

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

CASE NO. 5181

Heard in Montreal, May 15, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The 20 Day Suspension assessed to Locomotive Engineer Paul Lamoureux of Sudbury, Ontario.

JOINT STATEMENT OF ISSUE:

Following a formal investigation, the Company issued a Form 104, assessing Mr. Lamoureux with a 20-day suspension as stated in part, below:

“Formal investigation was conducted on December 23, 2022 to develop all the facts and circumstance in connection with the referenced occurrence. At the conclusion of that investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following:

- GOI Section 4- 2.0 Hand Brakes General
- GOI Section 4- 6.0 Securing unattended Cars- All other tracks

In consideration of the decision stated above, you are hereby assessed a Twenty (20) Day Time served Suspension. A record of a major rules' infraction will be placed on your file.”

Union Position:

The Union maintains all arguments advanced throughout prior correspondence and grievances without prejudice and without creating precedent. It relies upon those submissions and reserves the right to object to, or respond to, any new arguments advanced by the Company.

The Union disputes the allegations and conclusions set out in the Form 104 reproduced above.

The Union asserts that the 20-day suspension assessed to Mr. Lamoureux is unjustified, excessive, and in breach of both the principles of progressive discipline and the Brown system outlined in the Collective Agreement. The Company failed to consider key mitigating circumstances, assigned blame., and overlooked systemic safety issues within its own operations.

In support of its position, the Union makes the following submissions:

- Mr. Lamoureux Was Not the Cause of the Incident

The incident was caused by the conductor's unauthorized and uncommunicated action of bottling the air, which nullified the handbrake application and created the conditions for the runaway.

Mr. Lamoureux had no visibility of this action, which was pneumatically silent and done out of his line of sight.

At no time did Mr. Lamoureux direct, approve, or know about the decision to bottle the air — a violation that was both unsafe and contrary to crew briefing protocols and safe securement practices.

- Mr. Lamoureux Acted Professionally and Responsibly

Upon realizing the cars were moving, Mr. Lamoureux responded with immediate, decisive action to prevent escalation. He used the locomotives to pursue and re-couple the runaway cars, re-engaged control by successfully coupling to the cars and stopped the movement and mitigating risk to public safety.

The Company's own "Safety Flash" recognized the potential severity of the incident but failed to credit Mr. Lamoureux's courageous response.

- Crew Inexperience and Systemic Issues Were Central

The ground crew (conductor and trainman) consisted of two newly qualified employees, with limited field experience and minimal mentorship — a longstanding concern flagged by Transport Canada.

The incident occurred while following an established and management-directed local practice of securing cars on the Levack spur rather than the adjacent signaled siding, despite both tracks having the same 1.4% grade.

This directed shortcut undermined securement standards and remains in place today, reflecting systemic operational risks the Company has failed to correct.

- Suspension Disregards Principles of Progressive Discipline

The 20-day suspension in this case was not applied as a progressive or corrective measure. It disregards Mr. Lamoureux's response to the incident and the opportunity for coaching or redirection through the investigation process. Nothing in the Collective Agreement supports the use of suspensions in this manner.

- Investigation Was Procedurally Flawed

The investigation did not fairly account for key contributing factors beyond Mr. Lamoureux's conduct. The investigating officer acknowledged material facts — including the 1.4% grade on the spur track — that aligned with the Union's position but were excluded from the final conclusion. This selective treatment of evidence undermines the investigation's credibility.

The Union respectfully requests that the Arbitrator order the following:

- That the 20-day suspension be expunged from Mr. Lamoureux's record;
- That Mr. Lamoureux be made whole, including compensation for lost wages, benefits, and time lost attending the investigation;
- A declaration that the discipline was excessive, procedurally flawed, and unsupported by just cause;
- In the alternative, that the discipline be mitigated as the Arbitrator sees fit, having regard to all circumstances and mitigating factors.

Conclusion

This is not a case of willful misconduct, negligence, or a failure of duty. Mr. Lamoureux was placed in an unmanageable situation — a byproduct of staffing inexperience, policy shortcuts, and communication breakdowns. He responded not with error, but with courage, professionalism, and accountability.

Discipline in this case serves no rehabilitative or preventive purpose. It unjustly penalizes an employee for failures beyond his control, despite his efforts to prevent escalation and protect the public.

The Union respectfully requests that the Arbitrator recognize these facts and fully rescind the suspension, restoring fairness and integrity to the disciplinary process.

Company Position:

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

The Union takes the position that the Grievor was not afforded a fair and impartial investigation in accordance with the collective agreement. Specifically, the Union claims the IO posed self-incriminating questions to the Grievor, asked speculative questions and demonstrated bias and a conclusion of guilt through the subject matter of the investigation and by straying outside the scope of the investigation. There is no evidence to substantiate the Union's claims and case law supports there is no protection from "self-incriminating" questions in Canadian law, or in the investigation process under the collective agreement.

The Grievor neglected to take appropriate measures to ensure a proper securement test was conducted. Positioned away from the controls, he was unable to adequately guide or supervise his locomotive engineer trainee. Despite being aware—via radio communication—that only a single handbrake was applied on 28 loaded cars, the Grievor failed to intervene. As the Union outlined, the Grievor was the most senior member of the crew and would have been fully aware of the risks associated with the location's terrain and grade. His inaction directly contributed to the uncontrolled movement of the train. What the Union depicts as "courage, professionalism and accountability", jeopardized the safety of employees and the public. Moreover, his efforts to stop the train can only be seen as an attempt to mitigate the consequences of his own negligence.

The Company maintains that following the fair and impartial investigation, the Grievor was found culpable for the reasons outlined in his form 104 and there was just cause to assess discipline to the Grievor. The discipline assessed was appropriate, warranted and just in all the circumstances. Discipline was determined following a review of all factors, including those the Union describes. The Company maintains that the discipline was properly assessed under the Company's Hybrid Discipline and Accountability Guideline.

For the foregoing reasons and those provided during the grievance procedure, the Company maintains that the discipline assessed should not be disturbed and requests the Arbitrator be drawn to the same conclusion.

For the Union:

(SGD.) J. Bishop

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
B. MacDonald	– Assistant Superintendent, Sudbury

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
J. Bishop	– General Chairperson, LE-E, Severn
J. Blythe	– Local Chairperson, Division 308, LE-E, Sudbury
P. Lamoureux	– Grievor, Sudbury

AWARD OF THE ARBITRATOR

Context

1. This matter arises as a result of an incident in which 28 loaded ore cars weighing 3080 tons rolled uncontrolled downhill for 5464 feet, across a public highway, before being caught by chasing locomotives. The locomotives eventually stopped the runaway cars after a total 10,016 feet. Both the runaway cars and the locomotives exceeded speed limits and could have easily derailed. Through good fortune and quick reactions, no one was hurt, the cars and locomotives did not derail, and a single switch was damaged. The result could easily have been catastrophically different.
2. This matter focuses on the 20-day suspension given to LE Lamoureux for his actions and omissions leading up to the incident. The Grievor was an experienced employee, having some 14 years of seniority and having worked as an engineer for some seven years. At the time of the incident, he was working as a Locomotive Engineer field instructor, supervising an Engineer Trainee. His discipline record was excellent, with only 10 demerits and a very high E-test average at 98.49%.

Issues

- A.** Has the Company established grounds for discipline?
- B.** Was the discipline imposed reasonable in the circumstances?

A. Has the Company established grounds for discipline?

Position of Parties

3. The Company argues that the Grievor violated GOI Section 4-2.0 Hand Brakes General and 4-6.0 Securing Unattended Cars-All other tracks.
4. Essentially, it argues that it has established that the Grievor, as a member of the crew, failed to ensure that a sufficient number of hand brakes were applied to the 28 ore cars. It notes that the Transport Canada rules require 14 hand brakes, rather than the

single hand brake applied. It also argues that the Grievor, who was responsible for the actions of the Engineer Trainee, failed to ensure that a proper hand brake test was performed. It notes that there was still some air pressure left in the air brakes when the hand brake test was performed. It notes further that the hand brake test was performed inadequately, such the hand brake was never properly tested.

5. The Union argues that the Grievor was not responsible for the incident. The brakeman, an experienced Conductor, bottled the air on the cars, such that the emergency brakes never applied. This admitted error by the brakeman could not have been foreseen and was the cause of the runaway. The swift action of the Grievor actually prevented a serious accident.

Analysis and Decision

6. General Operating Instruction 6.1 (see Tab 8, Company documents) sets out the requirement for hand brakes on Unattended Cars:

“6.1 When cars are left unattended on other than a main track, siding, or at a high risk location, a sufficient number of hand brakes must be applied and tested for effectiveness: ...

b) two or more cars must be left with a sufficient number of hand brakes applied, at least one, unless a greater number is prescribed.”

7. CROR Rule 112 (see Tab 10 Company documents) notes the following:

“Securing Unattended Equipment

When equipment is left unattended, it must be secured to prevent it from moving unintentionally...

Non-Main Tracks (Excluding Subdivision Track, Sidings, Yards and High Risk Locations)

When equipment is left unattended, a sufficient number of hand brakes must be applied and tested for effectiveness. Unless otherwise indicated in special instructions, apply a minimum number of hand brakes as indicated in (g).”

8. Where, as here, the average grade is equal to or less than 1.4%, with cars weighing between 2000-4000 tons, the required number of hand brakes is 14 (see Tab 10, company documents).

9. The Grievor was aware that a single hand brake had been set by Brakeman Laing:

Q11: During the job briefing, did you or any member of your crew discuss how many handbrakes would be applied?

A11: No

[..]

Q22: Appendix D: GOI Section 4 - 6.0 - Securing Unattended Cars - All other tracks 6.1 b) states " ii) two or more cars must be left with a sufficient number of hand brakes applied, at least one, unless a greater number is prescribed." Is that correct?

A22: Yes

Q23: In reference Q22, what does sufficient mean?

A23: whatever holds the train after applying tractive effort

[..]

Q28: Was the number of handbrakes applied to the cut of 28 ore cars communicated to you?

A28: yes, I heard that there was 1

[..]

Q31: Appendix B: Memo to File-Justin Earle states that Mr. Laing said "our usual practice is to secure 1 hand brake and allow the cars to dump into emergency,". Is that correct?

A31: yeah, we usually only put 1 handbrake

Q32: Were you present for that conversation?

A32: I can't remember

10. Brakeman Laing confirms that a single hand brake had been set, with the practice for the last month being to do so, together with an emergency brake:

Q16: Did you apply any handbrakes?

A16: Yes, I did, I applied (1) handbrake

Q17: Did you communicate how many handbrakes were applied?

A17: I did yes, "back test one handbrake"

[..]

Q23: In reference to the last question, Were you aware of this section of the GOI prior to today?

A23: I was aware yes

Q24: In reference Question 22, what does sufficient mean?

A24: Sufficient means enough handbrakes to secure the equipment

[..]

Q31: Appendix B: Memo to File - Justin Earle states that Mr. Laing said "our usual practice is to secure 1 hand brake and allow the cars to dump into emergency,". Is that correct?

A31: that is correct yeah, I did say that

Q34 In the 12-15 times that you have worked the assignment before, when securing the loads in the make-up track, have you applied more than 1 handbrake?

A34 No, no I haven't.

Q35 Were you instructed or taught to perform the task this way?

A35 yes, we did have a job briefing with Brian Macdonald while we were at the Levack siding, either on the H55 or the H57, where it was stated as long as it was in the make-up track and 1 hand brake was sufficient to hold it the remainder would be dumped into emergency. He also added that if it was on the main track or siding the full number of handbrakes would be required.

[..]

11. Road Foreman MacDonald denies having told Brakeman Laing that a single hand brake was sufficient on the Levack siding, which is then confirmed by Brakeman Laing:

WQ4 Did you tell Mr. Laing that it was acceptable to leave cars. Either, attended or unattended, in emergency without a sufficient number of handbrakes applied to the movement?

WA4 No

[..]

Q36 Mr. Laing, Is there anything you can point out in Brian's answers that is incorrect?

A36 In Brian's answer? No, there were points in there I was trying to explain earlier that didn't come across clear enough, it is correct

12. The CROR Rules are clear that 14 hand brakes are required in the circumstances. Brakeman Laing confirms that only one hand brake was applied here, and that was the practice, for the 12-15 times he had been on this assignment in the last month. There appears to have been some confusion with the instructions given by Road Foreman MacDonald. However, in the absence of special instructions specifically amending CROR Rule 112, the Rule would continue to apply.

13. The crew appear to have been relying on the emergency brakes being applied, together with the single hand brake, as evidenced by the testimony of Brakeman Laing:

Q42 Can you explain what happened after your crew cut away from the cars on track 1 at Levack?

A42 I was riding the units they were pulling forward towards the switch, I was expecting the cars to go into emergency. The cars did not go into emergency because I made the mistake of accidentally bottling the remaining cars...

14. However, both the Grievor and the Brakeman acknowledge that they are not entitled to rely on the emergency brake. As the Grievor noted:

Q29 Are you allowed to rely on an emergency brake application alone to secure cars in non-main track?

A29 No

15. Brakeman Laing confirms this:

Q27 Are you allowed to rely on an emergency brake application to secure cars in non-main track?

A27 As long as there is sufficient handbrakes applied to hold the equipment, you must have handbrakes regardless

16. I find therefore that the Grievor did not follow GOI Section 4 with respect to a sufficient number of hand brakes and is subject to discipline.

17. I find further that the Grievor failed to ensure that the handbrake was properly tested, by failing to properly supervise the Engineer Trainee, for the reasons that follow.

18. As an Engineer-Instructor, the Grievor is responsible for observance of operating rules, even though the Trainee has the physical control of the locomotive. As noted in the Collective Agreement at Article 25.26 (3)-(5) (see Tab 9, Company documents):

(3) An Engineer Trainee will assume control of the locomotive under the supervision of an engineer-instructor. When an Engineer Trainee assumes control of the locomotive and/or train the Engineer-Instructor will have their responsibilities relaxed to the extent that they will not be held responsible for broken knuckles, damaged drawbars or rough handling; they will, however, continue to be held responsible for the observance of operating rules, special instructions and other regulations

(4) Engineer-Instructors will be required to complete progress reports on trainees as may be directed by the Company.

Incompetence, lack of judgment or other detrimental traits or attitudes will be reported. The responsibility for certifying a trainee as being a qualified Engineer shall be that of a Road Manager or other officer designated by the Company.

(5) For each tour of duty in respect of which an Engineer-Instructor has a trainee assigned to them, the Engineer-Instructor shall be said the allowance specified in Article 1 in addition to his normal compensation for that tour of duty. (underlining added).

19. Once sufficient hand brakes have been applied, the effectiveness of the hand brakes must be tested. As GOI Section 4-2.2 notes (see Tab 8, Company documents):

- Testing Hand Brake Effectiveness, the effectiveness of a hand brake application must be tested prior to uncoupling from equipment. Or having equipment unattended. When testing the effectiveness of hand brakes. ensure all air brakes are fully released and:
- allow the slack to adjust. It must be apparent when slack runs in or out that the hand brakes are sufficient to prevent the equipment from moving: °
- apply sufficient tractive effort to determine that the hand brakes prevent the equipment from moving when tractive effort is terminated.

20. Unfortunately, the Engineer Trainee did not conduct an effective hand brake effectiveness test, both leaving air brakes on and not providing suitable tractive effort of the locomotive to test the brakes. The Road Foreman (Tab 8, Company documents) noted:

12:45:24.0 – Train comes to a stop after pulling back into the make-up track 12:46:43.6 – Selector moved to forward position to begin HB test

12:46:47.5 – Throttle moved to position 1 for 1/10th of a second, no tractive effort noted on CP6243 and 6psi of brake cylinder pressure still applied.

12:46:55.3 – Selector moved to reverse position for 1/10th of a second, brake cylinder drops from 68psi to 64psi and immediately raises back up to 69 psi.

12:47:57.5 – Selector moved to forward position

12:47:58.1 – Throttle placed into position 2, no tractive effort noted and Generator Field switch was in the off position

12:47:58.2 – Throttle placed into position 4, no tractive effort noted and Generator Field switch was in the off position

12:47:58.9 – Brake cylinder pressure begins to reduce indicating the beginning of them moving eastward essentially to chase the uncontrolled movement.

12:48:01.7 – Tractive effort indicated and begins at 85 amps indicating the Generator Field switch is now in the on position (underlining added).

21. The Engineer Trainee testified that the Grievor was not in a position to observe his gauges:

Q61 While performing the securement test on the 28 ore cars at levack, was the qualified locomotive engineer with you?

A61 yes

Q62 Were you at any point unsure that you were performing the securement test correctly?

A62 no, I thought I was doing it correctly

Q63 Did the Mr. Lamoureux, the locomotive engineer, advise you on the steps needed to take to perform the securement test?

A63 at the time no, you could hear the release, there was no reason for him to question it

Q64 Was Mr. Lamoureux in position to see the gauges to ensure the securement test had happened properly?

A64 No, he wasn't standing over my shoulder.

Q65 In answer to UQ3, you state "I would have liked to understand more about the gauges and what a proper release of the air was, it could have helped me yes" did you ask Mr. Lamoureux to observe the release to ensure it was performed correctly?

A65 No, based on the information given to us the cars were secure

Q66 Previously you stated you can see the "effectiveness of the handbrakes" when a car "rolls and stops", Could having air brakes applied still on the locomotives bring a movement to a stop in a securement test?

A66 I suppose, yes

Q67 In summary: You performed a securement test of 1 handbrake on 28 ore cars at Levack the uncontrolled cars ran through the crossover switch you travelled up to speeds of 31mph on 10mph track. You made a joint on the 28 ore cars at approximately 30mph before placing the locomotives into emergency. Is this Correct?

A67 Correct (underlining added).

22. The Grievor confirms that he was unable to see the Engineer Trainee's gauges from his position in the conductor's seat:

Q25 In Appendix E: Road Foreman Report - Brian MacDonald, 12:46:43.6- Selector moved to forward position to begin HB test 12:46:47.5 -Throttle moved to position 1 for 1/10th of a second, no tractive effort noted on CP6243 and 6psi of brake cylinder pressure still applied. Is that correct?

A25 sure, I couldn't tell you about the 6lbs of independent, we did move backwards, it is on a grade. I did hear the independent release, I heard the units rev, I didn't see that the gen field was down from my seat.

23. I find therefore that the Engineer Trainee failed to properly test handbrake effectiveness, a failing for which the Grievor must be held responsible, as he put himself in a position where he could not observe that there was still air in the braking system, and that he failed to observe that insufficient tractive effort was applied by the locomotive to test the handbrake. I therefore find that the Grievor violated GOI Section 4-2.2 and is subject to discipline.
24. I find that the Grievor is subject to discipline, even if the actions of the Brakeman in bottling the air prevented the emergency brakes from deploying. The actions and inactions of the Grievor failed to ensure that the mechanical safety mechanism of a sufficient number of and properly tested handbrakes were in place.

B. Was the discipline imposed reasonable in the circumstances?

Position of the Parties

25. The Company takes the position that a "Failure to secure cars or locomotives" is a Major Life-Threatening Violation and, under its Hybrid Discipline Policy, subject to a minimum penalty of a 20-day suspension, to a maximum penalty of dismissal.
26. The Company emphasizes the danger that was caused to the crew and members of the public, by the violations made by the Grievor. It points to numerous decisions,

where dismissal or even more severe suspensions were upheld by multiple arbitrators.

27. The Union points out that the Grievor was not the cause of the accident. Brakeman Laing bottled the air, unknown to the Grievor, and he takes full responsibility for the incident. He further points out that the consequences could have been far worse, had it not been for the quick thinking and actions of the Grievor.

28. The Union points to a number of cases where demerits were given, rather than suspensions, for similar incidents. It argues strongly that the imposition of a lengthy suspension is contrary to the underlying principle of progressive discipline.

Analysis and Decision

29. While the Company appears to have followed its Hybrid Discipline Policy in imposing the minimum penalty of a 20-day suspension for a Major Life-Threatening Violation, an arbitrator is still bound to follow the Canada Labour Code and the applicable jurisprudence in exercising his/her discretion (see **CROA 5058**).

30. As such, the usual **William Scott** factors need to be appreciated, as well as the guiding principles of proportionality (see **McKinley v BC Tel 2001 SCJ No. 40**) and progressive discipline (see **AH 861** and **AH 246**).

31. Mitigating factors include the Grievor's significant service of roughly 14 years (see **CROA 4720** and **CROA 4564**). There is also no doubt that the quick thinking and actions of the Grievor after the rollaway began prevented potentially greater harm. The Grievor also had an excellent discipline record.

32. Aggravating factors include the highly serious nature of the rollaway across a public highway. It is unclear whether the signals were able to be activated in time, where even the Grievor estimates that the signals were activated between 10-20 seconds before the uncontrolled train crossed a public highway at high speed.

33. Both the Company and the Union have presented extensive jurisprudence to support their respective positions. Ultimately, of course, each case is decided based on its particular facts, taking into account the **William Scott** factors.

34. Reviewing the jurisprudence as a whole, it is clear that failure to secure is treated extremely seriously, with arbitrators upholding dismissals (see **CROA 3974**) or lengthy suspensions (see **CROA 4682**, 2-year suspension; **AH 828**, 15-month suspension). Where demerits have been given, there are often other extenuating circumstances. As this arbitrator noted in **CROA 5020**:

“31. The failure to properly secure, given its critical importance, can result in the termination of the person or people involved (see **CROA 4171**).

- Usually, however, such a failure results in a maximum penalty of a lengthy suspension (see **CROA 4471**, where a 40 day suspension was imposed where the grievor’s failure was a second offense and had a relatively poor safety record, and **CROA 4577**, where a 60 day suspension was imposed for a third offense), or reinstatement without compensation (see **AH 828** and **CROA 4564**)
- Where the fact situation shows mitigating circumstances, such as other contributing factors, long seniority, a good discipline or proper remorse, discipline can range from 7 days suspension or 10 demerits (see **CROA 4622, 3938 and 4384**).

35. I am less convinced by the Union’s citation of cases dealing with run-through switches, as this can result in a damaged switch or a potential derailment, but does not match the severity of an out of control runaway train.

36. I am troubled by the evidence showing that there appeared to be a practice on the Levac Siding of using a single hand brake and the emergency brakes, even if this is contrary to the GOI. Clearly if such a practice exists, either the GOI or the practice needs to change.

37. Here, the Grievor has significant seniority, and an excellent discipline record. The actions of the Brakeman were clearly a causal factor in the incident. However, the

Grievor made significant errors in failing to properly supervise the actions of the Locomotive Trainee, for which he is responsible, which should have prevented any movement of the cars. The situation itself was highly serious and potentially catastrophic.

38. Weighing all of the mitigating and aggravating factors, I cannot find that the decision of the Company to impose a 20 day suspension is unreasonable, even if other decisions could have been made. I find that the penalty imposed falls “within the range of reason having regard to all the circumstances of the case” (**Sheet Metal Workers’ International Association, Local 473 v Bruce Power LP** 2009 CanLii 31586).

Conclusion

39. Accordingly, the grievance is dismissed.

40. I remain seized with respect to any issues of interpretation or application of this Award.

July 18, 2025



JAMES CAMERON
ARBITRATOR