

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

CASE NO. 3582

Heard in Montreal, Thursday, 14 September 2006

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION

DISPUTE:

The Dismissal of Vaughn Alexander of Winnipeg, Manitoba for refusal to comply with a Company Officer's directive and failure to submit to a drug and alcohol test.

JOINT STATEMENT OF ISSUE:

On December 30, 2005, Vaughn Alexander was working as Assistant Conductor on Train M312 51 28 and was involved in a derailment and collision while setting out a portion of his train in Fort Rouge Yard. Several Company Officers, including General Manager Tom Bourgonje, General Superintendent Greg Wolinarski, Assistant Superintendent Ron Smith, Assistant Superintendent Paul Hackett, Assistant Superintendent Chris Yeroschack, and Trainmaster Miles Rutherford attended the site and interviewed Mr. Alexander immediately after the accident. Following these interviews and work in Fort Rouge Yard, Assistant Conductor Alexander and his crew continued to Symington where they yarded the remainder of their train and took the Locomotive Consist to the shops. Upon arrival at the shops, the Conductor and Locomotive Engineer were released and Assistant Conductor Alexander was advised that he would be required to undergo drug and alcohol testing. He refused.

An Employee Investigation was held on January 10th and 11th with respect to this matter and, on January 17, 2006 was issued a form 780 dismissing him.

The Union contends that any alleged refusal to comply with a Company Officer's directive was with respect to a directive to undergo drug and alcohol testing and, as such, are one in the same. Accordingly, the Union contends that there was no failure to comply with a directive of a Company Officer and the only issue before the Arbitrator is with respect to the refusal to undergo drug and alcohol testing. The Union further contends that if discipline was to be assessed for both failure to comply and refusing the test, such discipline would be double jeopardy and, as such, improper. The Union contends that the Company did not have reasonable cause to require Assistant Conductor Alexander to undergo drug and alcohol testing and, as such the company's request was unreasonable and Assistant Conductor Alexander was within his rights to refuse such request.

The Union requests that Assistant Conductor Alexander be reinstated, without loss of seniority and be made whole.

The Company disagrees.

FOR THE UNION:

(SGD.) R. A. HACKL

FOR: GENERAL CHAIRPERSON

FOR THE COMPANY:

(SGD.) K. MORRIS

MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| K. Morris | – Manager, Labour Relations, Edmonton |
| B. Laidlaw | – Manager, Labour Relations, Winnipeg |
| J. Newton | – Superintendent, Operations, Winnipeg |
| T. Bourgonje | – General Manager – Prairie Sub Region, Winnipeg |
| R. B. Smith | – Assistant Superintendent, Lakehead Zone, Winnipeg |

And on behalf of the Union:

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| M. A. Church | – Counsel, Toronto |
| R. A. Hackl | – Vice-General Chairman, Edmonton |
| V. Alexander | – Grievor |

AWARD OF THE ARBITRATOR

The facts and merits of this grievance were fully dealt with in **CROA&DR 3581**, whose analysis and conclusions are adopted for the purposes of this award.

September 21, 2006

(signed) MICHEL G. PICHER
ARBITRATOR