

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

CASE NO. 5162

Heard in Calgary, April 9, 2025

Concerning

VIA RAIL INC.

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The discharge of Wade Kabel: "Based on the findings of the investigation, which included the violation of CROR 302 (a), the failure to declare the incident to VIA Rail Canada, your dishonesty about the violation and your attempt to cover it up from the moment of the violation until the investigation, the bond of trust has been irreparably broken. Given the severity of your actions and dishonesty surrounding the declaration of the violation, we have no choice but to terminate your employment effective today, July 4th, 2023."

JOINT STATEMENT OF ISSUE:

On June 4, 2023, the Grievor was ordered as the Operating Locomotive Engineer (OLE), for Train 693-04 operating between Canora SK, and The Pas, MB, by way of the Turnberry Subdivision. The facts indicate that when the Grievor contacted the RTC to report his train clear of its OCS limits at The Pas South, it was realized that the crew had operated their movement beyond its limits of authority. The Grievor was removed from service and held out pending a formal employee investigation on June 8, 2023. On July 4, 2023, the Grievor was notified that he had been discharged from service with the Corporation.

The Union's Position:

In the grievance filed at Step III, the Union argued that mitigating circumstances contributed to the violation of CROR302 and that the crew panicked when they realized their mistake. The Union further opined that the Grievor made an honest mistake and became a victim of circumstance when his counterpart panicked upon realization of the error. The fact that the Grievor had only worked for the Corporation for a few weeks played against him as he was not completely familiar with the territory and was trying to manage several new tasks simultaneously.

The Union would rely on the Grievor's extensive railway service of 35-plus years with CN Rail to show that he is a long-service employee whose actions on the day in question are out of character and can normally be relied on to do the right thing and that he is not beyond redemption.

The Union would ask the Arbitrator to substitute the discharge with a less punitive form of discipline which would see the grievor returned to service under whatever terms the Arbitrator deems appropriate.

The Corporation's Position:

The Corporation's position was that Mr. Kabel was new employee of VIA Rail who engaged in behaviour that irreparably broke the bond of trust. The fact that Mr. Kabel had 35-plus years of experience reinforces the fact that he should have known better and should not have, as

described by the Union, “froze” in this situation. Furthermore, he should have known that covering up such an incident would be seen as a major violation of VIA Rail’s trust and should have known not to partake in such behaviors. There is no acceptable excuse why such an experienced Locomotive Engineer would have engaged in these behaviors and allowed an attempted cover up to occurred. The position of Locomotive Engineer is one that requires absolute trust given the responsibilities they have on the safety of our passengers, our equipment and the general public. Mr. Kabel was found to have, at worst, cooperated in the attempted coverup of a severe violation, or at best, complicit in its coverup, either of which is entirely unacceptable. Mr. Kabel’s previous experience does not mitigate the situation, but instead reinforces decision to terminate based on the bond of trust being irreparably broken.

The Corporation refers to the response to the Step 3 Grievance. The Corporation further relies on the discipline letter, the formal investigation and all relevant circumstances.

For the Union:

(SGD.) K. James

General Chairperson

For the Company:

(SGD.) T. Shannon-Drouin

Senior Advisor, Employee Relations

There appeared on behalf of the Company:

C. Trudeau	– Counsel, Fasken, Montreal
T. Shannon-Drouin	– Senior Advisor, Employee Relations, Montreal

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
M. Meijer	– Junior Vice General Chairperson, LE-W, Edmonton
T. Russett	– Senior Vice General Chairperson, LE-W, Edmonton
K. James	– General Chairperson, LE-W, Edmonton
W. Kabel	– Grievor, Locomotive Engineer, Canora
A. Inam	– Grievor, Locomotive Engineer, Canora

AWARD OF THE ARBITRATOR

Background, Issues & Summary

[1] The Grievor is a Locomotive Engineer. He was hired by the Company on April 10, 2023. He had previously been employed by CN for more than 30 years.

[2] This Grievance was filed against the Grievor’s discharge for events which occurred on June 4, 2023, less than two months after he was hired.

[3] The Grievor’s fellow Locomotive Engineer on that tour of duty was Mr. Inam. Mr. Inam was also a very new employee, having been hired on May 19, 2023. He had previously been employed by CP, beginning in January of 2018.

[4] The issues between the parties arise from the second and third questions of the *Re Wm. Scott* framework, which are:

- a. Was the discipline of discharge a just and reasonable response; and
- b. If not, what discipline should be substituted as just and reasonable?

[5] For the following reasons, the Grievance is dismissed. The disciplinary choice of discharge was just and reasonable, in all of the circumstances.

Analysis & Decision

Facts

[6] Mr. Kabel had commenced his employment with the Company in April 2023, not quite two months before this incident took place. While new to the Company, the Union pointed out that Mr. Kabel was an experienced LE in this industry, having worked for 35 years as an LE with CN in Saskatchewan and Manitoba, prior to his employment with VIA. He had also been active with the Union, in a number of roles.

[7] After his hire, the Grievor had taken familiarization trips, with his final familiarization trip occurring on May 9, 2023.

[8] On June 4, 2023, the Grievor and LE Inam were assigned to Train 693. That Train was operating between Canora, Saskatchewan and The Pas, Manitoba. The crew was operating under “OCS” Clearance, which stands for “occupancy control system” clearance, as per Rule 301 of CROR. This is also known in this industry as “Dark Territory”. Under OCS Clearance, the RTC supervises the territory by means of clearances, TOP’s, GBO’s and other instructions.

[9] Train 693 was “*operating under the authority of a proceed clearance in OCS territory on the Turnberry Sub between Relitz and Mile 80*”. The crew did not have a clearance to The Pas South, which was located three miles further, at mile 83.4.

[10] The crew had “*...instructions within the authority to protect against a patrolling engineering foreman between Relitz and mile 80, Turnberry sub*” (as summarized in the discipline letter dated July 4, 2023).

[11] The Grievor and Mr. Inam had traded duties during their tour of duty. At the time of the events at issue, the Grievor was the “In Charge Locomotive Engineer” (“ICLE”) and LE Inam was the Operating Engineer.

[12] The last location broadcast was required to be made by the crew at mile 75. The Grievor’s evidence was that LE Inam made that broadcast.

[13] As further described below, both LE Inam and the Grievor believed there was permission to The Pas South and that the crew did not discuss the clearance before that broadcast (Q/A 33, 34). Once the Train arrived at The Pas South, the Grievor – as the ICLE – contacted the RTC through the locomotive cell phone, which was placed on speaker.

[14] The audio recording with the RTC of the Grievor – and LE Inam (who also talked to the RTC during the call) was entered into evidence and reviewed multiple times by this Arbitrator. The following evidence is established from that conversation:

- a. When the crew arrived at The Pas South, which was at mile 83.4, three miles beyond their authority, the audio recording demonstrated the Grievor contacted the RTC to report the train was “*clear of The Pas South, entirely clear of the OCS limits on the Turnberry Sub...*”.

- b. The RTC asked for clarification of the Train's location and the Grievor again noted "We arrived at The Pas South...Turnberry Sub?".
- c. The RTC then noted the clearance was only to mile 80, which was three miles before The Pas South.
- d. There is then a significant second pause and the Grievor then states "Mile 80, sorry about that RTC". LE Inam is then heard to say "Tell her we are looking for a block. Ask her if we need a block", and then the Grievor says "yeah, ok".
- e. A "block" refers to the next section of track required by the Train to proceed.
- f. Then Mr. Inam speaks directly to the RTC, Mr. Inam is heard to say "Sorry *he was just taking a nap, we're looking for a block RTC*".
- g. I am satisfied the "*nap*" comment was part of a plan to attempt to explain why the crew first reported they had *passed* The Pas South and were now seeking a clearance for the track between mile 80 and The Pas South.
- h. The RTC then says "*ok stand by*"; and five seconds later the RTC is heard to ask "*So what is your current location*"?
- i. There is a further significant pause at this point, after this question.
- j. The Grievor then says to the RTC: "*We are just going by 78 here RTC and all set for another block*".
- k. The Grievor was aware when he gave this information to the RTC that the Train was in fact at mile 84, north of The Pas South.
- l. The RTC then provided clearance for the Train to proceed "*from mile 80 to The Pas South*".
- m. A second call occurred. Immediately on that call, the RTC instructed the Train to stop as there was an issue from the earlier call.

[15] The Union argued it was LE Inam who came up with the "plan" to request another block and misrepresent the Train's location to the RTC (being at mile 78), and that it was LE Inam who also relayed this information to the RTC, I cannot agree with that conclusion. From multiple reviews of the audio recording, I am satisfied the voice giving that information to the LTC was that of the Grievor and not LE Inam. While LE Inam may have come up with the idea to state the Train was at mile 78, the Grievor was the one who relayed that information to the RTC. The Grievor therefore participated in that plan, as he purposely told the RTC that the Train was at mile 78 when it was not.

[16] The Grievor had no explanation for why he did not self-report at that time, other than that *“he froze”*. He also described himself in *“shock”* and *“disbelief”*. Participating in an attempt to deceive the RTC as to the location of the Train does not demonstrate the Grievor *“froze”* or was in *“shock”*. Rather, it demonstrates the Grievor was able to make an active decision in that moment to protect his own self interest by deceiving the RTC as to the Train’s current location. The Grievor could have also made a choice to tell the RTC *“we are north of The Pas South, as first reported”*, when specifically asked for the Train’s location. He did not.

[17] The crew brought their train to a stop *“to regain some situational awareness and to get the new clearance”* (Q/A 57). When they called the RTC for the second time, the RTC told them to bring the Train to a stop as there was an issue with the previous information.

[18] The Grievor was Investigated. The AEI reader is located at The Pas South and registered when the Train passed that reader. That and the forward-facing camera demonstrated to the Company that the Train had passed The Pas South at the same time the crew was representing to the RTC they were only at mile 78 and seeking another block.

[19] By the time of the Investigation, the Grievor was not maintaining any longer that the Train had been at mile 78 when he spoke with the RTC. At the Investigation, the Grievor acknowledged that his original report to the RTC that the Train was at The Pas South, was correct.

[20] To explain why the crew was unaware their authority was to mile 80, the Grievor’s evidence was that the crew had received permission to mile 72 and received *“more*

instructions from the foreman which was up to The Pas South. Now our only focus on The Pas South and we overlooked that our clearance was to mile 80” (at Q/A 17). The Grievor’s evidence was the foreman provide permission “through his entire limits, from mile 72 to The Pas South, with no restrictions....” (Q/A 21). When asked how that corresponded to the “limits of authority on OCS clearance 6781”, the Grievor acknowledged that “... the foreman’s instructions were to The Pas South, while the clearance was authority to mile 80 Turnberry Sub” (Q/A 21).

[21] The Grievor was aware that the permission from the foreman did not convey operating authority (Q/A 24) and that “*a movement cannot accept permission for track they do not have authority for*” (Q/A 25; see also Q/A 26). However, his evidence was that the crew discussed that they were “*good all the way to The Pas South*” (Q/A 22) and that neither crew member recognized or commented on the “*discrepancy between the foreman’s instructions and the limits on clearance 6781 [to mile 80]*” (Q/A 23).

[22] The Grievor gave evidence that there was no attempt to “*obtain more operating authority after receiving permission through the foreman’s entire working limits*” “*because we thought we were good to The Pas South*” (Q/A 27). It was his evidence he did not realize the Train did not have authority past mile 80, until the RTC told him so (Q/A 47). He acknowledged that by that point, the movement was in violation of CROR Rule 302(a), and that at that point, he should have “*... immediately stopped, emergency broadcast, acknowledged to the RTC the violation, and self report to the VIA OCC*” (Q/A 49). The Grievor’s evidence was his “*initial instinct or thought process*” when he first realized the movement had exceeded its authority was to “*stop the movement*” and he “*didn’t have an answer*” for why he did not do so (Q/A 58).

[23] When asked why LE Inam took control of the call to the RTC, his answer was “*I was in pure disbelief of the situation. I froze*” (Q/A 50). When asked why he amended his track release for a clearance (for track he had already covered), his answer was he “*panicked and froze. Ahmed amended the plan*” (Q/A 51). When asked what his intention was in saying he was at mile 78, his answer was “[t]he intention was to get the track that we didn’t have in order to get the train to the station” (Q/A 52). When asked why he didn’t self-report the violation when the RTC made him realize he had exceeded his authority, the Grievor’s answer was “I don’t know” (Q/A 53).

[24] When asked to elaborate on the conversation between he and LE Inam that cannot be heard, he declined to do so, stating that “*I think it speaks for itself*” (at Q/A 56). Since it was not heard, it did not “*speak for itself*”. The question was a reasonable one and should have been answered.

[25] When asked what he would have done had the RTC not stopped him, the Grievor stated he would have “*...pulled up to the station.... and called the RTC to turn ourselves in*” (Q/A 55).

[26] LE Inam’s evidence was that it was he who decided to use mile 78 as a location (Q/A 50/51), and that his intention in doing so was “*...so it would appear we hadn’t run our limits*”. He also declined to elaborate on the conversation between he and the Grievor during the first call, when asked, also stating “*it pretty much speaks for itself*” (at Q/A 55).

[27] The Grievor stated that “[w]ith both of us being in shock and disbelief and agreed to say mile 78 in order to get the rest of the track to The Pas South” (Q/A 54). His evidence was the movement came to a stop at 0359 EDT to “*regain some situational awareness and to get the new clearance*” (Q/A 57). When he contacted the RTC the second time

(which is a call when the RTC instructed him to stop), his evidence was he told LE Inam that from then on, they tell the truth, and that LE Inam agreed with him (Q/A 63), although he acknowledged that the RTC at that point knew that there had been an operating authority violation (Q/A 64).

[28] When asked why he didn't turn himself in at that point, the Grievor stated "*I don't know why we didn't. It was a bit of a blur*" (Q/A 65).

[29] The Grievor acknowledged that by proceeding past limits, there could have been a collision with another movement, that a foreman could have come out and there could have been extreme consequences from exceeding the limits of the movement. When asked if he had anything to add, the Grievor offered a lengthy apology. He also stated it was a "*dream come true*" to work for VIA Rail and "*[i]f given a second chance and an opportunity moving forward I will be the best locomotive engineer I can be*" (Q/A 68).

[30] Both the Grievor and LE Inam were discharged. Both men were disciplined for exceeding the limits of their authority, when they proceeded three miles *past* that authority, to mile 83.4 (the Pas South) and for being untruthful to the RTC about their location, instead of properly self-reporting their contravention and "*engaging in the emergency protocol*". LE Inam's Grievance was also heard during the April CROA Session and is resolved in **CROA 5163**. Both Grievances arise out of these same general set of facts, although there are some differences in behaviour.

Arguments

[31] The Company's position was that its discipline was just and reasonable. It argued that not only did the Grievor exceed the limits of his authority, which is significant and

serious misconduct in this industry, but the Grievor had also demonstrated he was untrustworthy and the relationship was irrevocably broken. It argued the Grievor “*made up*” that the train was at mile 78 when he called the RTC, at a point in time when he knew the Train had already passed the limit at mile 80 and was in fact at The Pas South at mile 83.4. It pointed out the Grievor was a very short service employee of less than two months; that the contravention of proceeding past limits is serious and significant misconduct in this industry; and that being untruthful to the RTC regarding the Train’s location while in dark territory was also very serious misconduct. It argued that the aggravating factors are significant and the mitigating factors weak and that discharge was just and reasonable.

[32] The Union pointed out the Grievor had 37 years working in this industry. It noted the Grievor had only just begun at VIA and was not familiarized with the route on which he was traveling, as he had never received a familiarization trip on that route. It argued the Grievor honestly thought the Train had clearance to The Pas South given its interactions with the Foreman and this was a “*mistake*”. It argued it was the final instruction from the Foreman that the crew was clear through the balance of his working limits that led to the crew’s misinterpretation of their OS clearance. It argued the crew therefore believed they were safe to proceed to The Pas South and noted the Train operated to that point without any concerns. In Reply, the Union argued that the Grievor’s intentions were to “*get the train to the station at the Pas and report the incident*” and that “*as the crew was clear of the main line and in 105 territory*” there was “*no requirement for emergency protection in accordance with CROR 35*” (at para. 11). It argued that it was LE Inam that told the RTC the Train was at mile 78 and requested the clearance to The

Pas South. The Union argued the crew's response to the RTC resulted from their "*panic*" in these circumstances, when they realized from their conversation that they had proceeded past their limits, and it was not malicious or intentional as portrayed by the Company. It argued the Train was only 3 miles from the VIA station and crew change and there was no malice or ill intent in proceeding to that point, but it was rather stress-induced. It argued the Grievor was given "*mere seconds*" to process what had occurred prior to the intervention from LE Inam and that the situation was not of his choosing. It argued that it was LE Inam and not the Grievor whose choice it was to misrepresent the Train's location to the RTC and request the next block. It pointed out that the Grievor was honest during the Investigation and acted openly and truthfully when questioned and also offered sincere remorse.

Decision

[33] It was not disputed that on June 4, 2023, the movement proceeded past its authority, only being mile 80 or that the Train's location was misrepresented to the RTC as being at mile 78, when it was actually north of The Pas South, which was at mile 83.4. What is disputed is whether discharge was appropriate for what was described in the JSI as the crew's "*mistake*" and "*panicked*" response.

[34] For the following reasons, I am satisfied it was.

[35] Culpability is admitted for exceeding limits, although the Union argued that LE Inam was the individual responsible for the misrepresentation to the RTC. As noted above, I cannot agree the responsibility for the falsehood which occurred was that of LE Inam alone. The Grievor played an active role in the misrepresentations to the RTC which occurred on June 4, 2023. He was culpable for both forms of misconduct.

[36] This raises the second and third questions in the *Re Wm. Scott* framework of whether discipline is just and reasonable, and the appropriate level of discipline if not. Various factors are appropriately considered as either mitigating or aggravating. The first is the nature of the offence.

[37] It is well-accepted that the railway is one of the most highly safety-sensitive industries in this country, and that running trades employees have a pivotal role in this industry, for the safe passage of trains. Operating on a track for which there is no authority - while responsible for the lives of passengers - is obviously a significant and serious offence in this industry: See for example **CROA 2053**. It is often referred to as a “cardinal rule violation”. Failure to take responsibility for mistakes and errors for safety-critical work is likewise another very significant offence, which is capable of attracting significant discipline.

[38] As running employees work largely unsupervised, the Company must be able to trust that such employees are capable of accepting the significant responsibility that arises from that work. As noted in **CROA 5154**, relied upon by the Company:

Employees in this industry work largely unsupervised. The Company reasonably depends on Train crews to not just perform the responsibilities of their roles, but also to properly report incidents in which they are involved...the need for reporting is not up to the Grievor’s judgment (at paras. 55, 56)

... That is a part of working unsupervised which Arbitrators take seriously, as noted in **AH802**. It must also be recalled this was a passenger train and not a freight train. The Grievor is responsible for the lives of hundreds of passengers. The stakes in this sub-sector of the industry are particularly high (at para. 96).

[39] Precedents have limited application for the second and third questions of the *Wm. Scott* analysis, as it is a fact-dependant inquiry. No two fact situations will be alike.

However, themes can sometimes be gathered from the jurisprudence when reviewing those cases for the second and third questions.

[40] One such theme is that long service can be a significant mitigating factor in cases where serious rule violations occur. In **CROA 2053**, there were mitigating factors for a 25-year-old employee to have been confused regarding a particular siding, which led to a failure to take that siding. The same is true in **CROA 2377**, where the length of service was a factor in commuting discharge to significant demerits and a time served suspension. The same impact of long service is seen in **CROA 2953**, a 1998 decision; and in **CROA 3051**, where a grievor with 24 years service and only one rule violation in his entire career had proceeded three miles past the limits without authorization. The Arbitrator in that case noted that “*discipline for such infractions has traditionally ranged between thirty demerits and dismissal*” (p. 2). A year earlier, the same Arbitrator in **CROA 2953** stated the appropriate measure of discipline for proceeding past limits was a ninety-day suspension. However, that case also involved a grievor with long service.

[41] Regarding concealing misconduct, **CROA 4124**, relied upon by the Union, involved a case of speeding over a crossing, with discharge following their alleged attempt to “*conceal an important rule violation and a potentially hazardous incident*” (at p. 2). Mitigating factors in that case were the grievor’s long service of 32 years and that the attempts were to “*play down*” rather than “*fashioning outright falsehoods*” (at p. 4). In **CROA 3624**, a train sped over a crossing, exceeding the limit by more than 50 mph. The train was ultimately put into emergency and no call was made to the RTC as required. Arbitrator Picher noted:

In essence, the grievor and his workmate failed utterly to disclose to the Corporation or to CN any of the facts of what should have been viewed as an extremely serious incident. **In the past such conduct has been found by this Office as justifying the termination of employees who fail to disclose the occurrence of a dangerous incident which involves rules violations** (see e.g. CROADR 3607). Similar cases have also resulted in the reduction of penalties to something less than discharge, **where mitigating circumstances would justify that result** (see e.g., **CROA 1626**) (emphasis added).

[42] An important question that must be considered by Arbitrators in determining if discharge is just and reasonable is whether the bond of trust that must be maintained has been irreparably broken by the Grievor's misconduct. Where there is an issue with honesty and trustworthiness for self-reporting mistakes by employees who must work unsupervised, that becomes an important analysis.

[43] This is especially the case where the employment relationship is short. In such cases, the employee does not yet have a track record to establish that trust is well-placed and has not earned the loyalty which long service attracts.

[44] Turning to the facts of this case, there were two very serious offences committed by this crew. It is not disputed that not only did the crew proceed past their limits, but when they realized they had passed their limits, they were not truthful with the RTC who was seeking their location. Neither did they take the opportunity to "*come clean*" or self-report to the RTC at anytime *before* they were told by the RTC to stop their Train. While the Grievor stated it was their intention to report their mistake when they reached The Pas, that evidence is neither compelling or convincing and is self-serving. The crew had opportunity to "*come clean*" with the RTC in the first call, and also between the first and second calls, and did not take that opportunity. At any moment, the Grievor could have "*come clean*" as to what occurred, and could have called the RTC back to self-report the

violation. He could have also answered honestly when asked where the train was, such as saying “at The Pas South, as reported”.

[45] The Union argued the Grievor was thrown into a “*state of shock from the potential catastrophic ramifications of the crew’s actions*”. It also argued he was “*essentially frozen in position*”.

[46] The Union relied on **CROA1626**, a 1987 decision, for the impact of a frightening decision on the crew’s ability to fail to make mention of an incident to an RTC. However, that precedent does not stand for the proposition that fright excuses failure to report. All that decision does is refer to the “supposedly...frightening experience”. While discharge was commuted to reinstatement without compensation, and 50 demerits, it was because that individual had 36 years of good service. That level of service does not exist in this case. More recently, in **AH802**, the employee also stated he was “shocked” as a reason why no call was placed to the RTC. The Arbitrator drew the reasonable inference “*the crew hoped to avoid responsibility*” (at para. 35). Being in “*shock*” from a rule contravention therefore is not a compelling, convincing, or reasonable explanation, in the jurisprudence.

[47] While the Union argued the Grievor was forthright in the Investigation, that is not accurate. When asked if he could elaborate on the conversation which occurred between him and LE Inam that could be overheard on the first call to the RTC, the Grievor responded “*No, I think it speaks for itself*”. That is not a responsive answer. The reasonable inference is that a conversation occurred between them to “*cover up*” the incident and not report the violation to the RTC and that inference is appropriately drawn.

Engaging in such a conversation - and coming up with a plan to deceive the RTC – is not the actions of an individual who is “*in shock*” or “*frozen*”.

[48] This is not a case where LE Inam took over the RTC call and made the decisions which caused the difficulties with the communication to the RTC, while the Grievor stood by in shocked silence. That position is inconsistent with the evidence. Whether or not it was Mr. Inam who came up with the idea of telling the RTC the Train was at mile 78, the Grievor was an active participant in the plan to deceive the RTC as to the Train’s location when he agreed with that deception by relaying that information to the RTC. Instead, he could have chosen not to follow that suggestion and could have answered truthfully that the Train was at The Pas South. He did not.

[49] That is not the actions of someone who is “shocked” or “*frozen in disbelief*”. Rather, it is the actions of someone participating in an attempt to cover up their own misconduct by deceiving the RTC regarding the Train’s location.

[50] Short service is an aggravating factor in a *Wm. Scott* analysis. Here, while the Union pointed out the Grievor had decades of service *in this industry*, he had less than two months of service *with the Company*. The experience of an individual in an industry – while relevant to whether that individual is hired by another company or not – is not relevant in determining whether the Grievor has “long service” with the Company to place against his misconduct. It is service with *the Company* which earns the loyalty and trust which long service can bring.

[51] The categories of mitigating factors are not closed. An Arbitrator can consider any factor that she finds relevant.

[52] There was no evidence of any particular distraction in the cab to explain these two types of misconduct, which is a relevant factor.

[53] The Union argued this was not a “main track” violation, given the location of The Pas South. LE Inam described it as “105 territory” at Q/A 64: “*We were in 105 territory we thought we would get the train into the station and give the train [sic] to the next crew*”. The Union also focused on that issue in oral argument. There are at least two answers to this position. The first is the crew was not entitled to proceed on as if nothing had occurred when they over-ran their limits, regardless of what territory they were then moving into. There was an issue that needed to be addressed and the RTC needed to be informed of their violation. Second, whether or not the crew was then on the main track moving into The Pas, the crew was under the impression they did require RTC clearance to proceed, as they contacted the RTC to request a “block” to proceed past mile 80. Third, that position does not go any way to explaining the deception in the crew’s conversation with the RTC.

[54] The Union argued the Grievor had not taken any familiarization trips operating north between Canora and the Pas. However, as clarified by the Arbitrator at the hearing, the Grievor did not raise any issues with lack of familiarity for this route, prior to accepting the assignment, as was also the case in **CROA 5124**, relied on by the Company. If an employee holds themselves out to the Company as being willing to accept an assignment, then the Company is entitled to assume the employee is capable of operating his train through that assignment. The time to raise an issue of unfamiliarity is *before* the work is accepted, not *after* an incident occurs.

[55] While the Union argued that it is mitigating that the crew was confused given the instructions from the Foreman, the Grievor acknowledged that “*permission from the*

foreman, does not convey operating authority” (Q/A 24) and that a “*movement cannot accept permission for track they do not have authority for*” (Q/A 25).

[56] Further, the Grievor did not have an explanation for why the crew would not have reviewed their clearance rather than make an *assumption* it was consistent with the Foreman’s information. The clearance was there to check and is the guiding document; it tells the crew where they can be. It is the “running authority”, as that term is used in **CROA 2936** (to describe a TGBO).

[57] It has been recognized in the jurisprudence that it is a core responsibility of an LE operating in dark territory to be *aware* of the details of their clearance. In **CROA 4689**, the Arbitrator stated:

The difficulty in this case is that while it was not reckless disregard, the Grievor’s negligence was substantially more than a simple error in judgment. He failed to do what constitutes **one of the most essential parts of his job, that is: to review the specific instructions in his clearances** and discuss the same with his crew prior to setting out (at p. 5, emphasis added).

[58] That responsibility remains despite other interactions that may or may not occur with other employees during a tour of duty.

[59] While lengthy suspensions or significant demerits have been imposed for exceeding authority, I agree with the Company’s argument that this discretion is exercised where long service employees are involved, as seen in the jurisprudence and as discussed in **AH802**.

[60] Even if a lengthy suspension or significant demerits could be said to be appropriate for the Grievor exceeding his authority, that was not his only misconduct in this case. Discipline for the communication with the RTC must also be assessed. Cases involving

deception are of particular concern to Arbitrators, especially in a highly safety-sensitive industry such as the railway. While mistakes can happen, the Company must be able to trust in the employee's integrity to own up to such a mistake and take responsibility for it, and accurately relay the location of a Train in "Dark Territory".

[61] In **AH802**, the Arbitrator drew the reasonable inference "*the crew hoped to avoid responsibility*" (at para. 35). In this case, it is unnecessary to infer that result, as the behaviour of this crew leads directly to it. Not only did this crew *hope* to avoid responsibility, they came up with a plan to actively *avoid* responsibility by attempting to deceive the RTC as to their actual location. As noted above, Unlike in **CROA 3745**, this *is* a situation where the flow of the conversation with the RTC indicates the Grievor was attempting to avoid reporting the incident. The explanations offered by the Grievor for reporting to the RTC the train was at mile 78 when it was not, are neither reasonable nor credible. Neither was the Grievor entirely forthright in the Investigation, choosing not to provide the details of his conversation with LE Inam before the representation that the Train was only at mile 78.

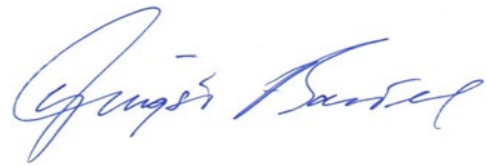
[62] The only mitigating factor in this case is the Grievor's apology and remorse. Given the facts of this case the weight of that factor, when placed against the aggravating factors, does not result in discharge being either unjust or unreasonable for this short service employee. Given these facts, this is not a situation where the exercise of discretion to reduce that penalty is warranted.

[63] Regrettably for this Grievor, given his short service, the bond of trust which the Company must maintain in his work – and which lies at the heart of the employment relationship – has been irretrievably broken.

[64] The Grievance is dismissed.

I remain seized of 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.

May 26, 2025

A handwritten signature in blue ink, appearing to read "Cheryl Yingst Bartel", written in a cursive style.

**CHERYL YINGST BARTEL
ARBITRATOR**