

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

CASE NO. 5067

Heard in Montreal, July 16, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal of the dismissal of Mr. Mandeep Nijjar.

JOINT STATEMENT OF ISSUE:

Mr. Nijjar was dismissed as shown in his CPKC Form 104 as follows,

“Formal investigation was issued to you in connection with the occurrence outlined below:

“In connection with, “allegedly leaving company property prior to the end of the completion of your tour of duty on while working HT18-22 on August 23, 2023.”

Formal investigation was conducted on September 14, 2023, to develop all the facts and circumstance in connection with the referenced occurrence. At the conclusion of that, investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following:

- 2020 June – Honour System Manual T and E Canada
- LR-012-20 Honour System Manual Update – June 29, 2020
- Operating Bulletin No.SO-016-23- Crew Activity Standards Revision

In consideration of the foregoing, please be advised you are hereby dismissed from company service effective September 2023.

Based on your previous discipline history this incident constitutes a culminating incident which warrants dismissal.

As a matter of record, a copy of this document will be placed in your personnel file.”

The Union further notes that Mr. Nijjar’s Form 104 is dated and signed on Sept 30, 2023, yet within the body of the dismissal letter the Company has shown September 22, 2023 which is wrong.

Union Position:

For all the reasons and submissions set forth in the Union’s grievances, which are herein adopted, the Union’s position that the outright dismissal of Mr. Nijjar is excessive, unwarranted, and punitive, the Company has chosen to not put education first before discipline.

As provided throughout the investigation and a mitigating factor the crew believed that account:

- 1) As per previous job briefing with TM Syrek where he had advised they had no time left to spot B/O cars and they had completed all their work, which led them to believe they were finished.
- 2) Upon trying to contact a manager for 15 mins with no luck.
- 3) No further list in the printer
- 4) Not having had a lunch break yet.

As noted by the above and not disputed, the employees believed they were ok to depart, it is clear the employees did not set out to intentionally break any rules, they simply believed account they had not taken their lunch, and no one would answer their calls they were ok to depart. Mr. Nijjar was honest and forthright throughout his investigation.

This was a matter where the Company could have had an informal discussion to make sure the employees were educated on said process so if there were any misunderstandings they had, it would be corrected and move forward. Not surprising the Company chose the formal route but that in itself does not necessarily require punitive discipline. The entire process provided the educational component and the employees commitment moving forward to make sure they followed the rules accordingly. That is the main focus of an investigation process, fact find/educate/employee commitment/understanding to move forward in a positive manner.

The Union further notes as provided in Article 96.07 and the Company's Bulletin NO: SO-016-23:

Yard Assignments

- Crews will report 10 minutes prior to on duty time dressed and ready to commence work
- at start of shift
- Engineer (If applicable), Conductor & Brakeman or Yard Forman & Yard Helper will brief
- with Supervisor for safety briefing and instructions during the 10 minute preparatory time
- Wheels turning within 10 minutes of on duty time
- **20 minute meal period**
- **30 minutes allowed from wheel stop to wheel start**
- Any issues that prevent movement will be escalated to the Terminal Trainmaster.

Article 96.07

Yard crews will be allowed 20 minutes for lunch between 4 hours and 5 hours after starting work without deduction in pay.

The employees not having had taken their lunch yet were still entitled, this was not something that was a secret as everyday they would have done this and the TM (or any other manager assigned to monitor the crews work day) **would absolutely be aware of such** and thus was obviously agreeing with same. So yes they left without proper communication having had taken place, but no theft took place, they were still to be in receipt of their lunch period time which would fulfill their 8 hours.

Mr. Nijjar was investigated and dismissed over this one incident which as noted it would not have been a secret to anyone in the Tower or on the ground monitoring the crew (they are monitored and communicated with regularly).

In the end as noted, education through the process would have been suffice, but instead punitive discipline. The Union is confident that based on the investigation process, education was achieved, and a repeat of the error would not happen again in the future.

The Union further argues that Mr. Nijjar was dismissed while his mate received a 10-day suspension. This is grossly un-comparable that one employee is dismissed, and one received 10-days of suspension (the Union still believes this should have been an educational experience for both employees, not punitive) for the one incident. The Company will argue based on his discipline record (2021 - 20DS, 2022 – 30DS) they were ok to dismiss him regardless of what the incident may have been. Mr. Nijjar's first excessive/punitive discipline took place in 2021, it is clear they have continued with their trend where it appears Mr. Nijjar is either facing discrimination or has a target on his back when it comes to assessment of discipline.

There is no doubt that the assessment of discipline in this case is unwarranted and excessive.

There is no doubt based on the mitigating factors that this crew believed they were ok to do as they had done with lunch not having been taken yet and that payable time period was still to be included. There is no doubt the Company Managers (in the Tower, on the ground) were aware of this crew doing same, it was only account on this day they needed them after all (even though what was provided within the statement by the employees in speaking with the TM that there was not enough time to do said work originally) and could no longer communicate with them as they had left, again, education was provided, the employees commitment moving forward, no chance of repeat.

The Union further notes the Company's unilateral discipline guidelines (which do not meet KVP Award) is under separate grievance.

The Company in their step 2 response bring up a preliminary objection which is simply baseless. For some reason the Company believes that the Union must only provide a carbon copy of their initial grievance and cannot argue the facts or what is believed to be the facts in their second step.

The Company is simply wrong and are not prejudiced as they are able to respond to the Unions grievance. This is just another Company attempt at delaying and interfering with process.

The Union requests that Mr. Mandeep Nijjar be reinstated forthwith, and the discipline assessed be expunged, and he be compensated all loss of wages with interest, no loss of benefits, or seniority. 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 Grievors culpability as outlined in the discipline letter was established through a fair and impartial investigation. Discipline was determined following a review of all the pertinent factors, including those described by the Union. Moreover, the discipline was properly assessed in keeping with the Company's Hybrid Discipline and Accountability Guidelines. Furthermore, this assessment of discipline is in line with the principles of progressive discipline.

The Union allegation that the Grievor was dismissed outright is not factual. Prior to being dismissed, the Grievor had active discipline on his record of a 20-day suspension for not

protecting his movement and shoving into an active PPZ zone and a 30 day suspension for failing an A&D post incident test.

The Union in their final step grievance claim for the first time that the dismissal of the Grievor is discrimination or that he had been targeted. The Company objects to any attempts to expand the grievance as the Union has an obligation to make their allegations and provide supporting evidence at the earliest possible step in the grievance process. By conducting themselves in this manner it has prejudiced the Company. Notwithstanding this, the Company maintains was in no way discriminated against nor targeted.

The Company's position continues to be that the dismissal was just, appropriate, and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed and respectfully requests the Arbitrator be drawn to the same conclusion.

For the Union:
(SGD.) W. Apsey
 General Chairperson

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

There appeared on behalf of the Company:

- E. Carrier – Manager, Labour Relations, Calgary
- A. Cake – Manager, Labour Relations, Calgary

And on behalf of the Union:

- R. Church – Counsel, Caley Wray, Toronto
- W. Apsey – General Chairperson, CTY-E, Smiths Falls
- M. Nijjar – Grievor, via Zoom

AWARD OF THE ARBITRATOR

Context

1. Yard Helper Nijjar was an employee with two years of seniority when he was dismissed for violating the Honour System Manual and Operating Bulletin. This was viewed by the Company as a culminating incident, given his previous disciplinary history.

2. His disciplinary history has been amended by the effect of the decision in **CROA 5066**, in which a 20 day suspension was reduced to 15 demerits.

3. Issues

A. Was there a breach of the Honour System Manual and Operating Bulletin?

B. Was discipline appropriate?

C. Was the discipline imposed excessive, and if so, what was the appropriate discipline?

A. Was there a breach of the Honour System Manual and Operating Bulletin?

Position of Parties

4. The Company takes the position that there was a clear violation of the Manual and Bulletin. The grievor left Company property 35 minutes prior to the end of his shift and claimed full pay for 8 hours and 15 minutes.

5. Moreover, the grievor left the property without obtaining permission from management.

6. The Company contests whether the grievor had in fact not taken an earlier lunch.

7. The Union takes the position that the grievor had not taken the 30 minute lunch period to which he was entitled, such that a full day of work was performed. The grievor had sought additional work, which had been declined, and had attempted to contact management without success.

8. The Union submits that the evidence is clear that the grievor had not taken an earlier lunch.

Analysis and Decision

9. The grievor has a scheduled shift, from 2100 to 0500. It is uncontested that he left Company property prior to the end of his shift, at approximately 0430 (see Q and A 21).

10. With respect to the factual issue of whether the grievor had taken an earlier lunch, I accept the Union argument. The only evidence before me is the testimony of the grievor and his colleague, both of whom testified that they had not taken lunch (see Nijjar Q and A 17, 25-27; Mitchell-Caldwell Q and A 18,22). There is no evidence to contradict this

testimony, and accordingly I find that the grievor had not taken the 30 minute lunch break to which he was entitled.

11. It is not contested that the grievor did not inform management that he was leaving the Company property, prior to the end of his scheduled shift.

12. It is also not contested that the grievor filled out his time sheet showing he had worked until 0500 (see 35-36).

13. The Honour System for Train and Engine Employees makes clear that employees are responsible for their own time sheets:

The Honour System

Under the Honour System all Train & Engine Employees are responsible for their own payroll.

Most timeslips are automatically approved and paid, and are subject to audit at a later date by Audit Specialists. As your own timekeeper, you are responsible for your timeslips (even if submitted by a fellow employee), and you must make every effort to understand and apply your Collective Agreement, this Manual and instructions provided by the Company from time to time. With CMA (Crew Management Application), you make your own adjustments (see "Adjusting Timeslips").

You are your own timekeeper.

14. It is acknowledged by the grievor that he did not accurately capture the hours worked:

Q22: Can you state for the record what time you were in fact done your work and departed CPKC property?

A22: Around 0425hrs.

Q23: What time is your shift scheduled to end?

A23: 0500hrs

Union Objection: Collective agreement Article 49.16 states that a Basic Day consists of 8 hours or less.

Investigating Officer: Objection noted.

Q24: Are you familiar with Article 96.07 of the Consolidated Collective Agreement Between Canadian Pacific Railway and Teamster Canada Rail Conference (read and discussed)?

"96.07 Yard crews will be allowed 20 minutes for lunch between 4 hours and 5 hours after starting work without deduction in pay."

A24: Yes

Q25: Are you familiar with Article 96.08 of the Consolidated Collective Agreement Between Canadian Pacific Railway and Teamster Canada Rail Conference (read and discussed)?

"96.08 Yard crews will not be required to work longer than 5 hours without being allowed 20 minutes for lunch, with no deduction in pay or time therefore. Yard employees will be entitled to a second lunch break between the ninth and tenth hour on duty. There will be no deduction in pay or time therefore."

A25: Yes

Q26: Referring to Q&A 17, you stated you did not take your lunch yet. Can you explain why you did not take your lunch between your 4th and 5th hour as outlined in Article 96.07?

A26: We rather take lunch at the end of the shift because it works out easier to get our work done as well as coordinate with other crews to allow them to get their work done. So just we just typically take it at the end of the shift. It works best for both us and the operation.

Q36: What time did you tie up your ticket for HT!8-22?

A36: Our ticket was tied up for 0500hrs.

Q37: Referring to your answer in Q&A 22, if you finished work at around 0425 and departed CPKC property, why did you tie up for 0500hrs?

A37: We thought that regardless of what time we finished at. we thought we had to tie up at the 8 hour tie up time. We tied up for 0500 account when factoring our lunch break it would be a 0500 finish time. I now realise that I misunderstood the basic day and have since corrected this procedure.

Q38: Referring to Appendix C. it states:

"Attention -All Canadian T&E Employees

Please be advised that a revised Honour System Manual has been published today.

Effective immediately, this replaces the previous version.

It is your responsibility to know and apply the contents of this manual

The Honour System is based on the premise that you are your own timekeeper. You must be aware of what you are submitting for payment and you must be sure that the submission is accurate and that you are entitled to be paid the amount submitted whether by you or on you behalf. This applies regardless of the wage claim type that has been submitted."

Is this correct?

A38: Yes as per Appendix C

Q39: Does tying up your ticket for 0500 hours although you left CPKC property at approximately 0430hrs comply with Appendix C?

A39: No. Now that we better understand what Appendix C is stating, we did not comply. It was under the impression that you tie up on your 8th hour regardless. Again, it was not our intention to falsify a tie up. We misunderstood the process.

Q40: Do you understand that CPKC depends on their employees to accurately report times such as on/off duty times, work claims, or work performed in order to ensure all operating guidelines are complied with?

A41: Yes

Q42: Can you state for the record who tied up the HT18-22 ticket?

A42: The foreman, Daniel Mitchell-Caldwell

Q43: Did you review your ticket to ensure it was tied up accurately?

A43: I saw that it was tied up for 0500 and again, thought it was the right way to do it.

15. Given that the time sheets filled out for the grievor do not accurately reflect hours worked, which the grievor admits, it appears clear that there was a breach of the Honour System Manual and Operating Bulletin.

B. Was discipline appropriate?

16. Breaches of the Honour System have been viewed extremely seriously by CROA arbitrators. Arbitrator Picher held in **CROA 2280**:

The decisions of this Office have clearly established that a running trades employee, responsible for his or her own timekeeping in a system which is largely unsupervised, works in a position of particular trust. The violation of that trust, an essential element of the employer/employee relationship, is, absent the most exceptional mitigating circumstances, grounds to conclude that the necessary foundation of the employment relationship has been destroyed.

17. Even carelessness or mistakes in judgment in properly filling out time sheets has been found to merit serious discipline, such as reinstatement without compensation (see **CROA 4764**).

18. Here there was a breach of the Honour System Manual and Bulletin by the grievor in not properly filling out his time sheets and discipline is therefore appropriate.

D. Was the discipline imposed excessive, and if so, what was the appropriate discipline?

Position of the Parties

19. The Company takes the position that discharge was an appropriate penalty, given the serious nature of the infraction and the grievor's short tenure and extensive discipline history.

20. It draws a distinction between the discipline given to his co-worker, given that the grievor was now being disciplined for his third major offense in two years.

21. The Union notes that no working time was lost by the Company, and this matter is essentially about inaccurate bookkeeping rather than time theft or fraud.

22. The Union submits that dismissal on its face is a wholly inappropriate penalty, given the facts in question. It notes that his co-worker, who committed the very same offense, was given a 10 day suspension (see Tab 10, Union documents).

23. The grievor has no previous instances of Honour System issues, and has been remorseful. Any discipline should be at the lowest end of the spectrum.

Analysis and Decision

24. For the reasons that follow, I find that while discipline was appropriate, termination was excessive.

25. Firstly, general labour relations principles of discipline require like violations to be disciplined in a similar manner (see Brown and Beatty 7:4414, **CROA 3581**, **CROA 4466**). Here, the identical violation resulted in a huge disparity of discipline. The grievor's foreman, Mr. Mitchell-Caldwell, was assessed with a 10 day suspension, while the grievor was terminated. It is clear, as the Company has argued, that discipline is necessarily a personalized exercise, taking into account the personal and work history of each employee. However, the 10 day suspension assessed to Mr. Mitchell-Caldwell can nonetheless serve as a starting point in assessing whether the discipline given to the grievor was excessive.

26. Second, the Company relies on the record of the grievor to support its view that progressive discipline has been imposed. It argues that this is the third major offense of the grievor in two years. However, one of the offenses has been reduced to 15 demerits from a 20 day suspension, by the effect of **CROA 5066**. The starting point for looking at the grievor's record has thus been changed from a 20 day suspension, followed by a 30 day suspension, to that of 15 demerits followed by a 30 day suspension.

27. Thirdly, there are no other instances of issues involving the Honour System on the grievor's record.

28. Fourthly, I find it unlikely that the "bonds of trust" have been broken for the grievor, when his colleague, having committed the same violations, is permitted to return to work after a 10 day suspension.

29. In these circumstances, I find that termination is excessive.

D. What discipline is appropriate in the circumstances?

30. Applying the William Scott principles to this matter, I note that the grievor does not have much seniority, and does have significant discipline against him in a relatively short time. An Honour System violation is extremely serious, given the need for trust between

the Company and the employee. It is troubling that the grievor chose to off-set his missed lunch period unilaterally and to leave the property without informing management. As mitigating factors, the grievor was candid during the investigation and accepts that he was wrong to act as he did. Apart from this incident, there are no other indications of problems with time keeping. He did attempt to contact management before leaving the property. This is not a matter of outright time theft, as was the case in **CROA 4869** and the cases cited therein. It is more akin to an error of judgment, as seen in **CROA 4894** and the cases referred to there. The Company imposed a sanction of a 10 day suspension on his colleague, Mr. Mitchell-Caldwell, for the same infraction.

31. Taking into account the above factors and jurisprudence, I find that a 15 day suspension is appropriate.

32. The grievance is thus partially allowed. The grievor is to be reinstated without loss of seniority and made whole, with the exception of the period of the suspension.

33. I remain seized for any questions of interpretation or application of this Award.

September 16, 2024



JAMES CAMERON
ARBITRATOR