

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

CASE NO. 5217

Heard in Edmonton, October 15, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

The Dismissal to Locomotive Engineer Braeden Fairbairn of Cranbrook, BC.

JOINT STATEMENT OF ISSUE:

Following an investigation, Engineer Fairbairn was dismissed from Company service described as:

For leaving locomotive KCS 4144 foul of track 3 at Fort Steele, creating a restricted clearance while working as the Locomotive Engineer on train 319- 107 October 1, 2024 at Fort Steele, BC. A violation of the Rule Book for T&E Employees 14.1 and Train and Engine Safety Rule book T-23.

Union's Position:

For all the reasons and submissions set forth in the Union's grievances, which are herein adopted, the following outlines our position.

The Union asserts the Company has not met the burden of proof necessary to warrant such an extreme assessment of discipline to Mr. Fairbairn. The investigation determined that both Engineer Fairbairn and Conductor Nickel visually confirmed that the locomotive had been left clear of the fouling point.

The Union asserts that the Company's photo evidence does not prove that the locomotive was left foul. The Union asserts that the photograph evidence supplied by the Company in Appendices D-G does not at any point provide a straight on perspective that might demonstrate whether the equipment has been left foul. The Union asserts that the Trainmasters have attempted to create false evidence to support their narrative that the equipment had been left foul. The Union asserts we have articulated and proven this in the grievance procedure.

The Union further asserts that the arm test described in Train and Engine Safety Rule Book T-23 is subjective. Every individual has arms of different length. One employee could determine that a car is clear of the fouling point while another employee might not. A photo of one employee being able to touch the equipment in an adjacent track is not definitive proof that the equipment is foul.

Train and Engine Safety Rule Book T-23 state the procedure for employees that are unable to identify the clearance point in a track. In this instance the Union submits that both crewmembers looked at the location of the locomotive relative to the adjacent track and both identified that the locomotive was clear of the fouling point.

The Union submits that Rule Book for T&E Employees 14.1 (c) states that equipment must not be left foul of a connecting track. In this instance both crew members observed and confirmed that the equipment was not left foul of the adjacent track. The Union asserts that this rule does not prohibit equipment from being left near the fouling point of an adjacent track.

The Union asserts that the Company has not considered the mitigating factors in this instance before assessing discipline. The Union submits that there was not any culminating accident or incident that might warrant the application of such heavy-handed discipline. Mr. Fairbairn was honest and forthright throughout the investigation. He explained that he had observed the locomotive relative the adjacent track and was confident that it was clear of the fouling point. Mr. Fairbairn demonstrated a positive attitude and willingness to be educated; he reaffirmed his commitment to working safely.

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

Company Position:

The Company's disagrees with the Union's contentions and denies the Union's request. The Union has introduced allegations within the grievance correspondence that was not raised during the investigation. Specifically, the Union is now objecting to photo evidence supplied within the investigation. For the Union to only now raise these concerns is contrary to the principles of labour relations and arbitral jurisprudence regarding lying in the bushes with respect to procedural objections. Moreover, the Company maintains such objection is not timely.

The Grievor was clearly unable to identify the clearance point visually and ought to have performed the requirements of T-23 from the Safety Rule Book for T&E employees. By failing to do so, the Grievor left a restricted clearance at Fort Steele, thereby violating the requirements of Rule Book for Train and Engine Employees Section 14.1 and creating an unprotected safety hazard.

The Company maintains that following the fair and impartial investigation, the Grievor was found culpable for the reasons outlined in his form 104. The Company maintains that culpability was established and there was just cause to assess discipline to the Grievor.

The Company's position is that the discipline assessed was appropriate, warranted and just in all the circumstances. Discipline was determined following a review of all factors, including those the Union describes, including the Grievor's past discipline record. The Grievor does not have what can be called long service. His discipline record is abysmal and demonstrates a lack of commitment to safety. He has been subject to progressive assessments that evidently have had little rehabilitative effect.

The Company maintains that the discipline assessed followed the principles of progressive discipline and in line with arbitral jurisprudence. The discipline was properly assessed under the Company's Hybrid Discipline and Accountability Guideline. For the foregoing reasons and those provided during the grievance procedure, the Company maintains that the discipline assessed should not be disturbed and requests the Arbitrator be drawn to the same conclusion.

For the Union:
(SGD.) G. Lawrenson
General Chairperson

For the Company:
(SGD.) F. Billings
Director Labour Relations

There appeared on behalf of the Company:

A. Harrison – Manager, Labour Relations, Calgary
D. Zurbuchen – Manager, Labour Relations, Calgary (virtual)

And on behalf of the Union:

M. Church – Counsel, Caley Wray, Toronto
G. Lawrenson – General Chairperson, LE-W, Calgary
C. Ruggles – Vice General Chairperson, LE-W, Lethbridge
J. Fifield – Local Chairperson, CTY-C, Cranbrook (virtual)
B. Fairbairn – Grievor, Cranbrook (virtual)

AWARD OF THE ARBITRATOR

Background, Issues & Summary

- [1] The Grievor was employed as a Locomotive Engineer. His date of hire was February 6th, 2012. At the time of the events at issue in this Grievance, the Grievor had more than 12.5 years of service.
- [2] On October 1, 2024, the Grievor was called as the LE in turn service to Kingsgate on 319-07 at 0800. He was working with Conductor Nickell. The Grievor turned on 416-02, starting at Tochtly and ending at Fort Steele, B.C. on the Cranbrook Subdivision.
- [3] Upon arrival at Fort Steele, the crew was required to set off locomotive KCS 4144 and tie onto other equipment, in Track 2. The crew did so.
- [4] It was not disputed there was room behind that equipment to have placed the KCS 4144 further back in Track 2.
- [5] Company officials in the Yard at Fort Steele later considered the crew had left KCS 4144 foul of the adjacent track, which was Track 3.
- [6] Both the Grievor and Conductor Nickell were investigated for leaving KCS 4144 foul of Track 3.
- [7] The Grievor was dismissed. There was no evidence of whether Conductor Nickell was disciplined.
- [8] The issues between the parties are:
 - a. Does this Arbitrator have jurisdiction to consider the impact of a failed Efficiency Test when the Union did not raise that issue in the JSI?

- b. Has the Company met its burden to establish
 - i. That KCS 4144 was left foul of Track 3; and
 - ii. That culpability for discipline was established under the *Efficiency Test Framework*.
- c. If so, was the discipline of dismissal a just and reasonable response?
- d. If not, what discipline should be substituted through the exercise of this Arbitrator's discretion?

[9] For the following reasons:

- a. The Union is entitled to rely on the *Efficiency Test Framework*.
- b. The Company has met its burden of proof to establish
 - i. That KCS 4144 was left foul of Track 3; and
 - ii. That culpability for discipline was established under the *Efficiency Test Framework*.
- c. The discipline of dismissal was not just and reasonable as it was excessive in all of the circumstances.
- d. A 30-day suspension is substituted as a just and reasonable penalty.

[10] The Grievor is to be reinstated and made whole for his losses.

The Relevant Provisions: Rule Book for T&E Employees

Article 14.1:

(a) Equipment must not be allowed to move foul of another track unless properly protected.

(b) A movement must not foul a track until the switches connected with the move are properly lined, or in the case of spring switches, the conflicting route is known to be clear.

EXCEPTION: A movement may foul a track connected by a hand operated switch provided that:

(i) neither the track occupied nor the track to be fouled are main tracks; (ii) the conflicting route is known to be clear; and

(ii) the switch is properly lined before the movement passes over it.

(c) Equipment must not be left foul of a connecting track.

Rule T-23 (sub 4):

1....

2....

3...

4. If unable to identify the clearance point when leaving equipment in a track, stand outside the rail of the adjacent track and extend the arm towards the equipment. When you are unable to touch the equipment, leave the equipment at least an additional 50 feet into the track to ensure equipment is beyond the clearance point.

Facts

- [11] Upon arriving at Fort Steele and setting off the locomotive in Track 2, it was the Grievor's evidence he walked to the "A" end of the unit and visually observed from the footboards that the locomotive was clear of the adjacent track, Track 3.
- [12] The Grievor's evidence was he was able to see the clearance point and was confident the locomotive was not "*foul*" of Track 3. Therefore, he did not perform what is known as an "*arm test*" as described in Rule T-23 of the Rule Book for T&E Employees.
- [13] At Q/A 33 the Grievor stated the arm check was not completed, given he was "*sure the KCS 4144 was clear of the fouling point, so Rule T-23 did not apply.*"
- [14] An "*arm test*" is where a crew member stands with one foot against the adjacent track and extends out his arm, to see if his equipment can be touched. If the equipment *can* be touched, that equipment fails the "*arm test*" and is considered "*foul*" and should be moved back 50 feet from where it cannot be touched.
- [15] There was no discussion between the Grievor and Conductor Nickell regarding where the locomotive was left or whether it was left clear of the fouling point.
- [16] Conductor Nickell's statement was also filed into evidence by the Union.
- [17] Conductor Nickell's evidence was that he also verified the locomotive was clear. At Q/A 28, he stated "*I believe I said it was clear, and when I walked out in front of the unit from a safe distance, I verified it with my eyes*".
- [18] Conductor Nickell's evidence was likewise that he "*...did not complete the arm test and it was not left 50 feet clear of the fouling point, because I was able to identify the fouling point*" (Q/A 30).
- [19] Conductor Nickell did agree at Q/A 32 that the equipment "*did not pass the arm test*", however he did not agree that meant the locomotive was foul, but did agree that a restricted clearance was created (Q/A 34), and that this restricted clearance could make "*riding of equipment past the point of restriction potentially hazardous*" (Q/A 35).
- [20] He stated he did not inform anyone of that restricted clearance, and that if the locomotive was moved back "*about 1 foot*" no restricted clearance would have been created.

- [21] At Q/A 40 he stated that KCS 4144 was not left foul of Track 3. At Q/A 44 he noted he believed no risk was created; but at Q/A 45 that there was a *“potential hazard”*.
- [22] The Grievor and Conductor Nickell proceeded to tie up and leave.
- [23] A memorandum completed by Brandon McLean, the ATM at Fort Steele, was entered into evidence. That Memorandum incorrectly noted that on October 1, 2024, ATM McLean and TM Brulotte noticed KCS 4144 in the Yard.
- [24] That date is obviously a typographical error, since the Train was not in the Yard until late on October 1. While the Union argued this invalidated the balance of the evidence in this Memorandum, it does not. This Arbitrator is satisfied this was a typographical error and that ATM McLean and TM Brulotte were discussing work in the Yard on October 2. While doing so, the men noticed KCS 4144 at the south end of Track 2. They *“decided we had better go over and check if it’s foul of Track 3 or not because from where we were standing, the KCS 4144 didn’t look like it was clear”*.
- [25] The two men walked to the locomotive and determined that it *“wasn’t appropriately shoved back clear of the fouling point”*.
- [26] They took some pictures of the locomotive; performed an *“arm test”* where TM Brulotte was able to grasp the handrail of the ladder; and TM Brulotte also posed on the side of the car.
- [27] It should be noted he posed on the side of the car with straight arms. This Arbitrator is satisfied that is not the correct manner to ride the side of a Train car. As noted by the Union, the upper body should be erect and the arms should not be straight such that the body leans back.
- [28] Mr. McLean determined the Grievor’s crew were the last to move locomotive KCS 4144. About an hour after this determination was made, the Grievor attended for work.
- [29] Mr. McLean’s evidence was that that Grievor was asked:

...if they checked to make sure the locomotive, he and Mr. Nickell had set off was clear of the fouling point before leaving it there and showed him some pictures. He said, *“I thought we did, but I guess clearly we didn’t”* and that it didn’t look foul when they left it but assured me it wouldn’t happen again going forward.

Later in the morning, I called Mark Nickell to talk to him about it and just let him know what we had found with the locomotive he had set off. He assured me that he knows how to check for the fouling point and said he wasn’t sure why they missed that. Mark was very apologetic and respectful when talking to me about the situation.

Arguments

- [30] The Company argued that the Grievor was culpable for leaving KCS 4144 foul; and that its discipline was warranted as a just and reasonable response.
- [31] The Company maintained that the photographic evidence was properly taken and relevant to the determination of this Grievance; that its evidence established that the locomotive was left foul by this crew, which evidence included an “*arm test*” performed by TM Brulotte; that the Company also relied on the first-hand evidence that he and TM Brulotte attended to look at the locomotive and determined it was foul.
- [32] It was the Company’s position that leaving a train foul was a significant and serious violation as it presented a significant danger risk to passing equipment and personnel; that the Grievor’s own admissions are that it was left foul; that the Grievor should have but did not perform an “*arm test*”; and that had he done so, he would have realized the Train was left foul. It argued the safety implications were heightened by the Train being left foul all night, given the risk of catastrophe was higher in the dark. It argued a conductor riding past the train may not have realized it was foul.
- [33] The Company also argued the Grievor himself acknowledged the locomotive was foul based on the photographs, in his discussion with Mr. McLean.
- [34] It was the Company’s position the Grievor had breached Article 14.1 and T-23 of the Rule Book for T&E Employees. It pointed out Rule T-23 required the Grievor to leave the equipment at least 50 feet back into the Track from where the “*arm test*” was failed.
- [35] It also argued that while the Grievor stated he observed from the footboards, that observation should have demonstrated to him that the locomotive was unquestionably *not* clear.
- [36] It also argued the Union did not raise any objections to the pictures in the Investigation and having failed to do so, cannot do so now.
- [37] The Union argued the Company had not met its burden of proof to establish the Train was left foul of Track 3.
- [38] It was the Union’s position the Company’s evidence was “faulty”; “flimsy” and “fabricated”; that the pictures were taken from a flawed perspective and/or showed TM Brulotte not following the Rules by leaning back when perched on the rail car; that the arm test did not apply as the Grievor could see the clearing point and did not need to perform that test; that the photographic evidence of the arm test demonstrates it was not properly performed; that the test is subjective

given the different sizes of employees; that the Company was fabricating the claim the Train was foul; and that the Company provided no measurements to establish the track was foul.

- [39] The Union maintained the Grievor's statements did not admit guilt, but were spur of the moment responses to what it argued were the Company's flawed photographs.
- [40] Alternatively, even if the Company *had* met it's that burden to establish KCS 4144 was foul, the Union argued that since this was a failed Efficiency Test, the *Efficiency Test Framework* - developed by this Arbitrator in **AH860** and **CROA 4866** - applied to determine if there was culpability for this discipline or whether coaching, education and mentoring was the appropriate choice.
- [41] It argued that applying that Framework, this was not an appropriate case for discipline.
- [42] In the further alternative, the Union argued that even if discipline was appropriate, the ultimate dismissal of discipline was harsh, excessive and unwarranted, and a lesser level of discipline should be substituted by the exercise of this Arbitrator's discretion.
- [43] Both parties also filed Reply arguments. Both provided emphasis of their arguments in Chief in their Reply and distinguished the other party's authorities. In its Reply, the Company also raised a preliminary objection to the Union's reliance on an Efficiency Test failure as it argued that issue was not properly before this Arbitrator, as it was not raised at any point during the Investigation, the Grievance procedure or the JSI. In the alternative, the Company argued the *Efficiency Test Framework* was met to support discipline; that this was a serious violation; that the Grievor's work history reflects previous serious violations; that the Grievor incorrectly identified the clearance point; that relying only on visual assessment from the footboard is insufficient; that the photographs speak for themselves and are not fabricated; that the TM in the photo was shown riding equipment properly and that the equipment was clearly foul. It argued Rule T-23 was developed to address this situation.
- [44] In its Reply, the Union argued the Company's own photographs show that KCS 4144 was *not* foul; that Conductor Nickell also believed the locomotive was not left foul as he also walked out a safe distance and viewed the unit from the front to verify its position with his eyes; and that the Company had not explained how the Grievor had violated Rule T-23. It argued the Company was unable to establish the reasons for which the Grievor was disciplined and that it had not provided clear, cogent and convincing evidence.

- [45] The Union argued the Grievor's consistent position in his Investigation was that the Train was clear; and any alleged admissions when speaking to Mr. McLean did not undermine or weaken his position as that was only a "*quick reaction*" to being presented with the Company's alleged evidence. It argued that Rule 24 – 9 and 10 required that the body position must be erect and not leaning back when riding the side ladder of equipment." It also argued the Company's arguments about catastrophe are speculative sensationalism, to detract from what it described as their "*flimsy evidentiary record*".
- [46] The Company introduced an Information Bulletin in its Reply. There was no explanation why this Bulletin was not introduced at an earlier point in the proceedings and it has not been given any weight.

Analysis and Decision

Preliminary Objection

- [47] The preliminary objection cannot be sustained.
- [48] It was not disputed the Company considered this event to be an Efficiency Test "*fail*" and it was entered into the Grievor's record as such. That Efficiency Test was a fact filed before this Arbitrator. The *Efficiency Test Framework* – like the *Wm. Scott* test itself – is a legal test that an Arbitrator applies to appropriate facts, to determine culpability. Like the *Wm. Scott* test itself, it is not an "issue" to be raised by the parties in the JSI, given it is a legal test.
- [49] If factually an Efficiency Test occurred, then the *Framework* applies to assess culpability for discipline.
- [50] In this case, it is an undisputed fact that the Company chose to treat this infraction as a failed Efficiency Test in its own records, even though this would not have met the requirements of an Efficiency Test, given that the Company employees simply noticed the Train in the Yard as part of their duties. As the Company chose to treat this incident as an Efficiency Test "*fail*", the *Efficiency Test Framework* applies as part of the first question of the *Wm. Scott* analysis, to determine whether discipline was an appropriate choice, even if culpability is demonstrated.
- [51] The Company also argued the Union was foreclosed from raising an issue with its photographic evidence at this hearing. It relied on **AH714**, which addressed late procedural objections. Arguments regarding the sufficiency of offered evidence are not procedural objections, but are "*arguments*" of whether or not the Company has met its evidentiary burden.
- [52] While facts are established by the Investigation, arguments are developed at the hearing. The Union is not required to object in the Investigation to the evidence

on which the Company chooses to rely, to later argue it is insufficient. The appropriate and proper place for the Union to challenge the sufficiency of the Company's evidence is at the hearing.

Merits: Was the Train Left "Foul"?

- [53] At Q/A 32, the Grievor agreed that the photos taken by the Company showed that KCS 4144 was left "*in the vicinity*" of a fouling point. He did not admit it was left "*foul*" as argued by the Company.
- [54] Both crew members felt it was *not* left foul.
- [55] The Grievor agreed at Q/A 35 that in the Company photos, since TM Brulotte was "*able to touch the equipment, this indicates that the equipment did not pass the arm test...*". When asked at Q/A 36 if equipment was then considered "*foul*", the Grievor stated that the arm test was not required, given he was able to identify the clearance point. He also stated the test was "*subjective*". His further evidence in his interview was that he was smaller in stature than TM Brulotte.
- [56] At Q/A 48 the Grievor confirmed he felt the locomotive was clear and did not pose any risk to other employees. At Q/A 39 the Grievor stated that an employee properly riding equipment would have been able to make it past KCS 4144. However, Conductor Nickell noted the location of KCS 4144 *did* present a potential hazard.
- [57] The Company provided a picture of TM Brulotte on the Train, clearly leaning back and not properly riding the Train. That evidence was not helpful or given any weight, given TM Brulotte was not properly riding that equipment. If an individual rode a train car in the manner demonstrated in the picture, he risked striking a passing train, whether or not the car was left foul.
- [58] While the Union took issue with the perspective evident in certain of the other pictures, the Company offered a picture taken from the footboard of the train, looking down. This Arbitrator is satisfied that evidence demonstrated the Train was left foul. The picture of the track below that footboard demonstrates that Track 2 is not parallel with the footboard, *even at that point*, which is *behind* the nose of the locomotive.
- [59] Rather, the Track at that point begins its curve toward the fouling point. The track would not have that curve – but would be perpendicular - if the locomotive was not left foul of Track 3.
- [60] That perspective is clear and convincing evidence that the locomotive was left "*foul*".

- [61] It is therefore unnecessary to determine whether or not the Grievor should have performed an “*arm test*” or whether he violated Rule T-23, given this finding; or whether or not the Grievor admitted the Train was left foul in discussions with ATM McLean.
- [62] Neither the Grievor nor Conductor Nickell offered any explanation of why the locomotive was not shoved further back, which would have ensured it was not left foul.
- [63] The Grievor failed this Efficiency Test, as did Conductor Nickell.

The Efficiency Test Framework

- [64] Turning next to the question of the appropriate discipline for this failed Efficiency Test, there are three factors that must be applied under the *Efficiency Test Framework* to assess whether discipline – or coaching, mentoring and education – is the appropriate response for an Efficiency Test fail. Those factors are: frequency, severity and work history. In applying this framework, it must be recalled that both crew members are responsible for the safe set off of this locomotive.
- [65] Looking first at severity, there is no doubt that leaving a train car foul is a significant issue in this industry. It poses significant hazards, whether or not those hazards are realized in a particular case. The factor of severity supports a disciplinary response.
- [66] Considering next the element of frequency, the Union filed the Grievor’s Efficiency Test record to demonstrate frequency did not support a disciplinary response. Those records have been kept since 2013. Prior to this incident, the Grievor had undergone 108 efficiency tests and had failed 17 tests. That is a record of 84%, which is not a particularly strong safety record. His last fail was for a passing train inspection in February of 2024. He also had a fail one year ago for missing a yellow flag.
- [67] The Grievor has not had a fail for leaving equipment foul. On September 17, 2019, he passed an Efficiency Test by stopping 1 car from the fouling point. He also passed multiple tests for safely moving equipment, and following all rules for shoving movements.
- [68] The Grievor’s Efficiency Test Record is a neutral to negative factor against him in this assessment of the framework. It does not tip the balance in his favour.
- [69] Considering next the issue of the Grievor’s work history, his disciplinary record is relevant under this factor. The Company argued his record was “*abysmal*”. Upon review, this Arbitrator must agree that the Grievor has had a troubled work history,

more evident in the last five years. Since 2020, the Grievor has been assessed two 45-day suspensions; a 10-day suspension and a 5-day suspension for safety issues; as well as a 20-day suspension for improperly paying himself; and demerits for late reporting.

[70] The Grievor's work record is also a negative factor and would support discipline in this case.

[71] Considering all of the elements of the *Efficiency Test Framework*, the Company's decision to discipline the Grievor was reasonable. The Grievor was culpable for some form of discipline.

The Second and Third Wm. Scott Questions

[72] The second question under the *Wm. Scott* framework is whether the Grievor's discipline of dismissal was just and reasonable. The Company bears the burden for establishing its discipline was just and reasonable.

[73] The Union has convinced this Arbitrator that it was not. Various factors are assessed by Arbitrators in determining this issue. Upon review of the facts and relevant jurisprudence, this Arbitrator is convinced that the Union is correct that the principles of progressive discipline were not appropriately followed by the Company in this case. The Company's move to dismissal was excessive.

[74] The Grievor has a level of significant service, at more than 12 years: **CROA 4720**. The Grievor's disciplinary record is also relevant, and has been discussed above. It is "*poor*" and not mitigating, but is aggravating. The nature of the offence is serious, which is also an aggravating factor, given that leaving equipment foul creates a significant safety hazard. It is also relevant the Grievor had sufficient space to have shoved KCS 4144 further back into Track 2 and offered no explanation why that was not done. Neither did Conductor Nickell.

[75] The Grievor also refused to recognize the Train was foul, even given the photographic evidence from the footboard. He failed to demonstrate remorse or accountability.

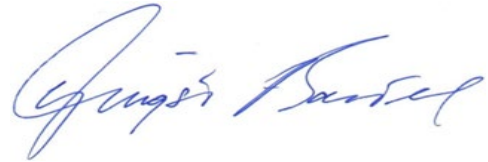
[76] The Company relied on **CROA 5026** which was an award which addressed a run through switch because no one was riding the point. While "*carelessness, laziness and questionable judgment*" was shown in that case, it is distinguishable. In that case, two issues were noted: not riding the point; and running through a switch.

[77] That is not an analogous situation to this case. Neither has carelessness and laziness been established in this case.

- [78] It also relied on **CROA 4351**, where an employee while shoving failed to realize two cars had rolled out and stopped foul of that lead. In that situation, the Grievor was a short service employee, dismissed for accumulation. Even an assessment of 15DM would have resulted in that result, in that case.
- [79] That is also not an analogous situation.
- [80] In **CROA 4127**, a collision occurred and the Grievor was discharged “*for accumulation*”. That likewise is not analogous.
- [81] The Union relied on multiple cases. All have been reviewed. Most are distinguishable. For example, in **CROA 4591**, the grievor was riding a car which sideswiped another which was left foul. That is a distinguishable situation from leaving the car foul in the first place. **CROA 4251** addressed failure to protect the point. **CROA 4419** involved a collision where one crew was operating behind the other. The Union also relied in several decisions involving violations of CROR 115 for switching operations.
- [82] Both parties relied on **CROA 4619** where a locomotive was found to have been left foul, and a sideswipe incident had occurred. In that case, the Grievor was a short term employee of two years with a poor disciplinary record. He had already been dismissed and reinstated previously; and a sideswipe had occurred. His dismissal was upheld.
- [83] That case is more severe than the incident at issue in this case, and the Grievor in this case has significantly longer service than did the Grievor in that case. That case is support for a lesser penalty than dismissal for this Grievor.
- [84] Upon review of all of the facts and jurisprudence, this Arbitrator is satisfied that the Grievor’s dismissal must be set aside as excessive; and that an assessment of a 30-day suspension should be substituted as just and reasonable discipline, on these facts.
- [85] The Grievor is to be restated. A 30-day suspension is substituted as just and reasonable discipline for leaving KCS 4144 foul. The Grievor is to be made whole for all other losses, after the impact of mitigation is addressed.
- [86] The matter of the amount of that compensation is remitted to the parties who are usually able to resolve these issues through discussion.

I remain seized to address any issues of remedy upon which the parties are unable to agree. If that direction is necessary, the Office is directed to set down that issue on an expedited basis, at a CROA Session over which this Arbitrator presides.

I also remain seized with jurisdiction to address any questions regarding the implementation of this Award; to correct any errors; and to address any omissions, to give it the intended force and effect.

A handwritten signature in blue ink, appearing to read "Cheryl Yingst Bartel". The signature is fluid and cursive, with a large initial "C" and "B".

November 24, 2025

**CHERYL YINGST BARTEL
ARBITRATOR**