

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

CASE NO. 5192

Heard in Ottawa, June 12, 2025

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The appeal of the assessment of 20 demerits to Locomotive Engineer J. Parent, PIN 149279, of Kamloops, BC. for “circumstances and events surrounding your alleged failure to operate with TIBS and failure to perform a required SBU Test.”

JOINT STATEMENT OF ISSUE:

On May 18, 2023, Mr. Parent was assigned to train M31051-17 with Conductor Tanner Klein. On the day in question, at the outset of his tour of duty, Mr. Parent was instructed to change out his lead locomotive with an engine out of Track KB01 and then make a mid-train lift before departing. Shortly after departing and before arriving at Heffley Mill, Mr. Parent realized they had forgotten to perform a test of their TIBS equipment and made arrangements to do so when they stopped to make the lift at Heffley Mill.

It is the Union's position that the coaching session Mr. Parent received from Superintendent Dales and Transportation Manager Grager-McDonald should have sufficed to provide the education required, and no further discipline should have been necessary. In addition, the Union finds that the Company strayed from the Brown Guiding Principles of Discipline by issuing 20 demerits for a first offense and, as such, would argue that if any additional corrective action was deemed necessary, 20 demerits must be viewed as excessive.

The Union would respectfully ask the arbitrator to replace the 20 demerits with a coaching letter or reduce the demerits to a less punitive measure of a written reprimand.

The Company disagrees with the Union's contentions. The Company's position is that the Grievor failed to perform a critical safety procedure, i.e. TIBS test. The TIBS testing ensures proper braking function, and failure to test it could have put the crew at significant risk if the braking system malfunctioned. The Company maintains that 20 Demerit points were justified and declines the grievance.

For the Union:
(SGD.) K.C. James
General Chairperson

For the Company:
(SGD.) J. Girard
Chief Human Resources Officer

There appeared on behalf of the Company:

| | |
|-------------|---|
| R. Singh | – Senior Manager, Labour Relations, Calgary |
| M. Salemi | – Manager, Labour Relations, Toronto |
| M. Smadella | – Assistant, Superintendent, Kamloops |

And on behalf of the Union:

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|------------|---|
| R. Church | – Counsel, Caley Wray, Toronto |
| T. Russett | – Senior Vice General Chairperson, LE-W, Edmonton |
| KC. James | – General Chairperson, LE-W, Edmonton |
| D. Davis | – Local Chairperson, Kamloops |
| J. Parent | – Grievor, Kamloops |

AWARD OF THE ARBITRATOR

Context

1. The Grievor is a Locomotive Engineer with some 15 years of seniority with the Company. As a result of the decision in **CROA 5191**, his active discipline record stands at 10 Demerits.
2. The essential facts of this matter are not contested. It is admitted that the Grievor operated his train without conducting a proper TIBS test to confirm the braking system, contrary to General Operating Instructions 1.9.

Issues

- A.** Has the Company established that discipline was appropriate?
- B.** Was the discipline imposed of 20 Demerits reasonable, or should some lesser penalty be substituted?

A. Has the Company established that discipline was appropriate?

Position of Parties

3. The Company takes the position that the Grievor clearly breached General Operating Instructions 1.9 Train Information Braking System (“TIBS”) test and discipline is entirely appropriate. It points out the potential serious consequences to operating a train without properly functioning brakes.
4. The Union submits that the Grievor had already discovered his error and was taking steps to correct it at the next stop. It submits that the Grievor and the General

Superintendent had a frank exchange in which the Grievor admitted his error and acknowledged the potential serious consequences which could ensue with faulty brakes. This was a coachable moment and there was no need to go further and to impose discipline.

Analysis and Decision

5. A Sense and Braking Unit (“SBU”) is a physical device installed on the back of trains in order to allow an emergency brake application from the rear of the train. In order for the SBU to function, it must be in communication with the Head of Train (“HOT”). To do this, the SBU is digitally armed and connected with the HOT. This connection is then tested through a TIBS test to ensure proper connectivity and functioning.
6. The General Operating Instructions 1.9 (see Tab 5, Company documents) calls for TIBS testing in a number of situations, including when, as here, a new locomotive is added to the HOT:

23. In another section of these guidelines, is the GOI 1.9 which outlines the TIBs Testing Requirements, which has been reproduced below: 1.9 TIBS TESTING REQUIREMENTS COMM and Emergency Test required when:

- EOT is first installed on train
- EOT is struck or damaged
- Lead locomotive changed out
- The HOT removed or reconnected
- Changed operating ends

COMM Test required when:

- Cars are added to train
- Air hoses on EOT reconnected
- Crew change

NOTES:

At locations utilizing a yard test plant, may be performed from the HOT on the assigned locomotive prior to the locomotive being coupled to the train.

At locations where a crew member or other qualified employee cannot readily access the EOT, one of the two following options may be used by the crew, or be directed by the proper authority.

If conditions permit, i.e. ambient temperature above 00 C, place the entire train in emergency using the HOT emergency switch; or

After performing a COMM test, proceed to the next scheduled crew change location, or other location prior to, where the rear car emergency test can be performed.

EMERGENCY BRAKING FEATURE TEST

(When performed from the rear car)

- Confirms the proper operation of the emergency solenoid valve.
- Brake pipe pressure must be at least 48 PSI at the rear of the train.
- Close the angle cock at the lead end of the rear car on the train.
- Compare the brake pressure displayed on the HOT with that on the EOT.
- Activate the emergency feature on the HOT and verify that the brakes on the rear car apply and the HOT displays "LOW PRES" and then "0 PSI".
- The angle cock on the lead end of the rear car may be opened when the EOT solenoid resets (approximately 15 seconds) and the car's vent valve closes, (approximately 45 seconds)
- Verify that the pressure is again being displayed on the HOT

(Copy of GOI 1.9 and a TIBS Test Job aid attached as Exhibit 5)

7. A memo from General Superintendent Dale (see Tab 6, Company documents) confirms that the Grievor had not armed the SBU, having failed to dial the SBU number into the new locomotive at the HOT:

At approx. 16:00 M31051-17 arrived and was in the process of applying handbrakes to their train, when the engineer (Jason Parent) told his conductor (Tanner Klein) that he could not arm the SBU. He told him on the radio that he a problem and was not able to arm his SBU. From a position in the parking lot adjacent to the train, we were able to observe Mr. Parent Walk to his second unit and then back to the lead prior to telling his conductor he had issues. Mr. Parent also explained to his conductor that he tried to perform a one-man arming, but was unsuccessful.

[...]

I asked the engineer (Mr. Parent) why he had operated 7 miles from the yard without being able to validate continuity or without being able to toggle an emergency application using his IDU. Mr. Parent told us that the train had lifted cars on the head end and added a locomotive while in Kamloops. Mr. Parent told us that there was a lot going on in Kamloops yard and that they had forgotten to dial the

SBU number into the new locomotive. I asked him if they had traveled at track speed. Mr. Parent agreed that he had. I asked him if he understood the risk of traveling 40 mph without an SBU. Mr. Parent told me he understood how dangerous the situation could have been.

8. This is confirmed during the investigation of the Grievor:

14.Q. Mr. Parent, do you understand GOI 1.9 TIBS Testing Requirements?

A. Yes

15.Q. Did you perform a TIBS Test prior to departing Kamloops?

A. No

16.Q. As indicated in the Memo to file from Mr Dale, ".... Mr. Parent walked to his second unit and then back to the lead prior to telling his conductor he had issues". Why did you have to go to the second unit?

A. Make sure I had the TIBS numbers right

17.Q. Was the TIBS number correct on your lead unit

A. No- until I changed it at Heffley

18.Q. Mr. Parent, when was the TIBS test completed?

A. When we got to Heffley Mill

[...]

20.Q. Mr. Parent what conversation took place with Superintendent Dale on May 18th 2023?

A. He asked if I knew what the possible consequences were and that I knew I had made a mistake.

9. The Grievor does not therefore dispute that he violated GOI 1.9.

10. The Grievor, to his credit, readily admitted his error to General Superintendent Dale and was in the process of correcting his oversight. This does not detract from the fact, however, that the oversight and violation occurred.

11. The Union argues that, given the admission of the Grievor, there was no need to proceed to discipline, but coaching would have been appropriate. I cannot agree.

12. The Grievor failed to abide by GOI 1.9 and operated his train for some 7 miles without a properly functioning SBU and failed to perform a TIBS test as he was required to do. The failure to ensure having properly functioning brakes could have led to the most serious consequences. This was not a technical error which could be corrected through E-testing, but rather a substantial safety breach.
13. Accordingly, I find that the Company was entitled to impose discipline on the Grievor.

B. Was the discipline imposed of 20 Demerits reasonable, or should some lesser penalty be substituted?

Position of Parties

14. The Company argues that it operates in an environment where safety is an absolute priority, given the possibility of terrible consequences should the rules not be observed.
15. It submits that the Grievor breached an important safety rule, and then operated his train knowing that his brakes may not perform properly. It adds that despite this knowledge, the Grievor ran his train at speeds over 25 mph, contrary to CROR Rules.
16. The Union objects to arguments based on train speed, given that this was not given as a reason for discipline in the Form 104. It notes as well that the highest speed of 39 mph does not reflect the much lower average speeds.
17. The Union argues that the Grievor was forthright in his responses to the General Superintendent and in his investigation. He fully acknowledges the possible consequences resulting from his error. It argues that this was the first time the Grievor had committed such a violation and that he had no similar operating infractions during his 16-year career and only the second violation of any operating rule. Fundamentally, the Union argues that the penalty imposed does not reflect progressive discipline, or that industrial discipline should have a corrective, rather than punitive, emphasis.

Analysis and Decision

18. In deciding whether the discipline imposed was reasonable or whether some lesser penalty should be imposed, arbitrators typically examine the facts of the case, together with an analysis of the mitigating and aggravating factors set out in the **William Scott** matter. Comparisons can then be made with relevant jurisprudence to determine whether the discipline was reasonable, or requires a substituted penalty.
19. The facts of the case have been set out above. The aggravating factors include the very serious nature of the violation, with possible profound consequences to the Grievor, the crew and members of the public.
20. The Grievor knew there was an issue with the brakes of the train but did not stop for some 7 miles, until the first scheduled stop. The Grievor could have stopped as soon as the problem was discovered, or at the very least, run at a very low speed to permit easy stopping.
21. I agree with the Union position that train speed was not invoked for the reasons for discipline, so may not be used for that purpose. However, it is a fact which has been established in this matter (see Q and A 13), to which the arbitrator may refer. The Grievor knew there was an issue with the brakes of the train and nonetheless permitted the train to occasionally exceed 25 mph. A more cautious approach would have been to keep the train speed well beneath this limit until the SBU issue could be corrected.
22. The mitigating factors, however, are many. The Grievor has lengthy service (some 15 years), a good discipline record (10 active demerits), no previous GOI 1.9 violations and only one previous operating infraction, some 15 years prior, when he was working as a Conductor and not an LE. He was forthright with both the General Superintendent and at his investigation.

23. The jurisprudence cited by both Parties is necessarily fact specific, depending on the nature of the infraction, the reaction of the employee to the infraction, the discipline record of the employee and other relevant circumstances. The Company notes cases where discharge has been upheld (see **CROA 5152**) or very significant suspensions given (see **CROA 4471**, 40-day suspension; **CROA 303**, 6-month suspension). The Union notes cases in which 15 Demerits have been given for a similar incident (see Tabs 17-18, Union Authorities). It also notes cases in which the grievor had shorter service and a worse record but still received discipline in the range of 15-20 Demerits (see **CROA 4553** and **CROA 3816**).
24. Here, there can be no doubt that the Grievor committed a serious safety infraction. However, the mitigating factors are numerous. I also note that the Company relied on the fact that this was the second infraction in one month by the Grievor. As a result of the decision in **CROA 5091**, the record of the Grievor has now improved.
25. In all the circumstances, weighing both the aggravating and mitigating factors, I find that a penalty of 20 Demerits to be excessive. Accordingly, I find that discipline should be substituted and that a reasonable penalty in the circumstances would be 15 Demerits.

Conclusion

26. The grievance is partially upheld and the discipline is reduced from 20 Demerits to 15 Demerits.
27. I remain seized with respect to any issues of interpretation or application of this Award.

August 15, 2025



JAMES CAMERON
ARBITRATOR