

**IN THE MATTER OF ARBITRATION**  
**BETWEEN**  
**TEAMSTERS CANADA RAIL CONFERENCE (TCRC)**  
**(the Union)**  
**And**  
**CANADIAN PACIFIC RAILWAY COMPANY (CP)**  
**(the Company)**

**DISPUTE**

Appeal of the 40 day suspension to Conductor Aaron Korthuis of Moose Jaw, SK.

**JOINT STATEMENT OF ISSUE**

Following an investigation Mr. Korthuis was issued a 40 day suspension described as “Failing to properly protect the point on your movement when setting off cars into track MF10, resulting in the run through of the east end switch as track capacity was exceeded, while working as the Conductor on the 1559 belt pack (RCLS) assignment at Moose Jaw, December 9, 2018. A violation of Rule Book for T&E Employees Section 2.2 (a), (iv), Section 2.3 (b), Section 4.2 (e), (j), Section 9.1 (a), Section 12.6 (a), (b), (c), (d), section 14.1 (a), (b).”

**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 be removed in its entirety and Mr. Korthuis be made whole.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above. In the alternative the Union contends Mr. Korthuis’ 40 day suspension is unjustified, unwarranted and excessive in all of the circumstances, including significant mitigating factors evident in this matter.

The Union requests that the discipline be removed in its entirety, and that Mr. Korthuis is made whole for all associated loss with interest. 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 maintains the Grievor’s culpability was established following the fair and impartial investigation. Discipline was determined following a review of all pertinent factors including the Grievor’s service and discipline record. Further, before discipline was assessed the Company duly considered all mitigating and aggravating factors.

The Union questions the authenticity and integrity of the documentation provided by Trainmaster Penner. Of note, this was not objected to within the investigation and the Company stands by the evidence presented. Further, the Union’s contentions regarding Appendix E, F, and G are without merit. The allegation that their inclusion “establishes outcome prior to conclusion of the Formal Investigation,” is not explained within the grievance submission. As such, the Company is left to defend itself against sweeping and vague allegations.

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.

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

FOR THE UNION:

FOR THE COMPANY:

Signed

Dave Fulton  
General Chairman  
TCRC CTY West

Signed

Lauren McGinley  
Assistant Director, LR  
CP Rail

January 6, 2022

**Hearing:** February 17, 2022 - By video conference

**APPEARANCES**

**FOR THE UNION:**

Ryan Finnon – VGC CTY West  
Dave Fulton – GC CTY West  
Doug Edward – Sr. VGC CTY West  
John Kiengersky – VGC CTY West  
Mr. D. Hariniuk - LC  
Aaron Korthuis – Grievor

**FOR THE COMPANY:**

Ivette Suarez, Labour Relations Officer  
Mr. John Bairaktaris, Director Labour Relations  
Lauren McGinley, Assistant Director Labour Relations

## AWARD

### JURISDICTION

[1] The parties agree I have jurisdiction to hear and resolve this dispute with all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*. This is an Informal Expedited Arbitration pursuant the Grievance Reduction Initiative Agreement of May 30, 2018 and Letter of Agreement dated September 7, 2021 between the parties. In accordance with their agreement, this award is without precedent to any other matter 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.

[2] I have reviewed the parties written submissions, books of documents and the investigation conducted by the Company.

### BACKGROUND

[3] On December 9, 2018, the Grievor was working as a Conductor on the 1559 assignment in Moose Jaw. The Company maintains that during his assignment, the Grievor failed to properly protect the point on his movement when switching cars into track MF10.

[4] On December 13<sup>th</sup>, 2018 the Grievor was required to attend an investigation in connection with circumstances surrounding the run through of the switch at east end of MF10 on Sunday December 9<sup>th</sup>. On December 28, 2018 the Grievor was assessed with a 40 day suspension for failing to protect the point resulting in the run through of the switch.

[5] The Union filed a grievance on January 21, 2019. In the Grievance the Union emphasized the discrepancies in the evidence and Mr. Korhuis' statement. It argued that the Grievor was denied a fair and impartial hearing. Culpability was not established. The Company's evidence did not establish any error on the Grievor's part. It maintained that the Company has ignored other possible causes of this incident.

[6] On March 22, 2019 the Company declined the Grievance. After reviewing all the facts and evidence from the investigation taken by Company Officer Brent Prokopchuk on December 13, 2018 it was found that Aaron was culpable and the 40 Day Suspension warranted.

### ANALYSIS AND DECISION

[7] The Company maintained that the Grievor shoved cars through the switch at the east end of the yard. It says the track had 6,392 feet of cars when the Grievor began switching and a capacity of 6,520 feet. The 11 cars handled by the Grievor were 860 feet in length. It says the 11 cars in addition to the existing cars in the track, totaled 7,252 feet which is in excess of track capacity. It says a fair and impartial investigation was conducted on December 13, 2018.

[8] Based on the findings of the investigation, the Grievor was assessed a 40-day suspension on December 30, 2018 for failing to properly protect the point on his movement and running through the east end switch. The Company says the Grievor knew and understood the rules. The Grievor acknowledged that his 11 cars, in addition to the existing cars in the track, exceeded track capacity. He further acknowledged that he was at the west end when watching the final shoving

movement. The Company acknowledged that the Grievor stated that there was a 15 car gap between his cars and the existing traffic in MF10. A fact inconsistent with the Company's position.

[9] The Union argues that the Grievor's crew was required to place specific cars into west end of track MF10. Mr. Korthuis observed a 15-car length gap between cars placed in track MF10 and existing east traffic prior to their final 6 car shove. At no time did the crew shove the additional car lengths to make the coupling on the existing east cars.

[10] The Union pointed to significant discrepancies as to the cars alleged to have run through the switch. The Company evidence at the investigation indicated both 3 and 13 tank cars at the east end of the track in different documents. However, the cars photographed as allegedly running through MF10 east track switch were hopper cars, not tank cars as shown in Company evidence. The Union also noted that the Company's evidence contain no identification to determine date, time, switch location and relative car numbers to establish the crew's culpability.

[11] I recognize that shoving cars through a switch not properly lined is a violation of rules that can result in catastrophic consequences. A 40 day suspension for such violation is not inappropriate if the facts and circumstances are consistent with the penalty. In this case the Union has raised significant questions regarding the facts and evidence considered by the Company during the investigation.

[12] Investigations under railway collective agreements are recognized as not intended to rise to the level of a full blown legal trial. However, they are the foundation for determining employee responsibility and serve to ensure the integrity of the system for review of discipline that may be assessed.

[13] Prior to the investigation the Grievor was advised of the evidence to be considered:

As per Article 70.01(4), you will find the enclosed documents which will be introduced during the investigation:

- A - Memo from Assistant Superintendent Brad McKeown
- B- Memo from Train Master John Penner
- C- Copy of MF05 switch list
- D- Copy of 499 train run with lengths marked on right hand side of 499 set of, 3 tanks at east end, total footage Cars set off to track, Track length and what the 1559yrd held out
- E - Copy of photo of cars through switch westward facing MF10
- F- Copy of photo of joint bar
- G- Copy of photo of MF10 switch stand

[14] At the outset of the investigation the Grievor's Union Representative and Local Chairperson Dave Hariniuk made the following objections:

I object to appendix E and G as there are no car numbers in the pictures to identify the equipment and there are no dates and time stamps, nor is the person who took the pictures identified. Appendix F there is no way to identify the location of here the picture was taken. According to appendix D

and written notes the 13 tank cars are in the east end of MF10 followed by the set off for 499 followed by the 11 cars placed by RCLS relief 1.

Union Note: The pictures depict a hopper running through the switch while Assistant Superintendent McKeown states that the 13 cars at the east end were tank cars.

[15] The memo from Trainmaster John Penner, regarding his being advised of the run through, is not dated. It does not indicate the time or date he received the call about the run through from Care Foreman Lamontagne. The Car Foreman does not indicate the time the crossing was found to be blocked.

[16] The memo from Assistant Superintendent Brad McKeown setting out the number of cars placed in the track and the total originally appeared as track MF09. Track MF09 is scratched over and replaced with M10.

[17] The Notice of Investigation clearly stated in Appendix D 3 tanks. However Appendix D actually indicated 13 tanks at the east end. The pictures shown of the run through car was a hopper car not a tank car.

[18] The Grievor set out the work he performed in response to question 27 stating:

Q27 To make it clear what switching activities did you perform in track MF10?

A27 As per the switch list appendix C, car 53 was placed in track and secured. Shortly after 44 through 47, 4 cars in total were coupled to car 53 and secured. Then car 42 was kicked into MF10, then after observing a 15 car gap between car 53 and the traffic that was already in MF10. Cars 35 to 39 were coupled to car 42 and then shoved into the clear and secured.

[19] The Grievor was asked to be clear and he responded that he placed 11 cars in a 15 car gap. His statement regarding that 15 car gap was not challenged.

[20] At the outset of the investigation the investigating officer stated:

Investigating Officer Note: This is a Company investigation conducted in accordance with the terms and conditions of the applicable collective agreement. Its **purpose is to develop the relevant facts associated with an incident** or occurrence, and the Company retains the right to rely upon the contents of this statement in the future. **Emphasis Added**

[21] I cannot find that the investigating officer met his own stated purpose of developing relevant facts. He ignored clear errors in the evidence. The notice of investigation stated 3 tank cars at the east end of the track when the documents showed 13 tank cars. The pictures showed hopper cars not tank cars. The Grievor indicated he had 15 cars of room which was not challenged. Key documents had no dates or times. A key document originally showed MF09 scratched out and replaced with MF10. No attempt was made to determine when the Car Foreman noticed the crossing blocked.

[22] This is not a case of one or two typos giving rise for concern. This is a case of numerous inconsistencies in the evidence and failure to address them when properly raised by the Union.

[23] Based on all of the forgoing I cannot find that the Grievor received a fair and impartial hearing. The evidence produced did not justify the discipline. I find the discipline imposed is null and void. The Grievor be made whole for lost wages and benefits.

[24] I remain seized with respect to any matters regarding the application or interpretation of this award.

Dated this, 9<sup>th</sup>, day of April, 2022.

A handwritten signature in black ink, appearing to read "Tom Hodges", is enclosed in a thin black rectangular border.

Tom Hodges  
Arbitrator