

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

CASE NO. 5176

Heard in Montreal, May 14, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Union advanced an appeal on behalf of Locomotive Engineer Cabel Crombach of Fort Steele, BC, regarding being assessed with fifteen demerits.

JOINT STATEMENT OF ISSUE:

Following an investigation, Engineer Crombach was assessed with 15-demerits described as: "For booking off unfit on call September 24, 2023, when properly called for train 805-798 for 23:10 at Sparwood, B.C. A violation of the T&E Availability Standards Canada."

Union's Position:

The Union's position has been thoroughly explained throughout the grievance procedure. For all the reasons and submissions set forth through the Union's grievance procedure, along with those herein adopted, outlines our position.

The Union submits that the Company is in violation of the Duty and Rest Period Rules items 5.1, 5.2, 5.3 and 5.6. Every Employee shall be able to report their fatigue without fear of reprisal. Employees are required to report their fatigue if they become unfit after commencing a duty period. In this instance the Company has elected to discipline Mr. Crombach after reporting his fitness level. The Company handing out punishment for employees booking unfit due to fitness creates an environment where employees are reluctant to comply with Transport Canada's fatigue guidelines with fear of reprisal. This creates the potential for an unsafe workplace.

The Union contends that this is not a case appropriate for an assessment of discipline, issuing fifteen demerits to Engineer Crombach a violation of CCA Article 35.01 and is not in line with the Duty and Rest Period Regulations or even the Company's Fatigue Management. Both agree that an employee that deems themselves to be fatigued while on duty must report such to the Company. Both agree that there will be no reprisal for reporting fitness level. The Company has created an environment where employees are dissuaded from complying with Transport Canada's fatigue guidelines for fear of discipline.

Mr. Crombach refused his call as he did not feel safe working with the Conductor that was being called for that train. Mr. Crombach determined that he was not fit to work with the Conductor that he deemed to be unsafe.

The discipline assessed to Engineer Crombach is excessive, unwarranted, and undeserved considering all the factors entered within the investigation and raised through the

grievance process. Mr. Crombach admits to having trust issues with Conductor Cardno which made him mentally unfit on the day in question and he is seeking assistance with this issue.

The Union requests the Arbitrator order that the fifteen demerit marks be expunged from Engineer Crombach's work record. We further seek a declaration that the Company is responsible for Mr. Crombach's lost wages for attendance at the investigation. 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 maintains the burden of proof has been met and 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 has not violated Article 35 as alleged. A plain read of the Article makes it clear that the Grievor did not follow the language of the Collective Agreement as written. There can be no dispute that the Grievor booked off after properly receiving a call for work.

The Union alleges a violation of Duty and Rest Period Rules (DRPR). This is not a case about fatigue management. Rather, the Grievor booked unfit because he did not want to work with another employee. The DRPR does not allow for this.

There is no legitimate avenue for an employee to refuse work simply because they don't want to work with a certain crew member. Employees cannot book off unfit because they do not desire to work with another employee. Concerns can be handled in a more appropriate fashion than the Grievor chose to deal with his.

Based on the foregoing, the Company can see no violation of the Collective Agreement, or any other provision and maintains the discipline assessed was appropriate, warranted and just in all the circumstance.

Accordingly, the Company cannot see a reason to disturb the discipline assessed and request the Arbitrator to be drawn to the same conclusion.

For the Union:
(SGD.) G. Lawrenson
 General Chairperson

For the Company:
(SGD.) F. Billings
 Director Labour Relations

There appeared on behalf of the Company:

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

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
G. Lawrenson	– General Chairperson, LE-W, Calgary
C. Ruggles	– General Chairperson, LE-W, Lethbridge

AWARD OF THE ARBITRATOR

Context

1. The Grievor is a Locomotive Engineer with approximately 8 years of seniority at the time of the incident in October 2023. His employment record shows a number of infractions, including two 30-day suspensions. His record also shows 10 Demerits for a previous infraction to Attendance Management, but no active demerits.
2. The present matter resulted from the Grievor being called for duty and declaring himself unfit at the time, because he had concerns about working with a particular Conductor.

Issues

- A. Was the Grievor properly disciplined for an infraction of the T and E Availability Standard?
- B. Was the discipline of 15 Demerits imposed just and reasonable in the circumstances, or should some lesser penalty be ordered?

A. Was the Grievor properly disciplined for an infraction of the T and E Availability Standard?

Position of Parties

3. The Company argues that the Grievor declared himself unfit when called, contrary to the T and E Availability Standard. It submits that the Grievor was given an opportunity to declare an unsafe working condition, because of his concerns about the Conductor, but did not do so. The Grievor was therefore properly disciplined.
4. The Union argues that all employees must be fit when appearing for work pursuant to Transport Canada and CROR Rules. It submits that article 35.01 of the Collective Agreement prevents an employee from being disciplined in the circumstances.

Analysis and Decision

5. The T and E Availability Standard (see Appendix G, Company documents) notes the following:

For Canadian Pacific to be successful and competitive in the North American Railway industry we not only have to provide great customer service, we have to continue our collective efforts at exceling on efficiency and productivity. Given that efficiency and productivity are directly impacted by employee attendance levels, an attendance policy that is understood and adhered to by all is essential.

[...]

T&E employees have negotiated opportunities provided for in their Collective Agreements to legitimately remove themselves from the working board. Examples of negotiated and also legal absence categories that will not result in discipline under this availability standard include: annual vacation; pre-authorized personal leave; bereavement; jury duty; company business; and time off mandated by the hours or service regulations.

6. More particularly, it stipulates:

The following absence categories will be handled as more serious offenses separate from this calendar month review:

- Booking sick or unfit on-call or after accepting a call.

7. The Grievor during his investigation admitted that he understood the Availability Standards, and that booking unfit on call can cause train delays (see Q and A 11 and 29, Tab 4H, Company documents).

8. The reason given by the Grievor for booking unfit at the time of call was that he had been assigned to work with Conductor Cardno, with whom he had personal trust issues:

Q20 According to Appendix E - Audio file of CMC call to Gabel Crombach regarding call for train 805-798 on September 24th, 2023, what reason did you give for booking off unfit on call?

A20 I could not work with Cardno due to personal trust issues.

Q21 Did you provide a reason for booking unfit on call to Superintendent Hole and GM Roseberry? If so, what reason was given?

A21 Yes, Same reason as above.

[...]

Q25 Did Mr. Hole and Mr. Roseberry provide you with an opportunity to invoke your right to refuse unsafe work during your discussion on September 24th, 2023?

A25 They gave me the option to, and told me to phone my union rep before I do.

Q26 Did you take the opportunity to refuse unsafe work?

A26 No.

Q27 So you knowingly let Mr. Cardno continue to work in an alleged unsafe manner by not invoking your right to unsafe work?

A27 I was not in a position to work with him that night. I have worked with him since, and am seeking assistance to work through the personal trust issues I have with this employee. The reason I booked unfit that night was because I was not expecting to work with him, and after speaking to several company officials about the issue, emotions rose inside me and I was no longer in a mentally fit state to work.

9. The Union argues that the Grievor had to make a choice between working in an unsafe mental or emotional condition or declaring himself unfit. It notes the CROR General Rule A (x) which requires all employees to report fit for duty and article 35 of the Collective Agreement which prohibits employee discipline for "booking unfit". Given the CROR requirement to only work when fit, the Union argues that the Grievor had no choice but to declare himself unfit. It notes further that the Grievor was unexpectedly assigned with Conductor Cardno, with several different Conductors having been previously assigned.

10. I cannot agree that the Grievor was left with no choice but to declare himself unfit.

11. He could have refused unsafe work, as was offered by the Company. Had he done so, the working conditions would have been assessed by an independent Government official.

12. He also could have specifically refused to work with Conductor Cardno prior to the call. The argument that the pairing was unexpected is a weak one, as lineups are subject to constant change. It was inevitable that the Grievor would have been eventually assigned to work with him, in the absence of action on the part of the Grievor. Had the Grievor specifically refused to work with Conductor Cardno ahead of time, as opposed to merely mentioning concerns about him (see Q and A 23-24, Tab

4 Company documents), the issue could have been addressed, either by getting support for the Grievor or by creating a work around, so the Grievor would not be paired with a person he did not trust.

13. In fact, the Grievor did little until the inevitable took place. By declaring himself unfit after being called, the Grievor clearly violated the T and E Availability Standard and made himself subject to discipline.

14. The Union has relied on **CROA 5054** for the proposition that the Company has the burden of proof to show that sick leave was taken inappropriately. I do not contest that proposition, but note that the grievor in that matter had booked off sick prior to being called, unlike the situation here.

15. It is unnecessary to decide the applicability of the Duty and Rest Period Rules, or article 35 of the Collective Agreement, as the Grievor did not declare himself unfit until after he was called for work. In so doing, he violated the Availability Standard.

B. Was the discipline of 15 Demerits imposed just and reasonable in the circumstances, or should some lesser penalty be ordered?

Position of Parties

16. The Company argues that the discipline imposed was reasonable in the circumstances, in light of the William Scott factors. The Grievor is not a long service employee, has been disciplined in the past for attendance issues and the discipline is within the range established by the jurisprudence (see **CROA 3605** (15 demerits), **CROA 4630** (3-day suspension), **CROA 4569** (20 demerits), **AH 751** (20 demerits) and **CROA 5147** (20 demerits).

17. The Union argues that the Grievor had checked the lineup multiple times, unlike the situation in **CROA 5144**. It notes that the Grievor had no active discipline at the time. Should discipline be imposed, it argues that a written reprimand is appropriate, as this Arbitrator had found in **CROA 5144**.

Analysis and Decision

18. In **CROA 5147**, this Arbitrator held as follows:

20. The basic principle is that when employees hold themselves out as available to work, they should be available to work. There will obviously be exceptions to the principle, such as when employees fall suddenly ill or there is a completely unexpected change to the Lineup which no reasonable person could foresee. Absent these exceptions, however, employees should be able to signify their unavailability prior to being called if they are fatigued or unwell.

19. Caution must be exercised in examining the discipline imposed in other cases, as each case is necessarily decided based on its own facts, as well as an assessment of the mitigating and aggravating factors discussed in the **William Scott** matter.

20. Many of the cases cited by the Company involve grievors who had poor discipline records (see **CROA 4569**, 15 demerits less than a year prior) or involved very problematic facts (see **AH 751**, grievor on vacation in Jamaica while subject to call). However, previous cases have upheld 15 demerits as appropriate discipline (see **CROA 3605**).

21. Cases cited by the Union show that discipline of a written reprimand has been substituted for discipline of 15 demerits (see **CROA 4524** and **CROA 5144**). However, in **CROA 5144**, the Grievor did not check the lineup and it changed prior to her call in, resulting in the Grievor having insufficient rest. The Grievor had reason to believe she would not be called for some time, and was surprised by the time of the call in. Here, the Grievor was well aware of his issues with Conductor Cardno well prior to the call in, but took no concrete action, as set out above.

22. Applying the **William Scott** factors to the present matter, the Grievor does not have a stellar discipline record and has received discipline for attendance issues in the past, including 10 Demerits for an Attendance Management infraction. There can be no doubt that the Grievor understood the attendance requirements. This factor would be

aggravating. However, he had no active demerits at the time of the incident, which is mitigating. The Grievor's seniority at 8 years is a neutral factor.

23. Looking at the facts of this matter in light of the jurisprudence cited, I cannot find that the Company decision is unreasonable.

Conclusion

24. The grievance is therefore dismissed.

25. I remain seized for any issues of interpretation or application of this Award.

July 18, 2025

A handwritten signature in cursive script, appearing to read "James Cameron", written in dark ink.

JAMES CAMERON
ARBITRATOR