

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

CASE NO. 5142

Heard in Montreal, February 12, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

**TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEE DIVISION**

DISPUTE:

10 Day Suspension assessed to A. Saulnier.

JOINT STATEMENT OF ISSUE:

On November 17, 2023, the grievor, Mr. Aaron Saulnier, was issued a Form 104 that provided as follows:

Please be advised that you have been assessed with a TEN (10) calendar day suspension from Company Service. Your Suspension will begin on November 18, 2023 up to and including November 27, 2023 for the following reason(s):

For your involvement in the run through switch that occurred in Toronto Yard on September 23, 2023.

Summary of rules violated: SPC #41 Section 4.0

The Union objected to the suspension and filed a grievance on December 7 2023. The Company denied the grievance by way of letter dated January 9 2024.

The Union contends that: 1) The incident that gave rise to discipline was a run through switch by a grinder that was operated by a contractor. The grievor had no influence over the operation of the switch, was not in charge of the switch or present at the switch, and was not piloting the grinder. There was nothing he could have done to prevent the grinder from running the switch. 2) The discipline assessed the grievor was unjust and unwarranted.

The Union requests that: The Arbitrator order the Company (1) to rescind the 10 Day Suspension, (2) to strike the suspension from the grievor's record, and (3) to compensate the grievor for all wages and benefits lost.

THE COMPANY POSITION:

The Company denies the Union's contentions and declines the Union's request.

The Company maintains that culpability was established through a fair and impartial investigation. Discipline was determined following a review of all pertinent factors.

While working on September 23, 2023, the Grievor was a Track Maintenance Foreman on a crew responsible for lining switches for a contract grinder, when the grinder ran through a switch. Foremen are “in charge” of the employees assigned to them and must “see that employees understand and properly perform their duties.” This requirement includes contract employees that a foreman may be working with.

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 requests that the Arbitrator dismiss the Union’s grievance in its entirety.

For the Union:
(SGD.) W. Phillips

President – MWED

There appeared on behalf of the Company:

D. Zurbuchen

S. Scott

For the Company:
(SGD.) L. McGinley

Director Labour Relations

– Manager Labour Relations, Calgary

– Manager Labour Relations, Calgary

And on behalf of the Union:

W. Phillips

M. Foster

– President, Frankford, Ontario

– Director, Belleville, Ontario

AWARD OF THE ARBITRATOR

Context

1. This matter concerns a 10-day suspension given to the grievor, a Track Maintenance Foreman with some eleven years of seniority at the time, with a clean disciplinary record.
2. The grievor was in the cab of a Loram grinding train when it reversed through an incorrectly lined switch.

Issues

- A.** Were the actions of the grievor worthy of discipline?
- B.** If so, was the discipline imposed reasonable?
- C.** If not, what discipline should be imposed?

A. Were the actions of the grievor worthy of discipline?

Position of Parties

3. The Company submits that the grievor was properly the subject of discipline. The Loram train reversed through an incorrectly positioned switch,

which was only discovered by a subsequent movement. The switch could have caused a derailment or other damage.

4. The grievor was the foreman of the track maintenance crew and the Company representative on the contractor Loram train. As such, he was responsible for both the actions of his crew and the safe movement of the Loram train.

5. When the Loram train reversed, the grievor failed to position himself so he could observe the track ahead.

6. The Union submits that the grievor had no culpability for the run through of the switch at all, and should not have been subject to any discipline.

7. The grievor was responsible for obtaining a Track Occupancy Permit and guiding the Loram train through the yard. His colleague, who also was a Track Maintenance Foreman with experience, was in charge of switching. The grievor performed his duties when he sought and obtained confirmation from his colleague that the switch was correctly lined.

Analysis and Decision

8. The grievor was disciplined, according to the Form 104, for: “your involvement in the run through switch that occurred in Toronto Yard on September 23, 2023. Summary of rules violated: SPC #41 Section 4.0” (see Tab 3, Union documents).

9. There is no doubt that there was a run through switch by the Loram train. However, whether there was culpability on the part of the grievor, and whether a rule was violated, remain to be determined.

10. Section 4.0 of SPC #41 sets out in general terms the Rules and Responsibilities of Track Maintenance Foreman (see Tab 7, Union documents). It provides general headings for which the Foreman will be responsible, such as Inspection of Track and Right of Way, Signals and Insulated Joints, Conditions to Report to the RTC, Crossing Warning Systems, etc.

11. The most relevant section to this situation is a reference to the preceding section: "Track Maintenance Foremen i) must follow the rules and instructions outlined in section 3.0...".

12. Section 3.2a notes the following: "Foremen are in charge of the employees assigned to them. Foremen must: i) see that employees understand and properly perform their duties".

13. During the night of September 23/24, 2023, the grievor was the foreman of a three man crew, which included Foreman Santos De-Gazon. I disagree with the Union position that Foreman Santos De-Gazon was not under his supervision on that shift. The grievor notes that he was "giving instruction" to the other employees (see Q and A 46, Tab 2, Union documents), while Foreman Santos De-Gazon noted: "I guess I was considered the Track man for the job I guess" (see Q and A 14, Tab 12, Union documents). I find that the grievor was the supervisor of Foreman Santos De Gazon on the night in question, despite the fact that he too was a foreman with an equal amount of experience.

14. There is little doubt, however, that the crew understood that Foreman Santos De-Gazon was responsible for and did in fact line the switches. As he testified:

"I lined that switch for the mainline. I got back in the truck and me and Aaron got in touch with one another. I told him that I lined that Top end switch towards the main for the mainline" (see Q and A 15, Tab 2, Union documents).

15. The grievor is equally clear that he verified with Foreman Santos De-Gazon that the switches were lined out to the main line:

Q28: Were they just going to the main and McCowan to proceed eastward?

A28: We were backing up to Kennedy to proceed eastward, because that's where we stopped the night before.

Q29: On the Loram audio clip you can hear someone say that "Ya we're all lined out, good to pull your way". Do you know who said that?

A29: No.

Q30: What communication did you give after getting the TOP?

A30: I told them we have a TOP and we're ok to go on the mainline.

Q31: Who did you tell that to?

A31: The guy sitting beside me, he was writing my protection. As well as calling the guys and asking if we were all lined out and I was told yes.

Q32: By "calling the guys", who do you mean?

A32: Rhean.

Q33: When you stated you asked if you were all lined out, what exactly do you mean?

A33: The switches?

Q34: Did you tell anyone after that, that the switches were lined for the intended route?

A34: I did.

Q35: Who did you tell?

A35: The operator.

Q36: The operator beside you or the one in the back of the grinder?

A36: Beside me.

Q37: Which operator was controlling the movement? The one at the back?

A37: Yes.

Q38: Did the operator beside you tell the operator in the back that the switches were lined for the intended route?

A38: yes.

Q39: How many switches did you go through to get on the main?

A39: No.

Q40: Did you have any visual on the switches in front of the movement out of L4A?

A40: No.

Q41: what was the wording you used when you asked Rhean if the switches were lined for the intended route?

A41: "Are we lined out?"

Q42: What was his exact answer?

A42: Yes

Q43: How did you communicate with Rhean?

A43: Phone.

Q44: Company phone?

A44: No.

Q45: Was it your personal phone?

A45: Yes. We don't have company phones. We 7 of them and none of them work. I had the mainline yard phone with me but I was already on the phone with the tower.

Q46: Did you give any instruction to Rhean or David regarding them lining the switches?

A46: Yes. Because I was on the grinder with the TOP, it was their job to line the switches out.

16. It is clear that Foreman Santos De-Gazon was the person primarily responsible for the incorrectly lined switch which resulted in a run-through. The Company argues, however, that the grievor should have been on the back end of the Loram train as it was reversing through a portion of the Yard to the main line. The Union argues that he had no such responsibility, beyond securing the proper TOP and verifying with his experienced foreman that the switch was properly lined. The Company argues that had he protected the point, the run-through could have been prevented. The Union argues that a Rules qualified Loram employee at the rear of the train was guiding it.

17. I agree with the Union argument that any discipline must be based on some fault or culpability (see **CROA 180**, **CROA 2230**).

18. The cases cited by the Company are not directly analogous to this matter.

19. In **CROA 5059**, a Conductor failed to protect the point, for which she was directly responsible under the shoving Rules. Here the grievor, at the highest, was indirectly responsible.

20. In **CROA 4620**, a Locomotive Engineer was disciplined with a 15 day suspension for a run-through, when he had a clear view of the switch. The crew members received no discipline, as they were at the rear of the train and had no clear view of the switch. This case may in fact support the Union position, as both Foreman Santos De-Gazon and the Loram employee had a direct view of the switch, whereas the grievor did not.

21. In **CROA 4577**, a trainee Conductor was disciplined for failing to properly secure a loaded phosphate car. The arbitrator found that the Company had met its burden of proof to show culpability, particularly as the Conductor was the only crew member directly involved. Here, once again, the grievor was not the most indirectly involved.

22. In **AH 858**, a Conductor in charge of a RCLS movement made an assumption that a switch had been lined, given that his colleague had walked by the switch. However, his colleague never confirmed that the switch had in fact been lined. Here, in contrast, the grievor received direct confirmation from his colleague that the particular switch had been properly lined. No assumptions were made.

23. In **CROA 5058**, a Locomotive Engineer was found to be culpable for a run-through, despite being told his Conductor that there was sufficient room to perform a shoving operation. Arbitrator Yingst-Bartel found at paragraph 31:

Reliance cannot be placed on a crew member in the abstract. Sufficient information must be gathered in order to determine if that reliance is warranted. Knowing where the Conductor was placed was a piece of key and important information for the Grievor to have, to comply with Section 12.3. The Grievor was not aware of whether the Conductor was in a position to protect the point and neither was that point "known to be clear" given the switch causing the detail. Therefore, the Grievor did not have any basis on which to rely on the Conductor's information that the point was being protected and it was therefore safe to make a shoving movement.

24. However, the arbitrator specifically found that the Engineer did not know where his Conductor was and whether he was entitled to rely on the information from the Conductor. She also found that there had been no communication between the Engineer and the Conductor as to the actual length of the cars being shoved. None of these facts apply to the present matter. Here, Foreman Santos De-Gazon had actually lined the switch himself, so was clearly directly present.

The grievor here would have had every reason to rely on the information provided by the person directly involved. There was no question of estimation or judgment; the switch was lined or it was not. The grievor properly relied on the statement of his colleague.

25. The jurisprudence is clear that the Company bears the burden of proof to establish culpability before any discipline can be applied (see **CROA 5059**, **CROA 4577**). I am not satisfied that the Company has met its burden here. As shown above, the grievor was informed by an experienced CPKC Track Maintenance Foreman that he had set the switch to permit the Loram train to go to the main track. The grievor would have had no reason to doubt that the switch was properly aligned in these circumstances. The current situation is quite different from that in **CROA 5058**, where legitimate questions remained. Here, no such doubts could have existed.

26. In my view, it is noteworthy that the grievor maintained that he was not at fault, and during his investigation, he was never questioned whether he should have been seated in the rear of the Loram train. While this position may have validity, it should have been put to the grievor and he should have been given an opportunity to explain. As it is, the evidence I am left with is a denial of any responsibility (see Q and A 57, Tab 2, Union documents):

“Q57 Do you think there’s anything that you did that lead to the possible run through switch?
A57 No.”

B. If so, was the discipline imposed reasonable?

27. Given my finding above that there was no culpability of the grievor demonstrated by the Company, discipline is not appropriate.

28. Even if some culpability had been established, I find the imposed discipline of a 10-day suspension to be unreasonable in the circumstances.

29. The primary actor responsible for the run through was Foreman Santos De-Gazon, who failed to properly line the switch, despite confirming that he had done so. The Foreman was given a 10-day suspension.

30. The grievor clearly played a significantly smaller role in the run-through. He had a clear discipline record and almost the same seniority as the Foreman, yet attracted the same discipline. This can't be reasonable. Had culpability been found, a lesser discipline should have been imposed.

C. If not, what discipline should be imposed?

31. Had culpability been found, I would have found that a minimal penalty was appropriate. It is not at all clear that a reasonable person in the position of the grievor would have realized that there was a need for him to be in the rear of the Loram train in the circumstances.

32. As such, I would have given the grievor a written warning. A bulletin to all Track Maintenance employees that this is the expectation of the Company in similar circumstances would avoid such issues in the future.

Conclusion

33. I find that the grievance should be allowed, and the 10-day suspension should be struck from his record. The grievor should be made whole.

34. I remain seized for any questions of interpretation or application of this Award.

March 19, 2025



**JAMES CAMERON
ARBITRATOR**