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# TRAINING MANUAL



**LOCAL CHAIR TRAINING PROGRAM**

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*In this publication, for the sake of brevity, wherever the forms “he/him” and “his” appear, they are to be understood in the generic sense that includes “she” and its related forms.*

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# Message from the President

## Welcome to the TCRC Training Program

The TCRC is committed to providing our representatives with up-to-date material that is focused, constructive, and includes interactive educational modules. The information and knowledge contained in these courses is second to none, compiled from the experience and education of our senior Officers.

I want to thank you for accepting the responsibility of representation for our members. These positions are critical to the success of our organization, for which the time and effort invested as an effective TCRC officer too often goes unacknowledged. Remember, your role is leadership for our members, you are the face of our Union, your voice and actions will often dictate the perception of our Union.

We hope that our educational program lives up to your expectations and provides the tools and resources you need to fulfill your duties as a TCRC representative to the best of your abilities.

Yours very truly,



Paul Boucher  
President  
Teamsters Canada Rail Conference

*"Education provides the path to knowledge;  
knowledge creates the steps to progress"*





# Education Programs

## Teamsters Canada Rail Conference

In January of each year, the National Executive Board meets with all of the General Chair and National Legislative Board members in order to review and establish priorities for the coming year. There is unanimous endorsement to the Education mandate, and **training has been given a top priority**. The development and delivery of a comprehensive and thorough program is ongoing.

Since delegate action at the 2010 TCRC Convention, the Executive Board has budgeted five dollars per member, per month, to properly finance, implement and deliver the TCRC Education Program. This represents expenditures in excess of several hundred thousand dollars each year.

Development and implementation of various training modules or courses is a continuously evolving project. Technology is providing a wide variety of methods for the delivery of training and education, and the TCRC Education Program will deliver the various courses in the best possible forum.

Expansion of the **TCRC Education Program** will include rank and file membership information sessions, multi-level Officer Courses, and skill development practical courses.

This manual is designed to form the instructional basis for a two day in-person classroom, introductory level training course intended to provide instruction to new or inexperienced Division representatives and has been further modified to accommodate live online training too. This course is designed primarily for **Local Chairs** and **Vice Local Chairs**.

*"I start with the premise that the function of leadership is to produce more leaders, not followers"* RALPH NADER



## Teamsters Canada

Through the Director of Education, Teamsters Canada is **committed** to offering a quality service that meets the needs of the country's Conferences and Local Unions. In addition to developing training courses, the **Department of Education** holds training sessions across the country. One dollar per member is allocated to all Local Unions and Conferences based on the previous year's average number of members.

## North American Railway Foundation

The North American Railway Foundation (NARF) is a non-profit operating foundation formed by the Brotherhood's Relief and Compensation Fund (BR&CF) to **support rail history, education, safety and technology** in the United States and Canada. With initial funding and continued Board of Directors stewardship coming from the BR&CF, NARF has supported many varied non-political projects throughout the United States and Canada over the past ten years. The primary focus of these efforts has been in support of organized rail labour, giving back to all of the men and women of the railroad community across North America.

The Teamsters Canada Rail Conference, through its ongoing relationship with NARF, has been able to utilize funding assistance through the Direct Project Funding for Rail Labour Organization Support.

The TCRC National Executive Board recognizes and appreciates the support of our Sisters and Brothers within NARF and BRCF.



*"Education is the foundation of  
the future"*



# Introducing Yourself

Meet up with the other members of your group and discuss the following questions. Be prepared to share your name and role as well one of your responses to question #5 when you return to the main room

1. What is your work experience?

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2. For how long have you been a Local Chair or Vice Local Chair?

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3. How many employees do you represent at the Division level?

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4. What prompted you to hold that position?

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5. What do you hope to learn during this training course?

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# Objectives

Here are the main objectives of this training seminar:

1

To build skills and confidence to effectively represent fellow members in the workplace.

2

To know the history and structure of our Union.

3

To define the role and responsibilities of Local Chair (i.e. Local Committee of Adjustments), and to foster mutual respect and cooperation between Division Officers, to the benefit of the membership.

4

To learn how to handle a dispute.

5

To develop skills to better investigate and represent your members during a statement.

6

To determine what a grievance is.

7

To determine how to handle a grievance.

8

To learn how to draft a grievance.

9

To understand the arbitration process.

10

To have an overview of various labour laws.

*Sometimes, our members don't know or forget the importance of being unionized, particularly in the 21<sup>st</sup> century, when the economy and globalization are constantly challenging our working conditions.*

*For this reason, it is our role to educate and inform our co-workers about our union structure and history, in order for them to better understand the struggles our leaders went through, and the reasons why we still need to be united to maintain and improve our life and working conditions.*

# Section I

## History and Structure



# History of the Labour Movements

**The right of association is a basic right in every democratic society. This right is enshrined in Labour Code and Charters of Rights.**

For a long time now, Canadian workers have been organizing into unions to promote their way of seeing things and set the rules that determine their work and working conditions. Thus, over time, workers have succeeded in not only **improving work and working conditions but also ensuring the protection of a host of social laws for all citizens**. For example, the acts respecting health insurance, employment insurance, pension boards, occupational health and safety to name a few. The right to organize has always been an important issue for workers. Let's not forget that **organizing was considered a crime a century ago!**

## **The right to organize: a long battle**

"Every worker's coalition is considered to be a criminal conspiracy, a plot to restrict trade, and is thus considered illegal. Any person associating with others to obtain better working conditions can be prosecuted under British Common Law and punished by a fine and/or imprisonment".

**The Combination Act**, passed by the British Parliament in 1800, explains clearly why the Labour movement had to develop clandestinely. The provisions of this act applied also to Canada, and other laws, Canadian laws, like the **Master and Apprentice Act** (1821) and the **Master and Servant Act** (1847), were used to suppress strike leaders and trade union officers. Finally, in 1872, the **Trade Union Act** was passed in the wake of the struggle by the typographers and the entire Labour movement. The right to association would henceforth be "tolerated" but would not be "recognized" by government.

The right of association now has an important legislative framework. But this does not mean automatic union recognition. Organizing is still difficult among small-and medium-sized companies, and third-sector employers (service industry, office workers, and businesses) still strongly oppose any attempt to organize their staff. Many workers are still struggling hard to have their union accredited.

More than 100 years have passed since 1872. Workers have achieved many of the early goals by collective bargaining and by political action. Unions have won Legislative changes ending the exploitation of child Labour, and numerous other regulatory and legislative standards that benefit all workers throughout society. It is an important record of "non-contract" achievements and an inheritance which Unions jealously guard and fight for today.



# Why a Union?

*"With all their faults, trade unions have done more for humanity than any other organization of men that ever existed. They have done more for decency, for honesty, for education, for the betterment of the race, for the developing of character in men, than any other association of men." - Clarence Darrow*

Take a few minutes to write down your responses to these three questions.

1. Why is it still relevant and important to be unionized today?

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2. What are the advantages to belong to Teamsters Canada Rail Conference?

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3. Why is it important to know our structure and history as a union rep?

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# Without a Union

## Management Rights

Without a Union, the employer has few limitations on how to treat employees and organize work. A non-unionized **employee is only protected by the minimum standards of the relevant labour laws**. If there is a violation of a section of the labour law, or any regulation, the employee has a choice to act alone or to hire his own lawyer to defend himself against his employer. Employers sometimes abuse their power or ignore the Labour Standards including Health and Safety Regulations, knowing **that it takes a lot of courage and money for a non-unionized employee to file a complaint against them and to be successful**. When faced with such an employer, nonunionized workers often quit that job and simply move on.

**Non-unionized workplaces do not have the benefit of the grievance procedure.** The employer is always right and there are not a lot of things the workers can do about it. The employer controls the entire workplace. Often, their way of thinking is “my way or the highway”.

Over the years, unions have fought for various workers’ rights and labour laws, which benefit both unionized and non-unionized employees: minimum wages and wage improvements;

- Minimum wages and wage improvement;
- Overtime work rules;
- Health and safety standard and regulations;
- General holidays;
- Annual vacation.
- Human rights;
- Pay equity;
- Employment Insurance;
- Workers compensation;
- Harassment Privacy;

# With a Union



## Member's Rights

With a Union in the workplace, you have one strong voice. **You benefit from all the rights included in the labour laws, and you also limit the management rights through the Collective Agreement.** The Union is the bargaining agent, which will negotiate a contract to gain rights, terms and conditions of work and pay in excess of the minimum standards and restrict management in their ability to control every aspect of the employment relationship. Beginning with a mandate provided by the membership and negotiated by the Union, terms and conditions of employment will be voted on, and decided by, the majority of the Union membership and will be written in a legal document called a Collective Agreement.

## The Collective Agreement

According to Provincial and Federal Labour Codes, a "Collective Agreement" is **a written agreement covering working conditions entered into between one or several Certified Unions or Associations and one or several Employers or possibly an Employer Association.**

In other words, it's a legal document by which a Certified Bargaining Agent (the Union) and an Employer, after long and sometimes difficult negotiations, agree for a definite period of time on working conditions covering the members of the bargaining unit. Once the Collective Agreement is signed, it has to be filed with the Labour Board in order to have effect.

In certain situations, an arbitrator may decide on the terms of a Collective Agreement, in whole or in part. However, it is **usually the result of a negotiation between the parties. The rights and obligations of the employees and the Employer are therefore provided under the original and exclusive agreement.** It is through the Collective Agreement that employees dictate the limits of management rights, thus the importance of maintaining solidarity amongst members, in order to have the edge on the Employer during negotiations. It may happen that one party or the other does not respect the Collective Agreement or any Labour Laws. Then, the aggrieved party may resort to the grievance procedure. **The grievance procedure is the mechanism negotiated between the Union and the Employer to resolve disputes as to the terms and conditions of the Collective Agreement which include any Labour Laws.**

### Employer Policies

Even if we work in a unionized workplace, the employer still has the right to introduce workplace policies. **The employer has the inherent right to manage the company, but a rule unilaterally introduced by the company,** and not subsequently agreed to by the union, **must satisfy the following conditions:**

- It must be consistent with the Collective Agreement and any applicable law.
- It must be clear and unequivocal
- The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge
- It must be reasonable
- It must be brought to the attention of the employee affected before the company can act on it
- Such rule should have been consistently enforced by the company from the time it was introduced

There is a long-standing case that outlines the governing jurisprudence with respect to the introduction of an employers' policy. It is listed as KVP Co. Ltd and Lumber & Sawmill Workers Union Local 2537 (1965), 16 L.A.C. 73 (Robinson), and commonly referred to as the **KVP Award**.

In a unionized workplace, **if the employer does not follow the parameters as established in this landmark case, there are grounds to file a grievance.**

### Attendance Management Policy

An employers' Attendance Management Policy is an example of a policy put in place by the employer.

Canadian Railway Office of Arbitration (CROA), case **3444**, heard in September 2004, is a good case to read to gain a better understanding of the introduction of an employer policy and the subsequent grievance and arbitration process.



# UNION STRUCTURE



**International Brotherhood of Teamsters**

1.2 million members across Canada and the United States



**Teamsters Canada**

125,000 members across Canada

**4 Joint Councils**

Location-based and consist of 3 or more local unions

**22 Local Unions**

Independent, hundreds across North America

**10 Trade Divisions**

Including;

- Freight and Tankhaul
- Parcel
- Movie Making & Tradeshow
- Dairy
- Social Services
- Construction
- Armoured Car
- Solid Waste
- Warehousing
- Retail, Brewery and Soft Drink

**Conferences**

- Graphic Communications Conference
- Teamsters Canada Rail Conference Maintenance of Way Employees Division TCRC-MWED
- Teamsters Canada Rail Conference TCRC





# TCRC STRUCTURE

## Teamsters Canada Rail Conference 10,000+ Members

### 86 Divisions

- President \*
- Vice President \*
- Secretary Treasurer \*
- Chaplain
- Trustees (3)
- Delegate
- Delegate by Craft \*\*
- 1st & 2nd Alternate

- Legislative Representative \*
- Alternate Legislative Representative
- Alternate Legislative Representative for each Craft \*\*

- Local Committees of Adjustment(s)
- Local Chair(s) \*
- Vice-Local Chair(s)

\*\* Craft Specific LCA's in Most Locations

\*Denotes positions which constitute the Division's Executive Board

\*\* Denotes Multi-Craft Divisions

### 13 General Committees of Adjustment

Each GCA is comprised of all the Local Chairs that fall under a particular collective agreement

### General Chairs Association

The General Chairs Association is comprised of the 13 General Chairs

### 7 Provincial Legislative Boards

Each PLB is comprised of all the Legislative Representatives within that Province

### National Legislative Board

The Board is comprised of the 7 PLB Chairs and the National Legislative Director

### National Office

#### National Executive Board (7 Officers)

President, Vice President, Secretary/Treasurer  
Recording Secretary and Trustees(3)

National Legislative Director

*In the past, a distinct separation has existed between the legislative and protective elements of our union(s). This has hindered the effective representation of our members.*

*As a result, one of the goals we have is to eliminate this division by reinforcing the importance of the various division officers working as a team to benefit our members.*

*Learning each other roles and responsibilities is an important part of this process. This section deals with the roles and responsibilities of the local chairs, remembering the same principles apply to all Division Officers.*

*This will ensure that Local Chairs will have a better understanding of how to work together, with Division Officers to help our members receive the assistance they require.*

# Section II

## Roles and Responsibilities



# Working Better with the Members



Work with the other members of your group to brainstorm ideas related to each question/situation described.

1. You are the new Division Officer, and you want to build up solidarity within the membership of your Division. What do you do?

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2. A member comes to you with a complaint. After investigation, you decide based on precedent cases and the Collective Agreement, that it is not a valid grievance. He insists to file a grievance. What do you do?

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3. A member works overtime and gets paid regular rate. He is entitled to file a grievance but refuses to do so. What do you do?

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4. The employer introduces a new policy. A small group of employees come to you to complain. What do you do?

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5. The employer introduces changes in clear violation of the Collective Agreement. After investigation, you realize that the majority of the membership agrees with the violation and don't want to file a grievance. What do you do?

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6. A member approaches you with information that he injured his back while at work 10 days previously. The local manager convinced him to not report the injury to Workers Compensation. The member had seen a doctor but did not disclose the ailment was work related. The members' back continues to hurt him and he doesn't know what to do. What do you do?

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7. New bargaining unit employees are hired by the company. What do you do?

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“Let the workers organize.  
Let the toilers assemble. Let  
their crystallized voice  
proclaim their injustices and  
demand their privileges. Let  
all thoughtful citizens  
sustain them, for the future  
of Labour is the future of  
America”.

John L. Lewis





# Your Roles and Responsibilities

You may be a Local Chair or a Vice-Local Chair Representative; you have similar roles and same responsibilities:

## To defend

- Obligation under the Canada Labour Code, to fairly represent our members from arbitrary, discriminatory, or bad faith. (Section 37).
- protects rights of all Union members, under the Collective Agreement and labour laws;
- Investigate any problems that are raised to your attention;
- take action to settle dispute;
- act promptly;
- defend our Union, and our democratic principles.

## To inform

- educate the membership on their union, their rights, their responsibilities:
- inform the membership of settlements and ongoing issues, talk about your victories, do not mention any names, you must keep personal information confidential:
- be politically aware of relevant issues:

## To build solidarity

- be willing to learn;
- show leadership (lead by example);
- act with confidence and in a professional manner;
- build your credibility by being honest and non-judgmental;
- Listen to the members, their concerns, issues and their needs;
- communicate with members, the General Chair, the Provincial Board Chair, and the TCRC National Office;
- organize, promote the Union in the workplace and in the community;
- promote equality and harassment free working environment;
- you are not simply another Union member; you are the face of the Union to many people; members and non-members alike.

*"The fight is never about grapes or lettuce. It is always about people."* CESAR CHAVEZ

Most importantly, a **Division Officer** must continue to be an important person in their own family. Whether that is as a spouse, a parent, or grandparent! Time Management and work life balance is essential in an effective Division Officer's life, despite the challenges of being a front-line Union Officer.

**An effective Division Officer establishes positive relationships with:**

- TCRC Members;
- Other officers within the Union(s);
- General Chair, Provincial Legislative Chairs;
- National Union Officers;
- The employer, through local management;
- Labour Community in their particular region or area.

**An effective Division Officer needs to know:**

- The Collective Agreement;
- The employer's rules and policies;
- Labour Laws and where to find them;
- Local working conditions;
- Supervisors and other management;
- The Union membership;
- The Union and the relevant Officers.

**Perhaps the most important thing a Division Officer needs to know is their own:**

- Limits and Capabilities
- Areas of Improvement
- Areas or issues to Avoid
- Jurisdiction and What to Avoid

As a Division Officer, you are the front line of the Union. Your job can be difficult, but you're not alone. There is support within the Union. Your role is to represent everyone and the collective rights of all.

TCRC Division Officers are expected to be thorough, prepared, and act professionally as they are representing the members and the Division. Sometimes it is natural that you will have adversarial and confrontational situations with the employer, because we don't share the same interest. When dealing with management as a Division Officer, you are an equal and have significant rights as a Union representative recognized in the Collective Agreement and labour laws.

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# Duty of Fair Representation

The duty of fair representation is a duty owed by Unions to their members. It sets the outer bounds of what Unions must and cannot do in the representation of their members. The source of the Duty of Fair Representation is Canada's various labour relations statutes:

**Section 37** of the Canada Labour Code reads:

A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the Collective Agreement that is applicable to them.

**Section 37** imposes three obligations:

A Union cannot act in a manner that is:

- arbitrary.
- discriminatory.
- in bad faith.

in the representation of any of its members.

**The Duty is limited to representation under the Collective Agreement only.** It does not apply to representation outside of the Collective Agreement such as:

- WSIB claims
- Agreements under special Acts
- Internal Union politics
- Taking grievances up on judicial review
- Negotiation of Back to Work Protocols

A Union shall not act in an **arbitrary manner**. An arbitrary decision is:

- A random decision.
- A decision not based on any general rule; or,
- A decision based on whim with little regard for the facts

A Union shall not act **Discriminatory**: Discriminatory manner is

- A decision that singles a person out and treats them unfairly on the basis of an irrelevant characteristic or ground
- A decision "based upon invidious distinction without labour relations rationale"  
- Mirza Alam, [1994] OLRB Rep. June 6

A Union shall not act in **Bad Faith**: bad faith is:

- Akin to acting with malice, ill will or dishonesty.
- Serious negligence
- A total lack of representation

A failure to investigate is often found to be "arbitrary" conduct. A Union can act in good faith but still act in an arbitrary manner. Put another way - to avoid acting in an arbitrary manner a Union must act with reason.

A member who complains that the Union has not represented them fairly may file a complaint to the Labour Board. They cannot file a complaint with the Courts, and they can't file a grievance against the Union.





# Observations

Participant	Additions	Deletions	Distortions
1			
2			
3			
4			
5			
6			

# How to Better Listen to our Members

We realize the importance to communicate with the membership to represent them and ultimately build the unity you need to better defend them and improve their working conditions. Communication skills can be developed with time and effort.



**What are the 10 Rules for Effective Communication Identified in the video?**

1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

## Active listening

Many authors have written on the topic of active listening, and all agree that this process cannot be developed through techniques or tips. **Active listening is strictly a question of attitude.**

In general, listeners allow other people who are listened to **feel**:

- respected, understood and accepted for who they are;
- acknowledged as human beings;
- supported during change and personal difficulties;
- confident to express their thoughts and emotions.

There are regularly **four attitudes** associated with active listening and a helping relationship:

- **empathy** (the ability to identify with someone, to feel what they feel);
- **respect** (an attitude that demands that consideration be given to the person facing me and who needs help, without passing judgment);
- **authenticity** (an attitude that demands sincerity, truthfulness and honesty);
- **trust** (an attitude that demands recognizing the personal strengths and abilities of the person receiving help, in order for that person to be involved in the problem-solving process).

### Speaking with members

First and foremost, it is important to be aware of the major difference between **speaking to members** and speaking **with members**. When speaking to members, we are involved in a monologue (one-way communication). When speaking with members, we are involved in a dialogue and communication is mutual. To establish an effective dialogue, certain standards must be respected.

#### Initial contact

To effectively establish contact, start with the members: what they think and what they know.

#### Listening

To gain more knowledge about our members (what they think and what they know), listening is of the utmost importance. We must be aware that what members say is the truth. It may not always be the truth in our eyes, but it must always be our starting point.

*“Whenever you have eliminated the impossible,  
whatever remains, however improbable,  
must be the truth.”* ARTHUR CONAN DOYLE

#### Respecting members

For our opinion to be respected, we must begin by respecting the opinion of others. A member who feels respected is more open and more receptive. A member who does not feel respected will develop a self-defense reflex, close in and adopt an anti-labour attitude. If we don't respect our members, we risk sparking conflicts and discussions will most likely lead to shouting matches rather than healthy and helpful discussions.

## Raising awareness

After having established a good initial contact, listening to and respecting our members, we'll begin to raise awareness. Raising awareness among members is first and foremost a question of informing them.

Raising awareness is not only a question of providing information on given situations but also making others aware of the impacts of such situations.

For example, service reductions and subcontracts (even contracting in: **CROA 3647**) may appear inoffensive at first glance during a time when job security is not in jeopardy. However, these same factors have the potential to seriously compromise our working conditions with respect to layoffs, promotions, and bargaining power.

Raising awareness must be a continuous and permanent process. It goes without saying that each time new members join the organization; they must be made aware before being able to see things like all other members.

## Taking the time

Successful representatives need to take the necessary time. Too often, we are such in a rush to produce results that we end up skipping steps.



However, once you are able to successfully communicate with the members and awareness has been raised, it allows us to produce better results in less time.

Taking the time does not mean taking more time but rather using the time at our disposal more wisely.

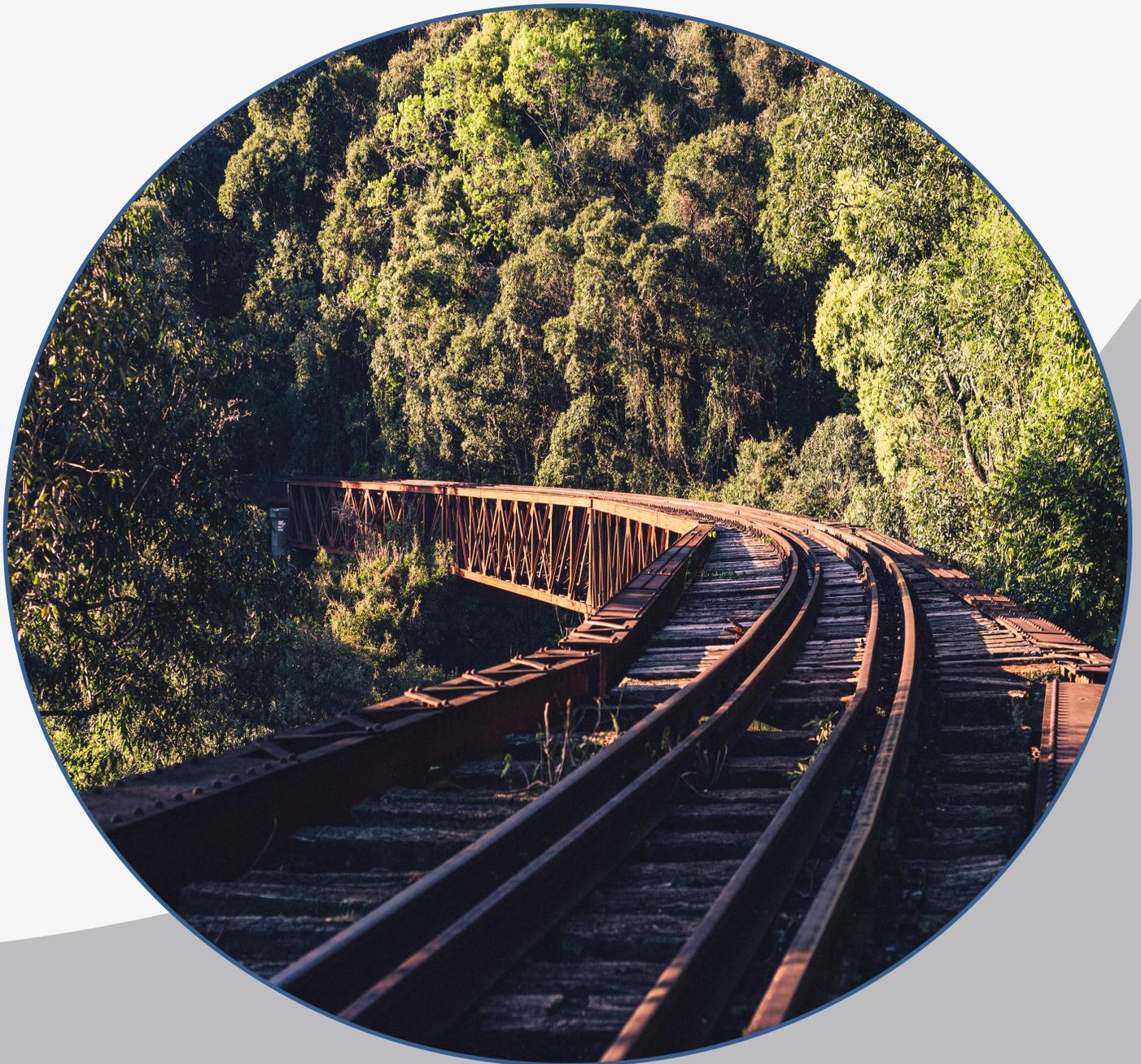


“Listening is such a simple act. It requires us to be present, and that takes practice, but we don't have to do anything else. We don't have to advise, or coach, or sound wise. We just have to be willing to sit there and listen.” Margaret J. Wheatly

*As a division officer it is mandatory to learn how to handle a dispute, and determine whether it is a complaint or a grievance.*

## Section III

### How to Handle a Dispute?



# Your Grievance Procedure

1. Have you ever filed a grievance?

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2. In what section(s) of your Collective Agreement is the grievance procedure?

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3. What are your roles regarding your grievance procedure?

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# How to Handle a Dispute

1

## The Union inquiry

The member presents a situation that he wants assistance with:

- You investigate: listen to the member, get the facts, and take notes.
- Define the remedy sought.

If it is a matter of disciplinary measure, you prepare the member for the upcoming statement.

2

## The Statement (employer formal investigation)

(If applicable)

3

## The Analysis

Determine if there are grounds for a grievance or a complaint based on the facts, the collective agreement, and the Labour Laws. You should also analyze the situation to:

- determine the causes of the problem;
- find a solution;
- determine the time limits to file a grievance if you have to do so.

If there are no grounds to file a grievance, explain the reason why to the member. If they continue to

4

## The First Approach

If you can resolve the problem with the member and the supervisor, do so.

5

## Drafting a Grievance Letter

If there is no settlement and there are grounds to file a grievance, file it within the time limits provided for within your collective agreement. (Obtain time limit extension if necessary)

6

## The Settlement

Be prepared to discuss the matter with the company and be prepared for a declination from the company or no response at all. Keep notes of every discussion.

7

## Transfer the file to the General Chair

Advance to the next step of your grievance procedure, which is normally to transfer the complete file to the General Chair level. Keep a copy for yourself. Explain to the General Chair the merit of the case and the employer's point of view. Be prepared to provide additional information to the General Chair upon request.

8

## Settlement of Disputes Without a Work Stoppage

Final and Binding Arbitration

## Phase 1 – The Union Inquiry

George was resting on the couch on Thursday afternoon. Two company owned screwdrivers were next to a tray on the rec room table beside him. When a company official knocked on the front door, George’s daughter put a cloth over the tray. The next morning, the Local Chair heard that George was being disciplined. George’s grievance was dropped after the first step.



Read through each statement and place an “X” in the column of your choice beside each one.

Statements about the story:	True	False	?
1. George was disciplined for misappropriating Company property.			
2. Two company screwdrivers were on the table in George’s rec room.			
3. George was resting on the couch on Thursday afternoon.			
4. A man knocked on the front door.			
5. George’s daughter answered the door.			
6. A cloth was placed over the screwdrivers.			
7. George was resting on the couch when the Company official knocked on the front door.			
8. There was no table in George’s rec room.			
9. In the story, 4 people are referred to: the Local Chair, George, the Company official, George’s daughter.			
10. The following events occurred: <ul style="list-style-type: none"> <li>• George was resting.</li> <li>• The Company official came to investigate.</li> <li>• The Local Chair heard a story.</li> </ul>			
11. The age of the daughter was not revealed in the story.			
12. George misappropriated company property.			
13. The Local Chair dropped the grievance.			
14. George’s grievance was dropped after the first step.			

# The Union Inquiry: A Fact-Finding Mission

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Whether we are dealing with a complaint or a grievance, the union inquiry is crucial and will proceed the same way. We have seen how important it is to listen to the members, understand their concerns and try to correct problems, in order to establish our credibility to the employer and the membership and to build a strong Union.

A member may contact you in a variety of ways to discuss a matter with you. You may also find out about a situation through another member, or you may witness the cause of a grievance yourself. Regardless, you need to **listen to the member** (or a group of members), and it is best to meet face to face.

**The search for facts by the Union Representative is called a Union inquiry.** It must be taken seriously, since a poorly done, inquiry can mean losing a legitimate case. For example, a lack of information, or incorrect information about a past discipline record would result in the Local Chair or General Chair to be unprepared when discussing a grievance with the employer and could be major reason why a discipline grievance is unsuccessful.

Establish the facts. Write them down, always! Keep notes of all conversations, or observations. Consider using a Union inquiry report and a witness deposition.  
Start a file, keep records.

If it is a very serious situation, you should immediately consult with the General Chair and work closely together throughout the entire situation. Depending on the seriousness of the situation, the General Chair may utilize legal counsel for initial advice.

## A good Union inquiry involves the following elements:

### 1. WHO

- Who is the member involved?
- Are there any witnesses involved? (customer, employee,)
- Who is the manager involved?

### 2. WHAT

- What happened?
- Is there a specific clause, practice, regulation or law that applies?
- What is the monetary claim, if any?
- What are the relevant time limits? (Do you need an extension?)

### 3. WHEN

- When did it happen? (time, date, year)
- When did it become a dispute?
- When did the employer issue the discipline?
- When are you going to become involved?

### 4. WHERE

- Where did the event or the cause of the grievance happen?
- (Jurisdiction, Yard, Road, Bunkhouse, a siding)
- Where was the grievor situated (the witness, if any), at the relevant time?

## 5. WHY

- Why is this considered to be a grievance?
- Why did the problem occur? (What was the cause of the problem?)

## 6. WANT

- Is there something that the grievance is supposed to obtain?
- Does the grievor want something?
- Does the Union want something?
- Does the Employer want something?

## 7. DOCUMENTATION

- Copy of the contract clause, regulation, policy, or law involved.
- Copy of the disputed claim.
- Copy of the past record (discipline, demerits, etc.).
- Copy of medical files (if necessary, possibly written authority from grievor)
- Copies of reports, seniority list, etc.
- Pictures or schematics of the event or location.
- Company evidence (if any) such as formal statements, memos, taped conversations, Q-Tron downloads, video, etc

# Union Inquiry Report

File no.: \_\_\_\_\_

## Part I – Details of the Event Giving Rise to the Notification

- 1. Name of the member: \_\_\_\_\_
- Employee number: \_\_\_\_\_
- Name of the Supervisor (if applicable): \_\_\_\_\_
- Date: \_\_\_\_\_ Time: \_\_\_\_\_
- Place: \_\_\_\_\_

### Witnesses

Name	Address	Telephone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 2. What are the facts from the very beginning that gave rise to the notification? Describe in sequence. Try to report, as accurately as possible.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

- 3. Is there a Code of conduct, policy and/or company's Rules and Regulations? If so, attach a copy.

Part II – Disciplinary Record

4. Content of the complainant’s disciplinary record.

Verbal warning: \_\_\_\_\_ Dates: \_\_\_\_\_  
 Reasons: \_\_\_\_\_

Written warning: \_\_\_\_\_ Dates: \_\_\_\_\_  
 Reasons: \_\_\_\_\_

Demerit: \_\_\_\_\_ Dates: \_\_\_\_\_  
 Reasons: \_\_\_\_\_

Other: \_\_\_\_\_ Dates: \_\_\_\_\_  
 Reasons: \_\_\_\_\_

Part III – Additional Elements

5. Applicable documents to be obtained (medical reports, photos, sketches, postings, work schedule, expense sheet etc.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Part IV – The Mandate

6. What does the member want?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed at \_\_\_\_\_ (Date) \_\_\_\_\_ 20\_\_\_\_.

Union representative signature: \_\_\_\_\_

Member signature:

# Witness Deposition

(If applicable)

File no.: \_\_\_\_\_

1. Name: \_\_\_\_\_

2. Address: \_\_\_\_\_

3. Telephone: \_\_\_\_\_

4. Is the witness employed by the company? Yes No  
If yes, in what department? \_\_\_\_\_

Job title: \_\_\_\_\_ Employee number: \_\_\_\_\_

5. What are the facts and/or evidence which you are personally aware of with regard to this matter? \_\_\_\_\_

a) Where were you when the said events took place? (Place and distance, sketch.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

a) Who was present?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What did you hear and/or see?

Lined area for handwritten notes.

I have read this document and I confirm that all facts herein related are true to the best of my recollection.

Signed: \_\_\_\_\_

(Location)\_\_\_\_\_ (Date)\_\_\_\_\_ 20\_\_\_\_\_.

Witness: \_\_\_\_\_

# Conduct of the Division Officer

## Hints to a successful interview with the member

1. Explain your **role and the purpose** of the meeting.
2. Get all the **facts** and obtain all **documentation** by meeting with the member.

In order for you to represent a member fairly and properly, a member alleging that he has been aggrieved, has a responsibility to provide you with all information and documentation that he has at his disposal. You need to know the facts in order to analyze the situation and decide if there are grounds to file a grievance or not. It is unacceptable for a member to simply make informal verbal complaints and expect the Division officer to file a grievance on each and every one of these complaints. That is simply unsupportable and unsustainable.

3. Do not assume, guess, nor presume. **Ask questions** according to the facts and the purpose of the meeting.
4. **Interview** all witnesses for and against the griever.
5. **Understand** the issue(s), who is involved/not involved, do not focus on something not in dispute.
6. Do not lose your **temper**. (Uncontrolled actions show weakness, discredit legitimate disputes and you lose the trust of the member and your eventually your credibility.)
7. Do not dwell on **mistakes**.
8. Conduct yourself with **courtesy and respect** to the individuals and to the situation.
9. Act in a **professional, thorough, and diligent manner**. Always!
10. Behave in a **truthful** manner, but don't be naive!
11. Be **nonjudgmental**.
12. **Explain** to the member all steps of the process, possible delays, etc.
13. **Take notes** on all points (for future reference, for your memory, for your protection, and potentially for the General Chair)

#### 14. Manage expectations:

- a. Members often develop a heightened sense of expectations if the Division Officer vigorously endorses a perceived grievance before all the facts are known or established. Never guarantee anything but to do your best.
- b. Management often develops a certain expectation that the Division Officer will make a situation “go away” if the Division Officer seems to be in agreement with the employer’s position during preliminary discussions. Remain objective.
- c. Do not believe or rely on total victory on each and every dispute. There are always at least two sides to every story, and you cannot be correct in every case that you investigate and advance. Often the most reasonable resolution falls short of a “total victory”.

15. In the case of a discharge or suspension, and the grievance is seeking a make whole order from the arbitrator, you should inform the griever of the duty to mitigate his loss during the relevant period. It is a **jurisprudential principle**, which applies in all cases of wage-loss following a termination.

What that means is should the griever get another job and make as much income as he would at his regular position. By mitigating his loss, there would be no lost wages for the Union to claim, or for the employer to pay. Arbitrators state that, the **griever is expected to mitigate his loss** and cannot simply stay off work and rely solely on the employer to make them whole.

See **CROA 2350**.

For another thorough explanation of this “duty to mitigate” please read **CROA 1867**. That case has particular importance because it deals with a collateral benefit, “out of service insurance” obtained by the Union member through the Brotherhood, and which was found to not form part of the offsetting income of the griever in his duty to mitigate his loss.

### **As a Division Officer, be aware:**

- Of the member who shops around between Union representatives to obtain the answer they are looking for. Always communicate with the other Division Officers. Work as a team.
- Of hearsay evidence, don't rely solely on hearsay evidence.
- Of what real evidence the employer has.
- Of previous or similar cases settled or rejected.
- That some people are difficult to deal with and not everyone tells you the truth!
- That you may not know all of the facts yet. (Ex: discipline records)
- That bad fact makes bad cases and bad cases make bad case law!
- Not all discipline is unjust or excessive.
- Sometimes the grievance just simply has no merit, or insufficient merit to proceed further within the grievance procedure.
- Sometimes you just have to proceed with a grievance in order to try and rectify a particular situation.
- That you cannot be expected to settle all grievances at the local level, and you may have to elevate the file to the General Chair.
- Of the relevant time limits, always!

# Phase 2 – The Statement



Please take a moment on your own to answer these questions and be prepared to share with the group.

1. Is there an article in your Collective Agreement governing the formal investigation? In the affirmative, have you attended an investigation before as an employee or a Local Chair? \_\_\_\_\_

2. How do you perceive the statement procedure?

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3. What is your first impression on how a statement is conducted?

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4. What difficulties do you personally anticipate during that meeting?

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Phase 2



# Steps of the Statement



Work with the other members of your group to complete this worksheet, using the information from the pages that follow.

1. Read the following statement. With the number attached to each question, identify the different steps of a statement:

- a) opening questions: \_\_\_\_\_
- b) introduction of evidence: \_\_\_\_\_
- c) main questions: \_\_\_\_\_
- d) members last chance to comment: \_\_\_\_\_
- e) closing questions: \_\_\_\_\_

2. Identify the questions to which the union representative should have objected and explain why.

Question #	Objection
5	Missing evidence.

# Canadian National Railway

(For the information of CN Solicitor)

## Case Study



Formal employee statement of: Mr. X

PIN:000

Occupation: Engineer

Agreement: 1.1

Statement conducted by:

Assisted by:

Also present:

Commenced: (date, time)

Reason for investigation: your alleged failure to protect against foreman Y while working M0000-00.

1 Q. Do you wish to have this statement in English or French?

A. In English.

2 Q. Company records indicate that your name is Mr. X and that your PIN is 000. Records further indicate that you are employed as Engineer at XX, is this correct?

A. Yes.

3 Q. Do you desire an Accredited Representative of the TCRC to appear with you?

A. Yes.

4 Q. Were you properly notified of this investigation, including the investigations of other employees in relation to this case if you are an operating employee, and are you prepared to proceed?

A. Yes. I received a verbal notification yesterday.

## Case Study

- 5 Q. You are now provided with the following information which is entered as evidence that may have a bearing on your responsibility in connection with the matter under investigation:
- 1) Copy of Form RTEMI (movement instructions) filled out by you or your Engineer.
  - 2) Tape conversation between your train 000 and Foreman Y and RTC Calgary.
  - 3) OCS Clearance number 000.
  - 4) Memo to File obtained from your Supervisor.
  - 5) Copy of work profile showing you where the Locomotive Engineer and Conductor Z was Conductor on M000 on (date).
  - 6) Copy of Formal employee statement obtained from conductor Z. Have you and your representative had sufficient opportunity to review this evidence?

Note: At this time, Local Chairman A would like to object as he feels that there is evidence missing, such as the tape conversation with Foreman Y is unavailable.

Objection noted. However, the investigation will continue.

- 6 Q. Do you wish to dispute any portion of this evidence?
- A. I just want to clarify your Supervisor memo to file where he states that the crew stated "the crew just thought they heard foreman Y call them", it should read "the crew heard foreman Y call them".
- 7 Q. As per evidence #3 (clearance #000 you had a protect against Foreman W between signal #000 and (place), and you had a protect against Foreman Y between (place), is this correct?
- A. Yes.

Case Study

- 8 Q. As per evidence #1, you were cleared through Foreman W limits at (time), is this correct?
- A. Yes.
- 9 Q. Do you understand CROR rule 311 (Trains or Transfers entering Top Limits)?
- A. Yes.
- 10 Q. Why didn't you comply with CROR 311 when entering Foreman Y limits?
- A. Right after we received permission from Foreman W to enter his limits, Foreman Y contacted us via radio, by identifying us as CN0000 North. At that time, Conductor Z answered "CN0000 North, 301 Foreman Y are you trying to get a hold of us over?". He replied "Yes, protecting "no subs" Conductor Z responded "No, no subs all set to copy". Foreman Y then replied "may proceed on main track from (place) to (place). Conductor Z then replied "Ok for CN0000 to proceed on main track from (place) to (place), is that correct Foreman Y? Over.". Acknowledged correct Foreman Y, Conductor Z then repeated back acknowledged correct Foreman Y CN0000 out.
- 11 Q. What kind of communication did you have with your Conductor after he received permission to enter Foreman Y limits?
- A. Conductor Z stated to me "it's nice when the foreman calls us". He then said cleared through his limits (place) switch (place), and I replied cleared right to (place) switch (place).

Case Study

- 12 Q. How did Foreman Y know that your Engineer number was if you did not call him?

A. I can only assume that he heard us calling Foreman W and getting cleared through his limits, also we were on the wrong tower when we were trying to get in touch with Foreman W.

- 13 Q. Why do you think there was confusion with Foreman Y if you had a clear understanding that you were cleared right through his limits?

A. I don't know because I am positive he called us and cleared us through his limits, also as you hear on one of the recordings Conductor Z stating "no, N O subs" and "0000 out" while he was talking to Foreman Y.

- 14 Q. We think that you were unfit to work that day. Have you ever taken any drugs or alcohol?

A. Only when I am off work or on vacation.

- 15 Q. Mr. Union Representative, do you have any questions pertaining to the fact that Mr. X didn't comply with rule 311, which you wish to ask for the record through the Presiding Officer?

A. Yes.

- 16 Q. Mr. Union Representative to Mr. X: is there any doubt in your mind that Foreman Y originally called your train by engine number or that the instructions given didn't pertain to your train?

A. Absolutely not.

Case Study

17 Q. Mr. Union Representative to Mr. X: how long have you been working on the CP Sub (XYZ)?

A. I believe I have been working since we started CP directional runs roughly 5 years.

18 Q. Mr. Union Representative to Mr. X: while operating on the CP XYZ Sub, have you ever entered a Foreman's limits without permission?

A. No.

19 Q. Mr. Union Representative to Mr. X: have you ever entered a Foreman's limits without permission?

A. Never.

20 Q. Mr. Union Representative to Mr. X: have you ever had a formal employee statement in the past?

A. Never, this is the first time.

At this time, Mr. Union Representative has no further questions.

21 Q. Are you sure that you are not addicted to drugs or alcohol?

A. Yes, I am sure.

22 Q. Do you have any questions pertaining to the matter under investigation which you wish to ask for the record through the Presiding Officer?

A. No.

Case Study

23 Q. Do you have anything further to add to this employee statement?

A. No, not at this time.

24 Q. Are you satisfied with the manner in which this investigation has been conducted?

A. My level of satisfaction will be determined by the outcome of this investigation. Let the record speak for itself.

Concluded at (time) on (date).

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Employee

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Supervisor

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Union Representative

# Disciplinary Investigation (Statement)

Almost every TCRC Collective Agreement states that no employee shall be disciplined or discharged until a fair and impartial investigation or hearing has been conducted and responsibility established.

Formal investigations, or statements as they are commonly called, are the first step of the investigation and discipline process. They represent the evidence that the company most heavily relies upon when assessing discipline and when they are defending their actions throughout the grievance procedure and also at arbitration.

## Summary of a Disciplinary Investigation

- Opening Questions**
  - First question: identification of the member
  - Second question: union representation
  - Third Question: Notification
- Introduction of Evidence.**
- Main Question**
  - Questions of the investigating officer
  - Questions of the union representative
  - Witnesses
- Members Last Chance to Comment**
- Closing Questions**
  - Level of Satisfaction of the Member
- Review of the Written Statement**
- Recess may be asked**
- Objections may be raised and must be reported in the written statement**

The Collective Agreement defines rules to be followed by the company in order to respect the member's right to a fair and impartial investigation. All employees are entitled to these essential rights when subject to a disciplinary investigation:

Every employee has the right to:

- adequate notice of details of the charges against them (Ad hoc 521, CROA 3322);
- enough time to be prepared for the investigation hearing;
- rebut witness statements made against them;
- access material, statements and documents pertinent to the outcome of the investigation (CROA 1734) at the beginning of the statement; Note: exception to this right decided in CROA 3999.
  
- ask for a witness (CROA 2920, 2934);
- union representation during the investigation of a witness
- state their case during the investigation;
- an impartial/unbiased investigation officer (Ad hoc 548, CROA 3061,3167);
  
- object to any illegal questions asked, such as;
  - leading questions;
  - unfair or self-incriminating questions; (CROA 2934, 1420)
  - investigator is stalling or pressuring;
  - investigator going off from subject matter;
  - previously asked questions;
  - investigator is overlooking or avoiding a line of questioning;
- recess, if necessary, during the investigation;
- a timely hearing without undue delay;
- copy of the written statement at the end of the investigation.

For a thorough explanation of issues related to fair and impartial investigations, see **CROA 2280**.



## Preparing The Member for the Investigation

As a Union Representative you should bear in mind that the member in an investigation is probably undergoing a new experience. So that you and the member may both be better prepared, you should take all of the time necessary to talk with each member and to explain the investigation procedure. He or she should know what is expected as a member and know and understand the questions that may be asked. If you need more time, ask that the hearing date be extended.

Explain to the member where and when the investigation will be held, who will be present, and the sequence of asking questions.

One of the most damaging practices a member can adopt is that of giving long, rambling and voluntary statements. A member should confine the answer to the question. If he or she volunteers or adds to what is asked, that will invite additional questions and open up avenues of inquiry that the investigating officer might otherwise overlook.

When the member is asked to tell in their own words all they know about the occurrence, they should give a short answer and not go into detail. The answer should be short and concise but contain all of the essential facts of what happened and of their defense. The investigating officer is then required to obtain the details by asking specific questions.

A member who has been properly instructed in the procedure and who understands the proper manner in which to answer questions will invariably go into the investigation with a feeling of more confidence and more at ease. If necessary, have the member prepare a short-written statement to read into the record.

## Check list of Points to tell the Member

- 1) **Personal Demeanor**- sit up straight, don't chew gum, speak audibly and loud enough for all to hear when you answer. A favourable impression or vice versa can be given merely by your appearance and manner of speech regardless of the contents of your statements.
- 2) **Be Courteous** – Guilt can sometimes be established in the subconscious of the questioner's mind merely by your being discourteous.
- 3) **Avoid Jokes, Tricks or Wisecracks** – This is a serious matter in which you hope to exonerate yourself, the person you are representing, or the party for whom you are a member. Avoid slang or swearing.
- 4) **Tell the Truth** – a lie may lose the case. If you tell the truth, you will have no problem with further questions or cross examination.



**Don't Assume Facts You Don't Know** – If you don't know facts which are necessary to answering the question asked of you, don't assume prior facts you personally don't know about. Many times, "I don't know" is the perfect answer.

- 5) **Don't Speculate** – If you don't know, politely state that you don't know. Where speeds, distances, dimensions, etc., are involved, know them nearly as possible. Avoid estimates but if you must estimate always make it known that it is an estimate.
- 6) **Understand the Question** – Much harm can be done by answering a question which you don't understand. If you don't understand or did not hear the question, ask the examiner to repeat it.
- 7) **Answer Only the Question** that is asked and no more. Do not volunteer information
- 8) **Don't Rely on Your Representative for your Answer**- Don't look at your representative when being questioned. This merely discredits your statement and gives the impression that the representative is putting words in your mouth. Look directly at the person asking the questions

- 9) **Don't Be Argumentative With the Person Questioning You** – Merely answer the question according to this guideline. A person in an argumentative mood loses the ability to think rationally.
- 10) **Don't Be Too Agreeable** – Don't agree with the investigating officer just because they are a nice person and smiles at you, or asks a question in such a way that it suggests the answer they want.
- 11) **Don't Lose You Temper** – To do so will force you to play into your opposition's hands.
- 12) **Don't Stick to Mistakes** – If you realize at any time during the investigation that you have made a mistake about something you have said, you should go back and correct it.
- 13) **Identify Others by Name** – There will be a typed transcript made of the investigation and other people will be reading it. When you refer to any other person involved you should refer to the person by name, and not by the pronoun "he", "she", "him", or "her".
- 14) Ensure you never answer yes to the question about whether the statement has been taken in a fair or impartial manner. State only **"Let the record speak for itself"**.

**Notes:**

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# Steps of the Statement

## Representation

The Union has the right to be present at the statement and to represent the members. It means that the Local Chair has the right to speak, to object, to ask for recesses, to advise the member, in other words, to take an active role in the process. The Local Chair can also ask questions to the member, witness, and he can cross examine management witnesses. If the investigation officer becomes a witness or supplies evidence, he will have no choice but to step down from his role. **The Local Chair is not required to testify.**

### 1. The notification

A proper notification informs the member of the date, time and location of the disciplinary statement. In some Collective Agreements, the notification must be given in writing and explain details of the alleged violations. It should also provide enough time for the member to be prepared for the investigation. The Local Chair can ask to postpone the investigation for legitimate reasons (CROA 2901), but the investigation must be conducted in a timely manner (CROA 1588).

If there is any sort of allegation of improper conduct of the employer related to the notification or subject matter of the investigation. It is important to raise the objection at the commencement of statement or at a minimum at some time during the statement or disciplinary interview. Procedural objections not raised in a timely manner may prejudice the grievance later. (CROA 2911)

Pay special attention to your Collective Agreement to know the exact way the notification should be delivered to the member, and to know its exact content.

## Objections

### Example 1

#### **Subject Matter of Investigation:**

The operation of Train 651 in violation of Rule 439, on March 2, 2009, at mile 106.9 Oakville Subdivision.

#### **Objection by Local Chair and/or investigated member:**

"I object to the subject matter of this investigation as stated in the notification to appear as well as the body of this written statement. The employer has obviously prejudged the situation, whereas the purpose of the investigation is to gather facts. The right to have a fair and impartial investigation as provided in the Collective Agreement is being violated. "

### Example 2

#### **Subject Matter of Investigation:**

The circumstances involving your tour of duty on Train 651 on March 2, 2009.

#### **Objection by Local Chair and/or investigated member:**

"We object to the subject matter of this investigation as it is vague and excessively broad. There is an obligation on the employer to provide each employee being investigated, a clear understanding of the precise nature of the conduct which is alleged in order to have a meaningful opportunity to prepare and respond to the investigating officers' questions and offer any rebuttal, if appropriate. "Ad Hoc 521

## 2. Opening questions

Commonly, the first question asked at the investigation is:

*"Have you been properly notified as to the subject of this investigation?"*

- If there was not proper notification, the answer is "no". The Local Chair should object and make sure it is recorded in the written statement and be ready to explain why.

## 3. Review of material, documentation, etc.

- Early in the statement, the investigator confirms to the union that the Local Chair and the member have all pertinent material and evidence related to the investigation.
- At this point always ask for full disclosure of all evidence and make it recorded in the statement. (If the situation warrants, you could ask for: full disclosure of all evidence, photographs, voice recordings, audio/video records, including any documentation whether paper or electronic, that has been utilized by, or is in the possession of the company, and which may have a bearing in determining responsibility) If necessary, take a recess and read everything.
- Go over all evidence with the member and prepare a rebuttal if necessary. Remember, the company cannot present any new evidence after this step of the statement unless facts are disclosed during the questioning that justify further evidence. If they try, you must vigorously object because it violates the right to a fair and impartial investigation.
- As a Union, we do not have to disclose our evidence at the beginning of the statement, but we have to disclose before the end of the statement any information that can help to prove the member's innocence or provide any mitigating factors.

### Example

“The Union requests full disclosure of all evidence, photographs, voice recordings, audio/video records, including any documentation whether paper or electronic, that has been utilized by, or is in the possession of the company, and which may have a bearing in determining responsibility”.

## 4. The version of facts of the member

After the evidence has been reviewed, the member will often be asked to give his version of the story in regards to the alleged violations. It should be brief, honest, clear, and include the member’s explanation of his actions. The member should answer to the questions only, avoiding long and rambling explanations.

### Example

Q: Can you please explain the series of events and your involvement leading up to the derailment at mileage 104.7, Oakville Subdivision, on March 2, 2009?

A: I was on duty at (time) called in straightaway service to (name of objective terminal), we departed the initial terminal at (time) and proceeded without incident until (time) where the train went into

**Make sure everything is recorded in writing in the written statement.**

## 5. The investigator questions

After the member has given their explanation, the investigator will ask more questions. Any improper questions should receive an objection. If you or the member needs to talk to each other in private, you may want to call for a recess. **Reasonableness is the standard to follow in the taking of a recess.**

### Member facts and witnesses

The member can also call witnesses to the statement. The Union cannot force another employee to attend as a witness. The investigation officer can call other employees as witnesses at the request of the Union as the company has the obligation of calling all witnesses necessary to complete a fair and impartial investigation.

If some evidence arises during the course of the statement that indicates a witness has some relevant information, you should request that the company produces that witness so that you may cross-examine that witness. **The old adage about" never asking a question that you don't know the answer to" is critically important and very relevant when examining any witness.**

## 6. The member's last chance

When the investigating officer is done asking all of his questions, he will ask the member if he wishes to add anything to the investigation. At this point ask for a printed copy to review everything, in private, and request a recess to review before you offer any additional information. It is usually the member's last chance to say something that he didn't have the chance to mention during the statement, or to correct any answers not properly recorded. Raise an objection if they resist or refuse to make any corrections.

## 7. The end of the statement

- Before the investigation is over, the following question will be asked:

Q: Are you satisfied with the manner in which this investigation was conducted?

- It is critical for the member to respond with the following answer:

A: Let the record speak for itself.

My level of satisfaction will be determined by the outcome of the investigation.

Answering this question in any other manner may later prejudice a grievance. (CROA 3653)

## 8. Written statement

Check with your General Chairman and Collective Agreement about the contractual requirement to sign written statements or the policies of the General Committee as it pertains to signing statements.

Take the time to read the complete statement and evidence thoroughly and refer to your notes if necessary to **ensure the statement is accurate** before it is signed. Make any necessary corrections. All objections **must** be recorded in the document, because once the statement is signed, it becomes the record of the proceedings.

If the statement is to be continued on another day, **you must obtain** a copy of the unfinished statement before leaving or you risk that someone changes the statement prior to your return. If, for any reason you are unable to obtain a copy of the statement in these circumstances, care should be taken to review and record the statement in your own writing so that you know with some certainty what was asked and answered already.

If the written statement is inaccurate or unsatisfactory, the employee and/or the representative should specify what part(s) of the document they object to.

However, each case must be judged on its own merits.

In the most serious of situations, where the employer refuses to correct the written record and/or refuses to record objections. Immediately contact the General Chairman's office for assistance and guidance.

There are a number of relevant cases involving formal investigation and related arguments. Some of them are:

CROA **1588**: timeliness of investigation

CROA **1696** –time limits on the issuance of discipline

CROA **2717** –time limits grievance procedure, penalty time claim and duty to mitigate.

CROA **3157**: investigation procedure Grievor refuses to answer.

CROA **3653**: Investigation Procedure, objections, and Are You Satisfied?

CROA **2901**: investigation procedure fair and impartial.

CROA **3214**: investigation procedure fair and impartial

CROA **3261**: investigation procedure employer rectified

mistake CROA **3586**: investigation procedure employer burden of proof

Some interesting cases involving Union representatives, pertaining to their rights, and obligations as an employee include:

CROA **3037** Discipline issued to an elected union officer following a confrontation with a local manager who had removed some union material from the union bulletin board. 15 demerits were removed.

CROA **3088** Discipline issued to an elected union officer following his refusal to remain at work in order to attend to a meeting in his capacity as a union officer. 20 demerits were found to be appropriate for the insubordinate refusal to remain at work.

CROA **3180** Discipline and discharge of a Local Chair who was excessively absent from work and booked off for union business. Discipline was found to be for just cause and discharge upheld.

CROA **2280** During a disciplinary investigation, it is impossible for the member to be represented by its own lawyer.

## Some reminders...

In representing a member in a discipline case, the following key points were made:

1. The responsibilities of a Local Chair are to represent the employee and not to defend him. The contract provision which states that an employee is entitled to a "fair and impartial hearing" is what the Local Chair defends. He represents the employee to make certain that he does receive a fair and impartial statement. It is not the responsibility of the Local Chair to determine whether the employee is guilty or not guilty. This responsibility rests with management.
2. The basic purpose of a statement is to obtain all of the facts, both for and against the employee for the purpose of determining whether the facts support the charges filed against him, and the investigating officer has the responsibility to see that this objective is carried out. Any failure to conform to this basic principle represents a departure from the principle of a fair and impartial hearing and may provide the basic for appealing the case to a higher official of management or to the Canadian Railway Office of Arbitration.
3. The entire procedure concerning the calling and conduct of an investigation is in the hands of the investigating officer as a representative of management. Neither the employee, nor the Local Chair, nor the Union, can control any aspects of the investigation. What the Local Chair can do is to object to any procedure which violates either the agreement or the standards for a fair and impartial statement, and such objections must be entered into the record.
4. All facts, including procedures, must be included in the transcript of the investigation. This transcript is the only document of the record of the case and unless it is full and complete, the Union might discover that it is not in a position to present the most effective case on behalf of the member on appeal to the Canadian Railway Office of Arbitration.
5. Advise your member to dress neatly for the statement and to behave well during the meeting.

These are a few of the things I have learned during my time as Local Chairperson. One of the hardest things for me was to realize that it didn't matter if I pissed off the Local Officer making objections or answering the questions for my members, what counted was what was on the piece of paper. That is what the Arbitrator is going to see and make his decision on. Even though the wording of a question may seem trivial in the Company Officer's office, what's it going to look like a year and a half from now in Montreal?"

A Local Chair

# Investigation Workshop



# Phase 3 – The Analysis



1. A Local Chair is dismissed for arguing during the work hours with the supervisor about a grievance related to scheduling of assignments. There was a formal investigation.

Are there grounds for a grievance?                      YES.              NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_

\_\_\_\_\_

2. A member provides the company with a wage claim. After preliminary investigation by the company, it appears that the claim was fraudulent. The member is terminated for fraud. There was no formal investigation.

Are there grounds for a grievance?                      YES              NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_

\_\_\_\_\_

3. On May 3<sup>rd</sup>, a member has to leave an hour before the end of his shift for a medical appointment. The company knows that every year this employee needs to see his cardiologist; his medical assessment is required by the company medical department. On May 1<sup>st</sup>, in writing the company authorized the member to leave his shift one hour early. On May 3<sup>rd</sup>, after the lunch break the manager asks the member to stay until the end of his shift because there is a customer that needs a car spotted asap. The member decides not to stay and leaves early anyway. The next day the member is terminated for insubordination. There was no formal investigation.

Are there grounds for a grievance?                      YES                      NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_  
\_\_\_\_\_

4. Two months after a disciplinary statement was completed, the employer issues demerits to a member. The member states that he deserves his demerits.

Are there grounds for a grievance?                      YES                      NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_  
\_\_\_\_\_

5. A member of the Motor Coach Division realized that the brakes on their bus are defective. The employee reports the situation to his supervisor during his pre- departure inspection and refuses to drive the bus. Another bus is used, and the trip is completed. After a mechanical inspection the manager determines there is no defect at all, calls the member and suspends him. The member calls the Local Chair and wants help.

Are there grounds for a grievance?                      YES                      NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_

\_\_\_\_\_

6. Several employees are complaining to you about the new supervisor's behaviour. They say he examines their paperwork like nobody ever did before, he asks lots of questions, he evaluates everybody and changes work procedures. They claim their previous supervisor was not watching them like that and they ask you "to put him in his place".

Are there grounds for a grievance?                      YES                      NO

Why? \_\_\_\_\_

What can the Local Chair do in this case?

\_\_\_\_\_

\_\_\_\_\_

# What is a Grievance?

After the Union inquiry (and the statement, if applicable) is completed, the Local Chair has to analyze the file to determine if there are grounds to file a grievance or not. The Local Chair work together in determining if there is ground for a grievance, based on the violation of a law and/or the Collective Agreement. Unless the terms of the Collective Agreement stipulate that the individual member can file a grievance, **the Union is the only one to decide if a grievance is filed or not.** The Union is charged with the responsibility to administer and protect the terms within the Collective Agreement. Once a grievance is filed by the Union, **it is the property of the union**, and not necessarily the property of the individual member.

**A grievance is the method of dispute resolution** which the Union and the company have negotiated in the Collective Agreement, and which applies in the case of:

- Violation of the Collective Agreement;
- Disagreement on the interpretation or application of an article in the agreement;
- Disciplinary measures (verbal or written notice, suspension, dismissal, demerits);
- Violation of legislation or regulation.
- Violation of any Labour Laws;
- Implementation or application of an improper or illegal policy, or the improper application of a valid policy.

Some would say: 'Why bother going through the grievance procedure to settle a violation of the Collective Agreement? Why not just walk out and not show up to work until the employer decides to smarten up?'

The answer is simple: It is illegal!

During the term of the Collective Agreement, the Union and the company have agreed to settle their disputes about the Collective Agreement without work stoppage (strike and lock out). **They must settle their differences through grievance procedure.**

(Note: For a thorough explanation to the jurisdiction of the grievance procedure and eventual arbitration, see **CROA 3465**)

## Work now, grieve later principle

“Arbitral jurisprudence has long established that **the workplace is not conceived as a debating society**. While an employee may object to a specific instruction and communicate that objection to the supervisor who gives it, when the employer insists on the instruction being carried out the employee is then under an obligation to do so, in keeping with the **"obey now - grieve later"** rule. The only **exceptions** in that regard arise when to carry out the order might involve engaging in **unlawful or unsafe conduct.**” (Arbitrator Picher **CROA 3228**)

In other words, even though the employer is willfully violating the Collective Agreement. That alone does not allow an employee to refuse to follow through on the employer’s direct instructions. Refusal to work is often considered as insubordination. It is therefore mandatory to work now and grieve later.

The exceptions to the rule ‘work now, grieve later’ are where the health and safety of the employee are at risk (**the right to refuse an unsafe job**), if the order is illegal or a situation where the employee would never be able to **overcome the prejudice** he **suffered** even if he wins his grievance.

## Burden of proof

The burden of proof falls onto the party advancing the grievance.

“The obligation to prove one’s case by affirmatively establishing the facts in dispute.”

In a situation of a **disciplinary measure**, the **company has the burden of proof** to establish that they have good reasons to discipline and that the disciplinary action given fits the crime.

If the **Union advances a grievance** involving an alleged violation of the Collective Agreement, law of regulation, the **burden of proof will be on the Union** as the party alleging, the misconduct and seeking relief.



### Grievance or complaint?

Every day, many things seem to be, or perhaps are, unfair. Not everything can be corrected with a grievance or a legal complaint.

### When is a complaint not a grievance?

If the management has not violated anyone's rights, there is no grievance. But there may be a real complaint, and in order to be an effective Local Chair, you will deal with complaints as seriously as you would for a grievance.

### Here are some types of complaints...

#### Personal troubles and requests for advice

You will often find that people want to confide in you. Treat them sympathetically, try to help them and keep confidences strictly to yourself.

#### Complaints about fellow workers

These need a lot of tact, diplomacy and moral authority on your part. This sort of complaint becomes a grievance if management gets involved when it shouldn't, according to the contract or past practice - or it doesn't get involved when it should.

#### Complaints against the management not covered by the contract

There may be cases you have to face which do not involve an injustice, do not violate past practice and are not covered by the contract. It still may be possible to remedy these complaints by informal discussions between the union and the employer.

#### Borderlines Cases (complaint or grievance?)

You should seek advice from the General Chair or the grievance committee before taking these up as grievances. Report back to the person complaining as soon as possible, explaining what you are doing and why.



## Types of Grievances

There are four (4) types of grievances. None of them require the member's signature or approval to be filed.

### Individual grievance

Most commonly happens when there is a violation of an individual's rights as contained within the Collective Agreement. Common examples within the rail industry are employees who are withheld from service, disciplined and/or discharged, disputed or unpaid wages, or possibly a violation of their Legislated rights or inherent rights as a member of our free society.

### Group Grievance

Group of several individual grievances brought forward as a single issue. Most common is where several employees have the same problem and they want the same remedy, then as a Local Chair you usually file the grievance on behalf of the group (who must be clearly named or defined) though there is nothing wrong with filing a series of individual grievances dealing with the same issue. This doesn't apply for discipline cases because every individual may have a different past record.

### Union or policy grievance

A policy grievance is usually considered to be one that does not depend upon the behaviour of an individual employee, or one that does not affect a specific individual. Policy grievances have been described as union or policy grievances where the subject-matter of the grievance is of general interest and where individual employees may or may not be affected at the time that the grievance is filed. In other words, the violation may affect everyone, but we can't identify anyone in particular.

**Company grievance**

In certain circumstances, the employer may file a grievance that the Union is failing to comply with the terms of the Collective Agreement (see 2007 Longshoreman Arbitration re UTU Strike). The best example is when a Union supports a strike. The employer can file a company grievance against the Union. They can seek compensation for all damages.

**Note:** For a very good example of a grievance advanced by the employer, as it pertains to the dispute settlement procedure without a work stoppage, see:

British Columbia Maritime Employers' Assn. and I.L.W.U.-Canada (Re) Pacific Coast Terminals Work Stoppage (UTU Strike 2007)

**Notes**

Horizontal lines for taking notes.



## Time Limits

- Every Collective Agreement contains a dispute resolution mechanism, which is the grievance procedure.
- There are time limits associated with the grievance procedure, at every step.
- There are several steps within the grievance procedure, many of the time limits are mandatory, with consequences.
- Time limit extensions are routine in many situations. They should always be in writing or confirmed in writing.
- Do not hesitate to obtain a time limit extension, or extensions.
- In CROA 1696, CN and BLE West, Arbitrator Picher determines in this case that time limits for the employer to issue discipline are directory and not mandatory. The arbitrator stated that when there is no clear and specific language in the Collective Agreement saying that they are mandatory, therefore those time limits are directory.



# Time Limits

As a division officer, you should know your Collective Agreement and, more specifically, its time limits in order to file your grievances on time. Therefore, you should be able to answer the following questions. Consult your Collective Agreement as needed, in order to answer these questions.

What are the time limits within your Collective Agreement:

1. For the employer to issue discipline? Are they directory or mandatory?

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2. For the filing of a grievance at the various steps? Are they directory or mandatory?

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3. For the employer's response to a grievance? Are they directory or mandatory?

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4. The advancement of a grievance to final and binding arbitration?

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5. Is there a provision for the extension of time limits?

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# What do you think?

1. A good example of a grievance and the relevant points to consider is **CROA 3679**. In this case an incident actually happened, the facts were not in dispute, the responsibility was established within a properly conducted formal investigation, and the level of discipline was not excessive. The arbitrator dismissed the grievance.

Read the case and answer the following questions:

Evaluation of the facts	Yes	No
Did something happen?		
Was the investigation fair and impartial?		
Was the responsibility established?		
Is the disciplinary measure appropriate?		
If mandatory, were time limits respected?		

Do you agree or disagree with the arbitrator?

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Additional comments:

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2. Equally interesting is **CROA 3680**. In this case the employer relied on written evidence, considered to be essentially hearsay evidence, while the Union had the grievor present to testify. The employer failed to meet their burden of proof.

Read the case and answer the following questions:

Evaluation of the facts	Yes	No
Did something happen?		
Was the investigation fair and partial?		
Was the responsibility established?		
Is the disciplinary measure appropriate?		
If mandatory, were time limits respected?		

Do you agree or disagree with the arbitrator?

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Additional comments:

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## Phase 4 – The First Approach

After the investigation and the analysis of the problem, you may want to try to resolve the situation before filing a grievance and going through the formal written procedure. This is often achieved through discussions and meetings with the local management.

**Note:** Should you meet with the employer and settle a grievance at the initial stages of your handling. Make certain that the settlement is consistent with the terms of the Collective Agreement and be certain to involve the General Chair in the settlement of disputes at the local level, so that you do not begin a pattern of incorrect contract interpretations that could lead to complications in the future.

### If No Grievance - Tell Them

If you are certain there is no grievance in the complaint, tell the member so and explain why. Show him the clause in the contract. You may have to show the member that he is in the wrong or that he hasn't the grounds for a grievance. But there are firm and yet tactful ways of explaining this so that you still keep his confidence. You will find that members will come to you with grievances based on what the Collective Agreement SHOULD SAY, not necessarily what it DOES SAY. To explain this to a member will involve patience and tact. A full explanation, based on the appropriate article within the Collective Agreement, or lack of, should, in most cases, satisfy the members concerns. In any case, however, you could be wrong. And what you think is a phony grievance, could be real and important. By listening carefully, by asking questions, by giving your reasons to the member, you protect the grievance procedure, and you protect the member too.

**If you are still in doubt, contact the General Chair's office for advice.**



## Phase 5 – Drafting a Grievance Letter

### Content of A Grievance Letter

If there is no settlement and there are grounds to file a grievance, file it within the time limits provided in the Collective Agreement.

#### Write it up - advance the grievance.

- This is where the entire fact finding comes together.
- Make sure you are sending it to the correct person.
- Do you have an agreement to exchange grievances electronically? Can you confirm receipt?
- Develop your own style of writing that you are comfortable with and develop your own way of closing out the letter. Don't write a novel. Be accurate and precise. Make a clear accusation and don't forget to include the remedy sought.
- Remember, you are not a lawyer and don't need to be one either!
- Act professionally and write a letter the same way.
- Keep the grievor advised and up to date with what is taking place.

## Drafting a Grievance Letter

### **First paragraph - What step of the grievance procedure is it?**

It is very important to identify your letter as a grievance, to identify whom it applies to, and to identify what step of the procedure it represents. If there has been a time limit extension agreed to, you should mention it and make it part of the record.

#### Example:

"Under Step \_\_\_\_ of Article \_\_\_\_ of the Collective Agreement I am advancing this grievance and claim on behalf of \_\_\_\_\_ who was \_\_\_\_\_ (employer's decision being contested) \_\_\_\_\_ on \_\_\_\_ (date) following a formal investigation on \_\_\_\_ (date) . This grievance was subject to a mutual time limit extension until \_\_\_\_ (date) and I appreciate your cooperation in that regard.

### **Second paragraph - What has happened?**

This is simply a matter of identifying the relevant facts of the dispute, not explaining it, analyzing it, or providing lengthy arguments. Unless the dispute is overly simple and straight forward, there will normally be some discussions with the employer at various steps of the grievance procedure, and certainly prior to arbitration. The initial steps of the grievance should be clear, concise and directly to the point. Generally, we recommend that you write as little as possible.

#### Example:

"The facts as outlined in the formal investigation on \_\_\_\_ (date) are not substantially in dispute. The evidence reveals that a switch on the Industrial Lead had been run through some time previous to the accident report of \_\_\_\_ (date) ."

**Third paragraph - Make a definitive accusation or point.**

The grievance is an official declaration by which an employer is accused of not respecting the Collective Agreement or a labour law. If the employer has violated an article or law, say so. The Union cannot sit in the weeds and allow the employer to violate a particular clause and not mention it until late in the grievance procedure or even as late as at arbitration. (CROA 3164)

The Collective Agreement is an entity, and its articles complement one another; each clause is interpreted in the context of the other articles. During arbitration, the arbitrator will be bound by the information contained within the grievance, including the joint statement of issue. Unless the grievance is very simple and straight forward, you must be careful to not tie his or her hands by only citing one or two provisions of

the Collective Agreement. There may be other related articles or appendices which could apply. We suggest that when citing an article of the Collective Agreement, you always add "and/or any other articles of the Collective Agreement which may apply".

In this way any other related articles will be associated with the claim, even if the claim is incomplete.

**\*\*Be careful not to divulge or argue something that is contrary to your position, or to another Article within the Collective Agreement.**

**\*\*Do not use existing arbitration cases or specific quotes from arbitration cases out of context.**

You may wish to expand your accusation to include any relevant laws, regulations, or existing arbitral jurisprudence that you may not be aware of.

**Example:**

"Notwithstanding, the evidence produced does not sustain the decision to discipline\_\_, nor does it justify the withholding of this employee from regular service.

Therefore, for the reasons as stated above I am advancing this grievance to you for your review and settlement in favour of\_\_\_\_\_. We object to the actions of the employer because it violates Article(s)\_\_\_\_\_, and/or any other clause, regulation, understanding, practice, or related jurisprudence which may apply."

**Fourth paragraph - Be clear and state what it will take to settle the dispute**

To ensure the text is as clear as possible, use terms (words) that are used in the Collective Agreement. If removal of the discipline and payment for all lost time will resolve the grievance then say so. If payment of the disputed claim is what will resolve the grievance, then say so. Know what it takes to settle the grievance!

Example:

“We respectfully request that you review the facts of this case and make the necessary arrangement to remove the discipline from his records and to make \_\_\_\_\_ whole for all lost wages as a result of his being withheld from service.

Your attention to this matter is appreciated and your timely response awaited. I am available to discuss this case at a mutually acceptable time.”



**Drafting a grievance letter**



On May 3<sup>rd</sup>, a member needs to leave an hour before the end of his shift for a medical appointment. The company knows that every year this employee needs to see his cardiologist; his medical assessment is required by the company medical department. On May 1<sup>st</sup>, in writing the company authorized the member to leave his shift one hour early. On May 3<sup>rd</sup>, after the lunch break the manager asks the member to stay until the end of his shift because there is a customer that needs a car spotted "asap". The member decides not to stay and leaves early anyway. The member was required to attend a formal investigation, and following such, was assessed 25 demerits for insubordination.

**Based on the facts above, draft a grievance letter to be submitted to the employer.**

A large rectangular area with a light gray background, containing 20 horizontal lines for writing a grievance letter.



# TEAMSTERS CANADA RAIL CONFERENCE

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Division xxx – Sometown, SK.  
Local Committee of Adjustment Conductors –  
Trainmen –Yardmen  
John Smith – Local Chairman  
xxx-xxx-xxxx [jsmith@teamstersrail.ca](mailto:jsmith@teamstersrail.ca)

File No.

VIA EMAIL

Date

Name of Supt.

Address

Dear Sir,

**RE: GRIEVANCE OF CONDUCTOR JACK BLACK – 20 DEMERITS**

Under the terms of Article 40 of the current Collective Agreement, the following will serve as the Union’s Step 1 appeal on behalf of Mr. Jack Black regarding the 20 demerits assessed and described as *“For not obliging with the T&E Availability Standards in the form of an unexcused sick leave on September 25<sup>th</sup> through to September 26<sup>th</sup> of 2019.”*

Facts regarding the dispute;

- Mr. Black was investigated October 11, 2019, regarding his work history from September 26, 2019, to September 28, 2019. The record confirmed the following;
  - Mr. Black booked sick on one occasion;
  - September 25<sup>th</sup> at 2324 to September 26<sup>th</sup> at 2332
- Mr. Black confirmed the illness as presented, and the record verifies that the Company did not refute the absence at the time or request medical verification.
- Mr. Black was assessed 20 demerits on October 22, 2019.

Union’s Position

- Canada Labour Code;
  - Allegations contained on the Form 104 include discipline for booking sick;
  - Company has been unable to refute the bona fides of the absences, nor was medical verification requested from the employee as provided within the Canada Labour Code.
  - The employer is prohibited from assessing discipline as a result of bona fide illness or injury.
- Burden of proof;
  - Burden lies with the Company to refute the Mr. Black’s explanation for being unfit or sick and establish culpability prior to contemplating the assessment of discipline.
    - The Company has failed in this regard.

- There is no distinct evidence supporting the absence was not bona fide.
  - The employee's absence must be considered nonculpable, or legitimate as a result.
- Company has failed to recognize mitigating factors as;
  - The Company is not in any position to suggest they are a better judge of condition than the individual them self.
  - To suggest and enforce otherwise could be construed as a violation of numerous rules and regulations regarding fitness for work (T&E Rule Book Sec. 2 General, General Rule A, etc.)
- Attendance Management Policy;
  - The Company alleges a violation of the T&E Availability Standard, which has not been substantiated.
  - Inconsistent application of the policy by the Company, and failure to recognize the employee's attendance record objectively.
  - Furthermore, it is the Company that has failed to administer the policy in an appropriate and productive manner.
  - The Union disputes this policy outright, as previously conveyed through the grievance procedure.
- Alternatively, the Union contends the discipline assessed is excessive considering the nature of the incident.

Remedy Requested;

- The Union contends the discipline assessed to be unjustified, unwarranted, and excessive and request that the Company remove the penalty imposed on Mr. Black in this instance.
- The Union further requests Mr. Black be made whole plus interest for all loss as a result thereof.

The Union reserves the right to allege a violation of, refer to and/or rely upon any other provision of the Collective Agreement or any applicable statutes, legislation, acts or policies.

Your attention to this matter is appreciated and we await your reply.

Sincerely,

John Smith  
Local Chairman CTY  
TCRC Div. xxx



# TEAMSTERS CANADA RAIL CONFERENCE

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**Division xxx – Sometown, SK.**

Local Committee of Adjustment Conductors –  
Trainmen –Yardmen

John Smith – Local Chairman

xxx-xxx-xxxx [jsmith@teamstersrail.ca](mailto:jsmith@teamstersrail.ca)

File No.

Date

Name of Supt.

Address

## **RE: GRIEVANCE OF CONDUCTOR JACK BLACK – 20 DAY SUSPENSION**

Under the terms of Article 40 of the current Collective Agreement, the following will serve as the Union’s Step 1 appeal on behalf of Mr. Jack Black regarding the 20-day suspension described as *“Your tour of duty on September 10, 2019 while working as the Conductor on train 1234 and the incident surrounding your movement reversing through the loop track switch at Silver that was lined against your movement causing the derailment of two cars; a violation of T&E Rule Book Sections 2, 4, and 14.”*

Facts regarding the dispute;

- Mr. Black was employed as the Conductor on train 1234 ordered 1530 September 10, 2019
  - LE P. Diddy
- The record indicates the crew was tasked with delivering train 1234 to the Silver loading facility and were to be governed by loadout personnel regarding the inspection and spotting of the train.
  - The inspection was performed as required
- The crew was then instructed to back the train up to spot the 1<sup>st</sup> car for loading.
- During the reverse movement to spot, it was unknown that the tail end of the train would require the loop switch the train’s head end had cleared.
  - During loading, the train went into emergency brake status
- It was discovered the loop switch had been run through, which in turn caused 2 cars to derail on the forward movement.
- The crew was investigated September 25, 2019
- A 20-day suspension was assessed October 12, 2019.

Union’s Position

- Burden of Proof
  - After further review it appears the Company has alleged violations of rules which are either not applicable, or for which the burden has not been met;

- Yellowstone Subdivision Footnote 12.0 Item 12.1
    - No culpability established for Mr. Black in this regard, nothing outlining requirements for the loop switch etc.
  - Train & Engine Employees Item 2.2 is generic, with the entire rule quoted and is not applicable as such
  - Train & Engine Employees Item 2.3 is generic, with the entire rule quoted and is not applicable as such
  - Train & Engine Employees Item 4.2 is regarding communication requirements, which were complied with the last time the switch was known to be handled (Q&A 26).
- Mitigating Factors;
    - As it was conceded the incident transpired as the record suggests, Mr. Black was forthcoming regarding the incident; has acknowledged that the event occurred as the record indicates, and accepted responsibility within the investigation
    - Mr. Black is a relatively new employee, having never been to the Silver facility
      - Unaware of the specifics involved in the spotting procedure
      - LE Clarke also had not been to the facility in years (Clarke statement Q&A 22).
    - Mr. Black understands the required rules and has been educated as a result.
    - While these mitigating factors do not absolve responsibility, the Union believes the Company has failed to fully recognize them when considering corrective action, and the role played regarding the unfortunate error.
  - Excessive application of discipline
    - The Union submits the discipline to be excessive given the circumstances.
    - The Union contends the improper application of progressive discipline, and the Company's failure to recognize Mr. Black' discipline record objectively
      - 1<sup>st</sup> discipline entry to the record.

Remedy Requested;

- The Union contends the discipline assessed to be unjustified, unwarranted, and excessive and request that the Company remove the penalty imposed on Mr. Black in its entirety.
- The Union further requests Mr. Black be made whole plus interest for all loss as a result thereof.

The Union reserves the right to allege a violation of, refer to and/or rely upon any other provision of the Collective Agreement or any applicable statutes, legislation, acts or policies.

Your attention to this matter is appreciated and we await your reply.

Sincerely,  
John Smith  
Local Chairman CTY  
TCRC Div. xxx



# TEAMSTERS CANADA RAIL CONFERENCE

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Division xxx – Sometown, SK.  
Local Committee of Adjustment Conductors –  
Trainmen –Yardmen  
John Smith – Local Chairman  
xxx-xxx-xxxx [jsmith@teamstersrail.ca](mailto:jsmith@teamstersrail.ca)

File No.

**VIA EMAIL**

Date

Name of Supt.  
Address

Dear Sir,

## **RE: GRIEVANCE OF CONDUCTOR JACK BLACK – WAGE CLAIM**

Under the terms of Article 40 of the current Collective Agreement, the following will serve as the Union’s Step 2 grievance on behalf of Mr. Jack Black regarding the disapproved wage claim pertaining to his tour of duty January 14, 2019.

Facts regarding the dispute;

- On January 13, 2019, train 1234 was called in straightaway service from Cromerth to Wingston at 2050.
  - C-only crew of LE P. Diddy, CO S. Combs.
- Mr. Black was ordered alone as a Brakeman in turn service, at Wingston at 0030 January 14, 2019.
- The crew on train 1234 and Mr. Black were required to perform work at the Silver Grain Terminal, an enroute location.
- Upon completion of his tour of duty, Mr. Black submitted a wage claim for the difference in actual earnings and what would have accrued being properly in position with the crew for the tour in question
  - 100-mile deadhead Wingston to Cromerth
  - Train 1234 ticket = 166 miles
  - Subtract 136 miles actual earnings
    - 130 miles.
- The Company subsequently denied the wage claim on February 2, 2019, with the comments “No provision for payment”

Union Position:

- A violation of Article 78.01;
  - *When freight crews are called out for any service the full crew will be used subject to the provisions of Articles 66 and 67.*
- Article 66 also outlines and defines crew consist.
  - The Company is prohibited from ordering employees in working service alone, other than passenger service and on self-propelled equipment (piloting).
- A violation of Article 2.18;
  - Provides non-required Brakeman all wages and benefits pursuant to Conductor-only operations
    - *Should the Company utilize a Brakeperson(s) in a non-required position on a fixed mileage train crew, all members of that crew, including the non-required Brakeperson(s), will receive all wages and benefits pursuant to the Conductor-Only agreement as though they did not form part of that crew. Brakepersons will only be considered as required when their presence will permit the crew to perform work beyond that which a Conductor-Only crew is confined to.*
  - To form part of the fixed mileage train crew and work in the capacity of a non-required Brakeperson, the Company would have had to place Mr. Black in position at the Cromerth terminal by way of deadhead.

Remedy Requested:

- The Union requests that the Company immediately cease and desist the violation of Articles 2, 66, 67, 78 and any other relevant articles.
- Specifically cease the practice of ordering employees outside of road crew consist(s).
- The Union requests that the claim submitted by Mr. Black (130 miles) be placed in line for payment.

The Union reserves the right to allege a violation of, refer to and/or rely upon any other provision of the Collective Agreement or any applicable statutes, legislation, acts or policies.

Your attention to this matter is appreciated and we await your reply.

Sincerely,

John Smith  
Local Chairman CTY  
TCRC Div. xxx





**TEAMSTERS CANADA RAIL CONFERENCE**

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DIVISION X  
Address  
Phone/Fax  
Email

Date

File No. XXXX

Name of District  
Superintendent Title  
Place

Attn: X

Dear X;

In accordance with Article 73.1 (b) of Agreement 1.1, I am submitting a grievance at Step 2 of the grievance procedure on behalf of **NAME OF DIVISION** locomotive engineer – **NAME OF MEMBER (000000)** claiming loss of earnings under article (b), article 54.11 and the Extended Run Principles section 2 c) iii.

On **DATE OF THE EVENT** Mr. **X** was first out and available on the **DIVISION** engineer's spare board and not called to fill a vacancy on pool turn CT11 to Toronto on Q10651-29. The regular assigned engineer Mr. **Y** was off for personal miles and the conductor Mr. **Z** was sent out on Q106 with a Toronto engineer Mr. **W (00000)**. Mr. **X** submitted a standalone claim (time slip **#0000**) which was declined for payment. Under article 54.11 and the Extended Run Principles section 2 c) iii Mr. **X** was entitled to fill this **DIVISION** engineer vacancy. Turn CT11 with conductor **Z** returned from Toronto on **DATE** with Toronto engineer Mr. **V (0000)**. Mr. **X** is entitled to loss of earnings under article 61.1 (b).

TCRC respectfully requests that Mr. **X** be compensated with a duplicate of engineer **W**'s earnings on Q106 (\$758.14) as well as a duplicate of engineer **V**'s earnings on M313 (\$723.22). Total claim is \$1,481.36 for the round trip to Toronto.

Sincerely,

Local Chairman



**TEAMSTERS CANADA RAIL CONFERENCE**  
**CONFÉRENCE FERROVIAIRE DE TEAMSTERS CANADA**

DIVISION X

Address

Phone/Fax

Email

Date

File No. XXXX

Name of District Superintendent

Title

Place

Dear X;

In accordance with Article 73.1 (b) of Agreement 1.1, I am submitting a Step 2 grievance on behalf of **DIVISION** locomotive engineer – **NAME OF THE MEMBER (00000)** appealing discipline assessed (15 demerits) on **DATE** for an alleged missed call on **DATE**.

Mr. **X** was required to appear for a formal investigation on **DATE** and subsequently assessed 15 demerits on **DATE** for failing to comply with CN's Attendance Management Policy by allegedly missing a call on **DATE** for M31641-16. Mr. **X** was one of a number of individuals cut from the engineer's spare board on **DATE** under the requirements of a spare board mileage check. Mr. **X** was notified of his displacement from the board at **TIME/DATE** and was required by article 57.4 of our agreement to exercise his seniority within 48 hours of being displaced, the deadline being **TIME/DATE**. At **TIME/DATE** the CMC attempted to call Mr. **X** for work and when there was no answer at his phone number charged his employee history with a missed call for M316. Mr. **X** was not in active service as a locomotive engineer and therefore was not subject to and could not accept a call under any article of our Collective Agreement until he exercised his seniority. It was made clear during the investigation that Mr. **X** could not be called for work under our Collective Agreement until he exercised his seniority under the requirements of article 57.

TCRC Division **X** respectfully requests that the missed call be removed from Mr. **X**'s history and the discipline assessed be cleared from his record.

Sincerely,



**TEAMSTERS CANADA RAIL CONFERENCE**  
**CONFÉRENCE FERROVIAIRE DE TEAMSTERS**  
**CANADA**

**DIVISION X**  
Address  
Phone/Fax  
Email

Date

File No. **XXXX**

Name of District Superintendent  
Title  
Place Dear

**X;**

In accordance with Article 73.1 (b) of Agreement 1.1 I am submitting a step 2 grievance on behalf of **DIVISION** locomotive engineer – **NAME OF THE MEMBER (00000)** appealing discipline assessed on **DATE** (15 demerits) for alleged delay to train **X** and failure to follow instructions of a company officer.

Mr. **X** was required to attend a formal employee investigation on **DATE** to provide information relevant to the allegations as stated above. During the investigation facts were presented that indicated Mr. **X** had been more than reasonable in his requests and suggestions to company officers on that date with regard to providing for his ability to eat enroute. Also submitted were excerpts from our Collective Agreement; Addendum 93, Addendum 71 and Article 28.3 (included as attachments to this grievance) outlining the company's responsibility for providing for Mr. **X** during this tour of duty.

The facts are that **Q00-00** had arrived in **PLACE** with 10,482 feet and a decision was made to split the train into two trains of a shorter length operating on the Ruel Sub to **DIVISION**. When Mr. **X** reported for duty he was made aware that his portion of this train was required to operate the train with the locomotive (CN **0000**) facing backward the

whole distance to **PLACE**. Upon entraining Mr. **X** made a decision because of restricted vision from his position in the cab of the locomotive (CN **0000**) that he would initiate an unsafe work refusal under the Canada Labour Code Part II. Subsequent to this arrangements were made through supervisor **Y** to switch the backward facing locomotive with one facing forward from another train. The locomotive supplied was from another railroad (BCOL **0000**) which was not equipped with a microwave oven or cooking utensils that could be utilized with the onboard hotplate. Mr. **X** immediately raised concern that he would not have the ability to heat the food he had for consumption during this trip which consisted of some containers of soup. Mr. **X** also made suggestions for alternatives which would avoid delay to this train; none of which were entertained by company officers involved in this situation on this date.

I believe that Mr. **X** made reasonable suggestions to accommodate the expedited movement of **X000** and that it was the company officers involved that were unreasonable in their expectation that Mr. **X** should operate for a full twelve hours and not be afforded the opportunity of a meal. Someone should have taken the responsibility of ensuring that some kind of arrangement was made for Mr. **X**. There were delays during this tour of duty that were beyond the control of Mr. **X** and crew which were substantially more relevant to the delay to **X000** on this date. As indicated in the investigation Mr. **X** was contacted by the RTC at 1630 and informed of "a new plan for Foleyet" and as indicated in the investigation Mr. **X** interpreted that as meaning the CTD (chief) had a change of heart with respect to the situation. Mr. **X** detrained at Foleyet bunkhouse to use the facilities at 1702 and was back on board the locomotive at 1714. I don't believe 12 minutes was an unreasonable amount of time to enter the bunkhouse, remove his footwear, heat his lunch, put his footwear back on and return to the engine. He did not eat at the bunkhouse; he merely used the available equipment to heat his lunch and returned to his train.

I believe under the circumstances and according to the facts that the discipline is unjust and unwarranted. I respectfully request that you reconsider the company's position and remove the discipline from Mr. **X**'s personal record.

Sincerely,

Local Chairman



## Phase 6 – The Settlement

Be prepared to discuss the matter with the company and be prepared for a declination from the company or no response at all. Keep notes of every discussion.

### Company's response

The employer is obligated by time limits to respond to a properly advanced grievance. If there is no response within the established time limits, **get moving to the next step in the grievance procedure because the time limits for the next step have begun.** There are situations when the employer will request a time limit extension for their reply. In their reply, be prepared for facts that you were not previously aware of.

Be prepared to participate in settlement discussions. In some cases, the grievances are actually settled at the local level. If you meet with the company, know the case file (have your investigation records in hand), your Collective Agreement, and what it takes to settle the grievance. Always obtain advice from the General Chair before settling and talk with the griever.

**Make certain that the settlement is consistent with the terms of the Collective Agreement and be certain to involve the General Chair in the settlement of the disputes at the local level,** so that you do not begin a pattern of incorrect contract interpretations that could lead to complications in the future. For example: in **CROA 3401**, the arbitrator found that a settlement at the local level was binding on the Union and in that particular case further advancement by the General Chair was found to be not arbitrable.

Similarly, when an interpretation is made in the settlement of a grievance at the **General Chair's level** it is binding on the parties. In **CROA 3254**, the arbitrator made the following comments:

"It is obviously essential to a rational and stable labour relations system for either side to rely upon a settlement made by an officer who has the ostensible authority to bind either the Company or the Council in a matter of Collective Agreement interpretation. Were it otherwise the system whereby grievances are settled, particularly when such settlements are made in writing and intended to have general application, would clearly be discouraged, with an obviously negative effect on labour relations stability. It is for that reason that the jurisprudence is clear, and that arbitrators enforce the terms of settlements such as that tendered in evidence in the case at hand."

If you are going to meet with the company prior to filing a grievance:

### Be confident and positive (you represent the Union)

- Act professionally at all times. Be calm but firm (don't forget that when you represent the Union, you and the employer are equal).
- Let the employer talk - listen carefully - make notes.
- Ask the employer to explain his/her actions.
- Leave the employer room to change his/her position and resolve the grievance without embarrassment.
- Don't try to outsmart the employer - convince him/her by knowing the facts and the agreement.
- Disagree calmly but firmly. Insist that the employer do the same. Table pounding, finger pointing, and threats do not resolve grievances!
- If you are unable to resolve the problem, advise the employer of your intention to proceed to the next step.
- If the employer says that he/she wants to investigate further before making a Decision, insist on **a definite time for the response**. Be firm but reasonable.
- Seek an appropriate settlement, not an argument. Show the employer that it would be more advantageous for him to settle the problem than to stay on his position.

### Stick to the point

- State your case briefly and honestly and ask the employer the reasons for his decision.
- Keep track of what being said, and the employer position is. Take notes.
- Don't raise irrelevant facts or issues.
- Listen carefully, don't be distracted and don't think about what you will be saying once he is finished talking.
- Don't discuss personalities and discourage the employer from doing so.
- Hearsay evidence and opinions are no substitute for facts. If you find yourself using them, you haven't done your homework.
- Don't talk too much. The facts and agreement will speak for themselves once you have set them out.

### Be prompt

- **Follow the grievance up as soon as possible.** An unresolved problem is a headache for everyone concerned.
- Stay within grievance procedure time limits.
- Don't stall.

### Keep Others Informed

- Always ensure that the grievor knows what is happening as soon as possible after it happens.
- Consult with the general chair for assistance in the manner that issues should be handled.
- Don't gloat over your successes. Today's gloat may be tomorrow's headache.

### Some Things to Avoid

- Never shortcut the grievance procedure.
- Don't bluff, threaten, or lie. You will get caught and lose all credibility!
- Don't make promises unless you are absolutely certain that you can keep them.
- Don't abandon the union's position unless it is definitely proven wrong. If in doubt consult the general chair's office.

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## Grievance settlement: some issues to consider

### Dispute of time claim

In the case of a disputed time claim, request payment of the claim. In some policy grievances it may be necessary to request an adjustment to the practices of the employer so as to avoid future disputes of a similar nature. Example of a company practice found to be in violation of the Collective Agreement and Human Rights is reflected in CROA 3501.

### Without precedent or prejudice

In some instances, the employer offers to settle the claim “without precedent” or “without prejudice”, or possibly a combination of these phrases. If these are the agreed upon terms of the grievance settlement, then for the future or for other cases you cannot rely on the terms of this settlement.

Without prejudice means: expression used to indicate that a person or party making an offer or taking an action does so on the basis that the offer or action does not imply an admission of liability, or otherwise adversely affect his or her legal rights.

Additionally, settlement discussion between litigating parties or between a union and employer during the grievance procedure are inadmissible in evidence, absent the consent of the parties, on the ground of public policy, whether or not such discussions are stated to be without prejudice.



## Phase 7 – Transfer the File to the General Chair

If the grievance is not settled, and there is sufficient merit to proceed further in the grievance procedure, prepare to send your file to the General Chair for handling at that level.

Keep a copy for yourself. Explain to the General Chair the merit of the case and the employer's point of view. Be prepared to provide additional information to the General Chair upon request.

### Advance to the General Chair

**Make sure the grievance** is timely or obtain a time limit extension **in writing**. Remember that it takes time for the grievance and file to travel to the General Chair's office, and they need time to review and possibly obtain their own time limit extension.

Have all of the facts and all of the evidence and documentation. Organize all of the material and send it all to the General Chair, include all statements, the discipline forms or records, medical records if necessary, post discharge evidence (if necessary) and any other details you have become aware of. (Example: other similar cases or relevant arbitration cases.)

Present the entire file to the General Chair along with a **written explanation** as to why it is being advanced. Remember, the General Chair should not have to read through all of the material and try to determine what it is that is in dispute. That is the role of the Local Chair. Explain the merits of the case to the General Chair and offer up rebuttal argument or fact to the employer's declination of the grievance, or the position the company has advanced in disputing the claim(s).

Explain to the General Chair what the expectations are, if any, along with an explanation of whether or not there is anything further that is being sent in or being waited for.

Explain if there's an expectation of success or is the grievance related to whom the grievance involves and not necessarily the facts of the case.

Advise the griever as to the advancement of the grievance. Manage expectations of the griever, just because the grievance is being advanced to the General Chair, it doesn't mean the case is more likely to be successful. The facts of the case will determine the outcome of the case regardless of what level the grievance is advanced.

Report your activities to the Division at the next meeting

## The General Chair

Each General Chair and General Committee may have developed certain practices on how they administer grievance files, and there may be General Committee Bylaws that pertain to the handling of grievances within a certain General Committee. You should always familiarize yourself with how the General Chair or General Committee has chosen to administer grievance files.

Upon receipt of a grievance file, the General Chair will review the facts of the grievance and depending on the circumstances may ask the Local Chair or the griever for additional information. They may possibly request a signed "release of information" form from the griever so the Union may access certain private files in the possession of the employer, or perhaps in possession by a medical practitioner who is involved with the griever. The General Chair will generally communicate through the Local Chair and may not, unless the circumstances warrant, communicate directly with a griever.

The General Chair may determine that there is no merit to the facts of the instant case. In this situation they will normally write back to the Local Chair explaining that decision. In such a case the file will normally be closed and not progressed any further.

The provisions of the Teamsters Canada Rail Conference Bylaws, General Committee Rules, Sections 41, outlines some jurisdictional governance pertaining to Grievances. The Bylaws of your particular General Committee may contain additional details as it pertains to the handling of grievances.

The General Chair will advance those grievances in which he/she believes there is sufficient merit to do so. There are time limits involved at this level and time limit extensions are common.

There are some Collective Agreements that begin the grievance process at the General Chair's level, when involving discharge, suspension, demerit marks in excess of 30 and restrictions. In these circumstances it is particularly important that the General Chair receives all of the relevant information and documentation, and all done in a timely manner.

There are specific time limits involved at this level of grievance handling. Some **Collective Agreements call for a "joint conference"** between the General Chair and the employer once the grievance has been advanced by the General Chair. The purpose of these meetings is to possibly settle the grievance.

In most cases the General Chair will have discussions with senior managers about the grievance, regardless of whether or not there is any likelihood of settlement. It is very important that the General Chair is aware of all the facts, and anything that

has taken place since the filing of the grievance, and which may be related to the dispute. This is particularly important in cases of discharge or significant discipline.

Should the grievance be advanced by the General Chair and ultimately declined by the employer, or not settled through joint discussions, there are really several options at that point.

- Review and reconsider the facts and should there be insufficient merit to proceed, the General Chair may close the file.
- The General Chair may want to continue to discuss the issue or issues with the employer in an effort to obtain an acceptable settlement.
- The issue or issues are advanced to final and binding arbitration.



## Phase 8 – Final and Binding Arbitration

### Arbitration

Every Collective Agreement contains the provisions to advance disputes to final and binding arbitration. There are time limits and a well-established process in scheduling and presenting arbitration cases. This is handled by the General Chair who may choose to utilize legal counsel depending on the complexity of the case.

Not every grievance can advance to arbitration and the Union has no obligation to arbitrate every grievance. The facts of the case and the impact on the membership are two important factors to consider. It is well known that bad facts make bad cases, and bad cases make bad case law.

In some cases, generally discharge cases, the Local Chair and the grievor may be asked to attend the arbitration hearing.

### Canadian Railway Office of Arbitration

There is a long past history of arbitration in the transportation industry. It goes back to 1918 when the Canadian Railway Board of Adjustment No.1 was established. This was replaced in 1965 by the Canadian Railway Office of Arbitration (CROA).



CROA provides a form of expedited arbitration unique to the transportation industry. The hearings are scheduled to be heard during one week every month of the year, excluding the month of August. The awards are usually issued within ten days, in writing and sent to the parties (the Union and the Employer). There are specific time limits and rules on scheduling arbitration cases with CROA.

Normally, the parties agree to the facts in dispute prior to the scheduling of the hearing. This is accomplished through a “Joint Statement of Issue”, commonly referred to as JSI. This expedites the process and the actual hearing time and narrows the dispute so that facts are rarely in dispute at this level.

Should the parties be unable to agree to a Joint Statement of Issue, it is still possible to schedule the dispute for arbitration using an Ex Parte Statement of Issue. An Ex Parte Statement of Issue is a statement of issue signed by only one party to a dispute. Unlike a JSI, **the Arbitrator has the discretion to accept or reject the party's application to proceed on an ex parte basis.**

You may want to consult the website [www.croa.com](http://www.croa.com) for more information and copies of all CROA cases. Within that website, there are questions and answers that clarify many aspects of this process.

**Note:** See at the end of the manual an article from Arbitrator MG. Picher thoroughly explaining the CROA history and process.

**Note:** there are very good websites available to search CROA cases, as well as shop craft and ad hoc arbitration: [www.localchair.ca](http://www.localchair.ca) (password protected) and [www.croa.com](http://www.croa.com)

Not all disputes can be taken to arbitration. Arbitration is final and binding on the parties. Once a particular dispute has been arbitrated, again depending on the issue and the circumstances, the employer or the Union may argue that Res Judicata may apply.

## Res judicata

Res judicata is a Latin phrase that means a matter which has already been conclusively decided by a court between the parties. It is a final judgment that prevents any re-examination or re-trial of the same dispute between the same parties. What this means to us if we have a grievance on an application or an interpretation of a specific clause of the Collective Agreement, and we already have a final arbitrated decision on this particular dispute between the same parties; we take the chance the employer raises the argument that the Res judicata applies and the arbitrator may not hear the case. This does not apply to discipline and discharge cases.

Quote from **CROA 2961**

"The general principle is well expressed in the following terms in Brown & Beatty, Canadian Labour Arbitration at 2:3220 and in an article by J.F.W. Weatherill, "The Binding Force of Arbitration Awards" (1958), 8 L.A.C. 323. The authors of Brown & Beatty comment as follows:

*"The authorities are legion that a board of arbitration has no jurisdiction to consider or, alternatively, that the grievor and his or her union representatives are barred and estopped from processing a grievance which is identical to a former grievance filed by the grievor and either withdrawn, abandoned, or settled, or determined by a board of arbitration. Some of these cases proceed on the basis of estoppel and others on the principle of res judicata, but regardless of the approach taken, the authorities are overwhelming that a board of arbitration has no jurisdiction to entertain such a second grievance ... There is also substantial authority to support the proposition that an arbitration board has no jurisdiction to determine a grievance which, though not identical in wording and form to a former grievance is identical in substance. ..."*



# Call to Action

I am...

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I believe...

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I will...

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## Conclusion

Always remember that it is in the best interest of our members to solve problems instead of fighting grievances. It is more efficient, quicker, and it has the advantage of you knowing and controlling the result. A decision from a third party (the arbitrator) sets a precedent. However, in some situations, you have no other choice but to file a grievance. The key of success is investigation.

The more your investigation is detailed and well substantiated, the more the Employer will be inclined to get to the root of the problem and settle the grievance, thus avoiding costly arbitration hearings, but most of all, avoiding an arbitration that will confirm the union's version of the problem.

Your role of advocate, your credibility and the impact it will have on solidarity will be greatly enhanced. However, if the Employer refuses to settle a grievance to the griever's satisfaction, you can always rely on your Union and General Chair for support and professional help in defending your rights at the arbitration level.

Always remember that your strengths reside primarily in your particular knowledge of the workplace and its employees, and of your Collective Agreement.

Best of luck to you all!

# Definitions and Other Issues of Interest

## **What is a Bargaining Unit?**

A unit of employees, sometimes referred to in terms of their job classifications, grouped together for purposes of collective bargaining.

## **What is a Bargaining Agent?**

A Trade Union which acts as the exclusive representative of the employees in a bargaining unit in negotiating and administering a collective agreement.

## **Arbitration**

There are two quite distinct processes, both of which are commonly characterized as labour arbitration.

## **Grievance arbitration**

Is an adjudicative process through which disputes arising out of the application and operation of a collective agreement are finally resolved. As such, it performs the same function for the parties to a collective bargaining agreement as do the courts in resolving issues and disputes arising from the operation of contracts in society generally. In essence, it is a quasi-judicial system created for each collective bargaining relationship.

## **Interest arbitration**

Is a form of dispute resolution in which the arbitrator makes the terms, conditions and rules which govern the employer-union-employee relationship. Interest arbitration functions as a surrogate for collective bargaining, and the awards of arbitrators in these circumstances take the form of and serve the same purpose as collective agreements. Normally, they do not contain reasons for decision, nor do they make findings of "right" or "wrong".

## **Inter Alia:**

(in-tur eh-lee-ah) prep. Latin for "among other things." This phrase is often found in legal pleadings (and some arbitration awards) to specify one example out of many possibilities. Example: "The judge said, inter alia, that the time to file the action had passed."

## Right to refuse dangerous work

The Canada Labour Code Part II states the employer has a general obligation or duty to ensure that the health and safety at work of every person employed by them is protected (Section 124). The employer has also specific duties in regard to each workplace they control and every work activity under their authority that occurs in a workplace that is beyond the employer's control (Section 125). Based on the law, an employee can refuse to perform an unsafe work (Section 128).

The employee who invokes this exception to the principle 'work now, grieve later' must believe that his well-being can be endangered if he performs his duties as requested. You have the right to refuse to work when you have specific knowledge of something happening or about to happen, that would jeopardize your safety.

The right to refuse is based on the good faith of the person invoking the right and the reasonable belief that the work poses a danger to his health and safety or the health and safety of someone else. The person is not required to prove they were right. No individual can be disciplined because they refuse to perform a job they thought to be unsafe for themselves or someone else.

To avoid any discipline for insubordination it is well advised to inform your supervisor if you refuse to work and to be clear that it is based on a health and safety reason.

The right to refuse to work is an individual right. It cannot be invoked on behalf of another person or in the name of a group. Several employees can however invoke their right to refuse an unsafe work at the same time.

## Criminal Code

Based on the Criminal Code, a Company, its administrators, supervisors, and lead hand can be accused of criminal negligence causing death, according to article 220 b) of the Criminal Code. If the Court can prove that the company or its representatives were voluntarily negligent and it causes a serious injury, they can be assessed a fine and also prison.

In fact, for the first time in Canada, a company (unionized with the Teamsters) was declared guilty of criminal negligence after it was clearly proven that his death had been caused by an industrial machine for which the protective system in the work area had been deliberately and voluntarily disconnected. In February 2008 the company has been required to pay a fine of \$110,000

### **Harassment and discrimination**

According to the Canadian Human Rights Act, it is illegal to discriminate based on: Race, National or Ethic origin, Colour, Age, Religion, Sex, Sexual Orientation, Gender Identity or Expression, Marital Status, Family Status, Genetic Characteristics, Disability or Conviction for which a pardon has been granted.

Harassment is any unwanted physical or verbal conduct that offends or humiliates an individual. It can interfere with an individual's ability to do their job. Harassment is a type of discrimination and can take many forms, such as:

- threats;
- unwelcome remarks or jokes about subjects like race, religion, disability or age;
- displaying sexist, racist or other offensive pictures or posters;
- sexually suggestive remarks or gestures;
- unnecessary physical contact, such as touching, patting, pinching or punching;
- physical assault, including sexual assault.

If an incident occurs and is brought to your attention, it is important to document and investigate. Because it is a serious matter, you should contact your General Chair for more advice.

Harassment is prohibited and the employer should put in place a policy to prevent and protect all employees against violence and harassment in the workplace.

### Employment Insurance

The Employment insurance Act is a federal law. You can apply for the benefit of the employment insurance (E.I.) in various situations, such as, maternity leave, parental leave, illness and lay off.

If a member is terminated for just cause, the principle states that the member cannot benefit from the employment insurance. But we suggest that the

member applies to the E.I. and appeals of the decision if his claim is denied. The appeal must be filed within 30 days from the decision.

At the hearing of the appeal, the member will explain his side of the story and he will have the opportunity to explain to the court that he didn't voluntarily lose his job. It helps to mention that a grievance is filed (if it is the case!) and the member is waiting for his arbitration hearing. Usually the company doesn't come to the court. It means that there is nobody to contradict the member's version of facts.

### **Privacy laws**

Every employee has individual privacy rights. Employers put in place various rules affecting privacy.

#### Information search:

Generally, the employer may search an employee's personal effect only if there is an express or implied term of the agreement to that effect (if the company has a long-standing practice in which the Union acquiesced), or there is a real and substantial suspicion that the employee has committed theft.

#### Video surveillance:

Arbitrators are not consistent on this matter. In general, video surveillance will be upheld only where three conditions have been met:

1. There are reasonable grounds for surveillance.
2. The surveillance is carried out in a reasonable and non-discriminatory manner.
3. No other, less intrusive alternatives were open to the employer to protect its legitimate business interests.

The type, purpose, place, and frequency of the surveillance are all factors that will be weighed in applying these criteria.

A number of arbitrators have suggested that employees have a lower expectation of privacy when they are in a public place. (Other arbitrators disagree.)

See: CROA 3003, for a case involving a disputed video surveillance.

### **Personal file:**

An employee has the right to consult his own personal file. The company cannot refuse an employee to consult his file. But the employer can ask the person to take an appointment to do so.















*Let your actions  
inspire others to  
dream more,  
learn more,  
do more,  
and become more!*

*Be a leader!*

