

**IN THE MATTER OF AN AD HOC ARBITRATION**  
**BETWEEN**  
**TEAMSTERS CANADA RAIL CONFERENCE (TCRC)**  
  
**And**  
**CANADIAN PACIFIC RAILWAY COMPANY (CP)**

**DISPUTE:**

The 45-day suspension assessed to Locomotive Engineer Justin Lazzarotto, of Revelstoke, BC.

**JOINT STATEMENT OF ISSUE:**

Engineer Lazzarotto was assessed with a 45-day suspension described as:

For improper train handling while yarding Train 100-08 into Track 1 at Field, BC on July 8th, 2020 on the Mountain Subdivision, which resulted in roll back of your train passed Signal 15B Field West. This is a violation of Rule Book for T&E Employees Section 2 General, Item 2.2(a), Item 2.2(c),(v)&(vi) and GOI Section 1 Train Handling 32.1 & 32.2, GOI Section 1 Equipment Handling 40.1 Non-Main Track, GOI Section 1 42.4 Stopping Freight Trains, and GOI Section 1 42.6 Slowing or Controlling Freight Trains.

The parties agree that CROA rules apply including item 14 of the Memorandum of Agreement Establishing the CROA&DR.

**UNION'S POSITION:**

It is the Union's position that a 45-day suspension assessed to Locomotive Engineer Lazzarotto for "improper train handling" is egregious and excessive. The 45-day suspension assessed by the Company is excessive and unnecessary and provides no additional prohibitive value in this instance. The Union submits Engineer Lazzarotto was placed in a circumstance difficult to navigate. The facts outlined within the investigation confirm the incident was not deliberate nor negligent.

The Union contests the fairness and impartiality of the investigative process. Specifically, the download markings from Mark Clarkstrom point blame and does not leave this investigation fair and impartial. Also, Mark Clarkstrom suggests that Engineer Lazzarotto should have applied tractive effort to "compensate for slack run out" which would have completely negated the efficacy of the brake test as per GOI Section 4. The Union further argues the Company made judgement on the outcome by asking pre-judged questions without first holding an investigation to find the facts. In Q&A 49, "Do you understand that as a result of the slack not being adjusted correctly, that the tailend of your train 100-08 ran out and a set of trucks on TTGX 971778 went past Signal 15B at Field West? A) Yes I understand but I brought the train into the yard cautiously because it was extremely tight to fit the train into the track." The Company has clearly made judgement on the outcome by asking this question without first holding an investigation to find the facts. Further,

the Company Officer is incorrect in his accusation, it was alleged that because the slack ran out from the brake release test which is how you test the efficiency of the brakes that the Rule 439 violation occurred. Further, Mr. Lazzarotto was not even informed about the alleged violation for a week. As well, the Company was insistent almost to a point of badgering Mr. Lazzarotto that the train would not have fit between the crossing and the signal. Within Q&A's 25-31 the Company asserts the train could not have fit, Mr. Lazzarotto advised multiple times that he was aware the train was a tight fit but he did check with the RTC to ensure he had fit when he stopped.

The Company also failed to report the violation to the crew once it was discovered which is a violation of Section 124 of the Canada Labor Code. Failure to report the violation to the crew is also a violation of the Railway Safety Act objectives. The Company has an obligation to make all parties aware of the incident prior to formulating a plan for prosecution.

If the Company had provided the burden necessary to assess discipline, the assessment of a 45-day suspension for the tail end of the train rolling back mere feet is beyond what arbitral jurisprudence has contemplated.

The Union seeks an order that the 45-day suspension be expunged from Engineer Lazzarotto's work record and that he be made whole for lost wages, with interest, as well as any lost benefits in relation to his time withheld from service. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

#### **COMPANY POSITION:**

The Company disagrees and denies the Union's request.

The Company cannot agree with the Union's allegations that the investigation was anything other than fair and impartial.

The Company does not agree that an event recorder download must be accompanied by evidence to show the Company followed procedure in downloading the event recorder. At no time did the Union object to whether or not the Company followed procedure, only regarding the submission of such evidence which is inherently unnecessary. Regarding Q49, the grievor agreed this is what occurred. Finally, the Company cannot agree as the Union has suggested that Section 124 of the Canada Labour Code requires this.

The Company maintains the Hybrid Discipline & Accountabilities Guidelines were properly followed in the circumstances. Major-Life Threatening Violations are clearly listed and, following a fair and impartial investigation into this matter which determined culpability for the violations listed in the Form 104, the grievor was assessed discipline in accordance with these Guidelines. Moreover, a 45 day suspension is supported by arbitral jurisprudence for a second major rule violation.

Discipline was determined following a review of all pertinent factors, including those that the Union describe as mitigating. The Company's position continues to be that the discipline assessed was just, appropriate and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed.

The Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

FOR THE UNION:



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Greg Lawrenson  
General Chairman  
TCRC TCRC LE - West

FOR THE COMPANY:



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Lauren McGinley  
Assistant Director Labour Relations  
CP Rail

March 28, 2023

Hearing: By video conference. April 13, 2023

**APPEARING FOR THE UNION:**

Ken Stuebing, Counsel, Caley Wray  
Greg Lawrenson, General Chair  
Harvey Makoski, Senior Vice General Chair  
Cam Murtagh, Local Chair  
Justin Lazzarotto, Grievor

**APPEARING FOR THE COMPANY:**

Poonam Sheemar, Manager Labour Relations  
Francine Billings, Assistant Director Labour Relations  
Lauren Mcinley, Assistant Director Labour Relations

**AWARD OF THE ARBITRATOR**

**JURISDICTION**

[1] This is an Ad Hoc Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. The protocols entered into by the parties provided for submission of detailed briefs filed and exchanged in advance of the hearing. At the hearing, the parties reviewed the documentary evidence and made final argument. Awards, with brief written reasons, are to be issued within thirty days of the hearing. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

**BACKGROUND**

[2] The Grievor, Justin Lazzarotto, entered the Company's service November 2011. He qualified as a Conductor later that year. He was subsequently promoted to Locomotive Engineer in March 2018.

[3] At the time of this issuance of discipline, the Grievor had been working as a Locomotive Engineer on the Mountain Subdivision in Revelstoke, BC for 2 years. He had approximately 8.8 years' of service and had received discipline on three previous occasions during his career. All three were suspensions.

[4] Nine months prior, the Grievor had served a 40-day suspension for failing to control Train 866-287, at controlled location Griffith East resulting in signal 712C displaying “Stop” [Rule 439] being passed without authority, on October 7th, 2019.

[5] The basic facts of this incident are not in dispute. Upon arrival at Field, the Rail Traffic Controller (RTC) instructed the crew to yard train 100-08 in Track 1 and secure and to cut the crossing, if necessary. Train 100-08 was 8971 feet in length; consisted of 3 locomotives, 45 loads, 22 empties and had a 7391 estimated gross tonnage. The Track 1 length capacity per the summary bulletin was 8500 feet between signal 15B Field West and the public crossing at mile 136.4. The RTC advised the crew when it was clear of Signal 15B Field West. However, shortly thereafter and while the crew was still on the train a roll back cars on the tail end passed Signal 15B Field West.

[6] The RTC did not notify the crew of the roll back or passing of the signal. The crew then booked off duty at 04:45 July 9. They booked 8 hours rest after having been on duty since 1900 the day before. The Company maintains the incident constituted a Major-Life Threatening Violations. However, the crew was allowed to continue working. The Grievor continued to work for seven more days before being notified of the incident.

#### **ANALYSIS AND DECISION**

[7] There are two major allegations by the Company which are central in considering the appropriateness of the 45 day suspension assessed by CP Superintendent Brad Templeton on July 28, 2020. First, was there improper train handling by the Grievor while yarding Train 100-08 in Track 1 at Field, BC on July 8th, 2020? The second is whether the Grievor’s train handling resulted in the roll back of the cars and the passing of Signal 15B Field West.

[8] The Company argues that upon arrival at Field, the Rail Traffic Controller (RTC) instructed the crew to yard train 100-08 in track 1 and secure and to cut the crossing, if necessary. It says the Grievor knew he had the ability to cut the crossing. He was in no way restricted from this train handling option.

[9] It is not in dispute that Train 100-08 was 8971 feet in length; consisted of 3 locomotives, 45 loads, 22 empties and had a 7391 estimated gross tonnage. Track 1 length capacity was 8500 feet between signal 15B Field West and the public crossing at mile 136.4. I find that a reasonable person would have concern for whether the 8971 foot train would fit in the 8500 feet of track. A 471 foot roll out of a bunched train was clearly a possibility to be considered.

[10] The Company maintains that the Grievor was responsible for the safe operation of his movement. Knowing the territory, he was relied on to plan ahead and select the most desirable train handling method. It says that by using throttle modulation to control his train entering Track 1 on an ascending grade, the Grievor stopped his movement in a bunched state, without all slack stretched out and just clear of the public crossing bond. He confirmed with the RTC that the tail end of his train was clear of signal 15B. The Grievor did not choose to cut the crossing.

[11] The Union contests the fairness and impartiality of the investigative process. Specifically, it says the download markings from Mark Clarkstrom point blame and does not leave this investigation fair and impartial. Also, Mark Clarkstrom suggests that Engineer Lazzarotto should have applied tractive effort to compensate for slack run out, which it says would have completely negated the efficacy of the brake test as per GOI Section 4. The Union further argues the Company

made judgement on the outcome by asking pre-judged questions without first holding an investigation to find the facts.

[12] The Union argues that by no means is Mr. Lazzarotto seen to have turned a blind eye to the requirements of the CROR or the proper procedures on July 8, 2020. It says Mr. Lazzarotto explained throughout his employee statement that he and his crew took proper steps to yard and secure their train. By no means does the evidence reflect any attempts to circumvent or disregard proper safe work procedures on Mr. Lazzarotto's part that should attract discipline, let alone a 45 day suspension.

[13] The Union says that even if there is a technical violation established on balance, the Company's conduct in response to this incident demonstrates that no real danger is seen to have existed on July 8, 2020. The Company neglected to report the purported violation to the crew once it was discovered—or indeed for 7 days thereafter. As noted in the Union's grievance, this is both a violation of Section 124 of the Canada Labor Code as well as a violation of the objectives of the Railway Safety Act.

[14] I find that, at best, the Grievor recognized the track was 8500 feet from the signal to the crossing for his train of 8971 feet. He clearly acknowledges such in his statement providing:

Q24 Upon arrival at Field what yarding instructions did you receive from the RTC for your Train 100-08?

A We were originally told to yard our train on the lead and do not foul track 1 and secure, then the RTC came on and changed our instructions to yard our train in track 1 and secure and cut the crossing if necessary.

Q27 Referencing Appendix E Nexus Train Details for Train 100-08 it shows the train as 8971 feet, this would have been 471 feet to long for track 1 as it only holds 8500 feet. Is this correct?

A Yes.

Q28 With the public crossing at mile 136.4 and your length of 8971 feet, you would have had to cut the crossing in order for your train to fit in track 1. Is this correct?

A Yes.

Q29 Did you cut the crossing with your locomotives at Field?

A No.

Q30 Please explain why not?

A I stopped with my headend of the train just clear of the bond for the public crossing at the East end of Field and confirmed with the RTC that my tail end of the train was clear of the West end of Field.

Q39. Knowing that you stopped in a short distance within 15 seconds from the time you applied the brake, do you understand with the make up/length of your train of 8971 feet, with cushion drawbars on the tail end (automobile cars) that the slack was not totally stretched out enough when you came to a stop in track 1?

A That is a possibility and that is why I confirmed with the RTC to make sure that I was clear.

[15] At the conclusion of his statement, he added:

Q Is there anything you wish to add to this statement?

A Yes, this incident has provided me with the educational aspect and moving forward I will do everything in my power to ensure something like this never happens again.

[16] The Union maintains that at all times, Mr. Lazzarotto was trying to lighten the next crew's workload by confirming with the RTC that his train was clear of signal 15B. Unfortunately, I agree that is what can be drawn from his actions. He was trying to make things easier for his crew and others when he should have taken the safe course of action and cut the crossing. It is clear that he was in doubt. He chose to ask the RTC if the tail end of the train was in the clear. The RTC could only tell him if the tail end was in the clear. The RTC could not tell him if the tail end of his train was clear by a foot, a car length or five car lengths. He acknowledged moving slowly with the slack bunched which compounded the potential for roll back. I find his train handling was improper given all the facts and circumstances. He acknowledged such in his statement.

[17] I find the Grievor handled his train in a manner which created the potential for a roll back. I do not find that the download markings from Mark Clarkstrom pointed blame and does not leave this investigation fair and impartial.

[18] From the outset the Union questioned when the actual roll back occurred. The Grievor's Union Representative objected to the picture evidence not being date or time stamped. The Union further submitted that although the Company was fully aware of the alleged infraction at the time of the incident, as evidenced by Appendix B, CTC Replay for Train 100-08, at no point were Engineer Lazzarotto or his conductor informed or notified during their tour. In fact, Engineer Lazzarotto continued to work unaware of any alleged infractions for nearly seven days before being notified by the Company.

[19] The Union submits that the Company also failed to report the violation to the crew once it was discovered which is a violation of Section 124 of the Canada Labor Code. Failure to report the violation to the crew is also a violation of the Railway Safety Act objectives. The Company has an obligation to make all parties aware of the incident prior to formulating a plan for prosecution.

[20] The involvement of the Grievor and the RTC are set out in the Grievor's statement:

Q49 Do you understand that as a result of the slack not being adjusted correctly, that the tailend of your train 100-08 ran out and a set of trucks on TTGX 971778 went past Signal 15B at Field West?

A Yes I understand but I brought the train into the yard cautiously because it was extremely tight to fit the train into the track.

Q50 Referencing Appendix D the photographs of the tailend car on your train TTGX 971778 they show that it stopped past Signal 15B at the Controlled location Field West. Is this correct?

A That's what the pictures shows.

Q51 Do you understand that as a result of this car rolling back past the signal caused a 439 prompt on the RTC's display?

A Yes.

[21] At the outset of the investigation the Grievor's Union representative requested full disclosure of all evidence, photographs, voice recordings, audio, video records, including any documentation whether paper or electronic, that has been utilized by, or is in the possession of the

company, and which may have a bearing on determining responsibility. The investigating officer responded that all pertinent evidence that is in possession here has been distributed in the form notification package.

[22] The Grievor's Union representative did not object to the fact that no memo or statement by the RTC was provided. Neither the RTC, or the individual who took the pictures were called as witnesses.

[23] The Union objected to the characterization of this incident as Major Life Threatening under the Policy. It argues that there was zero chance that this incident could have been "life threatening." It argues that CP has not explained why, in this incident that it was indeed life threatening, the Grievor was not made aware of this incident for a week after its occurrence (including, apparently, taking pictures on the day in question).

[24] I disagree with the Union's assertion that there was zero chance that this incident could have been "life threatening." Clearly the roll back of an unattended and unsecured train has such potential.

[25] That said, the RTC was involved in radio communication telling the Grievor to cut the train at the crossing if necessary. He also communicated when the train was clear of the light. It is difficult to understand why the RTC would give such information to a crew with such a long train that was on an uphill grade. Within minutes there was a roll back through the light which caused a 439 prompt on his display. The RTC did not inform the crew on the radio of that fact. The RTC could not have known if the roll out had stopped or could have increased later. It is difficult to believe that he took no further action.

[26] It is difficult to reconcile these facts given that the Company has assessed discipline pursuant to the Hybrid Discipline Policy as a Major - Life Threatening Incident of Stop signal violation. Such violations are to be reported immediately according to the Company Policy. There is no evidence of any immediate action taken by the RTC or that RTCs are not required to take any action or report such violations. Clearly, someone other than the Grievor was made aware and took pictures of the roll back. It is equally difficult to understand why the crew was not told of the roll back for over a week. I find no reason put forward to justify the delay.

[27] I have reviewed the authorities relied on by the parties. The Company relies on CROA 4582 in which Arbitrator Sims upheld a dismissal for passing of a stop signal causing a major collision in a populated area. He found the incident revealed a lack of inattention and an absence of caution by a railroader thoroughly familiar with the territory stating:

However, considering all the evidence in this case, I am satisfied that the aggravating factors outweigh the grievor's remorse and personal circumstances. The incident reveals a lack of attention by a railroader thoroughly familiar with the territory that caused very significant damage. It resulted from not only inattention to crucial signals, but an absence of caution in circumstances, even if momentarily confusing, called for a reduced speed. Reluctantly, I must deny the grievance.

[28] Unlike CROA 4528, in this case, I find an inexperienced Grievor with an unenviable record which displays a previous lack of attention to detail, situational awareness, choosing the easiest course of action when the safest course of action is obvious. When in doubt the safest course of action must be taken. The RTC told the Grievor to cut the crossing if necessary yet agreed to

tell the Grievor when he was clear of the signal. His contribution to the roll back appears to have been ignored.

[29] Given the Grievor's acknowledgement of his responsibility, the RTCs involvement with the yarding of the train and the delay in advising the Grievor, I find the discipline excessive. The 45 day suspension will be reduced to 20 days and he will be compensated accordingly.

[30] I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated in Niagara-on the-Lake, this, 16th, day of June 2023.

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is written in a cursive, flowing style.

Tom Hodges

Arbitrator