

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

CASE NO. 5203

Heard in Edmonton, July 10, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Conductor Shelby Audet of Kenora, ON.

JOINT STATEMENT OF ISSUE:

Following an investigation Ms. Audet was dismissed on March 23, 2021, as follows: “For submitting FM claims on days not worked which resulted in the generation of fraudulent payments, as evidenced by the claims you submitted between the dates of December 17, 2020 and January 3, 2021, inclusive. A violation of the CMC Honour System for T&E Employees, Bulletin LR-020-20 FM Familiarization Claim Instructions, and Bulletin LR-024-20 Your Pay – T&E Wage Claim Responsibilities.”

The Grievor was offered a unilateral reinstatement with no compensation on June 24, 2022. The Grievor declined the offer of unilateral reinstatement on September 7, 2022, advising that she would not be returning to employment with the Company.

Union Preliminary Objection

The Union raises a preliminary objection to the scheduling of this grievance in the July 2025 CROA session.

Under Article 40 of the Consolidated Collective Agreement between TCRC and CPKC, only TCRC has carriage of grievances and only TCRC can submit grievances to be scheduled at CROA. This is further entrenched in the May 30, 2018 Letter re: Management of Grievances and the Scheduling of Cases at CROA. There is no legal mechanism under the Consolidated Collective Agreement, nor under the CROA Rules, for the Company to put forward the Union’s grievances for adjudication at CROA.

The Company had no authority for putting forth Ms. Audet’s grievance in place of the duly filed grievances of Robert Self. The Company has never previously asserted a right to “veto” grievances duly put forth by TCRC, nor written to CROA asking that cases of its own choosing be scheduled in place of those put forward by TCRC. There is no basis— under the CROA Rules or Collective Agreement—on which CPKC can unilaterally insist that Ms. Audet’s grievance be scheduled and must take priority to those of Mr. Self.

CROA slots are valuable, limited resources. TCRC seeks a declaration that the Company has acted in breach of the Collective Agreement and a direction from the Arbitrator confirming TCRC’s exclusive carriage of grievances.

Union Position

The Union contends that the investigation was not conducted in a fair and impartial manner under the requirements of the Collective Agreement. For this reason, the Union contends that the discipline is null and void and ought to be removed in its entirety and Ms. Audet be made whole.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above. The Union contends the discipline assessed is unjustified, unwarranted, and excessive in all the circumstances, including mitigating factors evident in this matter. 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 requests that the discipline be removed in its entirety, and that Ms. Audet be reinstated without loss of seniority and benefits and be made whole for all associated loss with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Union's position is that the period of time in dispute is from the date of dismissal, March 23, 2021, to the date the Grievor declined the offer of unilateral reinstatement, September 7, 2022.

The Company Preliminary Objection

Not only does the Company disagree with the Union's allegations regarding the scheduling of this case as outlined in their Preliminary Objection, but the allegations are also inappropriate in the context of this hearing and outside of the scope of the Arbitrator's jurisdiction. As such, the Company must object on the following grounds:

1. The Union has expanded their position on the eve of Arbitration to include a procedural argument which is not related to or previously seen in the grievance correspondence. This expansion is in violation of the Memorandum of Agreement Establishing the CROA & DR.
2. The Union has already forwarded this position to the CROA Office outside of the context of this grievance and received a response. That response is that "The issue regarding docketing and the creation of the schedule does not fall within the jurisdiction of the Arbitrator. This responsibility lies exclusively with the Office Administrator." (Emphasis Added)
3. The Union is attempting to achieve a right through Arbitration which they have not achieved through collective bargaining.

The Company requests that the Arbitrator appropriately dismiss the Union's Preliminary Objection in its entirety.

Company Position

The Company disagrees and denies the Union's request.

The Company maintains the burden of proof has been met and that the Grievor's culpability as outlined in the discipline letter was established following the fair and impartial investigation and that the discipline was determined following a review of all pertinent factors, including those described by the Union.

In regard to the Union's contentions that the investigation was not conducted in a fair and impartial manner, the Company cannot agree. The Company maintains that the requirements under the Collective Agreement were met, and the investigation had the essential elements of a fair and impartial investigation.

It is the Company's position, that the period of time in dispute is from the date of dismissal, March 23, 2021, to June 24, 2022, when the Company began efforts to unilaterally reinstate the Grievor.

The Company maintains the discipline assessed was appropriate, warranted and just in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed 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:

S. Oliver	– Manager Labour Relations, Calgary
S. Scott	– Manager Labour Relations. Calgary

And on behalf of the Union:

R. Church	– Counsel, Caley Wray, Toronto
J. Hnatiuk	– Vice General Chairperson, CTY-W, Mission
D. Fulton	– General Chairperson, CTY-W, Calgary
D. Psychogios	– General Chairperson, CTY-E, Montreal
G. Lawrenson	– General Chairperson, LE-W, Calgary
J. Bishop	– General Chairperson, LE-E, Severn
P. Boucher	– National President, TCRC, Ottawa
J. Rousseau	– Local Chairperson, Kenora
S. Audet	– Grievor, Winnipeg

AWARD OF THE ARBITRATOR

Background, Issue & Summary

- [1] The Grievor was hired on April 24, 2017 and worked for four years as a Conductor in Lethbridge, Alberta. In late 2020, she moved to Kenora.
- [2] On March 23, 2021 the Company dismissed the Grievor for improper wage claims under its Honour System of pay, specifically for claiming for multiple familiarization trips in Kenora between mid December of 2020 and early January of 2021, when none were worked.
- [3] She also sought payment for a day that she did not work because she had booked it off as an “earned day off” (“EDO”).
- [4] It is not disputed between the parties that the Grievor was not entitled to any of the pay which she claimed for herself. She was overpaid by approximately \$1919.
- [5] The Grievor was subject to a lengthy investigation prior to her dismissal, which the Union argued was neither fair nor impartial. It argued that the discipline should be *void ab initio* as a result.
- [6] In June of 2022, the Company presented the Grievor with a unilateral reinstatement offer, without compensation, on the basis of a “*last chance*”.

- [7] In September of 2022, the Grievor declined the offer and indicated she was no longer interested in returning to the Company's employ as was retraining as a social worker.
- [8] The parties disagreed on whether reinstatement should be considered as occurring in June 2022 when it was offered, or September 2022, when it was declined.
- [9] This Grievance continued to be processed. The Union withdrew a preliminary issue relating to scheduling.
- [10] The issues in this dispute are:
- a. Was the Investigation fair and impartial?
 - b. Was the measure of discipline just and reasonable?
 - c. If not, what discipline should be substituted by the exercise of this Arbitrator's discretion? and
 - d. If necessary to determine, what was the effective end date of the suspension (June or September 2022)?
- [11] For the reasons which follow, the Grievance is dismissed.

Analysis & Decision

- [12] While the Company offered the Grievor a "*last chance*" reinstatement, it maintained at the hearing that fraud had been established. Fraud is a serious allegation. It requires a very careful review of the evidence, including subjecting any explanation given by the Grievor to careful scrutiny, to assess her credibility that she only made a "mistake" and did not act with any fraudulent intent.
- [13] In late 2020, both the Grievor and her brother chose to transfer to Kenora. Upon moving to Kenora, the Grievor was entitled to familiarization tours, under Article 28 of the Collective Agreement.
- [14] Between December 17, 2020 and January 3, 2021, the Grievor paid herself for multiple days on which no "*actual tour of duty*" for familiarization was in fact worked by her.
- [15] This included the time period covering Christmas and New Year.

- [16] In addition to claiming pay for familiarization trips not taken, the Grievor also submitted a claim for payment for December 17, 2020, which was a day she took an EDO.
- [17] The Union argued her brother's experience was relevant to the Grievor's dispute, as it was maintained he made similar "*mistakes*" to the Grievor and was also reinstated.
- [18] His dismissal was set aside, and he was given a 45 day suspension: **CROA 4894**.
- [19] As will be demonstrated in this analysis, the argument the Grievor should be treated similarly to her brother is not compelling. It is not the case that the Grievor and her brother have been found to have the same intent, just because they are siblings and moved to Kenora together. Each case is dependent on its own facts.
- [20] When asked if she was aware of the Honour System Manual (Q/A 14), the Union requested a recess, before the Grievor provided her answer.
- [21] It is not appropriate for a recess to be taken after a question is asked and before it is answered. When that occurs, an inference can be drawn that the Grievor is seeking assistance with her answers from the Union. As this recess lasted 18 minutes for a straightforward question – which should have been a question that was expected by the Grievor and which she should have been prepared to answer - I am prepared to draw that inference in this case.
- [22] The Grievor came back from this 18 minute recess and answered: "*No, I was not aware of honour system manual. When transferred to Kenor was not supplied the T&E CMA Honour System Manual and one is not in the bulletin book*".
- [23] This is a curious explanation. Not being provided a copy of the Honour System Manual upon arriving in Kenora would not act to excuse the Grievor's obligations regarding that system of pay or serve to explain her actions. That answer further fails to consider that the Grievor had been paying herself under that Manual for the previous 3.5 years. Given she had 18 minutes to formulate that answer, it does not offer any reasonable or credible explanation and in fact serves to cast considerable doubt on the credibility of the Grievor.
- [24] When asked in Q/A 17 if the Grievor understood the CMA Honour System that she was her own timekeeper and responsible for her own timeslips and must take every effort to understand the Collective Agreement and the rules of pay, the Grievor answered "**Yes**".

- [25] At Q/A 22 she also indicated she understood that she was to submit an IP claim; seek advice from CMA, or from a Company Officer or Union Officer if she was “*not certain of your entitlement to a wage claim*”.
- [26] Yet at Q/A 36, she states she was “*not educated in knowing to the IP claim*”.
- [27] Those two answers are inconsistent and again reflect negatively on the Grievor’s credibility and on the reasonableness of her stated confusion and misunderstandings.
- [28] In Q/A 15, the Grievor states she was familiar with Appendix 3 to the Investigation.
- [29] Appendix 3 was a Bulletin with the Subject line of “FM” – *Claim Code Familiarization Claim Instructions*”.
- [30] That Bulletin states at number 1 that “*FM claims may only to be submitted in accordance with **Article 28** of the Collective Agreement*” (emphasis in original).
- [31] Had the Grievor any confusion, that Bulletin directed her to the appropriate Article in the Collective Agreement. The Bulletin goes further and sets out part of Article 28, in paragraph number 4:
- 4) a. Per Article 28.02, there are only two circumstances where FM claims may be made for payment “*on the basis of the actual tour being performed at the rate of pay associated with the service being familiarized for*”. Therefore, claim a minimum day (not the job rate) unless: (*italicized emphasis in original as wording quoted from Article 28; underlining added*).
- [32] The “*two circumstances*” are then set out: a) if an individual was “forced” to a terminal; or b) had not worked for 12 months or more as an LE.
- [33] Otherwise, the bulletin requires payment be made for “*actual tour being performed*” of a minimum day rate.
- [34] The minimum day rate was the rate populated and then claimed by the Grievor.
- [35] When it was noted at Q/A 39 that the Manual indicates it is not a defence to claim unfamiliarity, the Grievor’s answer was “Yes, but again not understanding the bulletin that was posted. I will pay back full amount that I missed claimed.”
- [36] The Grievor does not explain what about the Bulletin she did not understand.
- [37] The Bulletin also states that familiarization activities are to be “*pre-authorized by local management*”; that all FM claims must include the “*reason for familiarizing*”; the “*manager authorizing*” the “*Train/Yard/Assignment familiarized on*” (emphasis

- added) and the name of the employee. Employees are also reminded in that Bulletin of their obligations under the Honour System.
- [38] After Q/A 15, the Union representative objected that this could be confusing if an individual were forced to another terminal.
- [39] A further recess of 15 minutes was taken at this point in the Investigation, after this objection was taken.
- [40] That is an inappropriate interjection by the Union into this interview. The question is not whether the Union representative found it confusing, but whether the Grievor did. It is the Grievor's interview, and up to the Grievor to state if she was confused by this aspect of the Bulletin.
- [41] That was not her evidence.
- [42] At Q/A 43 the Grievor was asked that since she understood the Bulletin at Appendix 3, why she did not enter the required information with her various claims (such as that for December 22)? This was a very reasonable and important question. Her response to that question was *"As I stated before just a misunderstanding the honour system"*.
- [43] That answer is not responsive to that question. It was void of any specifics of what was confusing to her about the Bulletin.
- [44] However, a general *"misunderstanding"* continued to be her response throughout the various claims on which she was questioned, without any details of what was misunderstood, or why.
- [45] The Grievor also gave evidence that the requirement in the Manual for pay *"when familiarizing in yard service or road service"* was *"vague"* (Q/A 19), yet even with this statement, she also stated on multiple occasions that she *"thought she understood it"* (eg, Q/A 190), which answers are inconsistent.
- [46] The evidence as noted above has established the Grievor knew what to do when a direction was *"vague"*, and knew to file an IP claim. In this case, although she believed the requirement to be *"vague"*, she chose not to take any of those steps. In fact, at several points when questioned about the specific dates, she stated that she felt she was entering time *"correctly"*.
- [47] Since the Grievor stated she felt the direction was *"vague"*; and since she took no steps to seek any clarification, she had no basis even on her own explanation to have determined that she was entering her time *"correctly"*; she had no basis – to

- believe she was “*correct*” and in fact the Bulletin at Appendix 3 provided a basis that she was *not*.
- [48] Her evidence of her understanding that she *was* entitled to those payments and so felt she was “*correct*” in her entries, was simply not credible.
- [49] In Q/A 16, the Grievor was asked if she was familiar with Appendix 4, “*T& E Wage Claim Responsibilities*”.
- [50] The Union and Grievor then took another 4-minute recess before the Grievor gave her answer to *this* question. The same concerns already noted regarding a recess taken after a question is asked and before a question is answered are repeated. An inference is appropriately drawn from such behaviour that the Grievor was being coached for her answers.
- [51] During her Investigation, the Grievor was taken through each day she improperly claimed, and asked a series of questions for each event. She maintained that she made the claims she did as she “*misunderstood the honour system*”; that she “*would not steal from the Company on purpose*”; (Q/A 178); and that she did not understand the Bulletin at Appendix #3. She also committed at several points to repay the mistaken amounts.
- [52] Paying back an amount does not excuse improperly claiming it in the first place.
- [53] When asked at Q/A 23-25 about her EDO claim for December 17, 2020, and in particular when asked whether she worked that day (at Q/A 25), another recess was taken of 3 minutes, before the Grievor gave her answer to that question.
- [54] It is inconceivable that the Grievor could not answer that question without a recess.
- [55] The same inference - that the Grievor was being coached before this answer – arises and is drawn, negatively impacting the Grievor’s credibility.
- [56] At Q/A 29 the Grievor expanded that “*Yes, I claimed it because I misread [sic] allowed to collect a minimum day, by not receiving the honour system manual*”.
- [57] The Grievor also offered a different explanation for this EDO at Q/A 33, where she stated that when she entered the claims, she had forgotten that she had an EDO on December 17 and “*put it in my mistake*” (emphasis added).
- [58] That is a different reason for claiming payment for an EDO than “*misreading*” the manual.

- [59] Her two different explanations for claiming the EDO are inconsistent and impact negatively on her credibility.
- [60] In June of 2022, the Company unilaterally offered the Grievor what it described as a “*last chance*” reinstatement.
- [61] In September of 2022, the Grievor declined reinstatement and decided to pursue training in social work.

Arguments

- [62] The Union raised a preliminary objection that the Investigation – which lasted approximately six hours – was neither fair or impartial. It argued the questions were repetitive and leading and presumed the Grievor’s guilt.
- [63] There was also an issue as to the timing of the suspension which has been served. The Company argued any reinstatement would have been effective in June of 2022 rather than in September of 2022 when the Grievor finally responded to the Offer; the Union argued that compensation would run until the offer was declined in September of 2022.
- [64] Regarding the merits, the Company argued that the Grievor’s actions in paying herself for time that she did not work – and for time when she was on an EDO – was in fact fraudulent behaviour. Even if not fraudulent, it argued her behaviour was careless and reckless and deserving of the lengthy suspension which was imposed. It pointed out the Grievor was a short service employee, who had not offered a credible explanation for her misconduct. It also argued she improperly claimed payment for an EDO during the same time period, without explanation.
- [65] The Union argued as a preliminary point that the Investigation was not fair or impartial, as it was repetitive, with unnecessary and leading questions, lasting more than six hours. It also urged that the Company’s internal memorandum should not be considered. On the merits, it argued alternatively that the Company had not met its burden to establish fraudulent misconduct. It argued the Company’s willingness to reinstate the Grievor in 2022 demonstrated that the bond of trust with the Grievor has not been broken. The Union also pointed out the Grievor was still within the window to adjust her claim. The Union also argued the Grievor’s situation was identical to that of her brother, whose dismissal was recently addressed by Arbitrator Cameron in **CROA 4894**. In that case, a 45 day suspension was imposed in substitution.

- [66] The parties are agreed that the issue is the measure of discipline and not whether culpability was established for some form of discipline, subject to the Union's preliminary objection regarding the Investigation.
- [67] The Union has argued the Grievor's brother's misconduct is similar and his 45 day suspension is persuasive for the Grievor's misconduct, rather than the 15 month suspension that was served by the Grievor. Mr. Audet's dispute was resolved by Arbitrator Cameron in **CROA 4894**.

Analysis & Decision

The Investigation

- [68] The first issue to be resolved is the Union's claim that the Investigation was not fair or impartial.
- [69] The Union's arguments regarding the Investigation are not compelling.
- [70] The issue of a lengthy investigation was canvassed in **CROA 4894**. Arbitrator Cameron noted that the questioning in that case was "*highly repetitive*", in an Investigation that lasted more than four hours, with the same questions being asked and then answered.
- [71] Those same arguments were raised in this case.
- [72] While Arbitrator Cameron noted the questions *could* have been asked in a different manner by adopting previous answers – shortening the time needed - he did not find that repetitive questioning for each incident rendered the Investigation either unfair or impartial. While he also noted some of the questions were leading, he found those questions were limited. I am satisfied the same conclusions can be drawn from this Investigation. When multiple confounding claims are made, the Company is within its right to question the Grievor about the details of each of the improper claims. It may well be that there are distinctions in explanation for certain of the days and not for others.
- [73] That this may result in a lengthy Investigation results from the *number* of improper claims made by the Grievor that must be Investigated, as much as from the questions themselves.
- [74] It must also be emphasized that Investigating Officers are lay people. Leading questions can be difficult even for seasoned counsel.

- [75] It is of note that the length of the Investigation in this case was not only influenced by the Investigating Officer, but by the actions of the Union, both in being argumentative even before the first question as to what *should* have happened, but also – as noted above – taking time for multiple recesses most often between the questions asked and the answers given, which were inappropriate.
- [76] The Investigation was neither unfair nor partial. It met the basic requirements of Investigations as set out in arbitral jurisprudence in this industry.

Preliminary Determinations

- [77] Two preliminary points are necessary to address.
- [78] First, Grievances which involve questions about the measure of discipline under the second question of the *Re Wm. Scott* framework – as does this one - are fact-specific. Precedents are therefore of limited value, as no two fact situations; and no two situations of knowledge or of action/decision, will be the same, *even if* two siblings both made a mistake.
- [79] While the Union has argued the Grievor's brother situation is persuasive, as will become apparent, on a careful review of the transcript, this argument is not compelling.
- [80] Second, Arbitrators are limited in their review of evidence to what appears in the Investigation transcript and the documents filed. Union's cannot provide evidence in their Briefs from their own knowledge of a Grievor's situation.
- [81] The Union argued the Grievor was confused between claiming for "*training*" and claiming for "*familiarization*". Upon a careful review of the Investigation transcript, however, the Grievor does not in fact make that connection herself or refer to any such confusion to explain her actions. That connection is made by her brother in his Investigation, but is not made in the Grievor's evidence.
- [82] The same comments made in **AH722** are applicable to this situation:

While the Union's thorough submissions are commendable in attempting to justify or mitigate his actions, the Grievor himself – given full opportunity to do so at the investigation state – did not provide similar explanations or justifications which might assist in justifying/explaining his conduct. An Arbitrator cannot take evidence from the Union, from their own knowledge of the Grievor's situation (at para. 9, emphasis added).

Were the Grievor's Actions Fraudulent?

- [83] To answer this question, the Grievor's credibility must be carefully considered and assessed.
- [84] Credibility is never easy to determine on written documentation, but a wholistic review of the evidence must be undertaken. That careful review of the Grievor's Investigation and documentation was undertaken to answer this question.
- [85] The Honour System of Pay is set out in the Honour System Manual, which is a 41 page document. Under that system, the Grievor is her own timekeeper and is entrusted to properly submit her claims for wages.
- [86] The Manual clearly sets out that timeslips are automatically paid, and that each employee is responsible for the accuracy of their own pay. If in doubt about a claim, an individual is directed to route a claim to an audit specialist for determination. While the Company does conduct periodic audits, it does not review every claim made. The same Manual applies across the country; it is not location-specific.
- [87] I am satisfied the Grievor was trained on – and made aware of - the requirements of the Honour System of Pay; and that she entered her time under that system for 3.5 years as a Conductor in Lethbridge, before the incidents at issue in this Grievance.
- [88] As a starting point, Article 28 of the Consolidated Collective Agreement (the "Agreement") provides, in part, that the Grievor was to "*receive payment for familiarization tours of duty **on the basis of a minimum day for the actual tour of duty being performed***" (emphasis added).
- [89] I am satisfied this wording is clear that the Grievor was only entitled to pay for an "***actual tour of duty***". (emphasis added). To be entitled to pay for a familiarization trip under the Collective Agreement required that the Grievor actually worked on a familiarization "trip". This makes intuitive sense as "*familiarization*" could not in fact occur if no tour of duty were actually worked to give that required familiarization.
- [90] Familiarization is not gained merely by being present in a Terminal, or sitting at home enjoying the Christmas holidays.
- [91] The wording of Article 28 requiring an "***actual tour of duty***" worked was in fact also set out in the Bulletin at Appendix #3. The Grievor's awareness of this Bulletin is an important understanding in the context of this dispute, as is her failure to explain what about this Bulletin she failed to "*understand*".

- [92] It was not made clear by the Grievor what aspect was confusing to her about the Bulletin or its reference to Article 28, and to an “*actual*” tour of duty being required for familiarization trips to be claimed.
- [93] The Grievor’s own evidence is that she felt the requirements around Familiarization were “*vague*”. There was no evidence of what she in fact found to be vague about the Bulletin.
- [94] The Bulletin is not “*vague*”. There is a clear reference to the need to work an “*actual*” tour of duty in the Bulletin.
- [95] If the Grievor *did* find this clear Bulletin to be “*vague*” as she stated, she would have also asked a Union or Company Official what to do. Her actions, however, were not consistent with her own explanation. She made no efforts to seek clarification or to even review Article 28, referred to in that Bulletin. The Grievor’s explanation that she did not “*understand*” the Bulletin is neither reasonable or credible.
- [96] As noted above, it is also noteworthy that – unlike her brother – the Grievor did not indicate she had any confusion between pay for “*training*” and pay for “*familiarization*”.
- [97] At paragraph 24 of **CROA 4894**, Q/A 128 of Mr. Audet’s interview is reproduced. The evidence also established at para. 23 that he put “*please adjust*” on his time claims (which does not route the claim to an auditor) and that he was confused he was to be paid “*as if I was in training*”. He further stated he should have asked for clarification on the requirements.
- [98] The Union focused on this same confusion as explaining the Grievor’s “*mistake*”.
- [99] However, the Grievor did not provide the same explanation for her confusion in her Investigation as did her brother in his Investigation. Her references are to her understanding that she was “*paying herself properly*” and that she read the honour system manual “*wrong*” (Q/A 192).
- [100] Neither did she demonstrate the same insight as her brother, as to what she should have done to seek clarification.
- [101] The Grievor initially blamed her misconduct on not being aware of the Honour System Manual, as if that ignorance would explain why she thought she was entitled to pay, including pay for *a day she herself had booked off as an EDO*.

- [102] The Honour System has been in place for many years, including all years which the Grievor worked for the Company in Lethbridge. The Manual is the same across the country; it does not change depending on location.
- [103] I am satisfied the Grievor in this case was appropriately trained that she was her own timekeeper. In fact, she had already been acting as her own timekeeper for the four years previous to this date.
- [104] Initially in her Investigation, she maintained she was unaware of the Honour System of Pay Manual because she was not supplied with a copy when she transferred to Kenora (Q/A 14).
- [105] The Grievor offered no explanation why she would need another “copy” in Kenora. Whether the Grievor received a “copy” with a transfer does not change her responsibility to accurately pay herself under its terms. I am further satisfied as evident in her Investigation that she was made aware that if she had any doubt, an IP claim was the appropriate route to have that addressed. She could also have asked a question of her Union representative or a Company representative.
- [106] This explanation did not provide a credible reason for the Grievor to have made a “*mistake*”.
- [107] Further, this explanation was given after an 18 minute consultation with her Union. That consultation was taken after that question was asked but before she provided her answer. Her need for an extensive consultation with her Union before answering this straightforward question was very suspect and casts significant doubt on her credibility. I am satisfied that if the Grievor in fact made a “mistake” which was unintentional she would not have needed 18 minutes caucus with her Union to answer the straightforward question of where she had an awareness of the Honour System Manual.
- [108] The Grievor’s explanation is simply not credible.
- [109] The Grievor indicated in her Investigation that she was familiar with Appendix 3. Appendix 3 states that for “Familiarization Claims”, the “*train/yard/assignment*” and the “*manager authorizing*” had to be stated on the claim. The Grievor’s evidence was she was aware of this obligation.
- [110] It is difficult to state which “*train/yard/assignment*” the Grievor felt she was being familiarized on for a particular pay request made by her, when she had spent no

time on a particular Train/Yard/Assignment on the date she claimed for “*familiarization*”.

- [111] The Grievor in fact chose not to include these details on her pay request, nor did this cause her to question what she has described as her own feeling that she was “*correct*” for seeking pay for days she did not work.
- [112] The Bulletin is clear that Article 28 requires “actual” tours of duty or “trips”. I am satisfied the Grievor was aware familiarization required “*trips*”. She failed to include information which she was aware was required by Appendix 3, because - not having worked those trips - she did not have that information to support her claim.
- [113] The evidence established the Grievor had to take multiple steps – and make several assumptions and determinations to pay herself as she did – for days she did not work: She had to *ignore* all of the requirements of the Bulletin at Appendix 3, of which she was aware; she had to decide *not* to provide any of that information requested (because it did not exist for those dates); she had to decide *not* to review Article 28 for her entitlement; she had to chose *not* to route her claims to IP for a determination; and she had to ignore the reminders she was her own timekeeper contained in that Bulletin and her responsibility to ensure the accuracy of her claims.
- [114] I cannot agree that these multiple actions were all a result of a “*mistake*”.
- [115] There is no evidence the Grievor asked any questions of anyone about how she should be paid. There was no evidence she asked a Union representative; checked the agreement herself; or even made an IP claim.
- [116] From a careful and thorough review of the Investigation transcript, I do not find the Grievor *was* in fact confused or mistaken regarding her obligations. She had no basis to be pay herself for work not performed and could not explain what was confusing to her. Her explanations for why she felt she was correct are neither reasonable nor credible, nor do they support a “*mistake*”. I am satisfied the Grievor had an awareness of what she was doing and that her actions were an intentional attempt to pay herself for work not performed, for familiarization trips
- [117] Not having found the Grievor’s explanations either reasonable or credible in the face of clear instructions that Article 28 requires an “*actual*” tour of duty be worked for payment to occur, I am satisfied the Grievor’s intent in doing so was to pay herself for work not performed, which is fraudulent and constitutes time theft.

- [118] The same conclusion is reached for the Grievor's claim for an EDO.
- [119] Claiming for an EDO is a separate and concerning action from her improper claims for "*familiarization*". It is not credible – and I do not accept – that the Grievor "*mistakenly*" believed – *from any type of "misread" or otherwise* - that she was entitled to pay for days on which she did not work.
- [120] The Grievor's evidence regarding EDO is neither credible nor compelling and is in fact riddled with inconsistencies.
- [121] When questioned why she claimed \$213.24 for her EDO, the Grievor stated "Yes *I claimed it because I misread were allowed to collect a minimum day, by not receiving the Honour System Manual*". It is not clear how any misread or misunderstanding of the Honour System would support a conclusion she should be paid for an EDO. At the end of her Investigation, she stated that she "*read the honour system manual wrong*". This is a change from her *earlier* stated ignorance of the requirements of the manual because she did not get a copy. She also stated at the end of the Investigation that she "*mistakenly put in a payment on the 17th of December when I was on my EDO as I was thinking that I was put on the board to do my familiarizing trips*" (emphasis added).
- [122] Not only is this explanation at the end of the Investigation a change of story for *why* an EDO was claimed, but it is also a recognition that "*familiarization*" in fact involves taking "*trips*".
- [123] The Grievor also offers *another* explanation for claiming an EDO that, as she was new to the terminal and meeting new people, she had a "*lot on her mind*" (Q/A 28)
- [124] These are all different explanations. It is not clear which explanation is in fact what the Grievor relied on, given these inconsistent offerings.
- [125] During the course of her 3.5 year career before her transfer to Kenora, I am satisfied the Grievor would have taken many, many days off and knew when – and when not – to claim those days.
- [126] Given her knowledge and the contradictory and inconsistent explanations offered by her, I am satisfied the Grievor knowingly claimed for a day on which she was aware she did not work and is guilty of fraudulent time theft.

Was Discharge Just and Reasonable Discipline?

- [127] Time theft is one of the most serious and significant offences in the field of labour relations. Such misconduct cuts to the heart of the employment relationship.
- [128] Arbitrators have considered Honour System Manual contraventions to be significant and serious misconduct, given the trust the Company must maintain in its employees to pay themselves appropriately.
- [129] The Company discharged the Grievor. It unilaterally offered the Grievor what it termed to be a “*last chance*” in June of 2022. The Grievor declined that option, but not for three months, until September of 2022.
- [130] The Union argued the Company illustrated that the bond of trust is not broken, given it agreed to reinstate the Grievor.
- [131] That conclusion does not necessarily follow from the Company’s actions. It is not a foregone conclusion from the Company’s offer that the Company now “*trusts*” the Grievor. The Company may well have made that offer to “*freeze*” its ongoing liability, with an intention to monitor the Grievor’s Honour System entries very closely from that time forward, precisely because trust was lacking.
- [132] The Grievor was offered a “*last chance*” opportunity, without compensation. That could have allowed the Company to dismiss the Grievor on any further issue.
- [133] This is also not a case of “*converting suspicion into legal conclusions*”, as that phrase was used in **CROA 2959**.
- [134] Arbitrators are united that time theft from fraudulent intent can support discharge: **CROA 1835** (one day of falsification of trip tickets; knowingly “*for the sole purpose of enhancing his earnings*”); **CROA 4438** (fraud was established; employee made 14 unjustified wage submissions on one day, for days she was not reporting to work; normal capacity and awareness; fraud established); **AH863** (over 130 false claims made); **CROA 2559** (not working but made false claims for two days; and falsified a radar report).
- [135] Both discipline for the particular issue – and deterrence to other employees – are legitimate goals for discipline in these cases.
- [136] The Grievor was a short service employee. She had received one reprimand during the course of her career, for failure to properly line a switch. While her discipline record would be a mitigating factor, her short service is not. Her lack of

insight and responsibility are aggravating factors. It is also relevant that in this industry, employees work – and submit their timeslips - largely unsupervised

- [137] While the Union offered **CROA 4281**, that case is distinguishable, as the Arbitrator found the Grievor believed he was entitled to make certain of the claims; and was careless for others. Unlike in this case, in that case, his explanations were credible.
- [138] The Grievor's explanations were not found to be credible. **CROA 4281** is distinguishable.
- [139] The Union relied on **AH723**. In that case, the Grievor submitted a wage claim as a "trainee" instead of as a "*trainer*". Unlike in this case, the grievor's explanations for doing so were not shifting, but were consistent, yet a "severe" disciplinary response was held to be appropriate, of 45 days.
- [140] No fraud was found in that case, which distinguishes it from this situation.
- [141] In *CN v. IBEW* (unreported), also relied on by the Union, the Arbitrator found the Company had been "*piling on*", which is not the situation in this case.
- [142] The Union also argued the Grievor should be treated the same as her brother in **CROA 4894**, with dismissal set aside and a significant suspension substituted. This argument is not compelling. No fraud was found by the Arbitrator on the facts in **CROA 4894**. That distinguishes the facts in that case from this case.
- [143] Even if **CROA 4894** were found to be persuasive, Mr. Audet, demonstrated *insight* into what he *should* have done, by his comments at the end of his Investigation. He stated: "*I should have asked for further clarification from union officers or company officials...*". That level of insight is lacking in this case.
- [144] It is concerning that – unlike her brother – the Grievor had no insight into what she *should* have done, or what her responsibilities were. A lack of insight serves to aggravate a disciplinary penalty, as insight provides comfort to the Company that she understood what was done wrong and that it will not be repeated.
- [145] Neither is it clear Mr. Audet sought to off-load responsibility onto the Company, as in this case, where the Grievor blamed her mistake on the Company because she was not given a copy of that Manual when she moved to Kenora, which is not credible given she was aware of the Bulletin which provided specific direction to her, which she ignored.

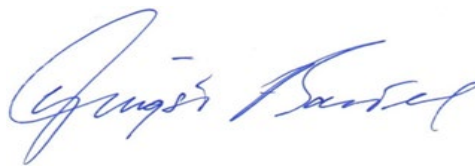
- [146] That “off load” of her own responsibility does not demonstrate that she took responsibility for her behaviour. A lack of responsibility is also aggravating for discipline.
- [147] The Grievor was initially discharged. That discipline would have been upheld as reasonable, given that fraud has been established.
- [148] The Company then chose to make a reinstatement offer to the Grievor, without compensation. In this industry, it is not unusual for Arbitrators to also offer to Grievor’s reinstatement without compensation to provide a second “*chance*”.
- [149] Given the findings made in this case, dismissal was appropriate discipline. Given that reality, reinstatement without compensation for 15 months was also a just and reasonable – and lenient – disciplinary response.
- [150] As such, there is no basis to interfere with that penalty.

Conclusion

- [151] The Grievance is dismissed.

I remain seized for any questions which may arise relating to the implementation of this Award; to correct any errors; and to address any omissions, to give this Award its intended effect.

July 24, 2025



**CHERYL YINGST BARTEL
ARBITRATOR**