CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5156

Heard in Edmonton, March 12, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the forty-five (45) day suspension to Locomotive Engineer Dave Ford ("the Grievor") of Saskatoon, SK.

JOINT STATEMENT OF ISSUE:

Following a formal investigation, Mr. Ford was assessed a forty-five (45) day suspension on May 23, 2023, for the following:

> "For submitting an improper Health and Safety wage claim for January 18, 2023, a day on which you were off duty for an investigation pursuant to CBA Article 39.01 and not authorized to perform Health and Safety duties.
>
> A violation of:
> - Bulletin 020-21 – Health and Safety Claims Instructions
> - Bulletin LR-008-21 – T&E Wage Claim Responsibilities
> - Bulletin LR-009-21 – Lost Wage Type Claims and Work Rest Regulations
> - Honor System Manual for Canadian T&E Employees"

UNION POSITION

The Union asserts that this investigation was unfair and biased against Mr. Ford. At the onset of the investigation the Union representative requested all evidence that would assist in the determination of the case, the investigating officer then submitted new evidence after 13 questions despite the line of questioning not warranting new evidence. This evidence itself was unfair and demonstrated bias as it only showed a small sample of the total documents to fit the Company's predetermined narrative. The Union further submits that the investigation was held long after the day in question. It is unreasonable to expect Mr. Ford to remember the details of a specific day after 99 days had elapsed.

The Union relies on CROA 1588 where the arbitrator rules that investigations must be held in a timely manner and to delay excessively prejudices the employee.

The Union asserts that the Company failed to meet the burden of proof to warrant any discipline to Mr. Ford. The investigation determined that Mr. Ford did perform Health and Safety

duties on the day in question. The Company has failed to provide evidence that Mr. Ford violated the Honor System manual either entirely or in part. The Company has not provided any evidence that Mr. Ford intended to be fraudulent or that his actions were in anyway deceitful. The honor system of pay does not give the Company free reign to accuse their employees of theft anytime a wage claim is disputed.

The Company referred to Bulletins 020-21 and LR-008-21. These bulletins were 7 and 9 months old respectively prior to the date of the alleged violation. These bulletins were not reissued or added to the Summary Bulletin. It is unreasonable for the Company to expect employees to remember the details of each individual bulletin after that much time has passed. The Company states that these bulletins are available in every yard office, and they are accessible on the Company website. This is simply not the case.

The Union requests that the discipline be removed in its entirety, and that Locomotive Engineer Ford 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 Company disagrees with the Union's allegation that the investigation was unfair and biased. The Company maintains that the investigation was conducted in a fair and impartial manner under the requirements of the Collective Agreement.

The Company maintains that the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation.

Discipline was determined following a review of all pertinent factors, including those described by the Union.

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 be drawn to the same conclusion.

For the Union:	**For the Company:**
(SGD.) G. Lawrenson	**(SGD.) F. Billings**
General Chairperson	Director Labour Relations

There appeared on behalf of the Company:

F. Billings	– Director Labour Relations, Calgary
R. Araya	– Labour Relations Officer, Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
G. Lawrenson	– General Chairperson, LE-W, Calgary
B. Myre	– Vice General Chairperson, LE-W, Red Deer, Alberta
J. Keen	– Local Chairperson, Saskatoon

AWARD OF THE ARBITRATOR

[1] The Grievor is a long-service LE, beginning his career in 1997. He has spent the last 18 years of his career with the Company as an LE. He is also a longstanding member of the Health and Safety ("H&S") Committee. This is the third Grievance involving this

Grievor which was heard at the March 2025 CROA Session. Discipline was set aside in **CROA 5154** and **CROA 5155.**

[2] In this case, the Grievor was assessed a 45-day suspension for an alleged Honour System violation involving a claim for payment on January 18, 2023 for H&S duties, which was a day that he was off for the Company's Investigation.

[3] The Grievor had booked off on January 16 to attend an Investigation on January 18, 2023. He attended that Investigation for approximately half of that day. His evidence was he performed some H&S Committee work that day, both before and after the Investigation. He then booked on and immediately off again on January 18, 2023 for H&S duties which were scheduled for January 19th and 20th, 2023.

[4] The Grievor was paid for January 18, 2023, even though he attended an Investigation that day. The amount of $635.91 – representing that day's earnings – were "clawed back" by the auditor. The Company Investigated the issue as an Honour System violation.

[5] The Company considered that violation was established and assessed discipline of a 45-day suspension. This Grievance was filed against that assessment.

[6] The issues between the parties are:

a. Was the Grievor culpable for some measure of discipline for a violation of the Company's Honour System of Pay?
b. If so, was discipline just and reasonable?
c. If not, what discipline should be substituted by the exercise of this Arbitrator's discretion?

[7] For the reasons which follow, the Grievance is upheld in part.

Arguments

[8] The Company argued that significant discipline was just and reasonable, given the serious nature of this offence. It argued that inappropriate wage claims under the Honour System of Pay were more egregious, given the unsupervised trust placed in its employees and the independence of those employees for claiming what they are owed. It argued the seriousness of violations under this system was significant, as noted in **AH863**. It pointed out the Grievor was an experienced employee and that he was attending an Investigation on January 18, 2023, the day for which he was paid, and that pay was not properly owed, as he was not authorized to perform any H&S Committee work on that day and it was therefore irrelevant whether he did so or not. Given he was not authorized to perform that work, he was not entitled to payment for that day. It argued culpability was established and the discipline was just and reasonable.

[9] The Union argued the Grievor was the long-time H&S Committee member (for 15 years) and was the co-Chair of that Committee at the time of this allegation. It took issue with the delay between when the claim was audited in early March and the Investigation in early May (just shy of two months). It maintained that the delay in the Company investigating this issue has led to prejudice, as it impacted the Grievor's memory. It also argued the Investigation was not fair or impartial, as material was entered into the Investigation that was not referred to in the Notice to Appear for the Investigation. Regarding the merits, the Union argued the Grievor had no intention to pay himself for time not worked, but rather the Company's payroll system had auto-generated payment for the day of the Investigation, given the Grievor had booked on and off again on January 18, 2023. It argued it was the system that then auto-generated payment, not the Grievor

submitting a claim. It noted the Grievor booked off January 16 to attend the Investigation on January 18. After the Investigation, the Grievor booked on and then immediately off again, which triggered the system to pay him for January 18, 2023. In rebuttal it expanded that the claim was submitted *after* the Investigation was over, from 1826 on January 18 to 2300 on January 20th, as the system "pulled the lost trip from 0725 on the 18th". It pointed out the Grievor had booked off for H&S work on January 19th and 20th, 2023, and had he not booked off as he did, he could have been called for a train the evening of the 18th and missed his time off for H&S Committee duties on January 19, 2023. In rebuttal, it also pointed out the Grievor did not physically enter a claim for work on January 18, 2023. It argued the Grievor explained he booked on and back off for H&S and that is why the system paid him for that trip (at para. 1).

[10] The Union also pointed out the Grievor *did* perform H&S work that day, as established by the evidence, and that there was no rule or policy that specific authorization was required for that work to be completed, although it did not maintain the Grievor should have been paid the full day's pay which had been auto-generated for January 18, 2023. It distinguished the Company's jurisprudence and pointed out the Company provided no explanation for the "months long" delay in convening its Investigation. In rebuttal, it also argued again that the Company had not established culpability as this was not a case of the Grievor submitting a claim for that day, but that payment resulted when he booked on and then off again for H&S.

[11] The Company argued in rebuttal that the Union's arguments that the wage claim was for a trip scheduled on January 17, 2023 were false. It argued "*the Grievor submitted a health and safety wage claim for lost work on January 18, 2023 for Train 2D21-18, which*

departed at 0725" (at para. 4). It further argued the Grievor was able to remember specific details from that time period and what was to be done for H&S, but could not recall a conversation with Company officials that H&S duties were to be done on January 19th and 20th, given the Investigation. It argued the Company was not able to Investigate what it did not know and that the Company moved to Investigation in a timely manner once it determined there had been overpayment. It also argued that no prejudice had occurred and that the Investigation was fair and impartial. It also pointed out the Union did not raise a timely objection at the hearing to the evidence entered into the Investigation, and it was too late to do so now. It argued that this was the Union "*lying in the bushes, weeds and other small shrubs*" in doing so. It maintained the discipline was not excessive and was just and reasonable for this type of infraction. It also distinguished the case law on which the Union relied.

[12] From a careful review of the evidence, I am satisfied of the following facts:

a. It was appropriate for the Grievor to determine with his managers what dates he would book off for H&S duties. It was not up to the Grievor to simply book such time off when convenient for him;
b. In January of 2023, the Grievor was authorized to book off for H&S duties on January 19th (Thursday) and January 20, 2023 (Friday), which he did; This timeline was established for the Grievor to perform his H&S duties those days, because the H&S duties were usually performed on a Wednesday and Thursday, but the Grievor's Investigation was to be held on Wednesday, January 18, 2023;
c. The Grievor booked off for January 19th and 20th, 2023 for his H&S duties;
d. While the Grievor could not recall a conversation with Assistant Superintendent Rapinda where this discussion occurred and authorization was given, Mr. Rapinda gave clear evidence of the contents of that conversation which I find to be credible, when combined with the fact of the book off that was made by the Grievor;
e. The Grievor had no authorization to claim for H&S duties performed on January 18, 2023 from Assistant Superintendent Rapinda;

f. The Grievor booked off on January 16 at 2233, booked back on 1603 January 18, 2023 and then immediately booked off Health and Safety, so that he would not be called out on January 18 and miss his H&S duties on the 18th and 19th;

g. Due to the timing of when he booked on and off, the system auto-generated a claim for January 18, 2023 in the Company's payroll system;

h. It was the Grievor's belief that he *should* have been paid for his H&S work on January 18, 2023 which he performed before and after the Investigation;

i. No time period was in evidence for how long the Grievor performed his H&S duties that day;

j. The Auditor "clawed back" the payment for January 18, 2023 on March 7, 2023;

k. The Grievor decided not to "*bother*" speaking to any manager when his H&S claim was "clawed back"; and

l. The Company Investigated the Grievor's alleged violation on May 4, 2023.

Analysis & Decision

[13] For the reasons which follow, the Grievance is upheld, in part.

[14] While the Company has established culpability for some form of discipline for the Grievor's failure to determine if he was entitled to payment when he worked on January 18, 2023 and to adjust the auto-generated claim if not, a 45 day suspension was not just or reasonable discipline, when considering all of the mitigating and aggravating factors and the jurisprudence. A 10-day suspension is substituted for the Grievor's carelessness and negligence in determining if he was entitled to be paid for H&S work completed on a day he was off for his Investigation.

[15] The Union argued the Investigation was not unfair or impartial on two bases. Its first basis was the introduction of evidence after the Investigation began, which evidence was not listed in the Notice to Appear.

[16] The elements of a fair and impartial hearing were discussed in **CROA 2280**:

> *Such provisions, which have existed in the railway industry for decades, have been fashioned to provide a minimal degree of shop floor due process as a condition precedent to the assessment of discipline against an employee. The underlying principle is that, before being disciplined, an employee should have a reasonable opportunity to know the precise nature of the accusation made against him or her, with reasonable access to any pertinent statements or documents in the possession of the Company, and be afforded a fair opportunity to offer an explanation, response or rebuttal to the information or material in the Company's possession* (at p. 2).

[17] Article 39 of the Consolidated Collective Agreement refers to the Investigation. Article 39(4) requires that the "*notification*" for an Investigation "*shall be accompanied with all available evidence*".

[18] That sub-Article also provides that the Union and the Grievor are entitled to time to consider that evidence, "*as well as any other evidence introduced at the commencement of the investigation.. Should any new facts come to light during the course of the investigation, this will be investigated and if necessary, further memoranda would be placed into evidence during the course of the investigation*".

[19] The parties obviously anticipated that there *could* be evidence introduced at the Investigation beyond what is included in the Notice to Appear.

[20] Likewise in Article 39(8), which discusses investigations arising out of an allegation of harassment, the concern is that the employee and their representative be given "*sufficient time to review such information".*

[21] That is a minimal due process requirement.

[22] Article 39.02 states:

> *Sub-clause 39.01(4) above will not prevent the Company from introducing further evidence or calling further witnesses should evidence come to the attention of the Company subsequent to the notification process above… Should any new facts come to light during the course of the investigation, such facts will be investigated and, if necessary, placed into evidence during the course of the investigation.*

[23] The Investigation transcript demonstrated that a recess was taken by the Company and six further Appendices were filed. The Grievor and the Union were given an opportunity to review that evidence. That evidence was H&S auditor information which was responsive to the Grievor's evidence that his involvement in H&S work was sometimes not noted, and his name was left off during that process.

[24] I am satisfied that no unfairness resulted from the introduction of this evidence. It must be noted that a) no objection was taken at the Investigation to the introduction of this evidence, which was not included in the Notice to Appear; b) time was given to the Union and the Grievor to review that evidence; and c) that evidence was H&S information, of which the Grievor would be aware, and was filed to address certain aspects of the Grievor's evidence to that point, that his name was not always included on that information when he worked.

[25] I am satisfied that evidence was specifically to address the Grievor's explanation, was contemplated by Article 39 and did not create an unfairness in this Investigation.

[26] Even if that were not the case, while the parties obviously contemplated that evidence could be filed into an Investigation that was not contained in the Notice to Appear, it is also the case that in this industry, the jurisprudence has established that

objections relating to the Investigation must be taken in a timely manner, or the ability to rely on that objection will be considered to have been waived.

[27] Had it been necessary, I would have determined that having failed to at least place its objection on the record during the Investigation, the Union cannot now raise that objection, and it is considered to be waived.

[28] The second issue with the Investigation argued by the Union was the delay between the audit of the Grievor's claim, which occurred on March 7, 2023 – and the Investigation of that claim on May 5, 2023. The Company pointed out there is no timeline exists in the Collective Agreement for when Investigations must be held. There is a timeline in Article 39.05 for when the decision must be issued, but none for how soon the Investigation must be convened.

[29] This case is therefore distinct from **CROA 1588**, referred to by the Union during the Investigation, where there *was* such a timeline.

[30] Also relevant is that audits of pay issues will always have a level of delay built into that process, given their nature, as noted in **AH863**. The Company argued it can only investigation "*what it knows*". However, in this case, the Company clawed back the claim in March of 2023, which was two months *before* it chose to Investigate. It was therefore aware there was an issue by early March.

[31] It offered no explanation for the almost two month delay in Investigating this claim. When there is a significant delay without an explanation – as in this case - issues of prejudice can arise as to why that delay occurred, regardless of whether the parties have

agreed on a timeline. That is because whether prejudice has resulted is an independent issue that falls to be assessed on a case-by-case basis.

[32] In this case, I cannot agree with the Union that the delay was prejudicial to the Grievor. As the Company argued, the Grievor was able to provide considerable detail on the work of the H&S Committee during this time period, and specifically on January 18, 2023, including the plan for how that work would proceed when he was in the Investigation. He recalled quite clearly what he did – and did not – do on January 18, 2023.

[33] Given that level of detail, it is unusual that he was not able to recall a conversation with Mr. Rapinda regarding what dates he would be performing H&S work that month, given the scheduling of the Investigation. I am satisfied that conversation occurred, although – as noted below - I am not satisfied that conversation was as comprehensive as was argued by the Company.

[34] I am not satisfied the Grievor suffered the prejudice argued by the Union. The inability of the Grievor to recall this conversation was convenient and self-serving, given his level of recall for these other events surrounding that time period.

Merits – Question 1: Was Culpability Established?

[35] Turning to the merits, the first question of the *Wm. Scott* disciplinary analysis requires an Arbitrator to determine if there was "*just cause*" for some form of discipline. The burden to establish that culpability rests with the Company. It is only if culpability is established that the analysis moves to the second question, which is whether the misconduct was "just and reasonable".

[36] Under the Company's "Honour System of Pay", employees are their "own timekeeper". As noted in the jurisprudence, considerable trust is placed in running trades employees to carefully and accurately track their time. While the Union argued that this Manual was not "*educational material*" as it is not taught, employees are expected to read and understand the Manual under which they are to claim payment for their work. This is not an onerous obligation, but it is one clothed with significant responsibility. Employees are also responsible to check to ensure they have been appropriately paid and to make appropriate Adjustments, if not.

[37] Embedded in the Honour System is an "Interpretation Code". It is discussed in clear terms at p. 11 of the Manual. If an individual is "*unsure about your entitlement to a given claim*" they can submit their claim *"through the IP System*". That routes that claim to an auditor "*for review*". That "Claim Code" is discussed at p. 11 of the Manual.

[38] While it is true that an employee bears responsibility for their own pay and should be checking their records to ensure accuracy, not every issue which occurs under the Honour System will result in culpable misconduct. The facts and circumstances of each case always stand to be considered.

[39] There are three possibilities in this case which could potentially attract culpability.

[40] The first possibility is that Grievor intentionally sought payment for a day on which he attended an Investigation and physically submitted an improper claim for that time. The second possibility is that the Grievor knew what he was doing by the *manner* in which he booked on/ off, and knew that type of booking on/off would cause the system to "auto-generate" payment to him for January 18, 2023 for H&S work, when he was attending the Investigation, when he was not entitled to payment for that day.

[41] The third possibility is the Grievor acted in a careless and negligent fashion regarding his time for January 18, 2023, as he failed to determine what he was entitled to in the unique circumstances of this case.

[42] While the Company argued the first or second possibilities have been established (both of which assume intent), I do not agree the Company has met its burden for those two possibilities. I am satisfied the Grievor is culpable for the third possibility, on the facts of this case, as I am satisfied the Grievor was careless and negligent for whether or not he should receive payment for January 18, 2023 – or whether or not payment was "auto-generated". I am further satisfied that this is culpable behaviour.

[43] While the Company did not specifically allege theft or fraud in its submissions, the Company maintained the Grievor "*attempted to secure over $600 in wages for himself on a day when he was not authorized to perform health and safety duties but was in fact attending an Investigation*" (at para. 2). That statement alleges more than just negligence or carelessness on the part of the Grievor, but rather alleges that the Grievor had the "*intent"* to claim monies for January 18, 2023, which is embedded in the first and second possibilities, noted above.

[44] An intention to seek payment for time not worked is a significant and serious allegation in labour relations, requiring clear and cogent evidence for the Company to meet its burden to establish that is what occurred.

[45] While the Company disputed that work was undertaken by the Grievor on January 18, 2023, it offered no evidence on which to base its suspicions. Suspicions are not evidence. The Investigating Officer did not ask the Grievor how long he worked on H&S work on January 18, 2023, so the Company did not solicit from him the time he worked

that day. Just because the Investigation was over three hours does not mean the Grievor could not have also performed substantial work on January 18, 2023. I am satisfied it would not be unusual for the Grievor to attend to H&S work on January 18, 2023, given that his evidence was it was a “busy” month for that Committee, and also given the fact the Investigation only took up a few hours of his day.

[46] The Company has not gathered clear and cogent evidence to prove the Grievor did not perform H&S work on January 18, 2023.

[47] The Company’s argument was based in large part on the failure of the Grievor to seek authorization for H&S work on January 18, 2023. While the Company argued that *whether* the Grievor actually performed work on January 18, 2023 is irrelevant, I cannot agree that is the case. The fact that there was work performed ***is*** relevant when considering the jurisprudence in this industry, and it undercuts the “intent” argument of the Company based on the first possibility. A failure to seek authorization is not the same as establishing an “intent” to defraud the Company by claiming for work that has not been performed. The two do not equate.

[48] This is not a case where the Grievor is making a false claim for work not performed; it is a case where the Grievor assumed he should be paid for work he did when he was also off for an Investigation, which is a unique circumstance. While I am satisfied the Grievor was given instructions to book off Thursday and Friday for H&S work, instead of Wednesday and Thursday, given the timing for the Investigation, I am not satisfied that the Grievor and the Company discussed the issue of any work that might performed on January 18, 2023, or how that work would be compensated if it *was* performed that day.

[49] While the IO asked Mr. Rapinda if it was “agreed” that the Grievor could make an H&S claim for January 18, 2023 and he answered “no”, that is a different question than asking whether it was even discussed whether the Grievor would perform work on January 18, 2023, or – if he did – how he would be compensated.

[50] I am satisfied the Company has not established that when the Grievor was scheduled for H&S work, it was made clear that H&S work could only be performed on those days, or that the Grievor would not be entitled to compensation if he chose to work on January 18, 2023 when his Investigation did not use up the entire day.

[51] That said, this is also a case where the manner in which the Union has characterized what occurred in its submissions is somewhat inconsistent with the evidence of the Grievor, given in the Investigation. It is ultimately the evidence in the Investigation that must be assessed. While the Union has argued that it was not maintaining that the Grievor should be paid for his H&S work on the same day as he attended an Investigation, I am satisfied from a close reading of the Investigation that the Grievor did not have the same view. The Grievor felt he was owed payment for his work and did not see a need to make any adjustment when that payment was generated by the Company’s system. The Grievor’s explanation was that he booked off on H&S *after* the Investigation and submitted it a per the bulletin in Appendix B to the Investigation. His evidence was he “*just followed as per bulletins, I thought that was the special instructions for these claims*” (Q/A 38.

[52] The Grievor believed that having worked on H&S issues on January 18, 2023 when the Investigation did not take all day, he would be entitled to claim payment for that day. As he noted at Q/A 44: “*If this was a mistake, it was an honest mistake as I was off*

company business for 2 different reasons on the same day". In describing that day, he stated:

> So, in the morning we met like we regularly do to plan the day…So we planned for Preston to do some audits while I was in the Investigation. We would then pick up where we left off after the investigation. After the investigation we got a few more audits in and then prepared for the next day's meeting. **So, I didn't book off H&S until after the statement. But started our day with some H&S and finished the day off with it. So, when I put in the time off for health and safety it shows lost work. I guess because I was off already company business it tracked that as well. Might be a one off situation** (at Q/A 44).

[53] I am satisfied the Grievor had been given instruction to book off Thursday and Friday for H&S work, instead of Wednesday and Thursday, given the timing for the Investigation. However, I am also satisfied that the system "auto generated" the payment, as argued by the Union.

[54] The Company was unable to dispute that the system could do so.

[55] However, the fact that the system "auto-generated" pay does not address the Grievor's culpability. The Grievor had a responsibility to be aware of what the Company's system had generated as payment to him, and to make an adjustment if necessary to ensure that the Claim was accurate. When the system auto generated payment given the time he booked on and off, the Grievor's responsibility would have been to make inquiries to determine if he was ***entitled*** to be paid for H&S work, when he was off work due to an Investigation. As it was a unique situation, I am satisfied it is one that *should* have caused the Grievor to ask this question.

[56] While it is true that in this case the Grievor did not physically enter a ticket to request payment for time he did not work, as is often seen in jurisprudence where Honour System violations are claimed (such as in **CROA 5009**, **CROA 5010** and **AH863**), I am

satisfied the Grievor's understanding was that he should have received payment for January 18, 2023 as he performed H&S work both before and after the Investigation. Given that understanding, he took no action to correct the situation when that system generated payment for that time, as he should have. He also failed to check with a manager for this unique situation, to determine what he was entitled to be paid for working less than a full day on H&S work on January 18, 2023.

[57] While the Union argued in Reply that the Grievor became aware the claim was not payable "when it was clawed back", the evidence does not support that argument. The Grievor's evidence was he did not speak to a manager about it when that occurred, as he just "*didn't bother*". It is unclear from the evidence *when* the Grievor became aware that he was not entitled to be paid.

[58] The Grievor failed to take any measures to determine his entitlement to payment for January 18, 2023, given these unique circumstances. Instead, he "assumed" he was entitled to payment for a full day, because he had worked that day. It was not appropriate for the Grievor to simply "assume" that because he also worked on a day he was Investigated, he was entitled to be paid for that day, so did not question that payment.

[59] I am satisfied the Grievor's conduct was careless and negligent and culpable. He made an assumption on entitlement and failed to check with a manager to determine what he was entitled to be paid, given this unique situation, or to make any adjustments.

[60] His failure to seek both authorization and clarification for payment on January 18, 2023 were culpable errors in judgment, however, they were not intentional actions to seek payment for time not worked.

Question 2 – Was the Discipline "Just and Reasonable"?

[61] Turning to the second question of the *Re Wm. Scott* analysis, I cannot agree with the Company that this is a case similar to other "Honour System" cases previously determined by this Arbitrator or in this industry, or that a 45 day suspension was just and reasonable for the Grievor's failure to determine what should occur in this unique situation.

[62] The Company relied on **CROA 5009**, **5010**, **AH863, CROA 2280**, **AH723**, **AH775, CROA 4438** and **CROA 2328**, but the facts in those cases are not sufficiently similar to support the Company's position. For example, **CROA 2328** involved an individual transported home sick, who then claimed 100 miles for a deadhead. In **AH775**, 18 of the 28 H&S days claimed were found to be false. In **AH723**, a 45-day suspension was imposed for eight false wage claims. In **AH863**, a previous noted, there were 136 wage claims at issue.

[63] I am satisfied that a relevant and mitigating factor in this case is that the Grievor in fact *did* perform H&S work on January 18, 2023. While I am satisfied the Grievor was mistaken that he was entitled to payment for work when he was already booked off for an Investigation, I am satisfied these are unique facts which are mitigating, with the Investigation coming directly before time booked off for H&S work. This mitigating factor is relevant in assessing what discipline is just and reasonable.

[64] The long service of this particular Grievor and his disciplinary record are also relevant and a strong mitigating factors. Given the findings in **CROA 5154** and **CROA 5155**, two other recent assessments of discipline have in fact been set aside. For a 28 year employee, the Grievor's disciplinary record is mitigating.

[65] While I agree that the Grievor should have clarified with his managers whether or not he could claim for the work that was done on January 18, I am not convinced that failure should have resulted in a 45-day suspension, with the significant financial penalty that follows. A 45-day suspension is a significant and severe penalty in this industry. It should be imposed only in the most serious cases.

[66] This is not such a case, given I have found the facts are unique; that the Grievor did perform some work; and that the Grievor was careless and negligent but did not intentionally seek payment when he knew he was not entitled to that payment. The Grievor's failing in this case was his carelessness and negligence for determining if he could be paid for January 18, 2023 and his assumption he should be paid for that work.

[67] Reviewing the jurisprudence, and the unique facts in this case, I am satisfied that a 45 day suspension did not constitute just and reasonable discipline and that discretion is appropriately attracted to substitute a lesser form of discipline.

Question 3: What Discipline is "Just and Reasonable"?

[68] That raises the third question under the *Wm. Scott* analysis, which is what discipline is appropriately substituted?

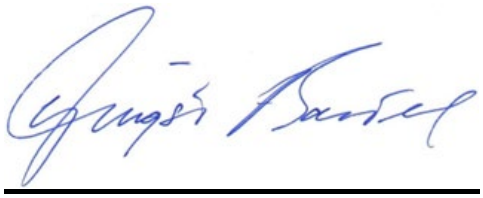
[69] I have considered all of the mitigating and aggravating circumstances. I am satisfied that a 10 day suspension is just and reasonable discipline for the Grievor's carelessness and negligence.

[70] The Grievance is upheld, in part.

[71] The 45 day suspension is vacated and a 10 day suspension is substituted for the Grievor's culpability in failing to seek advice from his managers as to whether he was entitled to payment for H&S work performed on January 18, 2023.

[72] The Grievor is to be made whole for the difference between the 45 day suspension served, and the 10 day suspension substituted and his disciplinary record amended.

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



May 7, 2025

CHERYL YINGST BARTEL
ARBITRATOR