

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

**CASE NO. 5163**

Heard in Calgary, April 9, 2025

Concerning

**VIA RAIL INC.**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The discharge of Ahmed Inam: "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 In Charge Locomotive Engineer (ICLE), for Train 693-04 operating between Canora SK, and The Pas, MB, by way of the Turnberry Subdivision. The facts indicate that upon arrival at The Pas, the Grievor's counterpart contacted the RTC to report their train clear of its OCS limits, at which time it was realized they had operated their movement beyond the limits of their 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 the Grievor's decision which caused him to panic when he realized their mistake. The Union recognized the severity of the error but implored the Corporation to give the Grievor a chance to prove that it was out of character and that he was 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:**

It is the Corporation's position that Mr. Ahmed was new employee of VIA Rail who engaged in behaviour that irreparably broke the bond of trust. Even if Mr. Ahmed panicked, as described by the Union, the decision to attempt to coverup a major violation as opposed to reporting it is completely unacceptable. 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. Inam engaged in a behaviour which severely violated that trust and left VIA Rail no choice but 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
A. Inam	– Grievor, Locomotive Engineer, Canora
W. Kabel	– Grievor, Locomotive Engineer, Canora

### **AWARD OF THE ARBITRATOR**

#### **Background, Issue & Summary**

[1] The Grievor was employed as a Locomotive Engineer (“LE”) for the Company. He was hired in May of 2023.

[2] On June 4, 2023, the Grievor was working with LE Kabel, on Train 693, which was operating between Canora, SK and The Pas, MN. The Grievor was the Operating Engineer at the time of the events in issue. LE Kabel was the ICLE.

[3] The Grievor was discharged for exceeding the authority given to the movement, by over three miles, and for engaging in efforts to cover up that reality, in communications with the RTC after that occurred.

[4] This Grievance was filed against that discipline.

[5] Culpability is not in issue. The issues between the parties are:

a. Was the discipline of discharge a just and reasonable response? And, if not

- b. What discipline is appropriately substituted by the exercise of this Arbitrator's discretion?

[6] For the reasons which follow, the Grievance is dismissed. Discharge was a just and reasonable disciplinary response, in all of the circumstances of this case.

Decision

[7] LE Kabel was also disciplined for these events and grieved that discipline. His dispute was resolved in **CROA 5162**. The facts, similar arguments and jurisprudence are comprehensively outlined in that Award. That analysis also applies to this dispute, with some variations for the behaviour of LE Inam. That analysis is therefore adopted, but will not be repeated, here. Reference is to be made to **CROA 5162** for any precedential use of this Award, and the decisions are to be read together.

[8] In summary, the evidence was the crew believed they had clearance to The Pas South, given their interactions with a foreman who gave up his limits to The Pas South. They did not have such clearance. They only had clearance to mile 80, which was more than three miles *before* The Pas South.

[9] When LE contacted the crew to report the Train was at The Pas South, the crew was advised by the RTC that their limits were only to mile 80. The crew then engaged in a "*cover up*" plan, ultimately misrepresenting to the RTC they were only at mile 78, in an attempt to avoid responsibility for their error. The crew was ultimately directed to stop by the RTC and were Investigated. Given the evidence of the AEI reader and the forward-facing camera, the Company was able to determine that when the crew told the RTC they were only at mile 78 and needed another "block", they were actually north of The Pas

South, five miles further on, which was the location acknowledged by both crew members in their Investigations.

[10] The Company argued that although the Grievor already knew he had passed the mile 80 limit, he suggested a “cover up” plan, “instead of reporting the contravention and engaging in the emergency protocol”. As noted in CROA 5162, the crew initially requested a “block” or the next section of track. LE Iman then came up with telling the RTC the movement was only at mile 78. The Company also pointed out the crew was aware that Foreman’s limits and RTC instructions were two separate things, and that a further OTC clearance from the RTC was necessary, given that the Foreman does not convey track authority. It argued the Grievor’s explanation of being “frozen in disbelief” is inconsistent with his actions to create this cover up. It argued that its discipline of discharge was warranted.

[11] The Union argued the bond of trust was not irrevocably broken. It argued the Company has exaggerated the evidentiary record, given that the crew believed they had clearance to The Pas South and there was no damage to equipment or Company property. It argued the Grievor and LE Kabel were frozen in disbelief that they did not have coverage to The Pas South and that the Grievor brought the Train to a stop awaiting a new clearance. It argued the shock and stress of what had occurred overcame the Grievor and he was not in a “present state of mind” and his actions were “out of character”. He was able to understand that the Train was in “105 territory” and no longer “in harm’s way” so he felt it would be expedient to continue to the crew change location. It argued this initial reaction – while a significant error – was not characteristic of the Grievor’s work habits but was “the spontaneous reaction of an individual experiencing traumatic shock”

(at para. 66) and that the incident was “briefly debilitation” given the “catastrophic ramifications” of this incident (at para. 73), and that his reaction was consistent with what occurs when an individual is in shock. It argued he did not “intentionally seek to fashion an outright falsehood” (at para. 77) but suffered an “impulsive lack of judgement” (at para. 78). It pointed out he confessed the entire incident and it argued this would have occurred even if the RTC had not intervened. It also argued the Grievor’s record demonstrated his positive work habits. It argued the Grievor understood the gravity of the crew’s error and expressed his sincere remorse. It noted the discharge had a profound impact on the Grievor’s life.

[12] Turning to the behaviour of LE Inam, in his Investigation he acknowledged that permission from a foreman does not convey operating authority; that when LE Kabel initially contacted the RTC for clearance past The Pas South, the train was in fact already at that location; that the crew should have acknowledged the violation and “*turned ourselves in*” (Q/A 47); that he “*froze*” when he took control of the call to the RTC from LE Kabel and that he was in “*pure disbelief of the situation*” and was “*shocked and confused: I just stepped as I saw that Wade was not saying anything*” (Q/A 49); and that he decided to use mile 78 as the location to give to the RTC, to “get the rest of the track from mile 80 to The Pas South” (Q/A 51).

[13] When asked why he did not “self-report the violation of CROR 302(a) at that time, he stated “*I am not sure*” (Q/A 52).

[14] Like LE Kabel he stated the intention of the crew was to reach the VIA station ahead and the “*turn ourselves in*” (Q/A 54). There was no explanation for why that could not have occurred anytime before reaching the VIA station.

[15] When asked to elaborate on the conversation between he and LE Kabel during the RTC call, he declined to do so, stating “*It pretty much speaks for itself*” (Q/A 55).

[16] When asked why he allowed LE Kabel to copy a clearance from the RTC that he knew was not correct when the Train had already cleared those limits, he stated “*I am not sure*”; and he acknowledged accepting a clearing “*even though a violation of CROR 302(a) had occurred*” (Q/A 61).

[17] He also acknowledged the crew knew by the time of the second call that the RTC “*knew that an operating authority violation had occurred*”. His explanation for not turning himself in at that point was “*we were in 105 territory we thought we would get the train into the station and give the train to the next crew*” (Q/A 64).

[18] Like LE Kabel, LE Inam also offered a lengthy apology and stated that “*[g]oing forward, I will never repeat this. If an incident was to occur, I would turn myself in immediately*” (QA 67).

[19] The familiar framework in *Re Wm. Scott* is to be applied. This dispute raises the second and third questions of that framework, as noted above. Precedents are of limited use for such determinations, given no two fact patterns will ever be the same.

[20] Certain themes can be found in such jurisprudence, however. One such theme discussed in **CROA 5162** is that long service acts as a significant mitigating factor for exceeding limits of authority. However, as that Award makes clear, it is the service for the Company that earns that loyalty, and not the length of service in the industry generally. It is service to the Company that builds loyalty *with the Company* and therefore mitigates

misconduct. The length of service – or disciplinary record - from another employer is irrelevant to that analysis.

[21] For the same reasons as outlined in **CROA 5162**, I am satisfied that discharge was a just and reasonable disciplinary response.

[22] As discussed in that case, the two different types of misconduct in this case – exceeding limits of authority and misrepresenting location to the RTC are both serious and significant errors in this industry. As noted in **CROA 5124**, running trades employees have responsibility for multi-ton equipment and – in this case – human lives. As they work unsupervised, the Company must be able to trust they can both follow the rules of operation, and truthfully report where that has not occurred.

[23] While the Union argued the Grievor's response arose from shock and disbelief and that he did not intentionally create a falsehood, I cannot agree. Intentionally creating a falsehood in fact is exactly what occurred in this case.

[24] When the crew was told they had exceeded their limits, they had a choice to make. That they were "*frozen in disbelief*" is not consistent with the specific actions they took to maintain the false location of the train. They did not correct this falsehood at any time before the second call when the RTC by then had figured out there was an issue and directed them to stop. They could have maintained to the RTC that they were at The Pas South, as LE Kabel initially said, being truthful when the RTC specifically asked their location. They did not do so. While LE Inam was operating the train, it is apparent from the audio recordings that he was the one making suggestions for falsifying the information to be given to the RTC.

[25] As also discussed in **CROA 5162**, being “*in shock*” and “disbelief” is not a reasonable or credible explanation for attempting to deceive the RTC: **AH802**. Further, to suggest you were “*going to*” turn yourself in later, when caught in a falsehood, is not particularly compelling, as it is self-serving evidence. The time to come clean for this crew was when they realized they had passed their limits. They attempted to cover up their misconduct, first by suggesting a further block- which was LE Inam’s suggestion - and then by deciding to say they were only at mile 78 – also LE Inam’s suggestion - was deliberate and intentional behaviour. That behaviour does not result from being “*frozen*” in disbelief.

[26] This is not a case where the call was *not* made to the RTC after a contravention; this is a case where the crew *chose* to tell the RTC the Train was at a point that it had already passed five miles before, to avoid responsibility for their own misconduct. That is deliberate and intentional behaviour.

[27] While the crew admitted to the misconduct in the Investigation, given the Company’s strong evidence it had occurred, it would have been difficult to maintain the falsehood. The Grievor was not forthcoming with the details of his conversation with LE Kabel once the crew was advised their limit was to mile 80. Being non-responsive to a reasonable question is not being honest and forthright in an Investigation.

[28] The jurisprudence was analyzed in **CROA 5162**. That analysis is adopted here.

[29] As noted in the jurisprudence, dismissal is one possible response to exceeding limits, especially if there is no mitigating factor of long service. When combined with a decision to misrepresent the Train’s location to avoid responsibility, that disciplinary choice gains considerable support. The Grievor is a short service employee who made



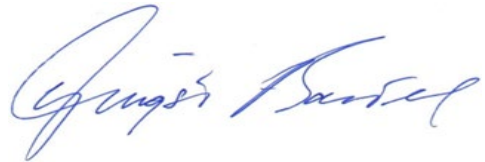
two very significant and serious errors. He made an assumption without checking his clearance after the conversation with the Foreman. To compound that error, he then participated in perpetuating a falsehood in his communication with the RTC.

[30] His apology is the only mitigating factor. Unfortunately for this Grievor, that does not provide a great deal of balance to the significant aggravating factors in this case, including his very short service. Regrettably for this Grievor, discharge was a just and reasonable response in all of these circumstances.

[31] The Grievance is dismissed.

I retain jurisdiction to address any issues relating to the implementation of this decision; to correct any errors; and to address any omissions to give this Award its intended effect.

**May 26, 2025**



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**CHERYL YINGST BARTEL  
ARBITRATOR**