CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5168

Heard in Calgary, April 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the Dismissal assessed to Conductor Cavan Spraklin (The Grievor).

JOINT STATEMENT OF ISSUE:

Conductor Cavan Spraklin was disciplined as shown in his Form 104 as follows,
Formal investigation was issued to you in connection with the occurrence outlined below:

"Failing to protect the point with another train in the RCLS zone causing a tail-end collision November 18, 2022."

Formal investigation was conducted on December 9, 2022, to develop all the facts and circumstances in connection with the referenced occurrence. Please be advised that you have been DISMISSED from Company Service for the following reasons:

T&E Safety Rule Book - Section 12 Shoving Equipment, Item 12.3 a (i)

Notwithstanding dismissal was warranted and appropriate for the aforementioned incident, based on your previously discipline history, this incident constitutes a culminating incident which warrants dismissal.

As a matter of record, a copy of this document will be placed in your personnel file."

Union Position

For all the reasons and submissions set forth in the Union's grievances the Union contends that the discipline assessed in this matter is excessive and serves no educational component, it is simply punitive.

The Union and Mr. Spracklin do not dispute the incident but believe there were mitigating factors. Mr. Spracklin, a junior employee in RCLS that day, thought the other train had left their zone (PPZ) and believed they had full control over it

Trainmaster D'Ambrosi remembered certain aspects of the investigation but admitted he could have informed the crew about the train's presence as noted in QF & AF. A proper briefing from the Trainmaster would have made the crew aware of train 120's intentions and ensured protection at the point.

The Company will argue that the dismissal was due to the employee's overall discipline record, showing repeated issues. The Union argues that the Company's Hybrid Discipline Guidelines are under grievance, as they exceed reasonable expectations and do not comply with the KVP award. The Union asserts that a Former Assistant Superintendent, when signing for deferred discipline, advised the employee to exclude the Union to avoid damaging their relationship.

The Company activated the deferred 30 demerits for Mr. Spracklin, bringing his total to 60, and dismissed him. No discipline was assessed for the incident itself; however, the Company added the prior demerits to his record and dismissed him again for the same incident.

Referring to Arbitrator Bartel's reasoning in CROA 5061, the Union questions how an employee can be dismissed twice—first for receiving 30 demerits and second for failing to protect a point. The Company did not assess discipline as required by Article 39.13 (4)

The Union believes the Company could have handled this differently. The investigation revealed mitigating factors for the incident. Mr. Spracklin took responsibility (Q&A 31) and showed remorse, so dismissal was unnecessary.

The Company states that a safety profile review was conducted. The Union questions what measures were taken to assist Mr. Spracklin, identified as an at-risk employee. Additionally, the Company's Step 2 response fails to address the incident leading to the dismissal and instead focuses on procedural flaws. The Union believes this argument is a distraction from the core issue and moot.

As per the facts presented within our grievances as well as the investigation the Union request that Mr. Cavan Spracklin be reinstated forthwith, and he be compensated all loss of wages with interest, no loss of benefits, and recalculation of AV/EDO's. In the alternative that the penalty, be mitigated as the Arbitrator sees fit.

Company Position

The Company's disagrees and denies the Union's request.

The Company contends that the Union has improperly attempted to consolidate / bundle two separate disciplinary assessments into a single Grievance. As the Union is well aware, absent concurrence by both parties, the provisions of the Collective Agreement do not allow for the arbitrary consolidation or bundling of multiple disputes into a single grievance. Each grievance must address the specifics of each alleged violation of the collective agreement Each case in turn, must be assessed on its own merits.

The Union does not question whether the incident occurred, nor that culpability was not established, only the quantum of discipline assessed.

The Company maintains that employees are always entitled to union representations during disciplinary matters, and there is no indication or evidence that the Grievor was prevented from exercising this right. As such, the Company's position remains that the deferred demerits were issued appropriately.

The Company carefully considers the appropriate disciplinary consequence, if any, to be assessed. Discipline was determined following a review of all pertinent factors, both mitigating and aggravating, and maintains the Grievor's culpability for this incident was established following the fair and impartial investigation into this matter. Moreover, the Company maintains the discipline was properly assessed in keeping with the Hybrid Discipline and Accountability Guidelines.

The Grievor was a qualified Conductor and was knowledgeable of the rules.

The Company's position continues to be that discipline assessed was just, appropriate and warranted in these circumstances.

The Company maintains that the discipline assessed should not be disturbed, requests that the arbitrator be drawn to the same conclusion and dismiss the grievance.

For the Union:	**For the Company:**
(SGD.) D. Psichogios	**(SGD.) F. Billings**
General Chairperson	Senior Manager Labour Relations

There appeared on behalf of the Company:

S. Arriaga	– Manager Labour Relations, Calgary
A. Harrison	–Manager Labour Relations, Calgary
S. Scott	– Manager Labour Relations. Calgary

And on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
B. Baxter	– Vice General Chairperson, CTY-E, Toronto
B. Wiszniak	– Vice General Chairperson, CTY-W, Regina
C. Spracklin	– Grievor, Montreal

AWARD OF THE ARBITRATOR

Background, Issue & Summary

[1] The Grievor was employed as a Conductor. He began his employment on November 1, 2021.

[2] On November 13, 2022 the Grievor's tour of duty was as a Conductor, working with an RCLS, in a Point Protection Zone ("PPZ") as described below. On that date, it was alleged the Grievor failed to protect the point, which caused a tail end collision, contrary to T&E Safety Rule Book, s. 12, item 12.3 a(i).

[3] At the time of those events, the Grievor had been employed for less than 13 months, and so was a short-service employee. It is relevant to this dispute that the Grievor had 30 demerits on his disciplinary record, which were assessed earlier in 2022. He also had accepted 30 *deferred* demerits, assessed approximately two weeks before, on October 28, 2022. Those demerits were assessed for "*passing through the switch resulting in a derailment during your tour of duty September 19, 2022"*.

[4] Article 39.13(1) allows for discipline to be deferred "*in circumstances that by themselves are not dismissible, but which, due to the existence of demerit marks on the individual's record, would result in dismissa*l".

[5] The Union raised issue with this deferral, as further discussed below.

[6] The Grievor was Investigated. The Company did not assess demerits for this incident. Rather, it considered the Grievor was culpable and that the alleged misconduct justified the dismissal of the Grievor, as discipline.

[7] On December 19, 2022 it issued a Form 104 dismissing the Grievor for failing to protect the point.

[8] As the Grievor's dismissal qualified as "additional discipline" under Article 39.13(4), the Company activated the 30 deferred demerits. That led to a total of 60 demerits. The Company issued a second Form 104 noting the 30 deferred demerits were activated and the Grievor was also dismissed for accumulation of 60 demerits, under the Brown System.

[9] This Grievance was filed against those dismissals.

[10] The issues between the parties are:

a. Does the Arbitrator have jurisdiction to determine the following for the deferred demerits:
    i. If the Grievor was "targeted" by the Company? And
    ii. If the Grievor was denied Union representation when the demerits were assessed?
b. Was the Grievor culpable for some form of discipline? And
c. What is the impact of the Company issuing two Form 104's dismissing the Grievor?

[11] For the following reasons, the answers to these issues are:

a. Neither "targeting" nor "denial of Union representation" has occurred so whether or not there is jurisdiction to address those issues is moot;
b. The Grievor was culpable for some form of discipline for this collision. As a result, the deferred demerits are activated, and the Grievor is dismissed for accumulation, whether or not the *measure* of discipline was just and reasonable or not;
c. The Company did not breach the Collective Agreement by issuing two Form 104's, both stating dismissal.

Facts

[12] On November 18, 2022, the Grievor was called as the yard foreman, in St. Luc Yard. He was working as a Conductor, operating an RCLS unit, which allows remote operation of a locomotive.

[13] The Grievor was assigned work in the PPZ, which is a series of tracks, designated in Special instructions. That means that employees must obtain permission from the Grievor's crew, prior to occupying such zones. He was working with a yard helper.

[14] The Company pointed out the Grievor had worked in the PPZ for months, as the foreman, and was familiar with the rules and regulations which surrounded the PPZ.

[15] During the Grievor's tour of duty, the crew gave permission to Train 120-18 to operate within the PPZ. Train 120 did not advise the Grievor it was leaving the PPZ, however the Grievor made an assumption that Train 120-18 had cleared the limits, given the Trainmaster had told him "*It was all mine*". As a result, he advised his Conductor there was no need for him to stay on the head and "protect the point" during his movement.

[16] The Conductor therefore detrained and the Grievor continued to operate the movement by RCLS, as he "*felt train 120 had left our zone*". It had not.

[17] The Grievor's movement collided with Train 120-18, which had not yet cleared the limits. He was not aware of this fact until advised by the Trainmaster.

[18] Further details of these facts will be referred to in the Award.

Preliminary Issues Relating to Deferred Demerits

[19] The Union raised what I will describe as two "preliminary issues".

[20] The first issue is that the Grievor was "*targeted*" by the Company, as the Company had assessed 30 demerits for the run through switch. It pointed out that would be just enough – with the Grievor's existing record – to bring the Grievor to 60 demerits, if he had another violation. The Company argued this was a "new" issue over which this Arbitrator does not have jurisdiction.

[21] It is unnecessary to address the Company's argument regarding jurisdiction, given that – even if jurisdiction *were* assumed - I am satisfied that the Union's arguments on either ground cannot succeed.

[22] Addressing first the issue of "*targeting*", this argument raised issue with the purpose of deferred demerits as noted in Article 39.13. That purpose is to avoid dismissal *in circumstances where it otherwise could be imposed.* The Agreement allows those demerits to be "activated" if there is another violation within the space of one year. The Collective Agreement provides that if another violation occurs in the course of a year before those demerits are worked off, that employment could once again be in jeopardy: Article 39.13(4).

[23] However, that Agreement also provides in Article 39.13(3) that if one year passes *without* further discipline, "*the employee's discipline record will revert to its standing prior to the assessment of the deferred discipline*". That is a considerable benefit to an employee to demonstrate to the Company his employment is valuable, when he has already received 30 deferred demerits. That individual would otherwise be required "*work off*" the demerits.

[24] When deferred demerits are used, employment is already – and obviously - in jeopardy. It therefore cannot be maintained that assessing an amount that *does* reach dismissal in case of *another* violation within the course of a year improperly "*targets*" an individual, when that individual was already in a vulnerable position needing demerits to be deferred in the first place.

[25] The very point of deferral is to allow the individual another opportunity with the Company in circumstances *when* that employment could have *already* been terminated, when those demerits were assessed.

[26] Given that the parties themselves have agreed this "deferral" process can occur – for demerits – it is not "*targeting*", if in fact another violation *does* occur and dismissal is once again faced by that employee.

[27] The Union also maintained that this deferred discipline was improperly assessed, as there was a denial of Union representation before it was issued, as noted in the JSI. The difficulty for the Union with this argument also arises from the parties' own agreement regarding deferred discipline, as outlined in Article 39.13.

[28] Under Article 39.13(5), the employee must agree to the use of deferred demerits. A deferral is not a form of discipline that can be *imposed* by the Company unilaterally. Not only must the employee agree, but the employee is also given "*three days*" to *consider* whether to accept that discipline. If the employee does not indicate to the Company whether he or she is willing to accept the deferred discipline within that timeframe, then the discipline is not deferred: Article 39.13(5). The Grievor would have had the 30 demerits assessed and then could have grieved that discipline was not appropriate. By accepting the demerits as "*deferred*", the individual can continue his or her employment

and earn an income, rather than waiting for that issue to be resolved through the grievance process.

[29] That means the Grievor was not required to decide "*on the spot*" whether to accept the deferred discipline or not. The Grievor was given time and space under the terms of the Agreement to assess what he was told by the Company's representative – ***even if*** it were assumed that conversation occurred as was outlined by the Union in the JSI and referred to in its Grievance documentation. The Grievor had that time and space to consult with his Union as to whether he should – or should not – accept that offer.

[30] Given that agreed timing, this is not a situation where the Company is in a position to "*deny*" Union representation; this is not a situation where the Grievor has no opportunity to consult with his Union. If the Grievor chose not to use the opportunity given to consult with his Union as to whether he should or should not agree to the deferred demerits – that was his choice. His failure to use that opportunity does not result in a denial of Union representation by the Company.

Analysis and Decision: Merits

[31] Given the state of the Grievor's disciplinary records – and the fact that the deferred demerits are activated with "*additional discipline*" - the only question between these parties is whether the Grievor was "*culpable*" for *any* discipline.

[32] If he is, the deferred demerits would be activated and he would stand dismissed. If not, no discipline is appropriate.

[33] The Union argued there was no just cause for dismissal. It argued the Grievor did not "wilfully ignore" rules and neither was he "negligent". It maintained he did not "intend" to breach the rules, but that this was the result of a "perfect storm" of circumstances. It argued the Trainmaster should have job briefed and shared his knowledge of the intentions of Train 120 within the PPZ, and the Grievor was entitled to rely on the Trainmaster's comments that it was "*all mine*", relating to the PPZ.

[34] Whether a breach of a rule was 'wilful' or not, is not the standard. Intention is not necessary for culpability to be found. The question is did the Grievor have a responsibility to determine if Train 120-18 had left the PPZ and did he carry out that responsibility? I am

satisfied he did have that responsibility and he made an incorrect assumption, leading to this collision.

[35] It is not disputed that the Grievor made an assumption about Train 120's location in the PPZ, which assumption was not correct. As noted at Q/A 22, the Grievor stated that Train 120 had not advised him they were leaving the PPZ. He also agreed that no one was riding the point (Q/A 21). The Grievor stated that "*[w]hen the conductor stated that he was pulling and wanted to stay on the headend and did not tell me they were stopping again in my zone, I felt that in past experience that meant they were leaving*" (at Q/A 24). The Grievor recognized that in future, he would *"stay on my channel so I know where you are in my zone…"* (Q/A 30).

[36] I am satisfied upon review of the evidence that – at the minimum - the Grievor should not have *assumed* the zone was clear or that Train 120-18 was leaving. The Grievor had an independent responsibility to be aware of whether Train 120-18 had cleared the PPZ, *even if* the Union were successful in its arguments that the Trainmaster *also* should have shared his knowledge of the intentions of Train 120-18 in the PPZ.

[37] I am satisfied the issues raised by the Union – including what the Trainmaster knew about Train 120 and what he failed to advise the crew or the comments made by the Trainmaster - are appropriately addressed as mitigating factors and not as factors capable of removing the Grievor's *own* culpability to ensure the point was protected, when he was did not have information that Train 120-18 had left the PPZ.

[38] I am satisfied there is no scenario where the Grievor does not face at least some culpability for this collision.

[39] The jurisprudence filed by the Union in this case does not support its arguments. In all of the cases filed by the Union, the grievor *was* found to be culpable for the collisions. There is no jurisprudence that suggests that when a Conductor operating an RCLS collides with another train he is not responsible. That jurisprudence all relates to questions involving the *measure* of damages once that culpability is found.

[40] None of that jurisprudence suggests that culpability for a collision is ever completely "off-loaded" onto other employees.

[41] It is unnecessary to factually outline or consider whether the mitigating factors argued by the Union were properly considered or not, for two reasons.

[42] First, mitigating factors do not serve to *remove* culpability for a collision, but only impact the *measure* of that discipline.

[43] Second, having found the Grievor culpable for some form of discipline, it is unnecessary on the facts of this case to determine what that measure *is*. Once culpability is found, it is this Grievor's unfortunate reality that *any* measure of discipline would qualify as "*additional discipline*" under Article 39.13(4); serve to activate his 30 deferred demerits; and result in his dismissal for accumulation, *even if* only one demerit or a one-day suspension were imposed.

[44] One further argument must be addressed. While the Union argued the Company has improperly dismissed the Grievor "twice", I am not satisfied it has, in this case.

[45] While the Company does most often combine its discipline into one Form 104 when deferred demerits are activated, I am not satisfied it is fatal if it does not. The facts of each case are important to consider, along with the wording of the Collective Agreement.

[46] According to Article 39.13(4), it is when "*additional discipline is issued*" that demerits are activated. It was therefore not unreasonable for the Company to "*issue*" that "*additional discipline*" and then to *also* issue discipline for accumulation as a *result* of that issuance of additional discipline.

[47] Both bases for dismissal could co-exist, on these facts, given the Grievor was dismissed as his disciplinary measure.

[48] In some cases, it may be that the activation of previous demerits does *not* result in dismissal and a second Form 104 would not be issued. It may also be that the Company chooses not to dismiss an employee who reaches 60 demerits. In this case, the Company made clear that its choice was to dismiss the Grievor for that accumulation in its second Form 104.

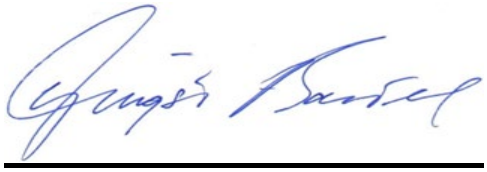
[49] This is distinct from **CROA 5061**, where the two dismissals did not result from an *activation* of demerits, but from two separate forms of misconduct, both of which were

stated to result in dismissal. Even so, the *ratio* of that Award is not that two dismissals cannot co-exist when one results from an activation of demerits because of the other.

[50] In summary, the Grievor was culpable for "*additional discipline*" and his 30 demerits from October of 2022 are activated. When combined with his disciplinary record, he therefore stands dismissed for accumulation of 60 demerits, regardless of what the *measure* of discipline *is* for his culpability.

[51] The Grievance is therefore dismissed. The Grievor stands dismissed for accumulation of 60 demerits.

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



June 2, 2025

CHERYL YINGST BARTEL
ARBITRATOR