

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

**CASE NO. 4764**

Heard in Calgary with Video Conferencing, November 10, 2020

Concerning

**CANADIAN PACIFIC RAILWAY**

And

**TEAMSTERS CANADA RAIL CONFERENCE**

**DISPUTE:**

Appeal of the dismissal of Conductor T. Jeglum of Revelstoke, B.C.

**JOINT STATEMENT OF ISSUE:**

Following an investigation Mr. Jeglum was dismissed which was described as "for using non-actual off duty times on your tie up for DHOM02 from Golden at 1830 August 14<sup>th</sup>, 2019 in Revelstoke, BC, which resulted in the generation of fraudulent 162 mile payment. For using non-actual off duty times on your tie up for DHOME02 from Golden at 1830 August 14<sup>th</sup>, 2019 in Revelstoke, BC, which resulted in the generation of an illegitimate Over 10 Hour Violation against Canadian Pacific. For using non-actual off duty times on your tie up for DHOME02 from Golden at 1830 August 14<sup>th</sup>, 2019 in Revelstoke, BC, which resulted in your receiving rest in excess of the maximum provision provided by the Consolidated Collective Agreement".

**Union Position:**

The Union contends the penalty is unjustified, unwarranted, and excessive in all of the circumstances, including mitigating factors evident in this matter. It is also the Union's contention that the penalty and the Company's discipline policy is contrary to the arbitral principles of progressive discipline.

The Union requests that Mr. Jeglum be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

**Company Position:**

Canadian Pacific uses an Honour System for TCRC represented employees to tie up, enter claims and to input required rest after a tour of duty.

Following a fair and impartial investigation, the grievor was found culpable for having violated the Honour System by using non-actual off duty times resulting in the generation of a fraudulent 162 mile payment, an illegitimate Over 10 hour Violation against the Company and in the grievor receiving rest in excess of the maximum provision provided for in the Collective Agreement.

Discipline was determined following a review of all pertinent factors, including those the Union describe as mitigating. The Company maintains the discipline was justified and warranted

in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed.

The Company disagrees and denies the Union's request.

**FOR THE UNION:**

**(SGD.) D. Fulton**

General Chairperson

**FOR THE COMPANY:**

**(SGD.) L. McGinley**

Assistant Director Labour Relations

There appeared on behalf of the Company:

*L. McGinley*

– Assistant Director, Labour Relations, Calgary

*S. Oliver*

– Manager Labour Relations, Calgary

And on behalf of the Union:

*K. Stuebing*

– Counsel, Caley Wray, Toronto

*D. Edward*

– Senior Vice General Chairperson, Medicine Hat

*J. Kiengersky*

– Vice General Chairperson, Revelstoke

*T. Jeglum*

– Grievor, Revelstoke

**AWARD OF THE ARBITRATOR**

The grievor entered into the service of the Company on October 1, 2018. He worked as a Conductor out of Revelstoke, B.C.

The grievor was working on the Revelstoke Trainman Spareboard on August 11, 2019. He received a call to deadhead to Golden, B.C. in order to be in position to work three tours of duty in a Yard Service assignment. The grievor opted to use his own vehicle for the Revelstoke to Golden trip.

The grievor worked his assignment as Yard Helper in Golden on August 12, 13, and 14, 2019. His completed his last tour of duty on August 14, 2019 at 16:16 and then deadheaded back to Revelstoke in his vehicle.

In addition to the grievor, the crew members for each of the grievor's assignments were Locomotive Engineer Rachel Reinks, Trainman (Conductor) Kelly Kuharski and Yard Foreman Shaun Wozny.

It is common ground that one crew member will often tie up and submit the wage claim for hours worked on behalf of the entire crew.

The final tie-up on August 14, 2019, which included crew rest, was completed by Yard Foreman Wozny on behalf of all the crew members. He claimed the maximum allowable rest of 10 hours for each of the crew members, including the grievor.

The grievor, as noted, deadheaded back from Golden to Revelstoke after his shift at 16:16 on August 14, 2019. This was around the same time Mr. Wozny tied-up the assignment for the crew in Golden.

The grievor was unaware that Mr. Wozny had included him in the final tie-up in Golden. Nor did the grievor realize that Mr. Wozny's tie-up entry into the Crew Management Centre ('CMC') had generated a deadhead trip ticket indicating that the grievor was expected to deadhead back to Golden, along with the other members of the crew, at 02:16 on August 15, 2019. The grievor stated at his investigation in that regard:

Q 24: Do you understand at 0216 August 15, 2019 that you were on duty and were required to be working your tour on DHHOME22?

A : I do now.

The grievor arrived at the Revelstoke station at 18:30 on August 14, 2019 and attempted to tie-up his deadhead claim in the CMC. The CMC system prevented him, from inputting his tie-up claim. The grievor sought the advice of other co-workers who happened to be at the Revelstoke station at the time about his tie-up. The grievor was advised by one of his co-workers that he could not complete his trip claim until his personal rest hours set out in the CMC system for his tour had expired. The grievor stated in that regard at his investigation:

Q 32: When you arrived back in Revelstoke at 1830 August 14, 2019 did you attempt to tie up?

A: I did I was unaware of the 10 hours rest and assumed there would be a DH waiting for me.

Q 33: Did you tie up?

A: No there was no ticket waiting for me.

Q 34: Did you call CMC to obtain a tie up?

A: I did not. I asked co-workers they said that I needed to request a ticket following the rest that I didn't book.

The grievor acknowledged at his investigation that he did not contact the CMC, his Union or a Company officer when he arrived in Revelstoke on August 14, 2019 to see what action he should take about his inability to tie-up his ticket.

The grievor returned to the Revelstoke station the following day, August 15, 2019 at 15:15 hours. He booked 12 hours of rest to 03:15 August 16, 2020. The grievor's Golden-Revelstoke trip was reviewed by a Company Audit Specialist which led the Company to find a discrepancy of 12 hours and 59 minutes. (The tie-up ticket was

originally entered at 02:16 by Mr. Wozny and subsequently entered by the grievor at 15:15). That discrepancy of 12 hours and 59 minutes in turn generated a trip ticket of 162 miles instead of the 100 miles that the grievor should have been paid for his tour DHHOME22. The audit, fortunately, caught the discrepancy and the Company did not process the grievor's tie-up as an Over-hours violation attracting payment.

The grievor was asked about the discrepancy at his investigation:

Q28. Mr. Jeglum did you use actual times when you input the data in to tie up for the DHHOME02?

A. Yes

Q29. Is this the actual time you arrived home from Golden?

A. No

Q30. Please explain what time you arrived home from Golden?

A. 1830 August 14, 2019.

Q31. Please explain why you would arrive back into Revelstoke and tie up 20:45 later?

A. Apathy and Ignorance.

The Company submits that running trades employees work in a unique position of trust and are responsible for their own time reporting and wage claims. Discrepancies of the kind that occurred with the grievor, in the Company's view, are considered to be of the utmost seriousness and grounds for termination of employment. The Company notes that the grievor claimed that the deadhead entry was complicated and yet he took no further steps, other than speaking with a co-worker, when he clearly should have contacted a Company or Union officer to seek assistance. Overall, the Company alleges that the facts support a finding that the grievor's tie-up entry of 12 hours and 59 minutes

establishes that he knowingly used an incorrect off-duty time resulting in an Over-hour violation against the excess rest.

The Arbitrator notes that the incident which led to the grievor's termination stems from Mr. Wozny entering the crew's tie-up time after his crew completed their tour in Golden. It is clear from the evidence that the grievor was unaware that Mr. Wozny had done so before he deadheaded back to Revelstoke in his own vehicle. The grievor, however, did not take the necessary steps that were incumbent on him to take as a running trades employee when he arrived at the station in Revelstoke. His failure to do so was a serious error and merits discipline.

The next issue is whether termination of his employment was appropriate under all the circumstances.

Given the grievor's short service of less than one year at the time of the incident, I do find it reasonable that he did not have a full grasp of how to correct his deadhead time when he arrived in Revelstoke on August 14, 2019. As he said in his interview at Q 54: "*Previous DHs were simple and this DH was complicated. I thought that I had tie up correctly*". The fact that the DH was "*complicated*" to him is born out not only by his general inexperience but was also demonstrated by his need to rely on a co-worker for initial advice after being unable to tie-up in Revelstoke on August 14, 2019.

The grievor in the Arbitrator's view should have made the effort when he arrived at the station in Revelstoke on August 14, 2019 to contact a Company official or a Union representative rather than rely on the advice of a co-worker on how to tie-up his trip. His failure to do so was negligent. On the other hand, I do not find after reviewing the entire incident that the grievor deliberately intended to defraud the Company by making a false trip entry. In the end, I accept his explanation for his actions was due more to "*apathy and ignorance*" and not dishonesty as alleged by the Company.

The Arbitrator concurs with the conclusion reached by Arbitrator Picher in **CROA 3614** that the grievor's actions do not amount to deliberate fraud but rather "...*show carelessness and errors of judgement deserving of some discipline*". The grievor must understand nevertheless that his tie-up error followed by excessive rest was unacceptable and a serious breach of his duties as a Conductor.

The arbitrator further agrees in these circumstances with the comments of the Arbitrator in **CROA 4418** "...*that the imposition of a serious sanction, short of termination, will have the desired rehabilitative impact on this grievor*". Accordingly, after considering all the facts, the Arbitrator directs that the Company reinstate the grievor forthwith without loss of seniority, but without compensation for any wages or benefits lost.

November 23, 2020



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JOHN M. MOREAU  
ARBITRATOR