Grievor had in fact performed passing inspections at other locations and was not the type of employee to shirk his duty. However, performing a passing train inspection at one location does not serve to excuse when it is not done at another location. That fact is not mitigating, nor does not reflect on his state of mind for this misconduct.

[59] Aggravating are the Grievor's failure to even turn his mind to the important job obligations with which he was charged, or even ask any questions of why his LE had stopped short. The Grievor also did not show insight and responsibility at his Investigation but chose to maintain there was no rule breach because the Train was "*moving*" as the reason for not performing the inspection – even given his failure to follow his obligations that would have put the train into position to do so. To not have any insight is an aggravating factor for discipline.

[60] The Grievor is a short service employee at four years, but he did not have any discipline on his record. The Grievor's length of service is not particularly mitigating, but his discipline record does offer some mitigation, unlike the Grievor in **CROA 5134**, although he does not have that same length of service.

[61] There was no suggestion the Grievor deferred to the LE because of her experience. It may often be the case that a Conductor has less experience than LE's with whom they work, but they still must be relied upon to speak up when an LE is operating a train in manner inconsistent with job obligations, or risk their silence exposes them to discipline.

[62] Deterrence is also relevant factor, given there have now been two different situations involving the same behaviour, both involving Medicine Hat employees, which were seen in one CROA Session; and given the responsibility of all crew members to ensure compliance with important safety rules.

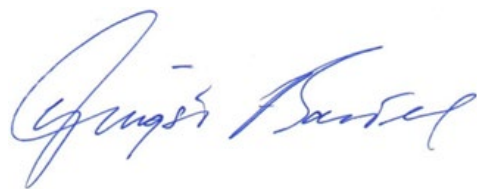
[63] Upon review of all of the evidence and all of the factors; considering that the actions were found to be deliberate and manipulative attempts to avoid a legitimate job obligation on a dark and snowy night; and considering the jurisprudence for this issue, in this industry, a 20 day suspension was just and reasonable discipline for this behaviour.

[64] The Grievance is dismissed.

[65] As with **CROA 5134**, this Award is lengthy to serve an educative role for the parties and for employees. The parties are directed to post this Award in the Medicine Hat Terminal for 30 days. Employees should understand that individuals who choose to engage in this type of manipulative behaviour risk serious consequences if that misconduct reaches this Office.

I retain jurisdiction for any questions relating to the implementation of this Award; for any issues arising from my directions; to correct any errors; and to address any omissions, to give this Award its intended effect.

**March 26, 2025**



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**CHERYL YINGST BARTEL  
ARBITRATOR**