CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5133

Heard in Calgary, January 14, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAILWAY CONFERENCE

DISPUTE:

The assessment of a thirty-day suspension to Locomotive Engineer Cordell Gruning.

JOINT STATEMENT OF ISSUE:

Following an investigation, Engineer Gruning was assessed with a 30-day suspension described as:

"In connection with your tour of duty on train 118-25, more specifically the adjusted AOMTS time of 1531 and the subsequent NR Wage Claim generated, while employed as an Engineer in Medicine Hat AB on June 26, 2023.

Summary of Rules violated:
CROR, Section 83, Operating Bulletins.
CROR, Item 2, Time Tables – Watches.
Honour System, NR Claim, Claim code page 31.
2020 Honour System Manual, Appendix A, 2020 Honour System Manual.
Bulletin-LR-008-21, Appendix B, T&E Wage Claim Responsibilities.
Bulletin-LR-004-23, Appendix C, Recent Arbitration Awards-Vigilance Accuracy Truth and Consequences-Wage Claim.
Bulletin LR-003-23, Appendix D, Tie Up Scenarios Involving Over 10 hours.
Bulletin LR-002-23, Appendix E, Accuracy of Tie-Ups Responsibilities-Re-Issue.
Collective Agreement, Article 18.12, Employees who have given notice.
Collective Agreement, Article 18.13, Employees who have not requested."

UNION'S POSITION:

The Company has chosen not to adhere to the grievance procedure as they have failed to provide their contractual obligation of a response to any of the Union's grievances. For all the reasons and submissions set forth through the Union's grievance procedure, along with those herein adopted, outlines our position.

The Union asserts that the Company has not established the burden of proof to warrant any discipline at all. CROA case 349 in short states the onus is on the Company to establish that

there was just cause for the assessment of discipline. The Company had failed to cite a specific part of the Honour System Manual that Mr. Gruning has violated. The Company has failed to provide any evidence that Mr. Gruning's intentions were to be fraudulent or that they deceitfully attempted to make the wage claim. The investigation determined that the cause of the inaccurate time entered on the tie up was a simple clerical error on the part of the Conductor.

The Union submits that the Company has jumped to the conclusion of a fraudulent claim without proper evidence. The Union maintains that times and claims that are entered inaccurately cannot be automatically considered fraudulent. The Honour system provides a method for wage claims that are in dispute. The Auditors are a part of the system to identify claims the Company believes are incorrect and the CCA provides a system, through the grievance procedure for handling disputed claims. By circumventing this process, the Company is in violation of Article 40.02. The Union submits that in this instance the incorrect time submitted and the auditor adjusting the ticket are normal processes within the system.

The Union asserts that the Company has attempted to pile on violations in attempt to exaggerate their position. The Company cites violations of 4 Bulletins related to accuracy of tie ups. These bulletins are intended to be informative reminders and contain information directly from the Honour System manual. The Company cites violations of CROR Section 83, but the investigation determined that Mr. Gruning was familiar with the requirements to read and understand operating bulletins.

The Union submits that the discipline assessed to Mr. Gruning is excessive. A 30-day suspension for a clerical error is extreme, unwarranted, and not inline with the concepts of progressive discipline considering this is the first time Mr. Gruning has been investigated for an inaccurate wage claim in his career.

The Union submits that Engineer Gruning was honest and forthright during the investigation which evidenced there was no intent of fraud but rather ignorance. The Union asserts that the investigation, information, and education presented during it have more than met the needs of the Company to address this situation. During the investigation, Mr. Gruning reaffirmed his commitment to be more diligent in the future to ensure his tie ups are accurate. The assessment of discipline by the Company that amounts to an excessive fine, is unnecessary and provides no additional prohibitive value in this instance.

The Union seeks an order that the 30-day suspension be expunged from the work record of Engineer Gruning and that he be made whole for lost wages, with interest, as well as any lost benefits in relation to his time withheld from service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION:

The Company disagrees with the Union's request.

The Union suggests the Company has effectively failed to respond to the local grievance and in doing so allegedly failed to fulfill the requirements of the Collective Agreement. The Company cannot agree with the Union's false allegations pertaining to the local grievance response. The first step appeal was responded to on November 7, 2023, the second step was responded to on February 21, 2024. In any case, the 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 does not allege fraud as the Union contends, the Grievor was disciplined for reasons as outlined in the Form 104. The Company also maintains that it has not violated the Collective Agreement or Honour System as alleged by the Union. The Grievor did not deny that that his NR wage claim was inappropriate.

The Company maintains the burden of proof has been met and that the Grievor's culpability as outlined in the discipline letter was established following the fair and impartial investigation and that the discipline was determined following a review of all pertinent factors, including those described by the Union.

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

For the Union:
(SGD.) G. Lawrenson
General Chairperson, LE-W

For the Company:
(SGD.) F. Billings
Director, Labour Relations

There appeared on behalf of the Company:

R. Araya	– Labour Relations Officer, Calgary
D. Zurbuchen	– Manager Labour Relations, Calgary
E. Deadlock	– Road Foreman, Calgary
K. Vu	– Audit Specialist Labour Relations, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, CaleyWray, Toronto
G. Lawrenson	– General Chairperson, LE-W, Calgary
C. Ruggles	– Vice General Chairperson, LE-W, Lethbridge
B. Myre	– Vice General Chairperson, LE-W, Red Deer
R. Marshall	– Local Chairperson, Division 322, Medicine Hat
C. Gruning	– Grievor, Medicine Hat

AWARD OF THE ARBITRATOR

Background & Issue

[1] At the time of these events, the Grievor was employed as a Locomotive Engineer. He began his employment on September 12, 2011 and had approximately 11 years and 9 months of service. He qualified as an Engineer in July of 2019.

[2] The facts are not in dispute. On June 26, 2023, the Grievor was ordered on Train 118-25, in Straightaway Service, from Alyth to Medicine Hat, Alberta. Conductor Martin was assigned to work with the Grievor on that tour. The tour of duty for this crew began at 05:30. It is relevant that the crew did not give any rest notice during their tour of duty, which meant the crew could have worked up to 12 hours that day.

[3] The Train download demonstrated that the Train had passed the Outer Main Track Switch ("OMTS") at the Medicine Hat Terminal at 15:24. That was 6 minutes before the 10-hour mark would have been reached. That timing is relevant, as the Collective Agreement in Article 18.13 provides for payment of an extra $80 premium if more than 10 hours has passed by the time the crew reaches the OMTS, when rest notice is not given.

[4] It is the entitlement to that premium that is at issue in this case.

[5] Conductor Martin performed the "tie up" for the crew in the Crew Management Application ("CMA or the System") under the Honour System of Pay (the "Honour System") by entering certain information, to request pay for that day's work. His evidence was that the Train passed the "reader" at 15:21, but that he accidentally inputted 15:*31* in the System when he tied up.

[6] As 15:31 was 1 minute after the 10-hour mark, the System then auto-generated an entitlement to an $80 NR Claim for reaching the OMTS after the 10-hour mark. The claim was later audited and not allowed, as the Train had passed the OMTS at 15:24, which was 9 hours and 54 minutes after the start of the tour of duty.

[7] Both the Conductor and the Grievor were Investigated, and ultimately assessed the same discipline of a 30-day suspension for improperly claiming an $80 premium.

[8] This Grievance was filed against the discipline assessed to this Grievor.

[9] Three issues arise between the parties arise under the *Wm. Scott* framework for assessing discipline:

a. Was the Grievor culpable for discipline as a result of these events?
b. If so, was the discipline of 30 days just and reasonable?
c. If not, what discipline should be substituted as just and reasonable by the exercise of this Arbitrator's discretion?

[10] For the following reasons, the Grievance is upheld, in part. The assessment of 30 days was excessive. A just and reasonable response is a 25-day suspension, which is substituted.

Analysis

[11] Determinations of both culpability and reasonableness of discipline under a *Wm. Scott* framework are fact-based. Those determinations depend on a wholistic view of all of the circumstances. As a result, precedents are of limited use, but broad general themes can sometimes be determined.

[12] Reasonableness of discipline is not established by demonstrating adherence to an internal discipline policy. Consistent application of a employer's discipline policy is only one factor that must be assessed under a *Re Wm. Scott* framework. If inconsistent application is demonstrated, that could result in a finding of discriminatory discipline. However, there is no assumption accepted that the discipline set out in that policy is reasonable. Discipline choices must be examined under the lens of the *Wm. Scott* framework, which includes examination of similar jurisprudence in this industry.

[13] An employee is only entitled to pay for work performed. It is a general theme in the jurisprudence that Arbitrators consider Honour System breaches to be significant forms of misconduct, given the trust that is built into that system of pay. Integrity, care, attention and diligence are required to comply with the obligations imposed.

[14] As noted in **CROA 5009**, in this industry culpability exists for both deceitful and deliberate misconduct relating to the Honour System of pay ("time theft" or "fraud"), but also for lesser forms of misconduct arising from action(s) or inaction(s), which demonstrate carelessness, negligence and recklessness to these important obligations. These are also referred to as "errors of judgment". Explanations for conduct are assessed based on their reasonableness and credibility: see also **CROA 5110**; **AH723**; **CROA 2382**; **AH775**; and **CROA 4894**.

[15] It is not enough therefore to just resist issues of deceit or intentionality in defending such breaches.

[16] While patterns of behaviour are relevant - with previous honour system breaches being aggravating for discipline - it should be emphasized that each employee does not get "the first one free" for Honour System breaches. Such an approach would not deter such conduct for either the individual employee or for the workforce. It is the *entirety* of a

discipline record that is relevant and appropriately reviewed under a *Re Wm. Scott* analysis.

Facts

[17] The Grievor was Investigated and the Conductor was also investigated. Both statements were filed at this hearing and have been carefully reviewed.

[18] Conductor Martin qualified as a Conductor on January 11, 2023. He had been a qualified employee for less than six months at the time of these events. Conductor Martin agreed he was "the employee that entered all the information into the system for this tour of duty" (Q/A 44). The Grievor had worked with Conductor Martin before and found him competent. Conductor Martin agreed there was no time populated in the system for when the Train reached the OMTS, so he had to manually enter the arrival time at the OMTS into the System.

[19] His evidence was that he had written in his time/log book when the Train passed the "reader", which is a reference to the Automatic equipment Identification reader. That time was 15:21. Conductor Martin's evidence was he then mistakenly manually entered 15:31 in the system when he tied up, instead of 15:21.

[20] The download evidence established that the trail passed the OMTS at 15:24. That is the best evidence for that question. The download evidence was the Train actually passed the OMTS at 15:24, which was three minutes later than the time noted by Conductor Martin. That is the best evidence for the time at issue. The Train did not pass the OMTS at 15:21.

[21] The Union argued this difference of one digit was a typographical error on Conductor Martin's part. While the Union argued the "reader" and the OTMS switch are often not at the same place at a Terminal - to presumably explain the discrepancy between Conductor Martin's evidence and when the Train actually did reach the OMTS - there was no evidence of where the "reader" was located versus the OMTS, at the Medicine Hat Terminal. Neither could Conductor Martin provide a copy of his time/log book for that day to support that he wrote down 15:21, because it "got lost and rained on while I was

working C22…" but he had tried to find it (Q/A 41). The lost time book/log could have supported the Conductor's evidence that he was only off by one digit and that was a typographical error, which was argued.

[22] The Conductor's evidence was that he did not check his information when it was inputted – to catch his error - as he was "rushing" (Q/A 46) because he was "trying to get home as my wife gets home from work at 1500" (Q/A 47). There was no explanation of why the prospect of seeing his wife would cause him to "rush" through his important work of entering the correct information on which to claim his pay. However, as this Grievance is not an assessment of Conductor Martin's culpability, but of the Grievor's, it is unnecessary to assess the credibility of that explanation.

[23] When Conductor Martin inputted 15:31, the system determined that the Train had reached the OTMS 1 minute after the 10-hour mark. Given that input, a claim was generated for the generation for the $80 NR Claim. Conductor Martin's evidence was he did not realize that claim had auto-generated until he tried to look at it "days later" but at that point it was "locked up by an Auditor" (Q/A 56). He stated he wanted to look at it, given it was "*waiting auditor approval*" so "*I wanted to see if I did something wrong*" (Q/A 57).

[24] He also stated he "*wasn't entitled to anything*" for being over 10 hours on duty before the OMTS, given the Train had reached the OMTS before the 10-hour mark. In that he is correct.

[25] When asked if he had anything to add, Conductor Martin stated "*I made an honest mistake, it was not my intent to get the $80 NR Claim, as I was rushing to get home and see my wife. In the future I will be taking more time to be more diligent in my tie ups*" (Q/A 70).

[26] The Grievor was also Investigated. His evidence was that he understood that being his own timekeeper meant "*keeping track of your own times as they pertain to you and the train or delays*" (at Q/A 17). When asked about the arrival at the OMTS, the Grievor's evidence was that he did not *"…record a time of my own. My conductor recorded the time*" (Q/A 39) because he was "*preoccupied with my duties*" (Q/A 40). Those duties

included operating the Train down a 1.3% grade. It is not disputed that in this industry, a 1.3% grade is significant.

[27] While the Grievor relied on the Conductor to keep track of the time the Train passed the OMTS, it is relevant the Grievor never then *asked* the Conductor for that time, at any point, so he could make his own assessment of his entitlement. He therefore remained unaware of when the Train passed the OMTS. This was the case, even though his evidence was he relied on the Conductor's timekeeping. Given he did not keep track of that time himself – and did not ask for it - the Grievor had no way to determine if he was – or was not – entitled to the $80 NR claim. When asked if he usually records times for his personal records "to comply with accuracy of time reporting and claims purposes", the Grievor answered "[*u]sually when I remember or not to busy driving. I leave it up to the Conductor*" (Q/A 41). The Grievor noted at Q/A 50 that he had "*worked with Ken before, he is very competent [sic] and there was no major concern as it was a regular ticket*". The Grievor also confirmed it was the Conductor who entered the information for this tie up (Q/A 45).

[28] When asked if he logged in "to confirm accuracy of your tie up when your tour was completed", the Grievor answered "*No, I had left to go pick up my son from daycare"* (Q/A 46). The Grievor was aware he had 24 hours to adjust any ticket to fix any errors (Q/A 51). When asked if he had a chance after he got home to log in and confirm the accuracy of the tie up completed by the Conductor, the Grievor answered "*No*" (Q/A 47). There was no explanation offered for why he did not check his tie up after he arrived home, given his evidence he left to pick up his son.

[29] The Grievor also confirmed at Q/A 53 that he did not know what time Conductor Martin had put in for arrival at the OMTS. So, he would have been unable to confirm accuracy, as he had no knowledge of the time the Train passed the OMTS. However, when then asked if he made "*any effort to validate your tie up from train 118-25, June 26, 2023?*", the Grievor stated:

> My next tour of Duty was 3 days later when I had a chance to log in and check the ticket. To which it was still "waiting approval". *I figured we were entitled to the $80 because we were over 10 hours* (Q/A 49; emphasis added).

[30] It is not clear how the Grievor could have "*figured we were entitled to the $80 because we were over 10 hours*", when he had no way to actually know if the crew was over 10 hours or not, since he did not confirm the time, the Train passed the OMTS.

[31] At Q/A 59 the Grievor then contradicted this statement by saying he was "*unaware*" of the NR Claim of $80 being made on his ticket all, until it was disapproved.

The two statements are contradictory and cannot co-exist. I am satisfied the Grievor was not in a position to even validate the accuracy of the entry, given his lack of knowledge of when the Train passed the OMTS.

The Grievor also stated at Q/A 56 that it was "common" for him "not to review tie ups after another employee enters the information" on his tie ups. However, the Grievor also agreed it would be important to address "*over claimed submissions*" "*whenever it is noticed*", although he also stated that he understood that his time slips were to be "*an accurate reflection of the work performed*".

[32] The Grievor indicated at A/Q 73 that in future he would "*be more diligent to double check my tie ups for accuracy and correctness. It was not our intent to steal from the company. I was unaware that we had the $80 NR claim on there*".

Arguments

[33] The Company argued culpability for discipline was established, which warranted significant discipline. It relied on the importance of accuracy under the Honour System and pointed out the Grievor was unaware of the time he arrived at the OMTS and failed to verify his entitlement to the $80 premium. It argued this constituted a serious error of judgment and carelessness, which was culpable. It argued the assessment of 30 days was reasonable, given this was the second major offence for the Grievor under its disciplinary policy in the course of a year; that the Grievor failed to take responsibility and deflected responsibility to the Conductor; and also given the Grievor's significant disciplinary record, which already had a 20-day suspension. It argued the Grievor had a responsibility to validate the ticket regardless of whether his crewmate entered the information. It argued the Grievor had plenty of opportunity to be vigilant, but was not. It

argued the division of responsibilities within the Train cab did not absolve the Grievor of his responsibility to ensure "*accurate time and wage claim submissions*" and that the Grievor bears the "*sole responsibility for any errors*" in his tie up (at para. 5; Rebuttal). It argued the Conductor's assertion he lost his notebook was akin to the excuse of "*the dog ate my homework*" (at para. 7). It also pointed out the crew failed to compare watches for accuracy as required. It argued it was the Grievor's responsibility to know if there were any problems with his ticket. It pointed out that significant discipline can result from mistakes: **AH723,** given the seriousness of improper claims under the Honour System.

[34] The Union did not pursue its arguments regarding the fairness of the Investigation at this hearing. It argued the Company had not met its burden of proof in this case. It argued the Conductor was responsible for writing down the time the Train passed the OTMS; that an honest mistake was made by the Conductor in inputting the time that the OTMS switch was reached as 15:31, instead of 15:21, which was the time he had marked down in his time book, and an error of one digit. It noted that the time on a "reader" is not dispositive of when the Train reached the OMTS, as it may or may not be located at the OMTS, and the two may differ. It argued that given this was an "honest mistake"; an error by the Conductor in manually entering time, and that no culpability for discipline was demonstrated on these facts. It pointed out the reader did not automatically generate a reading for Train 118-25, so the Conductor had to manually enter that number and mistakenly did so. It pointed out the Grievor was preoccupied with managing the Train and so did not keep his own time, independently of the Conductor. It argued the payment was automatically generated, and not sought by the Conductor. It argued the Grievor's first opportunity to check the ticket was not until his next tour of duty, and that he was unaware of any problems with the ticket until it was disapproved. It argued he did not know the Conductor had made an error. It argued the error was unintentional and not fraudulent. Alternatively, it argued the Company's discipline of 30 days was excessive and unwarranted and so not just and reasonable. It pointed out that **CROA 5009** recognized that a situation where a premium was sought for a day actually worked was distinct from that where payment was sought for time not actually worked. It also distinguished the Company's jurisprudence.

The Honour System

[35] This Grievance involves the obligations of employees under what is known as the "Honour System" of pay. That Honour System was recently described by this Arbitrator in **CROA 5009**:

> Under the Honour System, employees are their "own timekeeper". Each employee is responsible to input the details of their work for each tour of duty, which inputs determine what they will be paid. T&E employees work – and determine their pay – under this System. There is no manager or supervisor who approves or "signs off" on these entries. The Company automatically pays an employee according to the details they have entered.
>
> The Company does not "police" that an employee is entering these details properly but rather pays an employee based on what they have entered. While audits are conducted by the Company, not every entry is audited.
>
> The Honour System does allow an individual to go back in the system and change an entry, for a period of time. There is also a method for an employee to "flag" an entry for the Company's auditors to consider, if an employee is unsure of their entitlement.
>
> This Honour System has been in place for 20 years and was in place when the Grievor was hired by the Company, 11 years previously. The Company has communicated to its employees that they are responsible to know and understand the Honour System and to be accurate and vigilant in their own entries, as they are told "you are your own timekeeper".
>
> It is readily apparent that this Honour System results in the Company placing considerable trust in its employees to make their entries honestly and carefully, and with a particular regard for diligence and accuracy. If not, an employee will receive pay for which they are not entitled (at paras 7 to 11).
>
> And
>
> I accept that T&E employees are in a unique position of trust. Not only do they work largely unsupervised, ***but the Honour System puts considerable responsibility on the employee to make his time entries accurately, with due care and attention***.
>
> ***While I accept that under such a system an honest mistake could be made, each case will depend on its own facts regarding how an action is characterized*** (at para. 38, 39; emphasis added).

[36] Under the Honour System, each employee is responsible not only for ensuring the accuracy of the inputs made into the Honour System, but also for ensuring the accuracy

of what those inputs then generate in that System. This is because each employee must ensure they are only paid for what they have earned.

[37] It is therefore no response to blame the inaccuracy on auto generation of the System, or the fact another employee made an "honest mistake", given that *each* employee has an independent responsibility to ensure that the claims for pay are accurate, regardless of who "ties up" the Train. As noted in **AH863**, it is not the Company's role to "*catch*" improper time claims.

[38] While it is not unusual in this industry for one member of the crew to "tie up" in the CMA on behalf of the crew - and therefore create the inputs by which both members are to be paid (or the "tickets") - there is a risk created when that occurs. By leaving this important task to another employee - without any validation or checks – or even discussion of what should be claimed - an employee assumes considerable risk that information has <u>not</u> been properly submitted and significant discipline could result.

[39] To avoid that possibility, it is up to each employee to validate that the information is correctly entered, and to be cognizant of the claims which are made on their behalf. Choosing to leave the Terminal before they can do so – and choosing not to check that information - is a course of action fraught with risk, given the seriousness with which breaches of the Honour System are considered in the jurisprudence.

<u>Question One: Was the Grievor Culpable for Some Measure of Discipline?</u>

[40] It is important for the purposes of this Grievance to recognize the distinct responsibilities of employees under the Honour System. The question for this dispute is not whether the Conductor in this case made an "honest mistake", but whether *the Grievor* was careless and reckless in determining whether his time was properly entered.

[41] That is a different question. The Grievor cannot stand behind any "honest mistake" of the Conductor, if he himself failed in his own obligations.

[42] The Grievor has worked under the Honour System of pay for his career. I am satisfied the Grievor was aware that if his tie-up generated an $80 payment, that he was not entitled to, he was to "*check and correct your tie-up to ensure all values entered are*

accurate" and if this did not work, to "*email and Audit Specialist*"; which was noted in Bulletin-LR-002-23 "Accuracy of Tie Ups – Responsibility"; and that auto-generation of the claim does not excuse the Grievor's responsibility to ensure its accuracy.

[43] In this case, the Grievor had not determined if he was "*over 10 hours*", as he had not asked any questions of the Conductor to determine if that was in fact the case. That question was necessary, since he did not keep his own time.

[44] Rather, he *assumed* that the claim was prepared correctly, and stated he thought he was entitled to the premium (at Q/A 49). While he also stated "I thought the ticket was submitted properly" in answer to a question from the Union at the same number (about contact from the Company), he had no basis to think that, when he had not made any attempt to *check* any of the information inputted by the Conductor, or even to ask the Conductor when the Train had reached the OMTS. Having just finished his tour of duty, the Grievor knew – or should have known - he that the crew were close to reaching the OTMS around the 10-hour mark. It would have been appropriate – and reasonable – for him to check with his Conductor for their arrival time, and then ensure that payment was not inappropriately generated for the NR Claim if it had not been earned. He could have easily asked this question when the Train was shut down, given his reliance on the Conductor for timekeeping. Neither did he check his ticket upon reaching his home, which would have been within 24 hours to correct any error.

[45] It is not the "honest mistake" of the Conductor in inputting the time in error that is at issue for this Grievor. The issue in this Grievance is a) the Grievor's failure to take *any* steps with his Conductor to verify the time of arrival at the OMTS, so that he was in possession of the required information to b) check and ensure the claims made on his behalf were entered accurately. Had he fulfilled his responsibilities, he would have seen the error and it could have ben corrected.

[46] The Grievor bore responsibility was for his own information. If it is inputted by someone else, and he chooses to confirm the information on which the entry is based, he takes the risk it was not done correctly. In Q/A 52, he was asked if he had any concern for the arrival time at the OMTS, or any concern with ensuring accuracy, given another employee made the entry. The Grievor's answer was "*No, there was no concern for*

double checking this ticket". This is a misunderstanding of the Grievor's – and every running employee's – obligation. It is not only if an employee has a "*concern*" that the ticket should be checked for accuracy. The Grievor had a responsibility to "*double check*" the ticket to ensure it was correct whenever another employee enters information for him – or accept the risk that the information is later found to be wrong and he is found culpable for failing to carry out his responsibilities.

[47] It is not an onerous or unreasonable obligation for the Grievor to take responsibility for his own tie ups, or to gather the information necessary to do so.

[48] The Grievor explained in his Investigation that he left and let his Conductor tie up - without reviewing or discussing the information to be inputted - as he had to pick up his child from daycare. While there can be a sense of urgency to that task, in this case, the Grievor's after-work child-care responsibilities do not excuse his own responsibility to finish his work before leaving for that personal task, or to check it upon his arrival home. That work includes ensuring that the entitlements which were claimed were done accurately.

[49] Had the Grievor checked or even discussed his entitlements with Conductor Martin before he left; he could have confirmed with Conductor Martin what time they reached the OMTS. Conductor Martin would have told him the time of 15:21 – which was his evidence – and the Grievor could have *then* said "wait, you put in 15:31 here for OMTS arrival, so isn't that wrong then?" The error would have been discovered and could have been corrected.

[50] The Grievor's own inactions were culpable. Culpability having been established; the next question is the reasonableness of the measure of that discipline.

Question Two: Was the Discipline Assessed Just and Reasonable?

[51] In **AH723**, the Arbitrator stated:

> As a number of previous CROA decisions have made abundantly clear: the **consequences of a breach of the Manual are intentionally severe in light of the unsupervised trust and independence bestowed on the employees to be their own timekeepers.** In the circumstances here, anything other than a severe

> disciplinary response would invite similar conduct and fail to underscore the importance of the *Honour System* (at para. 28; emphasis added).

[52] That is a conclusion also reached by this Arbitrator in **CROA 5009** and **CROA 5110** and by the Arbitrators in **CROA 2328** and **4894**.

[53] There is a spectrum of misconduct for Honour System breaches. At one end is time theft and fraud, where a level of intentionality and deliberateness which demonstrates a lack of integrity is established on the evidence. In such cases, discharge is often upheld, as recognized in **CROA 4894**.

[54] In cases where fraud is not established, but there is a significant level of carelessness, a 45-day suspension has been imposed, or in one case 30 DM (halfway to dismissal). In **CROA 5009,** for example, a 45-day suspension was upheld for the Grievor claiming payment for two days he was on strike, which required multiple entries for each day. It was noted in that case that those facts were more serious than claiming for a premium not earned, on a day actually worked, which are the facts in this case, and the penalty there was more serious – 15 days more suspension – than that which occurred here. In **CROA 4894** a 45-day suspension was imposed for a Grievor who overpaid himself by approximately $1000. The Arbitrator found the Grievor's conduct "wrong" and "careless" in his time entries, when he thought, he was entitled to certain pay that he was not. In that case, the Grievor had already been reinstated, but had been off for 21 months. The Arbitrator found that excessive and imposed a suspension of 45 days, without pay. In **AH723,** there were eight different wage claims over the course of a month at issue, when he claimed payments as "trainee" instead of as a "trainer", on the assumption "they would be audited and adjusted", instead of routing the questions to the Auditor, as required. Fraud was not established, but it was found the Grievor had "purposely" entered a claim "*he was unsure of*" (at para. 24) and this was an "*intentional breach"* of the Honour System Manual, which required IP claims in that circumstance.

[55] This particular Grievance involves a Grievor who failed to become aware of information required by him to fulfill his responsibilities; and who then failed to check his claim to ensure he was properly claiming only entitlements he had earned. It involves

one incident of carelessness. It did not involve a situation where a Grievor made multiple wrong entries into the System that were doubtful; or failed to route multiple claims to an audit specialist. There is no pattern of behaviour demonstrated.

[56] The Grievor is an employee of almost 12 years. That level of service is significant. The Grievor's discipline record was mixed for a 12-year employee, with a recent 20-day suspension for train handling. The Grievor's *next* most recent discipline prior to that was a formal reprimand a couple of months earlier. He then had received 10DM, 16 months earlier, for inaccurate inventory reporting.

[57] The *next* most recent discipline were suspensions from a period between July 2015 and August of 2016, which was *eight and nine years* earlier: two 5-day suspensions (marshaling violation and failure to report after accepting a call) and a 14-day suspension (improperly removing a handbrake from the ground). The Grievor has benefitted from progressive discipline of his previous suspensions and was not assessed a further suspension for eight years. That is relevant as a mitigating factor.

[58] While factually distinct, this case does bear some similarities to **CROA 5110**, where the Grievor did not check claims made on his behalf and "*felt everything was correct"*, but given he took no steps to verify that was the case, it was not evident how he had that assurance. That said, the discipline in that case was significant in large part because the Grievor already paid himself while he was on strike, four months earlier.

[59] In **CROA 3433**, relied upon by the Union, it was found there was a tolerance by the Company for tie ups "at the same time" for all crew members, even if one crew member may have left before that time. That case also involved a 30-year employee, which is not the level of service of this Grievor. In **CROA 3614**, there were substantial "mitigating factors", including that two other members of the Grievor's crew were reinstated, even though their actions were "more serious" than those of the Grievor. The grievor was also offered reinstatement if he gave up his union office in that case, which was "*disturbing"* to the Arbitrator. An audit letter was found to be appropriate on those facts and the Grievor was reinstated

[60] No similar mitigating factors occur in this case and I cannot agree a warning letter would be sufficient to address the Grievor's carelessness.

[61] The facts in **CROA 4281** are also distinguishable. That case involved a 3 year employee with two reprimands on his record who received a 76 day suspension for claims which the Arbitrator found were not all "*honestly made*" and some of which were to take advantage of his trainer's vacation schedule "*to obtain payment without working*", but found 76 days to be an excessive suspension. 30 demerits – ½ way to dismissal – for "*lack of integrity*" was substituted.

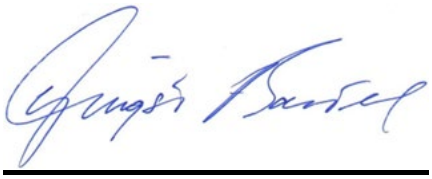
[62] In **CROA 5067**, the Grievor left 35 minutes early, but claimed the full 8 hours and 15 minutes for his tour and maintained he had not taken lunch. The Arbitrator accepted the Union's argument that no lunch was taken by the Grievor, but found that the Grievor was nevertheless not correct in his Honour System entries, and culpability was established, given he claimed for the full shift. The Arbitrator found termination excessive, given the Grievor's foreman was only assessed a 10-day suspension and the Grievor was terminated. The grievor had 2 years seniority; 15 DM and a 30-day suspension, with no other instances of an Honour System breach. The Arbitrator imposed a 15-day suspension. In that case, the Arbitrator accepted that the Grievor had worked the time he claimed, as he had not taken lunch.

[63] Those facts are distinguishable than this case, where that time was not worked.

[64] The Grievor was careless, negligent and made a serious error of judgment when he failed to make any checks or validations of any information entered on his behalf. He did not appear particularly remorseful or have insight, noting that he never double checked his time entries. However, this was only one incident. Considering all of the mitigating and aggravating circumstances, the Company's response of a 30-day suspension was excessive and unwarranted.

[65] However, given the importance of deterrence for the unsupervised nature of Honour System entries, and the Grievor's significant disciplinary record, significant discipline is justified. The 30-day suspension is vacated. A 25-day suspension is appropriate and is substituted by the exercise of this Arbitrator's discretion. The Grievor is to be made whole for the difference of 5 days and his record amended.

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



March 26, 2025

CHERYL YINGST BARTEL
ARBITRATOR