

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

CASE NO. 5184

Heard in Ottawa, June 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the 30 demerits and dismissal of Conductor Manveer Patti of Edmonton, AB.

JOINT STATEMENT OF ISSUE:

Following an investigation, Mr. Patti was assessed 30 demerits and dismissed on January 26, 2024, which was described as:

Please be advised that you have been assessed with 30 (thirty) demerits for the following reasons:

"A formal investigation was conducted on January 9, 2024, in connection with your tour of duty on January 2, 2024. At the conclusion of the investigation, your culpability was established for failing to communicate your intent to entrain prior to entraining your movement while working as the Conductor on the BC03 1500-yard assignment at Cloverbar Yard in Edmonton, Alberta. This is a violation of Rulebook for Train & Engine Employees, Section 2 - item 2.1, 2.2, 2.3 and Train & Engine Safety Rulebook -T-11, Entraining and Detraining Equipment."

Additionally, Mr. Patti received a second form 104 stating:

"Dear Mr. Patti,

Please be advised that in light of your 30 Demerits assessment of discipline, you are hereby DISMISSED from Company service for an accumulation of 60 demerits under the Hybrid Discipline and Accountability Guidelines."

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 meet the burden of proof or establish culpability related to the allegations outlined above.

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

The Union submits the Company has engaged in the unreasonable application of the Efficiency Test policy and procedures, resulting in the arbitrary, discriminatory, unjustified, unwarranted, and excessive assessment of discipline. The Union further contends the discipline does not conform with the principles of progressive discipline.

The Union disputes any reference to the Hybrid Discipline & Accountability policy and its application in the instant matter.

The Union requests that the discipline be removed in its entirety, and that Mr. Patti be reinstated without loss of seniority and benefits and be made whole for all associated loss with interest. The Union seeks damages to be determined as a result of the wrongful dismissal of Mr. Patti. 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 maintains that following a fair and impartial investigation, the Grievor was found culpable for the reasons outlined in his form 104 and that the discipline was in line with the principles of progressive discipline. Additionally, the Company maintains the discipline is further supported and properly assessed in keeping with the Hybrid Discipline and Accountability Guidelines.

Regarding the Union's allegation that the discipline was arbitrary, discriminatory, unjustified, unwarranted, and excessive, the Company cannot agree with this allegation. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed. Discipline was determined following a review of all pertinent factors, including those described as mitigating by the Union.

The Company rejects the Union's arguments, maintains no violation of the agreement has occurred, and no compensation or benefit is appropriate in the circumstances.

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.) D. Fulton
General Chairperson

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

There appeared on behalf of the Company:

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

And on behalf of the Union:

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 was given 30 Demerits for violation of entraining rules observed during an E-Test and was dismissed for accumulation of demerits on January 26, 2024. The

grievor was notified on April 30, 2025 that he would be unilaterally reinstated, and was scheduled to return to work on June 6, 2025. However, the Grievor resigned on June 12, 2025.

2. This matter is therefore about an assessment of the reasonableness of the 30 Demerits imposed and whether discharge was appropriate in the circumstances.

Issues

- A. Was discipline for the failed E-Test appropriate in the circumstances?
- B. Was discipline of 30 Demerits appropriate in the circumstances?
- C. Was discharge for accumulation of demerits appropriate in the circumstances?

A. Was discipline for the failed E-Test appropriate in the circumstances?

Position of the Parties

3. The Company submits that there was a clear violation of Rule T-11 of the Train and Engine Safety Rule Book, where the Grievor admits failing to communicate with the Engineer prior to entraining.
4. Discipline can be imposed, even if the violation occurs in the context of E-Testing.
5. The Union submits that the Grievor had a good reason for not communicating with the Engineer prior to entraining, as he did not want to interrupt the radio count down to stopping the train in which the Conductor and Engineer were engaged.
6. The Union notes that the Conductor and Grievor had already detrained shortly before, so the train was moving at less than 4 mph and would be coming to an imminent complete stop.

7. The Union argues that the Company has not demonstrated that they considered or applied their own E-Testing Policy, which requires an examination of the “frequency, severity and the employee’s work history”.
8. It argues strongly that no discipline was appropriate, and only coaching should have been given.

Analysis and Decision

9. The Train and Engine Safety Rule Book Rule T-11 Entraining and Detraining Equipment states the following communication requirements for employees:

T-11 Entraining and Detraining Equipment

When conditions are considered to be safe and only after the Locomotive engineer confirms the speed of the movement is 4 MPH or less, employees are permitted to entrain or detrain moving equipment.

Always verbally communicate the intent to the locomotive engineer (includes RCLS / RCO operator) prior to entraining or detraining moving equipment. The locomotive engineer must verbally acknowledge the intention of entraining or detraining the movement and confirm to the employee when the speed is 4 MPH or less at the entraining or detraining location.

Always verbally communicate to the locomotive engineer once you have safely entrained or detrained moving equipment.

10. Trainmaster Bryan Li was conducting an efficiency test on the crew working assignment BC03-02, which included the Grievor. The Trainmaster found that the Grievor had failed to properly communicate with the Engineer prior to entraining.
11. The Company Policy on Efficiency Testing (see Tab 9 Union documents) notes the objectives and possible consequences of a violation:

The objectives of efficiency testing are:

1. to reduce human-failure incidents to a minimum;
2. to improve employee compliance with safety and operating rules;

3. to ensure rules and operating practices are clearly written and understood;
4. to ensure employee training programs are effective and address critical issues;
5. to provide a measure of compliance and performance; and
6. to achieve and maintain the highest possible degree of employee and operational safety.

[...]

An efficiency test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge. Testing is NOT intended to entrap an employee into making an error, but is used to measure efficiency (knowledge and experience) and to isolate areas of non-compliance for immediate corrective action. efficiency testing is also not intended to be a discipline tool. While this may be the corrective action required, depending on the frequency, severity and the employee's work history, education and mentoring will often bring about more desirable results. (underlining added)

12. In the Disciplinary Investigation, the Grievor admits breaching the communication rule and provides the explanation for why he did so:

1. Referring to Appendix #2: Memorandum submitted by Trainmaster Bryan Li did you entrain the movement without communicating on the radio intent to do so?
 - Yes
2. Referring to your previous QA why did you entrain the movement without communicating on the radio the intention?
 - We were shoving back in track 1 in Gibsons we were spotting cars. We were going to spot 2 End of track at Gibsons. Jatinder proceeded to say we were getting down in half a car. We both got down and the engineer said that we were at the correct speed, so we got down. I wasn't comfortable interrupting the communication 5 feet from end of track, so I did not communicate my intention of entraining the movement.
3. Referring to your previous QA why did you detrain the movement just to re entrain the movement?
 - Because I was getting myself in position to put the handbrake on for the spot and I didn't want to interrupt the communication 5 feet from the end of track

4. Referring to Appendix #2: Memorandum submitted by Trainmaster Bryan Li did Trainmaster Bryan Li stop to discuss with you that he had observed?

- Yes

5. Referring to Appendix #2: Memorandum submitted by Trainmaster Bryan Li did you commit to never doing it again?

- Yes

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

- I apologize for my actions however I did not want to interrupt the spotting being so close to the end of track.

13. CROA caselaw accepts that Efficiency Testing is an integral part of training and ensuring on-going compliance with safety rules. As Arbitrator Moreau noted in **AH 695**:

“Proficiency testing of employees (or Efficiency tests) is rooted in Transport Canada’s Safety Management System Industry Guideline. It is a tool used to evaluate an employee’s compliance with rules, instructions and procedures and to isolate areas of non-compliance for immediate corrective action. From the Company’s perspective, the corrective action can take the form of verbal counselling through to disciplinary action. The Company also notes that these proficiency tests are often conducted randomly without the employee’s knowledge.”

14. CROA caselaw also accepts that an E-Test violation can result in discipline, provided that there is just cause to do so. For discipline to be imposed, the caselaw notes that the Policy requires an examination of the violation with respect to frequency and severity and a review of the grievor’s work history. As Arbitrator Yingst-Bartel wrote in **AH-695**:

“It is no longer disputed in this industry that discipline can follow a failed “E-Test”. That issue has been resolved. It is also now settled that there is a framework to be applied in determining if there is “just cause” for discipline for a failed E-Test – or if coaching, mentoring or education are more appropriately assessed for that failure. That framework was first developed in this Arbitrator’s Award in *AH860*, in October of 2023, with a historical analysis provided by this Arbitrator in *CROA 4866*, which was decided a few months later. Those Awards determined there are three criteria for assessing whether discipline – or education, coaching and mentoring –

are the appropriate responses for an E-Test failure. Those criteria are “frequency”; “severity” and the Grievor’s “work history”.

While there is some overlap in those factors with those considered for the assessment of mitigating and aggravating factors which occur under the second question of the *Wm. Scott* analysis, until “just cause” for some form of discipline is established, there is no movement to those factors. While the Union sometimes refers to the E-Test criteria as a “threshold” question, it is more accurately considered as one of culpability under the first question to be addressed in the *Wm. Scott* framework, which is whether there is “just cause” for some form of discipline: *CROA 4866*, para. 20. In other words, if the context of the misconduct is that it is part of an E-Test fail, it is not sufficient for the Company to only establish that the incident occurred to support a disciplinary response. It is also necessary for the Company to establish the E- Test criteria support a disciplinary response from a culpability perspective, rather than a response which focusses on education, mentoring and coaching. Whether that burden has been met will be a matter of fact in each case.

It is also relevant to consider whether the Company has treated the misconduct as an E-Test, even if that situation is not an E-Test as those tests have been described in the jurisprudence. If the Company chooses to treat the situation as an E-Test, then it has chosen to subject its decision to that framework.

15. This approach has been followed repeatedly (see for example, **CROA 4866**, **CROA 5045-5046-5047**).
16. Applying the first criterion, that of frequency, the Grievor passed an earlier E-test with respect to entraining and detraining (see Tab 3, Union documents). His E-tests with respect to communication were all successful (see Tab 3, Union documents). This violation concerning communication appears to be a unique event.
17. Applying the second criterion, that of severity, there is no doubt that proper entraining and detraining is essential to safety. However, the facts show that the train was coming to an imminent stop. The Grievor and Conductor had already detrained, with the speed of the train at 4mph or less. When the Grievor entrained again, the train was within a half car length of stopping. It was almost stopped. It is entirely true that the Grievor did not communicate with the Engineer, because he did not wish to disrupt the radio

communication between the Conductor and Engineer bringing the train to a stop. The Grievor could have waited until the train was stopped, when there would have been no disruption in radio communication. However, the train was going slowly enough for the Grievor to detrain and then entrain. Communication with the Engineer, given that the train was at the point of stopping, would not have changed the actions of the Engineer, or increased the safety of the Grievor. The violation is at the very low end of the spectrum.

18. The final criterion is with respect to the Grievor's work history. Following the decision in **CROA 5183**, he remains with a total of 10 Demerits. He has never before been the subject of discipline for an operating rule infraction. His work history is good.

19. Applying the three criteria, I cannot see that the Grievor's actions were properly the subject of discipline, according to the Company's own Efficiency Testing Policy. Coaching apparently took place at the time and the actions of the Grievor should not have resulted in discipline.

B. Was discipline of 30 Demerits appropriate in the circumstances?

20. Given the finding with respect to the previous issue, no discipline should have been imposed. The 30 Demerits are therefore removed from the Grievor's record.

C. Was discharge for accumulation of demerits appropriate in the circumstances?

21. Given the decision in **CROA 5183** and the findings with respect to the above issues, the Grievor is left with 10 Demerits on his discipline record. His dismissal for accumulation of demerits cannot stand.

Conclusion

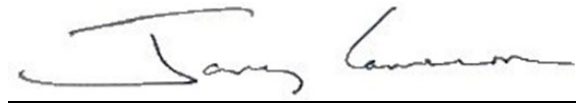
22. The grievance is therefore upheld, the 30 Demerits and the Discharge for accumulation of demerits struck from the Grievor's record.

23. The Grievor should be reinstated and made whole from the time of his discharge to the time of his reinstatement, less mitigation.

24. I do not find, however, that the actions of the Company have been shown to be harsh, vindictive, reprehensible or malicious, such as to warrant damages (see **Honda Canada Inc. v Keays** 2008 SCC 39, **CROA 4605**). I note that the Company unilaterally reinstated the Grievor.

25. I remain seized for all questions of interpretation or application of this Award.

August 15, 2025

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

JAMES CAMERON
ARBITRATOR