

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

**CASE NO. 5193**

Heard in Ottawa, June 12, 2025

Concerning

**CANADIAN NATIONAL RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

The appeal of the assessment of 45 demerits and subsequent discharge for accumulation to Locomotive Engineer J. Parent, PIN 149279, of Kamloops, BC, for “Violation of CROR 439 at Irvine on the Clearwater Subdivision while working on train Q1O521-27 on July 31, 2023.”

**JOINT STATEMENT OF ISSUE:**

On July 31, 2023, Mr. Parent was assigned to train Q1O521-27 and was approaching Irvine when he encountered an advanced clear-to-stop signal to Irvine East and then a clear-to-stop signal at Irvine East. As he proceeded Westward, Mr. Parent was preparing his lunch and was engaged in a conversation with his conductor when he lost situational awareness and realized too late that the light at the West end of Irvine was fast approaching. Mr. Parent quickly put his train in emergency and made the appropriate emergency broadcasts as his train came to a stop, approximately 5 car lengths past Signal 47.9 at Irvine West on the Clearwater Subdivision. Mr. Parent was removed from service and held for an investigation. Following the investigation, Mr. Parent was issued forty-five demerits, which brought his cumulative total to eighty-five, resulting in a discharge from service for accumulation.

It is the Union's position that there were no aggravating factors surrounding the violation of CROR439, which would justify the quantum of discipline assessed, and as such, the Union finds the assessment to be excessive and unnecessarily punitive. This was Mr. Parent's first cardinal rule violation, and before the recent flurry of discipline received over the previous nine months, he had managed to maintain a nearly pristine record by only attracting one previous issuance of demerits in 2008. Issuing eighty-five demerits over nine months does not fall in line with the Brown Guiding Principles of Progressive Discipline, and as such is patently unfair and not progressive.

As such, the Union would respectfully ask the arbitrator to replace or reduce the demerits assessed with a measure which would see Mr. Parent reinstated to active service without loss of seniority, and that he be made whole for all lost wages including benefits and interest for either all, or a portion of his time held out of service.

The Company disagrees with the Union's contentions. During the formal investigation on August 3, 2023, the Grievor admitted to being distracted while operating his train at Irvine West. As a safety-critical employee, his inattentiveness posed a significant risk to himself, his crew, railway operations, and public safety. Despite acknowledging the Critical Focus Zone (CFZ) bulletin, he failed to comply with it and was operating at 25 mph when the train was placed into an emergency.

CROR 439 violations are severe, with potentially catastrophic consequences. Despite multiple warnings, the Grievor failed to stop as required. The Company contends that the Grievor's disciplinary history indicates a pattern of non-compliance. The Company maintains that 45 demerit points were appropriate 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:

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. This matter concerns the discipline of 45 Demerits and dismissal for accumulation of Demerits of the Grievor. He has previously been the subject of decisions by this arbitrator in **CROA 5191** (10 Demerits removed) and **CROA 5192** (20 Demerits reduced to 15 Demerits).
2. The active discipline of the Grievor therefore stands at 25 Demerits prior to consideration of this matter.
3. The Parties agree that the Grievor was distracted and failed to slow his train in time to stop 300 feet short of a Stop signal, finally stopping through the use of emergency

braking some 5 car lengths past the signal. In so doing, the Grievor violated CROR 439 and is subject to discipline.

## Issues

- A. Was the discipline imposed of 45 Demerits reasonable in the circumstances, or should some lesser penalty be imposed?
- B. Should the dismissal for accumulation of Demerits stand?

## **A. Was the discipline imposed of 45 Demerits reasonable in the circumstances, or should some lesser penalty be imposed?**

### Position of Parties

- 4. The Company takes the position that the discipline imposed is entirely appropriate.

The Grievor failed to heed multiple signals indicating an upcoming stop:

15. As the crew proceeded from Blue River to Kamloops, the crew observed and accepted an advanced clear-to-stop Signal 451 at Mile 45.1 at 10:58:55 PDT while operating at 23 mph. This is governed by Canadian Railway Operating Rule (CROR) 415, written as follows:

415. ADVANCE CLEAR TO STOP Advance Clear to Stop - Proceed, prepared to Stop at second signal.

16. Subsequently, the crew observed and accepted a clear-to-stop signal at Signal 467 at Mile 46.7 at 11:03:18 PDT while operating at 23 mph. This is governed by Canadian Railway Operating Rule (CROR) 411, written as follows:

411. CLEAR TO STOP  
Clear to Stop - Proceed, preparing to stop at next signal.

17. It is important to note that at the time of passing the Clear to Stop signal at Mile 46.7 (Signal 467), the Train was travelling at 23 MPH and continued to accelerate past the signal.

18. As the crew proceeded, they initiated an EIE (Engineer Initiated Emergency) at 25 mph while approaching the Stop Signal at Irvine (Signal 479) around 11:06:16 PDT. The train went past the stop signal and stopped 8 car lengths after the signal.

19. Upon passing the Clear to Stop signal at Mile 46.7 (Signal 467), the Train was travelling at 23 MPH. At this point, the Grievor should have been taking steps, through proper train handling, to bring his train to a stop at the next signal located 1.2 miles away at mile 47.9. However, the Grievor took no such action. Indeed, despite being only 2 MPH short of maximum allowed speed (25 MPH) and having just passed a warning of an impending need to stop the train, the Grievor inexplicably continued to accelerate past the signal.

20. Stop signals, such as the one located at MP 47.9, are governed by Canadian Railway Operating Rule (CROR) 439, written as follows:

439. STOP Stop - Stop. Unless required to clear a switch, crossing, controlled location, spotting passenger equipment on station platforms or spotting locomotives for fuel, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

21. Not only did the Grievor not stop his train 300 feet BEFORE the Stop Signal, as required by CROR 439, but he passed the signal at high speed, namely 22 MPH. By doing so, the Grievor violated CROR 439.

5. In addition, the Grievor failed to abide by the requirements of a Critical Focus Zone ("CFZ"), applicable within 3 miles of a Stop signal, which requires crews to cease any actions or communications unrelated to immediate operations of the train. Here, a CFZ covered the entire distance from the initial signal.
6. The Grievor's actions are still more negligent, given that he was very familiar with the area.
7. The Company submits that the Grievor's discipline history shows multiple recent violations which indicate an alarming escalatory pattern of behaviour, with the current discipline amounting to a culminating incident.
8. Finally, the Company argues that the discipline imposed is entirely within the range of arbitral decisions for CROR 439 violations.

9. The Union submits that the Grievor lost situational awareness which resulted in in the CROR 439 violation. He was completely transparent and took full responsibility for his actions. He expressed remorse for his error.
10. It notes that this was the first CROR 439 violation in his career. It strongly urges that the aggravating factors present in many CROA decisions are absent here, including the fact that no damage was caused.
11. The Union underlines that the Grievor had no other cardinal rule violations on his record, and for most of his career, he had been entirely discipline free.
12. The Union submits a number of cases for the proposition that a lesser number of Demerits or a short suspension would be appropriate in the circumstances.

### **Analysis and Decision**

13. Canadian Rail Operating Rule 439 requires trains to stop well in advance of a Stop signal:

Unless required to clear a switch, crossing, controlled location, or spotting passenger equipment on station platforms, a movement not authorized by Rule 564 must stop at least 300 feet in advance of the STOP signal.

14. In **CROA 5093**, this arbitrator noted the following concerning the Rule:

8. A failure to respect CROR Rule 439 is viewed as a cardinal rule violation, as it involves a critical safety action. Indeed, Arbitrator Schmidt in **CROA 4335** referred to such a violation as: “the most serious that an employee can commit on a railway”.

15. In **CROA 4608**, Arbitrator Clarke noted the importance of examining the entire context in deciding on sanction for a Rule 439 violation:

32. Rule 439 is one of the cardinal rules in the railway industry given the potential consequences of a train failing to respect a stop signal. But a violation does not automatically result in termination. Instead, this Office has consistently examined the entire context surrounding a Rule 439 violation, along with an employee's service and disciplinary record, when considering the discipline imposed.

16. Arbitrator Picher in **CROA 2356** provided an excellent review of the treatment of Rule 439 violations:

The circumstances of this case, and the submissions of the parties, have caused the arbitrator to review the prior awards of this Office with respect to violations of UCOR 292 and CROR 429. As the cases disclose, allowing a train movement to proceed through a stop signal has always been viewed as a serious offense. It has not, however, been treated by employers as meriting automatic dismissal. In the earliest years of this Office the most common response of a violation of Rule 292 appears to have been a lengthy suspension, generally in the order of six months, although not always necessarily of that length. The suspensions recorded seem to have varied between forty-five days and nine months. (See **CROA 48, 168, 270, 303, 388, 439, 467, & 725.**) For a time, the tendency was to assess demerits for violations of UCOR 292. Generally, the demerits assessed fall within the high range, between thirty and fifty-five demerits. (See **CROA 350, 374, 743, 1031, 1116, 1306, 1328 [nullified at arbitration], 1372, 1674, 1696, 1710 & 1778.**) A small number of the cases involving the assessment of demerits also resulted in discharge for the overall accumulation of demerits.

Outright discharge for a violation of Rule 292, generally coupled with other rules violations, is revealed in a relatively limited number of cases (see **CROA 474, 681, 745, 1479, 1505, 1677 & 2124 [reduced to a suspension]**). In each of the cases involving an imposition of outright discharge by the company there has been some aggravating factor. For example, in **CROA 681** and **2124** the employee discharged for passing a stop signal had committed his second offence against the rule. In **CROA 745** a locomotive engineer was dismissed where a violation of Rule 292 was found to also involve a violation of Rule G, resulting in a collision and two fatalities. Serious collisions were also involved in **CROA 1479** and **1677**, while in **CROA 1504** the discharge of the locomotive engineer was motivated, in part, by his falsification of an employee

statement intended to evade his responsibility. More recently, employers have again used the assessment of suspensions for violations of rule 292 of the UCOR and rule 429 of the CROR (See, e.g., **CROA 2126, 2161, & 2267.**)

17. In the present matter, we are not dealing with a discharge because of a Rule 439 violation. The penalty imposed here was 45 Demerits, and discharge only occurred because of accumulation of Demerits.

18. In assessing the reasonableness of this penalty, it is necessary to review the aggravating and mitigating factors set out in the **William Scott** matter.

19. The most aggravating factor is clearly the violation itself, which has long been held to be one of the, if not the most, serious cardinal rule violations. Missing a Stop signal could imperil the train's own crew, other crew members, members of the public as well as creating the potential for significant property loss.

20. An additional aggravating factor is the complete disregard for the CFZ requirements. Although the Grievor was not specifically penalized for this in the assessment of the 45 Demerits, the facts can and must be examined to determine if the penalty is reasonable. Here, the Grievor admits that he did not follow the CFZ requirements and was distracted:

Q14. Mr. Parent, referring to the bulletin No 007 the CFZ is to be applied while approaching a stop signal. CFZ commences 3 miles before the stop signal or the moment the advance stop signal is observed until the movement has stopped for the signal to the next signal has been identified to be permissive. Were you compliant with this instruction?

A14. No

21. The Grievor has also demonstrated a recent decline in his professional behaviour, which has not been corrected by discipline. In the 8–9-month period preceding the

most recent incident, he has been the subject of 3 disciplinary events, only one of which was altered at arbitration.

22. I cannot agree, however, that this last incident amounts to a culminating incident, which according to Brown and Beatty, Canadian Labour Arbitrations, 5<sup>th</sup> edition, 7:63, requires a “consistently bad employment record”. This is not the case here.

23. The mitigating factors are numerous.

24. The Grievor has substantial seniority, with nearly 16 years at the company at the time of the incident.

25. This is his first Rule 439 violation. He has one other operating violation as a Locomotive Engineer, which is the subject of **CROA 5192**. Prior to this last incident, his only other operating violation was from 2008, some 15 years ago, when he was employed as a Conductor.

26. A major mitigating factor is the candour of the Grievor throughout the disciplinary events of 2023. In all cases, he has been forthright and accepted responsibility. In this matter he accepts the seriousness of his mistake:

Q30. Mr. Parent, are you satisfied with the manner in which his investigation had been conducted?

A30. Let the record speak for itself. I have been an employee for 16 years and try to adhere to all the rules. I fully understand the severity of the situation and I do not take this lightly. The scenarios that are running through my head make me realize the magnitude of the different scenarios that could have happened.

27. His discipline record was good for a lengthy period, up to 2023.

28. The jurisprudence indicates that discharge can take place for a Rule 439 violation if there are aggravating factors (see **CROA 2356**, **CROA 3745**, **CROA 5093**). Usually,

however, demerits or a lengthy suspension are imposed. In **CROA 3744**, Arbitrator Moreau reinstated a grievor with a Rule 439 violation, having 19 years of service and who was both forthright and remorseful. The reinstatement was without compensation, for a period of some 4 months. In **CROA 5093** and **CROA 5094**, this arbitrator-imposed suspensions of 12 months and 3 months on a Conductor and CLO who had committed a Rule 439 violation. Here, however, the Grievor is the Locomotive Engineer and bears a greater responsibility for the operation of the locomotive.

29. Arbitrator Picher in **CROA 2356** identified a range of 30-55 Demerits for a Rule 439 violation. This has been followed by Arbitrator Clarke in **CROA 4608**.

30. Balancing both aggravating and mitigating factors, significant discipline is required, but not at the highest end. I find this matter to fall towards the middle of the range of the circumstances examined in the jurisprudence.

31. Weighing these factors in light of the jurisprudence, I find that the discipline imposed to be somewhat harsh. The discipline imposed was undoubtedly a function of the greater existing discipline at the time of the decision, now reduced by **CROA 5191** and **CROA 5192**. I find that discipline of 40 Demerits would have been reasonable in the circumstances.

#### **B. Should the dismissal for accumulation of Demerits stand?**

32. The Grievor was dismissed for accumulation of 85 Demerits, including the 45 Demerits imposed for the present matter, well above the limit of 60 set under the Brown system. Decisions in **CROA 5191** and **CROA 5192** have now reduced the total discipline by 15 Demerits, leaving the Grievor with 25 active Demerits, prior to consideration of this matter. An award greater than 35 Demerits would result in attaining the Brown demerit limit.

33. The Company cites numerous cases dealing with Rule 439.

34. In **CROA 4582**, Arbitrator Sims noted that each Rule 439 case must be decided on its merits, with a careful examination of aggravating and mitigating circumstances. I agree with Arbitrator Sims.
35. In **CROA 4249**, Arbitrator Schmidt upheld a dismissal for accumulation of demerits, where the grievor was given 45 Demerits for a Rule 439 violation, but had 50 active Demerits on his record prior to the Rule violation, together with multiple operating violations.
36. A similar situation was examined by Arbitrator Picher in **CROA 4320**. A discharge was upheld, but the Arbitrator noted that the grievor had 55 Demerits at the time of the violation and that this was his second Rule 439 violation.
37. In **CROA 4608**, Arbitrator Clarke reviewed the length of service and discipline records in multiple earlier cases. He noted that Arbitrator Picher had reinstated without compensation grievors with lengthy service and good records in **CROA 2625** and **CROA 3866**. Arbitrator Clarke declined to intervene in that matter, noting that the Grievor was neither long service nor possessed of a positive discipline record.
38. In **CROA 4488**, Arbitrator Sims reinstated without compensation a 28-year grievor with no active discipline, who not only had breached Rule 439, he had also failed to properly send out an emergency broadcast.
39. The Union has cited multiple cases where grievors were reinstated without compensation.
40. In **CROA 3744**, Arbitrator Moreau reinstated without compensation a grievor who had committed a Rule 439 violation by some 350 feet. It is noteworthy that the grievor there had 45 demerits prior to the violation, but was nonetheless reinstated given his 19-year career and forthright acceptance of responsibility.

41. In **CROA 2356**, Arbitrator Picher reinstated without compensation a grievor who had committed a Rule 439 violation. The Arbitrator noted the clean disciplinary record of the grievor, but noted aggravating factors and that the grievor had only 7 years of seniority.

42. In **CROA 4145**, Arbitrator Picher substituted a suspension for a 25 Demerit penalty which would have brought the grievor over the Brown demerit limit. This was done despite the 50 demerits on the grievor's record at the time of the violation, and multiple rules violations:

At the time of his termination the grievor had accumulated twenty-four years of service. He had only one rules violation on his record as of 1999, although further rules violations appear in 2009, 2010 and 2011. On the whole, however, the grievor's record does not disclose a pattern of serious or cardinal rules infractions causing events such as derailments or collisions. While I do not agree with the Union's submission that this is a case for the application of article 86.9 of the collective agreement, which keeps an employee in active service pending the outcome of arbitration for a discharge prompted by a minor offense, and agree with the Company that the speeding infractions here under examination are serious, I am not persuaded that the termination of the grievor was justified in all of the circumstances. I accept, as a mitigating factor, that the weight of the grievor's train and the terrain over which he was travelling did make train handling difficult, a fact that was not assisted by the absence of dynamic brakes. In my view this is a case for an appropriate substitution of penalty.

In the result, the grievance is allowed in part. The Arbitrator directs that the grievor be reinstated into his employment forthwith, without compensation for wages and benefits lost and without loss of seniority. His disciplinary record shall continue to stand at fifty demerits.

43. In **SHP 742**, Arbitrator Moreau reinstated without compensation a 12-year grievor who had failed to properly secure a train. The Arbitrator set out his views on when reinstatement may be appropriate:

Overall, I find the comments of Arbitrator Schmidt in **CROA 4419** properly reflect the facts in this case as well:

While it is true that the grievor is not a long service employee and his error was a critical one, it is not properly elevated to the degree of recklessness such that the employment relationship is beyond redemption.

Having regard to all of the forgoing I am of the view that the imposition of a serious sanction, short of termination, will have the desired rehabilitative impact on this grievor. I therefore direct the Company to reinstate him forthwith without loss of seniority but without compensation for any wages or benefits lost.

A similar finding was expressed by Arbitrator Ready in **SHP 689**:

I find that a lesser sanction would be sufficient to impart to the grievor the seriousness of his wrongdoing and to make clear to him that it is his duty as groundman to pay attention to the rules governing locomotive movements.

After consideration of all the circumstances, it is my view that the employment relationship is not beyond repair. The grievor should be allowed a further opportunity to prove his worth as a Diesel Mechanic. But the penalty for his negligence must be such that it sends a strong message to him that further operational incidents of this kind involving safety violations could lead to the permanent fracturing of his employment.

Accordingly, I direct that the grievor be reinstated without loss of seniority but without any compensation for lost benefits or wages.

44. Here, the Grievor has nearly 16 years of service, with lengthy periods of little or no discipline. As of April 2023, the Grievor had only 10 active Demerits. The 3 months prior to his dismissal must be viewed as somewhat anomalous.

45. The Grievor has shown a lack of attention to key safety issues on two occasions, dealing with brakes and signals. This must immediately change if the Grievor hopes to continue his employment. However, the fact that the Grievor has been forthright throughout is a significant factor in reestablishing a trusting relationship with the Company.

46. In all the circumstances, I find that the discharge for accumulation of demerits should not stand. Instead, the Grievor should be reinstated without loss of seniority, but

without compensation. The time from his termination until his reinstatement should be recorded as a suspension. His discipline record should stand at 25 Demerits. It will be up to the Grievor to improve his record through diligent and attentive work.

### **Conclusion**

47. The grievance is upheld in part, with discipline of a time served suspension recorded as such substituted for the penalty of 45 Demerits. The discharge for accumulation of demerits is overturned and the Grievor is reinstated without loss of seniority, but without compensation, and with 25 Demerits remaining on his record.

48. I remain seized for any questions of interpretation or application of this Award.

**August 15, 2025**

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

**JAMES CAMERON**  
**ARBITRATOR**