

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

**CASE NO. 5218**

Heard in Montreal. November 11, 2025

Concerning

**CANADIAN PACIFIC KANSAS CITY RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE**

Appeal of the dismissal assessed to Conductor Casey Choy of Calgary, AB.

**JOINT STATEMENT OF ISSUE**

Following a formal investigation, Mr. Choy was dismissed on March 11, 2024, for the following:

“A formal investigation was conducted on February 22, 2024, in connection with "Your tour of duty on 412-12 on February 12, 2024, specifically your alleged failure to protect your point while switching in Red Deer Yard". At the conclusion of the investigation, your culpability was established with failure to protect your point shoving toward Track 4 during switching operations in Red Deer Yard on February 12, 2024, while employed as a Conductor in Calgary Terminal; a violation of the following:

1. Rule Book for T&E Employees, Section 2.1 Reporting for Duty
2. Rule Book for T&E Employees, Section 2.2 While on Duty
3. CROR Rule 115 - Shoving Equipment

Notwithstanding this violation in and of itself warrants discipline, based on your disciplinary record, this incident constitutes a culminating incident, warranting dismissal. You are hereby DISMISSED from Company.”

**Union 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 contends the Company has failed to meet the burden of proof or establish culpability related to the allegations outlined above.

The Union contends the Company has failed to consider mitigating factors contained within the record.

The Union submits the Company has engaged in the unreasonable application of the Efficiency Test policy and procedures, resulting in the arbitrary, discriminatory, unjustified, unwarranted, and excessive assessment of discipline. The Union further contends the discipline does not conform with the principles of progressive discipline.

The Union disputes any reference to the Hybrid Discipline & Accountability policy and its application in the instant matter.

The Union requests that the discipline be removed in its entirety, and that Mr. Choy be reinstated without loss of seniority and benefits and be made whole for all associated loss with interest. The Union also requests Mr. Choy be awarded suitable damages to be determined. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

### Company Position

For all the reasons and submissions set forth thorough the Company's reply, which are herein adopted, this outlines our position.

The Company maintains the grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation. The grievor is a short service employee with a heavy discipline record. This was the grievor's third major infraction in an 8-month period. The Company cannot agree with the Union's position concerning the efficiency testing. Arbitral jurisprudence has held that the assessment of discipline for a rule violation identified through the efficiency testing procedure does not void the discipline assessed.

The Company maintains that the dismissal was just, appropriate and warranted in all the circumstances and that discipline was assessed in a progressive fashion. Accordingly, the Company requests that the Arbitrator decline the Union's grievance in its entirety.

#### **For the Union:**

**(SGD.) J. Hnatiuk**

Vice 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:

K. Stuebing	– Counsel, Caley Wray, Toronto
J. Hnatiuk	– Vice General Chairperson, CTY-W, Mission
B. Wiszniak	– Vice General Chairperson, CTY-W, Regina
D. Fulton	– General Chairperson, CTY-W, Calgary
G. Lawrenson	– General Chairperson, LE-W, Calgary
T. Haug	– Local Chairperson, Yard, Calgary (zoom)
C. Choy	– Grievor, Calgary (zoom)

## **AWARD OF THE ARBITRATOR**

### **OVERVIEW**

- [1] The Grievor, a Conductor with less than two years of employment, was dismissed for allegedly failure to protect the point during a shoving operation on February 12, 2024, during an efficiency test.
- [2] The Office must decide if the Employer has proven that the Grievor breached rule 115 because he failed to protect the point and if so, what level of discipline was appropriate.

- [3] The Office finds that the Employer did not prove, on the balance of probabilities, that Conductor Choy breached rule 115. Therefore, the dismissal must be quashed and the Grievor reinstated.

## **ANALYSIS AND DECISION**

### **- The law**

- [4] The analysis in *William Scott & Co. v. C.F.A.W., Local P-162 (1976)*, [1977] 1 C.L.R.B.R. 1 (B.C. L.R.B.) requires an arbitrator to seek the answers to three questions:

- a. Does the Grievor's action warrant some kind of discipline?
- b. If so, was the discipline assessed just and appropriate and therefore reasonable? And if not,
- c. What discipline is appropriately substituted as just and reasonable?

- [5] Rule 115 essentially says that in a shoving operation, a member of the crew must be in a position to view the track and confirm it to be clear. The only other possibility is when the track is "known to be clear" because a member of the crew saw the track was clear and there is no other access to it.

- [6] The incident took place during an efficiency test. According to CPKC's Efficiency Test Codes and Descriptions<sup>1</sup>, "an efficiency test is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge." It has been recognized by many decisions of this Office that efficiency testing should usually not lead to discipline. Three factors must be taken into consideration when imposing discipline in that context: frequency, severity and work history (CROA Case No. 4866).

### **- The Facts**

- [7] On February 12, 2024, Conductor Choy and Locomotive Engineer Bill Merriman were instructed to pull north of the 42 crossover switches on the north end of the yard. This required a series of steps which were performed without incident.

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<sup>1</sup> Union Exhibits, pp.76

- [8] Conductor Choy told the investigators that he lined the first switch then told the locomotive engineer to stop. He then detrained, lined the north crossover switch and removed the SBU from the tail-end car. He walked towards the PMS switch to look down track 4. He says he could see approximately 15-20 cars to the track 4 switch and another 15-20 cars down the track. He therefore told the engineer to “back up for 25 cars, good for 30”.
- [9] Assistant Superintendent Boulianne who saw in part the shoving operation, states in his memo, that he heard the Grievor say, “Good for 30 cars back the train up into the clear.”
- [10] Not long after the beginning of the shoving movement, Assistant Superintendent Boulianne ordered the train to stop, which was done smoothly. Then Mr. Boulianne and Trainmaster Bowerman approached in their truck. They proceeded to talk to Conductor Choy.
- [11] Conductor Choy says that when Mr. Boulianne intervened, he only told him that he should not have changed tasks during the procedure. He told him that both switches should be changed before taking off the SBU.
- [12] Mr. Bowerman then said he did not believe Conductor Choy could see for 30 cars down track 4, but that neither of them would fail him for that. Later that day, Conductor Choy drove back to the site of the incident to verify how far he could see and maintained that he could see 15 to 20 cars down track 4.
- [13] The Union argues that the E-test record shows that a pass was first noted in the system with the mention “Retested on shoving equipment”. This entry was made only 2 minutes after an entry of a failure to protect the point. Both entries were made by Mr. Boulianne. This last entry led to Conductor Choy’s dismissal.
- [14] The company provided no reasons as to why Mr. Boulianne entered a failure when his colleague had said Conductor Choy would not be failed for this issue. It also did not provide testimony or affidavit from Mr. Bowerman, who is the one who raised this issue during the efficiency test.

- **The analysis**

**Did the Grievor fail to protect the point?**

- [15] The Office finds that the Employer has not met its burden of proof.
- [16] I prefer the Grievor's version of the event for the following reasons.
- [17] First, his testimony to the investigators is clear and unambiguous. He said that, from where he was on the ground, he could see 15-20 cars beyond the switch, so at least 30 cars down track 4. This is because, after he removed the SBU, he walked away from the train, towards the PMS, to get a better view of track 4. He was therefore in a much better position to see down track 4 than anyone else. The fact that Mr. Boulianne was in his car at that moment is not contested.
- [18] The Grievor also said that the train would not be backing up for 30 cars into track 4 since they only needed to clear the 4.2 crossovers to do the next steps in their assignment.<sup>2</sup> This was confirmed with the Train engineer during a radio exchange a few moments before the procedure was done.
- [19] Mr. Boulianne's memo makes no mention of this but does mention that the Grievor said "Good for 30 cars back the train up into the clear". I find this supports the Grievor's version of event because he did not ask the Train Engineer to back up 30 cars, he asked him to back up "into the clear".
- [20] Finally, I find I must draw a negative inference from the fact that Mr. Bowerman was never interviewed by the investigators, even if he was the one who brought up this concern in the first place. But most importantly, I must draw a negative inference from the fact that Conductor Choy was told that he would not get a failure for this issue and that, in fact, at first did not get one.
- [21] The evidence proves that a failure was entered in Mr. Choy's record by Mr. Boulianne for failure to protect the point even if Mr. Bowerman had said he would not fail him for that. Why? This question was never answered by the Employer. In the context of an efficiency test, where the goal is education and mentoring, it was

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<sup>2</sup> See the diagram in Tab 6 of the Union Exhibit

questionable at best for a fail to be entered when it was expressly said that none would be.

[22] Since I find that the Employer has not proven that the rule was breached by the Grievor, it is not necessary to decide if the disciplinary measure was appropriate. Obviously, none was warranted in the circumstances.

[23] Concerning the argument raised by the Union that the Grievor was targeted. I find that the Union failed to establish any abuse or bad faith. The evidence reveals that the Employer erred in its appraisal of the situation.

**FOR THE REASONS SET ABOVE, THE OFFICE OF ARBITRATION:**

**GRANTS** the grievance;

**CANCELS** the dismissal;

**ORDERS** the Grievor to be reinstated and made whole for any loss.

**RETAINS** jurisdiction for any issues relating to the implementation of this Award, and to correct any errors or omissions necessary to give it the intended effect.

**December 5, 2025**

A handwritten signature in black ink, appearing to read 'M. Flynn', is written over a horizontal line. The signature is stylized and somewhat cursive.

**MAUREEN FLYNN  
ARBITRATOR**