

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

CASE NO. 5153

Heard in Edmonton, March 12, 2025

Concerning

VIA RAIL CANADA INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Dismissal of Mr. Mathew Edwards for accumulation of Demerit Marks

JOINT STATEMENT OF ISSUE:

The Union contends that Mr. Edward's assessed discipline was excessive, especially given the circumstances. The residual demerit marks (10) on the employee's work record at the time of the CROR 439 violation were from a previous similar violation while the employee was a student locomotive engineer. At that time, he was completely unfamiliar with the territory and was reliant on his two trainers accompanying him. In the second incident it was established that he had wrongfully identified the signal indication, as did his mate and the Manager Train Operations who was also in the cab. Mr. Edwards was three weeks away from another discipline free year which would have reduced his documented discipline to zero.

The Corporation contends that the discipline is appropriate in the circumstances, including the fact that this is Mr. Edwards' second contravention to Rule 439 CROR, which is a cardinal safety rule.

The Corporation refers to the content of its response to the Step 3 Grievances. The Corporation further replies on the termination letter, the formal investigation and all relevant circumstances.

For the Union:
(SGD.) P. Hope
General Chairperson

For the Company:
(SGD.) R. Coles
Specialist Director, Employee Relations

There appeared on behalf of the Company:

C. Trudeau	– Counsel, Fasken, Montreal
M. Ardon	– Manager, Train Operations, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
P. Hope	– General Chairperson, Toronto
D. Dunn	– Vice General Chairperson, Brantford
M. Edwards	– Grievor, Montreal

AWARD OF THE ARBITRATOR

Background Facts

[1] The Grievor was employed by the Company as a locomotive engineer ("LE"). He was hired on September 16, 2019.

[2] At the time of the incidents at issue in this Grievance, the Grievor had almost four years of service. This dispute involves the Grievor's second Rule 439 violation. There is no dispute the Grievor had been in training in the Fall of 2021 when his first Rule 439 violation occurred.

[3] The Grievor was assessed 30 demerits for that incident, which had been reduced from 45 demerits after discussions between VIA and the Union.

[4] The Grievor had been able to "work off" 20 of those demerits, so had 10 demerits on his record at the time of this Grievance. The Grievor had received no other discipline between that date and the date of the event in issue in this Grievance. At the time of this event, the Grievor therefore had 10 demerits on his disciplinary record.

[5] On September 4, 2023, the Grievor was working Train 42, out of Union Station, operating eastbound, towards Belleville. The Grievor was the Operating Engineer. Mr. Barry was performing duties as "In Charge Locomotive Engineer" (the "ICLE").

[6] A Manager for Train Operations (or "MTO"), Mr. Richard West, was also riding along with this crew, to Belleville. He was observing their operation.

[7] It is not disputed that the Grievor proceeded through signal 178 at Cherry Street, which signal indication was "*stop*", or that a Rule 439 violation occurred as a result.

[8] It is also not disputed that all three of the individuals in the cab – including Mr. West - called the signal as "*clear to medium*", which allowed them to proceed.

[9] The Grievor was Investigated, as was Mr. Barry.

[10] The Grievor provided a detailed explanation. The Grievor's evidence at Q/A 35 was he was aware he was travelling on E5, and that the crew was "faced with 5 overhead

lights at Cherry Street tower". His evidence was he watched the fourth light to the right, which upgraded to a green, and that all occupants called that signal.

[11] That was not the correct signal for the Grievor's Train. The Grievor's evidence at Q/A 35 was that "[w]e thought we were operating on E4 clear to medium when actually, we went past the red light for E5 which we were operating on".

[12] The Grievor's evidence was this was the first time he had operated on E5. At Q/A 38 the Grievor stated:

Q38: Can you explain how you operated differently on E5 as it was your first time on this track?

Mr. Edwards: There was a sense of nervousness because E5 feels and looks exactly like E4, with signal progression and speeds. Having a clear to stop and coming up on a restricting signal adjacent to the signal that was actually ours, and then watching the signal upgrade, provided some reinforcement with the error that occurred with accepting the wrong light and the indication we might have been following the GO train that was released from Union before us.

[13] At Q/A 42, he stated:

Mr. Edwards: The circumstances led me, in that moment, to believe that it was my light. E6 has a very obvious light located on the ground, there are 5 lights overhead and there are numerous signals within the USRC that are not placed above or to the right of the track they govern. It was not a situation of me forgetting I was on E5 or being unaware of the signal placement on E4, or relying upon my crew. It was a series of circumstances, signal progressions and minor errors, that led me and two other people with CROR qualifications, to misidentify the signal indication and call out the signal for E4 as it if pertained to us on E5 [emphasis added]

[14] The previous signal for the Grievor's train – prior to Cherry Street – had in fact indicated "*clear to stop*", which meant the next signal could be a "*stop*" signal. However, that next signal could also change – be "*upgraded*" in the words of the Grievor – depending on the situation. I am satisfied it is not always the case that the next signal after a "*clear to stop*" is in fact a "*stop*".

[15] Mr. Barry was interviewed. He confirmed that all three employees in the cab of this Train confirmed the "*clear to medium*" signal. It was Mr. Barry's evidence that he actually thought the Train was operating on track E4 and not on E5, so he thought the E4 signal was correct for the Train. He also noted that the normal operation of the Train would be

to follow a GO Train to Durham Junction, and that usually the train would get that signal to reduce its speed. His evidence was it did not register the Train was not proceeding in that manner. He stated he did not have enough time to *“count the signal masts”* as he usually does. He noted the switch was lined for straight, and the track ended at a concrete barrier.

[16] Mr. West, the MTO, was an individual who also called this signal incorrectly. He was physically riding in this cab. However, no evidence was filed by the Company for what Mr. West believed or for why *he* called the signal as “clear to medium” that day. No Memorandum from Mr. West was filed into this process from him, for example, which usually occurs when management views an infraction, and no explanation was given for the lack of that evidence.

[17] Mr. West’s evidence of *why* he called the wrong signal would have been relevant and important in this process.

[18] Given the lack of evidence from Mr. West, an Arbitrator is entitled to infer that his evidence would have supported that of the Grievor and Mr. Barry, that Mr. West also believed that the correct signal for this Train was that for E4, and that the alignment of the signals at this location contributed to that confusion.

[19] The crew ultimately came upon a switch not lined for their route. Their track also ended at a concrete barrier ahead. The Grievor brought the train to a stop. An emergency broadcast was made by the Train Management Director (“TMD”), who observed the Train go past signal 178.

[20] The crew was unaware they had passed a stop signal until they were informed after the fact. They were aware they were going to run out of track, and that the switch points were not lined to allow them to move to another track, but felt there had been a routing error. The Grievor noted he asked if he should *“go flag”* the train while waiting, but there was *“unanimous agreement this was unnecessary because we had permission to be on that track, it was a routing error”*. His evidence was that *“multiple times, we looked at the track diagram and played through the signal sequence that we had, and remained of the belief that we were on a permissive signal”* (Q/A 55). I am satisfied this was a

reference to what occurred in the cab between the time the train stopped and the time Ms. Ardron came into the cab, which the Grievor noted was approximately two hours later.

[21] The Grievor's evidence was that all individuals in the cab followed "*cab red zone*" as required, which meant that "*all lights were acknowledged and communicated in the cab*" and that the Grievor was "*prepared to stop after accepting a clear to stop signal*". He also confirmed that there was no "*non-operational conversation*" in the cab and that all were focussed on the signal progression. Mr. Barry's evidence is consistent. While the MTO was also in the cab, the Company did not offer any evidence from that individual to dispute the evidence given by the Grievor and Mr. Barry.

[22] Ms. Ardron was the MTO, Central Region for the Company and it was she who responded to this event by going out to the Train. Her evidence was that it was the TMD who put out the emergency broadcast, as Train 42 was to be held up at signal 178, to give priority to two GO Trains on track E6. This had occurred at approximately 12:34. At 13:50, MTO Ardron arrived at the Train and took pictures of the train and of "*the alignment at this location given there are only 5 signals and 6 tracks*". The evidence of the Grievor and of Ms. Ardron, was that the occupants of the cab did not understand they had misread signal 178, but thought there had been a routing error, as they believed they had a permissive signal at signal 178. She noted that the crew stated a few signals had in fact "*upgraded as they had departed Union eastward*". It was also noted by Ms. Ardron that the crew told her the Train had already come to a stop at the time of the emergency broadcast by the TMD, as the points were not lined out to E5. There was also a barrier marking the end of track *at E6* according to Ms. Ardron. However, in the Investigation, it is noted that Train 42 was in fact operating on E5; and had misread the signal for E4 as their signal. The Metrolinx report also indicated that the concrete barrier was on E5, not on *E6* as noted by Ms. Ardron's memo.

[23] Ms. Ardron described that the crew was sent for drug and alcohol testing and that "*[t]hey were very remorseful and somber and took this very seriously*".

[24] Proceeding through a signal is known in this industry as a Rule 439 violation.

[25] I am satisfied that all three individuals in the cab that day – including the Company Official – mistakenly believed that the signal displaying "clear to medium" applied to their

movement, and not the signal on the ground, which displayed “stop”. I am satisfied that all individuals in the cab that day shared that confusion and called out the wrong signal as “*clear to medium*”.

[26] The Grievor was assessed 60 demerits for this violation. As the Grievor already had 10 demerits on his disciplinary record, he was discharged for accumulation. This Grievance was filed against that assessment.

The Issues

[27] The first question under the *Wm. Scott* framework is whether the Grievor is culpable for some form of misconduct. In this case, culpability has not been disputed by the Union: There is no doubt the Grievor operated his Train through signal 178, which indicated “*stop*”.

[28] The second and third questions of the *Wm. Scott* framework remain in issue as between the parties:

- a. Was the discipline assessed “just and reasonable”? and; it not
- b. What discipline should be substituted as “just and reasonable” by the exercise of this Arbitrator’s discretion?

[29] The Union maintained there were significant mitigating factors in this case that Company failed to consider. For the reasons which follow, I am persuaded that is the case.

[30] The Grievance is upheld, in part. The assessment of 60 demerits for this infraction was not “just and reasonable” discipline in all of the circumstances.

Analysis and Decision

[31] There is no doubt that the Company operates in what has been recognized as one of the most highly safety-sensitive industry in this country. Given that it is “*passengers*” and not “*freight*” that is being transported by the Company in its business, the safety concerns are heightened for this sub-sector of the railway industry.

[32] The Company argued that proceeding through a red signal was a “cardinal rule violation”, which can have serious and significant consequences. It noted that such

violations can support discharge in this industry. It also pointed out this was the Grievor's *second* Rule 439 violation in just under two years, in support of its disciplinary choice of discharge for this misconduct. It argued the Union was trying to relitigate the previous assessment of discipline in its submissions, which was improper. It also argued the issue of the impact of the track curvature was not alleged by the Grievor in his statement; that a "straight line" exists prior to the signals at Cherry St and that the Grievor was now disputing responsibility. It argued that "three wrongs don't make a right". While one of those "wrongs" was made by a member of its own management team, it argued that Mr. West was not a "member" of the crew.

[33] The Union resisted the Company's assessment and argued discharge was excessive on these facts. It argued there were significant mitigating factors in this case that should act to reduce that penalty, which included the confusion caused to all of the occupants of the cab by these particular signals at signal 178. It argued this confusion even impacted even the Company's own MTO, who called the signal as "*clear*". It also pointed out the Grievor's previous Rule 439 violation occurred when he was still a "Trainee" and dependant on the direction of his On the Job Trainer; and that he was 3 weeks shy of working off the remaining demerits from that incident when this incident occurred. It also mentioned that incident involved an obstruction of the signal by shrubbery. It pointed out that was the only discipline on his employment record.

The Wm. Scott Questions

[34] Under the second question of the *Wm. Scott* framework, various factors are appropriately considered to determine if discipline is "just and reasonable". One of those factors is the nature of the offence.

[35] Rule 439 violations are very serious violations in this industry. The consequence of a train proceeding through a "stop" signal can be very serious indeed. However, with that recognized, the facts surrounding the violation remain relevant, just as they would be in any dispute. In labour relations, there is no "automatic" penalty for any particular violation.¹

¹ Although being impaired while at work in this industry does carry the "presumptive" penalty of discharge.

[36] While the Company argued the Union was trying to address culpability in its arguments regarding this offence, I cannot agree this is the case. It is not disputed the Grievor read the wrong signal and that he had a responsibility to understand which signal applied to his train. The circumstances under which he did so, however, are relevant when determining what discipline is appropriate.

[37] I am satisfied that all three individuals in the cab that day – including an MTO - called the signal at Cherry St. as “*clear*” and believed they had a permissive signal. They did not. They had a “*stop*” signal. The question when considering mitigating factors is “*why*” did these individuals have the belief they had a permissive signal?

[38] The facts in this case appear to be unique in the jurisprudence. Many factual situations for Rule 439 violations involve a train which is operating on a single track, and a crew which either notices the “*stop*” signal too late to stop – and so runs through that signal by some margin; or a crew which is inattentive and misses that signal altogether for some reason. Those are the types of cases on which the Company relied to support its discipline, as noted later in this Award. This is not that type of case. This is also not a case where a train proceeded past a “*stop*” signal without any explanation from the LE other than “*inadvertence*” or “*distraction*”.

[39] Rather, this is a case where all three occupants of a locomotive cab were attentive, saw and called the signal, but believed a different signal applied to them at a point in time when they faced with multiple tracks and multiple signals. This type of case could only occur where a number of tracks exist with different signals for different parallel tracks, as is the case at Mile 178 at Cherry St. That distinguishes much of the jurisprudence relied upon by the Company for its discipline.

[40] While multiple tracks and signals is not unusual coming out of Union Station, this crew was *a/so* faced with a curvature of the track, shortly after that signal.

[41] Signals can be located either above or to the right of a track, as indicated in CROR 401. Turning to the signals themselves, it is not disputed that at Cherry Street, there are six parallel tracks, or that there is also a bank of multiple overhead signals. There is also a ground level signal, off to the right, and further down from the Cherry St. signal bank.

Further complicating matters is that – at Cherry Street – the overhead bank of signals has been placed above the track shortly before the track *curves* to the left.

[42] The evidence included a video of the Train's movement at Cherry Street, which was very helpful in understanding what was being perceived by this crew, at this location. On the video, the Train is operating in the second to righthand track approaching the signal masthead, which appears to support five signals facing the train; as well as another signal facing the opposite direction. The colour of the signals on the video cannot be determined. While not clear in the video, the evidence was there was a further signal off to the right at ground level, which was the signal for the track on which the Train was operating. The video showed this bank of signals was located at a point just *before* the track curves around a bend to the left.

[43] Upon viewing what the train crew would have seen, the curvature of the track just after these signals *could* reasonably cause confusion as to the alignment of the signals, as demonstrated in that video. I am satisfied that because of this curve, the perception is that the signals do not align with the track which they control, at this location, and that this is a mitigating factor for discipline.

[44] While the Company argued this track curvature was a 'new' position, I cannot agree that is the case. The Grievor's answer in Q/A 42 notes that there are numerous signals at this location which are "*not placed above or to the right of the tracks they govern*". That is a clear reference to an alignment issue, at this location. I am satisfied from the evidence that this issue of alignment perception occurs *because* of the curvature of the track to the left shortly after this signal. That impacts the perception of which signal governs which track. The video also demonstrated that this curvature impacted the alignment of these signals over the tracks and explains how the signal for E4 could have been confused for the signal for E5.

[45] While it is true that "three wrongs do not make a right" as argued by the Company, this is an assessment of mitigating factors not culpability. The track curvature at this location does not *excuse* the Grievor's misconduct for not following the correct signal, but it does go some way to *explaining* it, which is part of what mitigation addresses.

[46] It is also mitigating that the Grievor was not the only employee in the cab who made this perceptual error. While the Grievor did call the signal first, his crew member in the cab is not to simply “repeat” the call, but must make an independent determination that call is correct. That responsibility is therefore “joint”. Mr. Barry called the same signal as the Grievor. As Mr. Barry agreed with him on the call, the Grievor reasonably took some comfort from that agreement, given that independent obligation.

[47] Mr. West then confirmed the call, providing further comfort to the Grievor that his assessment was correct. While the Company argued Mr. West was only “observing” that day and was not a member of the crew, he chose to take an active role in the cab by calling signals. The Company offered no evidence to contradict that involvement. As noted above, the inference is that Mr. West also believed that E4 was the correct signal for track E5, at Cherry Street. While I agree he was not a member of the crew, the fact is he called the signal out that day – and also believed the signal was permissive. The Company failed to file *any* evidence from Mr. West, who could have explained why he himself – as management of VIA - was confused at that point, if in fact the track was ‘straight’ and the signals clear and not confusing, as maintained by the Company.

[48] That the Company’s management personnel were also confused as to which signal was correct for this Train is a relevant factor when considering the appropriate measure of discipline.

[49] The evidence the Company *did* file supports the position of the Union.

[50] The Company filed a Metrolinx 24 Hour Report of the incident. It noted there had been a *“Safety Blitz all operating crews regarding the incident.... Discuss signal progression, track curvature, and previous incidents at this location”*.

[51] I am satisfied from this reference that the fact that there *could* be difficulties caused by the *“track curvature”* was recognized even by the Company and that other employees were warned of this issue, and that there had been *“previous incidents at this location”*, given this reference. While not excusing that the occupants of this Train for following the wrong signal or reducing their culpability for that error, this also supports that there was a credible explanation for why this entire crew – and the Company’s MTO – were all confused regarding which signal applied to them that day.

[52] While the Company argued the track was ‘straight’ before the signal, it is how the track curves after the signal that creates confusion.

[53] Under the second question in a *Wm. Scott* analysis, any factor which may be relevant can be considered by an Arbitrator. The factors listed are only examples and it is not a “closed group”. From a review of all of the evidence, including the video filed from the train’s forward-facing camera, I am satisfied that the curvature of the track just *after* the Cherry St. signal and the lack of alignment of the signals as perceived is a relevant mitigating factor for discipline.

[54] The Grievor provided a very detailed explanation, which has been carefully reviewed. The crew was not inattentive, nor did they “miss” the signal as is often seen in the jurisprudence. The Grievor was also attentive to switches and was able to bring his train to a stop before the switch was reached.

[55] Considering the Grievor’s employment record, the Company argued that this was the Grievor’s second Rule 439 violation, in support of its discipline choice. It argued the Union was attempting to “re-litigate” that offence in its arguments, including that the signal was “obstructed” in that case, which it is not entitled to do. Rather, that discipline must be accepted on its fact: **CROA 5102**.

[56] In **CROA 5102**, both parties relied on an Investigation transcript for a “speeding” offence, for a later alleged improper use of drugs and alcohol while waiting for a drug and alcohol test *after* that offence. At issue was the Grievor’s knowledge that the speeding offence had in fact occurred, which impacted whether he reasonably believed he would not be tested, so could consume drugs after his shift.

[57] That Award confirmed that – if a Union does not challenge discipline, culpability and reasonableness of that discipline is considered to be established and cannot be later challenged (such as with a suggestion that speeding did not occur, as in **CROA 5102**). While I agree with the Company that the Union cannot re-litigate that discipline, which would include the facts on which it was based (including whether the signal was obstructed), the fact that the Grievor was in “*training*” in the Fall of 2021 *when* it occurred is a relevant and undisputed fact. That was acknowledged by the Company in that dispute.

[58] The previous Investigation materials were only considered to support that fact – and not whether the signal was obstructed.

[59] It is relevant that the Company and the Union came to an agreement to reduce that previous discipline to 30 demerits from 45 demerits for that incident; and that the Grievor then worked off 20 of those demerits with one year of discipline free service. Therefore, his disciplinary record at the time of this later event was 10 demerits, under the Brown System. It is also relevant the Grievor had no other discipline on his record.

[60] A record which stands at 10 demerits is not a significant record for a four year employee, under the Brown System and I agree with the Union that the fact the Grievor was training is relevant when considering the impact of that record.

[61] When considering mitigating and aggravating facts under the *Wm. Scott* framework, the Grievor's level of remorse and insight is also relevant. If an employee is able to demonstrate this, that is recognized as a mitigating factor, as it provides the employer comfort that the error will not be repeated.

[62] Conversely, if that type of insight and/or remorse is not evident or is not judged to be sincere, that is a cause for concern for whether an employee has insight that a mistake has even been made, or what should be done differently in the future. Without that insight, the Company – and the Arbitrator – are reasonably concerned that the misconduct could be repeated.

[63] In arbitrating over 100 disputes in this industry the last two years, this Arbitrator has rarely seen a grievor who demonstrated greater insight into what occurred - and how the same mistake could be avoided in future - than that shown by Mr. Edwards. He was not only forthright and apologetic, but had put considerable thought into the incident and how he could avoid a similar issue in future. He demonstrated a level of insight and remorse rarely seen in this process. Ms. Ardron also commented on the level of remorse shown by this crew.

[64] The Grievor's evidence was this was the first time he had operated on this particular track in his career. His evidence was that after this incident occurred, he reflected on this to try to determine what occurred. He reflected on this incident at Q/A 49:

Q49: What is the definition of a clear to medium signal?

Mr. Edwards: That we should have expected a medium signal at the next light. I was prepared to comply with not only a medium signal, but also a 15mph switch. In retrospect, coming upon a switch without seeing a medium to clear should have been an obvious indicator of a signal violation. With all of the construction, quick progression of signals and it all transpired so quickly, I for some reason, still believed we were going to come upon a medium signal and taking action. It just didn't register that there was no other light before the turnout until after the fact.

[65] The Grievor was asked what could have been done different to avoid this incident and his answer demonstrated he had put considerable thought into that question. He indicated that the crew could have discussed the signal placement for this track while still stopped at Union station and they could also have obtained routing information from TMD Street to reinforce the "novel situation" the crew was in. He also had thought through the potential consequences passing a stop sign, including its impact on VIA's bargaining position with the host railway. When asked what he would do in the future to ensure this did not happen again, the Grievor also had several thoughts, as evident in the Investigation. He felt it would also be beneficial for him to *"view an MTO completing an evaluation as more of a rider, as opposed to something that causes me anxiety or strain as I am being observed"*.

[66] He fully accepted responsibility and explained he was not trying to absolve himself with his answers. He also indicated his willingness to comply with any training or familiarization the Company felt appropriate and offered his sincere apology for the incident.

[67] This is a unique Rule 439 issue. I have reviewed the jurisprudence on which the parties relied. It is distinguishable from the circumstances at issue in this case. No jurisprudence on point was offered by either party.

[68] In **CROA 4819** a further off signal was argued to appear closer than the closest signal, but that case involved only a single track; not a situation involving multiple tracks and signals. That is distinguishable.

[69] **CROA 681** is a short decision where the Grievor passed a stop sign. There was no excuse offered for that situation, other than inadvertence. That is also distinguishable.

[70] **CROA 4278** was a Rule 439 violation, where the Grievor had “*turned his attention away from the track to perform double checks and check the volume and station of this radio*” and the train had passed the stop sign by the time he had refocussed his attention. That likewise is distinguishable. In this case, all occupants of the cab saw and called out what they believed to be the correct signal, although they were mistaken.

[71] In **CROA 4579**, the Grievor was operating a coal train, heading westbound and passed a “clear to stop” signal, and then had “forgotten” about it. When the stop sign came into view, the crew was not prepared. That case is also distinguishable from these facts.

[72] For its part, the Union argued dismissal “outright” was not warranted on these facts, citing **CROA 2356**. It argued that “aggravating factors” must also be present for outright dismissal to occur. However, it should be noted that a “*second offence against the Rule*” was recognized in that case to be an “*aggravating factor*”.

[73] In **CROA 4240**, the Grievor was ordered reinstated because his conduct was less severe than that described in **CROA 2356**.

[74] The Union also relied on **CROA 4495**, where the Grievor’s candor about his error was noted, as was his ability to be “*more attentive in the future and perform their duties safely*”.

[75] Certain other cases were noted regarding serious rule violations, but not Rule 439 violations (**CROA 4488** and **CROA 4563**). The Union also relied on the recent decision in **CROA 5037**.

[76] The mitigating factors in the Grievor’s favour in this dispute are strong. The Grievor only had 10 demerits on his discipline record at the time of this event. That is not a significant record for a four year employee. He was able to work off 20 demerits of the 30 assessed for the previous Rule 439 violation with his discipline free service. His previous Rule 439 violation – while serious – took place while he was a Trainee, which I am also satisfied is a relevant mitigating factor. It is also relevant that he was not the only individual who was confused by the signals due to the track curvature. He offered what I find was a credible explanation for his confusion. Of significance, the Grievor offered sincere and

significant remorse and very thoughtful insight, which bodes well for his future with the Company.

[77] Of concern for the Company's position was the complete lack of evidence from the MTO, which weakened its position that the explanation was not credible.

[78] By imposing 60 demerits for this violation, the Company has effectively "doubled up" the previous discipline of this Grievor for the previous Rule 439 offence. I do not consider this "doubling up" on these circumstances to be just and reasonable. An assessment which just "doubles up" previous discipline without due regard to such strong and significant mitigating factors loses an essential element of progressiveness.

Conclusion

[79] Considering all of the facts and circumstances of this incident – including the lack of evidence from the MTO - I am prepared to set aside the Company's assessment of 60 demerits for this Rule 439 violation. An assessment of 30 demerits is to be substituted for this incident, as just and reasonable discipline, on these specific and unique facts.

[80] As that level of discipline does not result in the Grievor's dismissal for accumulation, the Grievor is to be reinstated without loss of seniority or benefits and with full compensation for all losses, after his mitigation efforts are deducted.

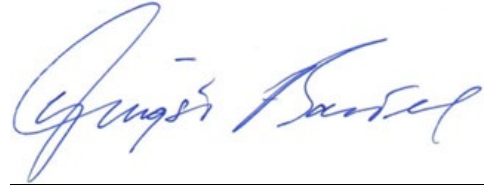
[81] The matter of the amount is remitted to the parties, for their further discussion, with the Grievor reinstated while that discussion is ongoing.

[82] Given his time out of service, the Grievor is to engage in any familiarization training or rules refresher courses which the Company feels appropriate to bring his skills back to current. The time spent in that training is to be compensated by the Company, if that obligation is not already clear.

[83] I retain jurisdiction over the issue of the amount owing to the Grievor, should the parties be unable to agree, which dispute can be scheduled for a CROA session over which I preside, on initiation of either party. Should that hearing be necessary, the Office is directed to schedule it on an expedited basis.

I also retain jurisdiction to address any questions regarding the implementation of this Award; to correct any errors; and to address any omissions, to give it the intended effect.

April 22, 2025



**CHERYL YINGST BARTEL
ARBITRATOR**