

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

**CASE NO. 5185**

Heard in Ottawa, June 10, 2025

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The assessment of 30 demerits and subsequent dismissal for accumulated demerits to Locomotive Engineer Cabel Crombach ("the Grievor") of Cranbrook, BC.

**JOINT STATEMENT OF ISSUE:**

Following an investigation, Engineer Crombach was assessed 30 demerits on June 28, 2024.

*For failing to be available for duty on assignment EXSWT7 at 19:30 for 22:10 resulting in a miss call June 6, 2024, and refusing a call on train 805-340 at 16:24 for 19:00 resulting in a miss call June 17, 2024. A violation of:*

▪ *T&E Availability Standard*

He was subsequently dismissed from Company service for accumulated demerits on June 28, 2024, described as:

*For an accumulation of demerits (95) under the Hybrid Discipline & Accountability Guidelines dated April 17, 2023.*

In a letter dated May 5, 2025, the Company outlined the Grievor's unilateral reinstatement.

**Union's 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 submits that the Company did not accept the reasoning for the missed call Mr. Crombach gave yet offered no evidence of it not being truthful or unreasonable.

The Union asserts the explanation by Mr. Crombach for the refusal of the call as an ESB on June 17, 2024, was reasonable. The Union submits that the Company must accept responsibility that they did not properly advise Mr. Crombach that he was held off his turn for Engineer work and was now subject to a call for duty before his regular slot day.

Mr. Crombach was not expecting this call and had no choice but to refuse the call because he was not fit or properly rested. He immediately spoke with the Superintendent to explain the situation. This incident could have been handled differently with the appreciation of the circumstances, such as educating Mr. Crombach about 'quiet time' in relation to not being informed about being held in. The Union asserts that in no way does this incident warrant 30 demerits.

The Company in their Step-2 response states that Mr. Crombach would have known that his turn was held due to the RJH function on the CMA work history screen. The Union asserts that employees are not trained in CMA codes and it was never established during the investigation if Mr. Crombach understood, or even looked at this CMA code. Employees use the Crew Information website. During the investigation Mr. Crombach saw that his slot was not at home, but he had not been advised that he was held off to protect Engineer work.

The Union asserts that the dismissal of Mr. Crombach due to accumulated demerit marks is not appropriate.

For the foregoing reasons and those advanced through the grievance procedure we respectfully request that the Arbitrator reinstate Locomotive Engineer Cabel Crombach without the loss of seniority and be compensated for lost wages with interest in relation to his time removed from service. In the alternative, we request that the discipline be reduced to an assessment more commensurate to the offence and the circumstances indicated within the investigation as the Arbitrator sees fit.

In the further alternative, the period in dispute is limited between the date of the Grievor's dismissal (June 28, 2024) and the date Mr. Crombach resumes familiarization.

Company Position:

For all the reasons and submissions set forth through the Company's replies, along with those herein adopted, outlines our position.

The Company disagrees with the Union's request.

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's discipline record demonstrates a history of absenteeism related discipline. This included 30 deferred demerits under the collective agreement, wherein the right to grieve was waived.

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

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

In the alternative, if the Arbitrator finds that culpability was not established and that the Grievor is entitled to compensation for the period that he was dismissed, then the Company's position is that any compensation be limited between the date of the Grievor's dismissal (June 28, 2024) and his reinstatement letter dated May 5, 2025.

**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
G. Lawrenson	– General Chairperson, LE-W, Calgary
C. Ruggles	– Vice General Chairperson, LE-W, Lethbridge
D. Fulton	– General Chairperson, CTY-W, Calgary

J. Hnatiuk  
J. Fifield

– Vice General Chairperson, CTY-W, Mission  
– Local Chairperson, Cranbrook

## **AWARD OF THE ARBITRATOR**

### **Context**

1. The Grievor had 9 years of seniority in June 2024 when he was assessed 30 Demerits and dismissed for accumulation of Demerits.
2. In addition to past suspensions, the Grievor had a discipline record of 15 Demerits (upheld in **CROA 5176**), 20 Demerits (upheld in **CROA 5177**) and 30 Deferred Demerits from April 2024. This matter will therefore decide if the Deferred Demerits are implemented.
3. The Grievor was unilaterally reinstated by the Company in May 2025, but the Grievor did not return. The grievance concerns therefore the issue of lost salary and benefits between the date of termination and the date of reinstatement.

### **Issues**

- A. Was the Grievor properly subject to discipline?
- B. Was the discipline imposed of 30 Demerits reasonable in the circumstances or should some lesser discipline be substituted?
- C. Is the Grievor entitled to lost salary and benefits between his termination and reinstatement?

### **A. Was the Grievor properly subject to discipline?**

#### **Position of Parties**

4. The Company submits that the Grievor is properly subject to discipline for two missed calls, one because his cell phone ringer was off and the second because he was too far away from home to make it back in time for an engineer assignment.

5. It submits that both are breaches of the T and E Availability Standard.
6. The Union submits that the Grievor provided reasonable explanations for the two missed calls and should not be subject to discipline. It relies on **CROA 5056**.

### Analysis and Decision

7. In **CROA 5183**, this Arbitrator commented on the importance of employees who have declared themselves available to work being in fact available:

“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.

8. 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 8E, Company documents). The Grievor was familiar with the Standard and admits having missed a call (see Q and A 14,15 and 23, Tab 9, Company documents).
9. The explanation given by the Grievor in his investigation was that he had inadvertently turned off the ringer on his cell phone:

Q22. Why did you have a missed call on June 6<sup>th</sup> 2024?

A22. My cell phone case was *off* because it overheated, and when I put it back it back on it turned the ringer off.

10. In **CROA 5056**, Arbitrator Yingst Bartel found that the grievor was not subject to discipline, when his phone failed to charge.
11. In **CROA 5183**, this arbitrator found the grievor subject to discipline for having turned his phone on silent and missing a call. **CROA 5056** was distinguished as that grievor had not made any mistakes which caused him to miss a call.
12. Here, as in **CROA 5183**, the Grievor is responsible for the fact that his cell phone was placed on silent. The Grievor had previous discipline in 2020, and had been warned that his employment was in jeopardy with the imposition of the deferred discipline. A reasonable employee would have taken great care to ensure that the sole means given to the Company to communicate with him would be functional. This is still more the case, when the Grievor already had concerns about his phone not functioning due to over-heating.
13. I find that the Grievor is subject to discipline for the first missed call due to his phone being placed on silent. The issue of the quantum of discipline will be discussed below.
14. The facts surrounding the second missed call are quite different.
15. The Grievor believed that his Conductor call had gone out while he was on rest, and he was unaware that he had been held in as an Engineer:

Q29. Did you believe that your DS conductors turn had gone out as a conductor while you were on rest?

A29. Yes

Q30. Are ESB's required to protect extra engineer work when off rest at the home terminal?

A30. Yes

Q31. Do you believe that because your conductors turn went out as a conductor that it makes you unavailable for ESB work?

A31. It did at that point, yes.  
[...]

Q43. As per Article 113 (7) in the Collective Agreement, which reads "Employees withheld from the working list in anticipation of being called later as a Locomotive Engineer may be so withheld when their regular turn presents itself for call, and they will be so advised...."

Were you advised that you were held in as an Engineer on June 17th?

A43. No. At the time of the call I was told I was held in, but I was not aware being held in prior.

Q44. According to the Evidence in appendix D, at what date and time does it state that you were held in at?

A44. 0300 on the 16<sup>th</sup>, the day before my call.

Q45. Does it state in appendix D why they did not notify you at the time of being held in?

A45. Due to Quiet Hours.

16. The Grievor was not advised of being held in as an Engineer after the Quiet Hours on June 16 and was only advised at 1600 on June 17, when he received a call. At that time he was too far away to get to his home terminal in time for the call (see Q and A 24).

17. It is noteworthy that the Grievor immediately took steps to alert the Company of the situation and the reaction of the Company at the time:

Q32. Did you speak to a company officer in regard to the missed call on June 17<sup>th</sup>, 2024?

A32. I spoke to Sup Attendant Ashley Reid. I spoke to the OC director too. I attempted to call Assistant Superintendent Pendray.

Q33. According to the evidence in Appendix C, you later booked off sick/unfit on call following the missed call, is this correct?

A33. I told them to do whatever they need to so they booked me off.

Q34. Why did you tell CMC to do whatever they needed to book you off on June 17<sup>th</sup>, 2024?

A34. Because I wasn't willing to book myself off as a missed call or sick. If I was aware I was lined up for work I would have been ready for work. Superintendent Ashley Reid said she would put me unfit and give me 10 hours rest.

Q35. How does CPKC contact employees for Conductor/Engineer work?

A35. Usually call us.

18. I find that the Company has not established that there was culpable conduct for this second missed call. The Grievor was unaware prior to late June 17 that he had been held in as an Engineer and needed to check lineups accordingly.

**B. Was the discipline imposed of 30 Demerits reasonable in the circumstances or should some lesser discipline be substituted?**

19. In **CROA 5183** this Arbitrator reviewed much of the CROA jurisprudence relating to missed calls and will not repeat the analysis here. The importance of employees being available when they have indicated that they are available to work was underlined, but the Company continues to bear the onus to establish culpable conduct worthy of discipline. Once culpability has been established, the usual **William Scott** factors apply and cases will be decided on their facts.

20. Here, I have found that the Grievor was subject to discipline for the June 6, 2024 call, but not for the June 17, 2024 missed call. The Grievor was made subject to 30 Demerits, which cannot stand, given the finding on the second call. However, the mitigating and aggravating factors reviewed in **CROA 5176** and **CROA 5177** continue to apply, with the Grievor's discipline record having further deteriorated due to the present matter as well as the 30 Deferred Demerits.

21. In all the circumstances, I find that discipline of 15 Demerits would be reasonable.

**C. Is the Grievor entitled to lost salary and benefits between his termination and reinstatement?**

22. Given the above findings to uphold partial discipline for the missed calls, the deferred discipline becomes applicable and the Grievor will have 80 Demerits on his record.

Under the Brown System, the employer is entitled to discharge an employee when the discipline record reaches 60 Demerits. Here the Grievor is well beyond that threshold.

23. Given the Grievor's poor discipline record, and his very poor attendance record, I am not prepared to exercise discretion to substitute a suspension for demerits.

24. Even if I were inclined to do so, I would not have ordered compensation during the time of the suspension (see **CROA 4627** and **CROA 4201**).

### **Conclusion**

25. Accordingly, the grievance is upheld to the extent of reducing the discipline of 30 Demerits to 15 Demerits. The Grievor is therefore left with 80 Demerits and the decision of the Company to discharge the Grievor is upheld.

26. I remain seized with respect to any 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**