

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

CASE NO. 5183

Heard in Ottawa, June 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 20 demerits assessed to Conductor Manveer Patti of Edmonton, AB.

JOINT STATEMENT OF ISSUE:

Following a formal investigation, Mr. Patti was issued a Form 104 for 20 demerits on January 5, 2024, which stated the following:

“A formal investigation was conducted on January 3, 2024, in connection with your tour of duty on December 26, 2023. At the conclusion of the investigation, your culpability was established for missing a call for duty when properly called while working in assigned service on the BC06 yard assignment reporting to Cloverbar Yard. This is a violation of CPKC's T&E Availability standard Canada.

Your employment with the Company is in jeopardy if you commit another offence for which discipline is warranted. Please consult the “Hybrid Discipline & Accountability Guidelines” to learn how you can improve your discipline standing.”

Union Position

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the following outlines our position.

The Union contends the Company has failed to consider mitigating factors contained within the record.

The Union contends the discipline assessed is arbitrary, unwarranted, unjustified, and excessive in all the circumstances. It is also the Union's contention that the penalty and the Company's discipline policy is contrary to the arbitral principles of progressive discipline.

The Union disputes the T&E Availability Standards and the Hybrid Discipline & Accountability policies, and the manner in which they have been applied in the instant matter.

The Union seeks an order that the Company has violated the above-cited Collective Agreement articles, policies and legislation. The Union requests the discipline be removed in its entirety, and that Mr. Patti is made whole for all associated loss with interest. 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.

For all the reasons and submissions set forth through the Company's reply, which are herein adopted, this outlines our position.

The Company carefully considers the appropriate disciplinary consequences, 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 Company's position continues to be that the discipline assessed was not excessive and was in fact just, appropriate, and warranted in the circumstances.

The Company request that the Arbitrator dismiss the grievance in its entirety.

For the Union:
(SGD.) D. Fulton
 General Chairperson

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

There appeared on behalf of the Company:

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|-------------|--------------------------------------|
| E. Carriere | – Manager, Labour Relations, Calgary |
| S. Oliver | – Manager, Labour Relations, Calgary |

And on behalf of the Union:

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|-------------|--|
| K. Stuebing | – Counsel, Caley Wray, Toronto |
| J. Hnatiuk | – Vice General Chairperson, CTY-W, Mission |
| D. Fulton | – General Chairperson, CTY-W, Calgary |
| W. Chernoff | – Local Chairperson, Edmonton |
| M. Patti | – Grievor, Edmonton |

AWARD OF THE ARBITRATOR

Context

1. The Grievor is a short service Conductor, with about 18 months seniority, at the time of the missed call in December 2023.
2. The Grievor's discipline record consisted of an AOR Formal Reprimand for booking unfit on call and 10 Demerits for booking unfit on call.

Issues

- A. Is the Grievor subject to discipline?

- B. Is the discipline imposed of 20 Demerits reasonable in the circumstances, or should some lesser discipline apply?

A. Is the Grievor subject to discipline?

Position of Parties

3. The Company submits that the Grievor is clearly subject to discipline as he missed a call for an assignment, contrary to the T and E Availability Standard, which treats missed calls as “more serious offenses”. The fact that he put his phone on silent mode does not excuse this violation.
4. The Union submits that the Grievor was not expecting a call, having checked the lineups, and had gone to bed to be rested for duty the next day. Unfortunately, he had inadvertently placed his phone on silent mode, so he missed a call. The Union submits that the matter should have been handled with an informal caution or a written warning. The error was inadvertent, and had never previously happened.

Analysis and Decision

5. There is no doubt about the importance of employees being available for work when properly called, given the nature of the railway industry. As noted by Arbitrator Yingst-Bartel in **CROA 5054**:

... [t]he staffing model in this industry is different than in other industries. Employees can be "called in" for work if they occupy a position on a Board. They are called in order of their position, and are required to be available for work when called. When employees are unavailable to work, other employees must be called for work earlier than they may have been anticipating. Such absences therefore can have operational impacts which are different than in typical workplaces, given the unique nature of this industry.

6. The T and E Availability Standards note: “The following absence categories will be handled as more serious offenses separate from this calendar month review: Miss

calls...” (see Tab 6, Company documents). The Grievor was familiar with the Standard and admits having missed a call (see Q and A 16-23, Tab 6, Company documents).

7. In **CROA 5056**, relied on by the Union, Arbitrator Yingst-Bartel found that culpability for discipline had not been established when the grievor missed a call due to his phone failing to charge:

[33] It is not unreasonable for an individual to depend on his phone for his alarm clock. While in hindsight the Grievor should have set a back-up alarm and is encouraged to do so in future, his explanation of his phone not appropriately charging is not an unknown phenomenon, and was logical and reasonable. It was not an excuse which inherently lacked credibility or logic. I find credible that the Grievor had a legitimate reason for missing calls on December 28, 2020.

[34] Further, the Grievor also acted consistently with that reality by calling into the CMC and booking on as soon as he was awoken and realized what happened. The Grievor was not off work for the entire day, as might be expected if he did not want to work on December 28, 2020. He booked on as soon as he realized what had occurred, and was in touch with the Company within one hour of missing the second call.

8. The facts in **CROA 5056** clearly point to no culpability on the part of the Grievor. He did not expect, and had no reason to believe otherwise, that his phone would fail to charge.
9. Here, however, it was the Grievor who put his phone on silent. He admits to having made a mistake:

Q21. Please explain the circumstances for missing a call for assignment BC06-26 on December 26th, 2023?

A21. I checked the vacancies, nothing was open, so I proceeded to go to bed. My phone was on silent.

[...]

Q23. Do you have anything you wish to add to this investigation?

A23. I understand I made a mistake; I will ensure to try my best not let this happen again.

10. Given the importance of not missing calls and given the admitted involvement and mistake of the Grievor, I find that discipline is appropriate.

B. Is the discipline imposed of 20 Demerits reasonable in the circumstances, or should some lesser discipline apply?

Position of the Parties

11. The Company takes the position that the discipline imposed of 20 Demerits is entirely appropriate, given the Grievor's very short service and previous discipline record concerning attendance issues having resulted in a Formal Reprimand and then 10 Demerits. A third offence under the hybrid Discipline Guideline provides for 20 Demerits, which was imposed.
12. The jurisprudence indicates that missed calls are treated very seriously, with substantial discipline being upheld (see **CROA 3381**, 40 Demerits and 30 Demerits for missed calls; **AH 853**, 30 Demerits reduced to a 2-year suspension without compensation; **CROA 4642**, 25 Demerits reduced to time served of 1 year without compensation; **CROA 3639**, 25 Demerits reduced to 1.5-year suspension without compensation).
13. The Union takes the position that the prior discipline is unrelated to the current discipline, and that the Grievor had never previously missed a call. There is no pattern of behaviour to justify demerits amounting to one third of a dismissal. The Union relies on a number of cases for missed calls which have resulted in written warnings or smaller numbers of demerits (see **CROA 4631**, written warning; **AH 792**, 20 and 25 Demerits reduced to a written warning and 15 Demerits; **CROA 3190**, 35 Demerits reduced to 10 Demerits).

Analysis and Decision

14. A review of the **William Scott** criteria reveals multiple mitigating and relatively few aggravating factors.

15. This missed call was the first of the Grievor's career. His previous discipline, while related to attendance, was not for a missed call. When he realized that he had missed a call he immediately called the employer and worked a same day shift. He immediately admitted his error during the investigation and stated that he would not make the same mistake again.

16. Against these mitigating factors are the importance of not missing calls and the very short service of the Grievor. He has also had previous attendance issues.

17. I weigh heavily the comments of Brown and Beatty which highlight the importance of the state of mind of the employee:

“A mitigating factor closely related to the potential of an employee to reform his or her behaviour is the employee's intention and state of mind at the time of the alleged offence. Premeditated and/or persistent wrongdoing is always regarded as more culpable than momentary lapses and those that lack a malicious intent.”

18. Here I find that the missed call was not part of a pattern, was not intentional, and the Grievor expressed remorse.

19. I find that many of the cases cited by the Company involved grievors with significant discipline records (see **CROA 3381**, **CROA 4642**, **CROA 3639**), unlike the case here.

20. I note that Arbitrator Clarke in **CROA 4524** reduced a 30 day suspension for 3 missed calls to a written warning. In **CROA 4631**, the same Arbitrator reduced a dismissal following a missed call to a written warning.

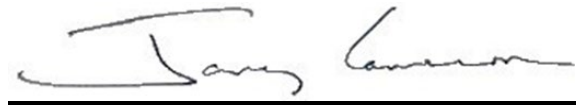
21. Weighing all the mitigating and aggravating factors, I find that the imposition of a 20 Demerit discipline to be unjustified in the circumstances. I find that an appropriate level of discipline would have been a written reprimand.

Conclusion

22. The grievance is therefore partially upheld, with a written reprimand substituted for the 20 Demerits imposed.

23. I remain seized with respect to any questions of interpretation or application of this Award.

August 15, 2025

A handwritten signature in black ink, appearing to read "James Cameron", is written over a solid black horizontal line.

**JAMES CAMERON
ARBITRATOR**