CANADIAN RAILWAY OFFICE OF ARBITRATION

& DISPUTE RESOLUTION

CASE NO. 4339

Heard in Montreal, October 15, 2014

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

On January 17, 2014, following an investigation, Conductor Flinn was dismissed from Company service for "reporting to duty in an unfit condition on December 24th, 2013 in the lobby of the Ruby Foo's Hotel, a violation of CROR Rule G and Policy OHS 5100 and Policy OHS 4100".

UNION'S EXPARTE STATEMENT OF ISSUE:

The Union contends that the Employer did not have cause or justification to request a substance test. The Union contends the Grievor was denied union representation contrary to policy. The Employer failed to conduct a fair and impartial investigation. The Employer is in breach of Policy OHS 5100 and 4100, the Collective Agreement, and the *Canadian Human Rights Act*. Mr. Flinn's discharge is unjustified, unwarranted and excessive in all of the circumstances. The Union requests that Mr. Flinn be reinstated without loss of seniority and benefits, and that he be made whole for all lost earnings with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

The Company disagrees and denies the Union's request.

FOR THE UNION:
(SGD.) B. Hiller
General Chairperson

FOR THE COMPANY:
(SGD.)

There appeared on behalf of the Company:

B. Medd	– Labour Relations Officer, Calgary
M. Moran	– Labour Relations Officer, Calgary
J. Ross	– G. M. Transportation, Calgary
R. McRobbie	– Trainmaster, Montreal

There appeared on behalf of the Union:

K. Stuebing	– Counsel, Caley Wray, Toronto
B. Hiller	– General Chairperson, Bowmanville
W. Apsey	– Senior Vice General Chairperson, Smith Falls
T. Flinn	– Grievor, Smith Falls

AWARD OF THE ARBITRATOR

The factual circumstances surrounding the incident that led to Conductor Tom Flinn's (the "grievor") discharge are set out below.

The grievor had worked through the night with Locomotive Engineer John Murphy ("LE Murphy") on December 23, 2013 operating Train 132-23 from Smith falls to Montreal. The crew arrived in Montreal at approximately 09:15 hours on December 24, and the grievor tied up his assignment at the Ruby Foo's Hotel (the "Hotel") at approximately noon. The crew was scheduled to deadhead back to Smith Falls by taxi at 15:59 hours.

Shortly before their departure time the crew's plans changed. At Trainmaster Doyle's request, the crew agreed to operate Train 143 from Lachine back to Smith Falls. A taxi arrived at the Hotel at approximately 17:10 hours. The taxi driver was under the impression he was going to Smith Falls instead of Lachine – which is a significantly larger fare. He became aggressive, was raising his voice and was swearing. The grievor got out of the cab, and encouraged LE Murphy to do the same. LE Murphy called Trainmaster Doyle who arranged for Trainmaster McRobbie to pick up the crew to drive them to Lachine.

Trainmaster McRobbie arrived at the Hotel at approximately 17:30 hours. He caught the tail end of an altercation between LE Murphy and the taxi driver. Trainmaster McRobbie told the crew to get their grips and get into his truck as he dealt with the taxi

driver. LE Murphy sat in the front seat of the truck and the grievor sat in the back. When Trainmaster McRobbie joined the crew, LE Murphy was yelling – again – in frustration over what had transpired. Trainmaster McRobbie smelled alcohol on his breath.

Trainmaster McRobbie left the truck and went into the Hotel lobby. He called Trainmaster Doyle and then Superintendent Jason Ross (“Superintendent Ross”), who, given Trainmaster McRobbie’s concern about LE Murphy, made his way to the Hotel.

In the meantime, the grievor and LE Murphy went back into the Hotel lobby.

Before Superintendent Ross arrived at the Hotel at about 18:30 hours, Trainmaster McRobbie confronted LE Murphy and asked him if he had been drinking. LE Murphy denied that he had been drinking at all. Trainmaster McRobbie told LE Murphy that he would be arranging for substance testing. As Trainmaster McRobbie was doing so, LE Murphy stated loudly in the Hotel lobby that he had been suspected of drinking.

By that point, two crew members from Smith Falls, namely Mr. Andrew McGreer (“Mr. McGreer”) and Mr. Mike Smith (“Mr. Smith”), arrived at the Hotel. When the grievor spoke with them he learned that they were going home deadhead.

The grievor approached Trainmaster McRobbie and asked if he could now deadhead with Mr. McGreer and Mr. Smith. At that point Trainmaster McRobbie smelled alcohol on the grievor's breath. He also noticed the grievor was grinning and that his eyes were only partially open. Trainmaster McRobbie immediately relayed to the grievor that he could smell alcohol on his breath. The grievor denied that he had been drinking. Trainmaster McRobbie informed the grievor that Superintendent Ross was on his way to the Hotel and that he would be interviewing him separately. Trainmaster McRobbie then followed up with another phone call to Superintendent Ross, and let him know that he had smelled alcohol on the grievor's breath as well.

Upon Superintendent Ross' arrival at the Hotel, the grievor approached him in a vestibule in the lobby. According to Superintendent Ross, the grievor's speech was slow and deliberate. The grievor was smiling and asked Superintendent Ross if he had noticed his new safety glasses. Superintendent Ross, who testified at the hearing, commented that he had thought that was a strange greeting. Safety glasses had been the subject of the grievor and Superintendent Ross' last interaction some weeks prior. Superintendent Ross had no recollection of that interaction when he spoke with the grievor at the Hotel.

Superintendent Ross estimated that he and the grievor spoke for approximately 20 seconds. During that initial interaction Superintendent Ross noticed the grievor's eyes were droopy – not fully open - and that he was swaying slightly from side to side while standing still. Superintendent Ross asked the grievor to join him in his vehicle and explain what had happened.

Superintendent Ross recounted the interaction in his truck in his memo:

> He went on to explain the details of the argument with the cabbie, and as he was speaking, for about two minutes – there was clearly a stench of alcohol in the vehicle while he was speaking. He was sitting back, not in close to me, but the smell was very distinct and it was clear he was trying to avoid coming in closer to speak to me. His speech was slow and deliberate, he was slow to answer questions, and was trying not to give many answers, but when he spoke, I smelled the alcohol.
>
> At that point, after about 4 minutes of conversation, I asked him if he had anything to drink, and he simply started repeating parts of the previous conversation (about them going out to eat at the Belle Province). He denied having anything to drink, and when I asked him to explain the smell of alcohol, he said he didn't smell anything. At that point I told him that Robert McRobbie smelled, and so did I, and given his behaviour – the odour, and the altercation with the cabbie, that I was going to request a test for him as well for reasonable cause.

Once back inside the Hotel, however, both LE Murphy and the grievor continued to deny having been drinking and that there was no reason to test them. The grievor said several times that there had been no incident and that he had not been involved in any altercation.

Still in the lobby, the grievor asked Mr. McGreer and Mr. Smith if he could blow in their faces to see if they could smell alcohol. He also asked Ms. Sonia Pieur, the Assistant Manager of the Hotel, who was on the other side of the desk in the front lobby if she could smell alcohol on his breath. During the investigation, the crew and Ms. Pieur were witnesses. The crew confirmed that they did not smell alcohol on the grievor's breath from no more than a foot away. Ms. Pieur also confirmed that she did not smell alcohol on the grievor. I note that in LE Murphy's investigation statement the Smith Falls crew also confirmed that neither of them could smell alcohol on LE Murphy.

After approaching Mr. McGeer, Mr. Smith and Ms. Pieur, the grievor asked Superintendent Ross if he could speak with a Union representative. Trainmaster McRobbie gave the grievor Sean Orr's number. He did not answer the grievor's call. Superintendent Ross explained to the grievor and LE Murphy that they could contact their Union representatives, but that he was not prepared to delay the testing with the testing agent at the Hotel in order to wait for a Union representative to arrive.

The grievor told his supervisors that he would not submit to testing. In his investigation statement, the grievor said that he was unfamiliar with the protocol in the circumstances or his rights. He explained that he felt that, because he had not been drinking, or been involved in any conflict or violations, the supervisors were being abusive of their authority.

The testing agent arrived at approximately 19:00 hours. Arrangements were made to first test LE Murphy and then the grievor.

Once upstairs in the testing room, Trainmaster McRobbie gave the grievor two more phone numbers of two other Union representatives, Steve Munt and Wayne Apsey while he waited for the completion of the testing of LE Murphy. Although the grievor tried to contact them and Sean Orr one more time, by the time the testing agent had completed

the testing on LE Murphy - shortly after 19:30 hours - the grievor had been unable to get in touch with any Union representative.

LE Murphy's conduct had deteriorated once the testing official arrived. In the testing room it got to the point where the testing agent was going to leave for fear that LE Murphy would get violent. It was only at that point that LE Murphy calmed down. He agreed to undergo testing. He also encouraged the grievor to do the same. LE Murphy took two tests administered fifteen minutes apart. The first registered a Blood Alcohol Level ("BAC") of 0.089, the second registered at 0.085.

Superintendent Ross made it clear to the grievor, several times, why the testing had been requested and the implications of refusing the testing:

> Thomas Flinn was explained the situation several times, why he was there and why the tests have been asked for. He told both Robert and myself that it was only "us two" who smelled anything that we have no cause to test him. Once again we explained why, and he was continuing to play with words and argue his point that we could only test after an incident, and that there had been none.
> At the end of the conversation I made it very simple, and I told him that we had explained our reasons of suspicion, and with all due respect, if he had nothing to drink – then the test would show that he again refused, and so I explained to him the following:
> 1 - a refusal to test would be regarded as a negative inference. He then asked what that would mean.
> 2 - that a negative inference would be regarded the same as a positive test. He once again asked would that means.
> 3 - I told him he would be considered as in violation of rule G would be removed from service pending investigation. He again - asked what that meant.
> 4 - I explained that an investigation for rule G would result in an investigation, that could include discipline up to and including dismissal.
> I asked him again if he would take the test, he said no. I've been told him he was out of service and to proceed downstairs where a cab would take him home.

The grievor and LE Murphy were held out of service and arrangements were made for a taxi to take them to their homes.

Decision

The Company raised a preliminary objection. It was not until the Union submitted the proposed JSI, that the Company says the Union raised for the first time the argument that the Company did not have cause to request a substance test. The Company contends that the raising of this issue is therefore untimely. It refers to CROA Rules 6 and 9 and the established CROA jurisprudence in support of the position that the argument should not be considered. The Company relies on the grievor (and Union) acknowledging – and it did so during the investigation statement and the grievance process - that the grievor had erred in not submitting to the test. The Company submits that, implicit in that concession, is an acknowledgement by the Union that there were reasonable grounds for testing.

I have carefully reviewed the grievance correspondence, and though the Union certainly could have more succinctly asserted the argument, the manner in which the Union challenged the determination of “just cause” – by pointing out facts which it saw as problematic in that assessment - is set out in its Step 1 grievance correspondence of February 23, 2014. The Company responded to that correspondence asserting that it was clear it had reasonable grounds to request that the grievor submit to a “For Cause” test. In the Step 2 correspondence, the Union challenged certain aspects of Superintendent

Ross' assessment of the grievor. While not explicitly articulated, my view is that the argument was impliedly made and acknowledged in the grievance process. Moreover, the grievor himself expressly made it clear during the investigation that he believed his supervisors did not have cause to request testing.

The grievor's acknowledgment that he erred in not submitting to testing does not necessarily translate to a concession that there were reasonable grounds for testing. It may well be that, in admitting that he erred he simply regrets the fact that he lost an opportunity to provide exculpatory evidence that he had not been drinking.

For these reasons, I dismiss the Company's objection.

Notwithstanding the above, I am compelled to agree with the Company that it had reasonable grounds to test the grievor in the circumstances recounted above. My reasons are as follows.

Trainmaster McRobbie and Superintendent Ross both readily acknowledged at the hearing, as they did when questioned during the grievor's investigative statement, that tired railroaders may appear to have droopy eyes. Superintendent Ross admittedly failed to appreciate the grievor's comment about his safety glasses when the grievor first approached him at the Hotel. Trainmaster McRobbie was familiar with the grievor, whereas Superintendent Ross was not, and Trainmaster McRobbie agreed that the

grievor was a jovial type person whose speech was generally “deliberate.” Superintendent Ross had characterized the grievor’s speech as “deliberate” as one of the many indicia he relied on to support his assessment that there were reasonable grounds for testing.

Notwithstanding the above, the Company had reasonable grounds to request that the grievor submit to testing. First, Trainmaster McRobbie and Superintendent Ross made independent assessments of the grievor. In those assessments, which took place in the absence of LE Murphy, there was no doubt in either Trainmaster McRobbie or Superintendent Ross’s minds that the grievor displayed conduct consistent with the consumption of alcohol. Trainmaster McRobbie would have drawn on his knowledge of the grievor in assessing the behavioural indicators he observed in the lobby. Contrary to the Union’s assertion, the grievor was not “an afterthought”. The reason he was not initially the object of suspicion by Trainmaster McRobbie was because of the factual backdrop upon his arrival at the Hotel. It was LE Murphy who drew Trainmaster McRobbie’s initial attention because of his angry response to the taxi driver in Trainmaster McRobbie’s truck.

Perhaps most significantly, Superintendent Ross spent over four minutes in a closed vehicle with the grievor prior to making the final call on whether the grievor would be asked to submit to testing. In that closed space, Superintendent Ross describes a clear “stench of alcohol in the vehicle” as the grievor spoke and other behaviour consistent with the consumption of alcohol and an effort to conceal it. These factors informed his assessment that the Company had reasonable grounds to test the grievor.

I have some difficulty with the grievor's explanation of his behaviour in Superintendent Ross' vehicle, namely that that he had done nothing wrong so he was very relaxed. By that point the grievor knew that he was suspected of drinking. He knew Superintendent Ross was called to the Hotel because of Trainmaster Robbie's concern that both he and LE Murphy had been drinking. It is difficult to believe that, even if he had not been drinking alcohol, he was in a relaxed state of mind in these circumstances.

The Union submits that Superintendent Ross relied on the information he had about the incident with the taxi driver and LE Murphy to justify the decision to test the grievor. I cannot agree that Superintendent Ross's decision to test the grievor was due, in substantial part, as the Union argued, to the altercation between LE Murphy and the cab driver. It was clearly the grievor's conduct in Superintendent Ross' closed vehicle, following the behaviour exhibited by the grievor in the Hotel vestibule, that crystallised Superintendent Ross' assessment and gave him reasonable grounds for "For Cause" testing.

The Union also asserts that the supervisors should have given consideration to the grievor's "witness" assessments on their impressions of whether or not the grievor's breath smelled of alcohol. Assuming, without deciding, that the grievor directly raised with both supervisors that other witnesses could not detect the odour of alcohol on his breath, nevertheless I am persuaded that the supervisors made the decision to request the

testing independently and for their stated reasons, in good faith. Moreover, the independent one-on-one assessments by the supervisors are more credible than the judgment of the Smith Falls crew - who also thought LE Murphy did not smell of alcohol, but who clearly had been drinking. Though Ms. Pieur may not have detected the smell of alcohol on the grievor, she was across the lobby desk when the grievor put the question to her. Irrespective of any “witness” input to the contrary, the assessment of reasonable cause was for the Company’s representatives to make. They simply came to a different conclusion based on a number of factors that LE Murphy and the grievor had both been drinking.

The Union argues that the investigation in this matter was not fair and impartial. That was so, in part, because at the very end of the grievor’s investigative statement, the investigating officer displayed, in the Union’s view, the appearance of impartiality inconsistent with his role.

The context for the Union’s assertion relates to one comment made by the investigating officer at the very end of the investigative statement. The comment was in response to the Union representative’s reference to Section 2.3.1 of the Alcohol & Drug Procedures for All CP Employees of Procedure OHS500, which provides for unionized employees entitlement “to Union representation provided this does not cause undue delay” in situations when there are reasonable grounds to believe an employee is unfit for work. In the course of the investigation, the Union representative had commented that the entirety of the situation would have been avoided had the Company provided enough time

for the grievor to contact his Union. In response, the investigating officer read from Superintendent Ross's memo surrounding the circumstances of the grievor's refusal to submit to testing. The investigating officer stated that Superintendent Ross had followed the procedure as per the OHS policy.

First, one must appreciate that the investigation was undertaken, as cases are normally, because the Company had some reason to believe that misconduct may have taken place. The Union directed me to **CROA 1561** in support of its position. In that case, the investigating officer was the father of one of two witnesses where credibility was crucial to the outcome of the investigation. I am not persuaded that **CROA 1561** stands for the proposition that the investigator is akin to an impartial referee. The investigator is a Company fact finder who asks questions, at times tough questions, where the Company may have some reason to believe that misconduct has taken place.

I agree that the investigator drew a conclusion based on the facts revealed during the investigation, and that he should not have done so. However, the situation is in no way analogous to **CROA 1561**, and the investigator's comment, did not, considering the totality of the investigative statement, taint the investigative process to any significant extent.

The Union also alleges the grievor was denied the opportunity to participate in LE Murphy's investigation and hear about what LE Murphy had to say about the

confrontation with the taxi driver, or put questions to him that might have elicited facts in mitigation of the grievor's own responsibility. The Union's assertion is premised on the taxi driver confrontation being the "incident" rather than the alleged violation of Rule G and Policy OHS 5100 and Policy OHS 4100.

The Union contends that the taxi driver confrontation, and the grievor's role in it, somehow prompted the Company to assess the grievor's fitness for work. That is not the case. The Company did not hold the grievor responsible for the confrontation, nor is the confrontation what led to the assessment of the crew's respective "conditions." The tail end of the confrontation between LE Murphy and the taxi driver was simply the factual backdrop to Trainmaster McRobbie's arrival at the Hotel to pick up the crew to drive them to Lachine.

The Union seeks to rely on **CROA 3732, 3271 and 4082** in support of its position, but those cases pertain to employee culpability in operational incidents *per se*. They have no application to the circumstances before me. Moreover, in the case before me, the Union and the grievor can make no claim that they did not have access to LE Murphy for the purpose of gaining information from him that might assist the grievor. LE Murphy was present at the grievor's investigative statement. Also, in answer to question 127, the grievor agreed that he had been given the opportunity to present witnesses or cross-examine witnesses who he considered to have information bearing on the investigation.

I now turn to the Union's contention that the grievor was denied union representation contrary to Company Policy.

Section 2.3.1 of the Alcohol & Drug Procedures for All CP Employees of Procedure OHS500 – Unfit for Work Situation - Employee and Section 3.2.2 of the Alcohol & Drug Testing Procedures for Safety Critical & Safety Sensitive Positions of Procedure OHS500 – For Cause Testing - are identical:

> In all situations when there are grounds to believe an employee is unfit to be on Company premises, the employee will be escorted by a supervisor to a safe and private place, interviewed, and given an opportunity to explain why they appear to be in a condition unfit for work. Unionized employees will be entitled to union representation provided this does not cause undue delay.

Appendix 3 – alcohol and drug testing process of the Alcohol & Drug Procedures OHS500 is as follows:

> The alcohol and drug testing process is based on rigorous collection, analysis and reporting procedures designed to ensure the accuracy and integrity of the results. Steps in the testing process are highlighted below. Note that this is a summary of the process for general information purposes.
> …
> In a For cause and Post Incident/Accident testing situation, specimens for testing will be collected as soon as possible after the decision to test is made. However attempts to collect specimens will cease six hours after the triggering event.

The procedures reproduced above must be read together. While specimens are to be collected "as soon as possible" after the decision to test is made, that directive must be balanced with a unionized employee's entitlement to Union representation "provided this does not cause undue delay." The balance must be struck in the context in which the cause for testing comes up.

Almost immediately after the grievor was informed that the Company was requesting that he submit for “For Cause” testing, he asked Superintendent Ross if he could speak with a Union representative. The Company had no difficulty with the request and Trainmaster McRobbie facilitated it by providing the grievor with three Union representatives’ phone numbers. None of them answered the grievor’s calls, which may not be all that surprising given that it was Christmas Eve.

The testing agent arrived some 15 minutes after the grievor had been provided with at least one Union representative’s phone number. It took more than 30 additional minutes to complete LE Murphy’s testing. For approximately 45 minutes then, the grievor was given the opportunity to exercise his entitlement to obtain Union representation. In these circumstances I am inclined to agree with the Company that it was not unreasonable to refuse to wait any longer in the hopes that the grievor’s calls would be imminently returned.

It is the Company’s burden to prove that the grievor reported to duty in an unfit condition on December 24, 2013 in the lobby of the Hotel in violation of CROR rule G and Policy OHS5100 and Policy OHS4100. Rule G stipulates:

> G (i) the use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty is prohibited.

Section 3 of the Alcohol & Drug Testing Procedures for Safety Critical and Safety Sensitive Positions of Procedure OHS 5100 states, in part, as follows:

> 3.2.5 **Failure to Test:** Failure to report directly for a test when required, refusal to submit to a test or complete the testing process, failure to provide a valid specimen absent a documented medical condition, a confirmed attempt to tamper with the test sample, refusal to agree to disclosure of the test results of the Company Program Administrator, or failure to report involvement in an incident which may require testing are a violation of this Policy and Procedure.
>
> Employees cannot be forced by management to submit to a For Cause or Post Incident/ Accident test. Refusal to submit to a test should be witnessed and documented by management. This documentation should also include identification of any other witnesses present and documentation about the incident or observations about the employee's condition at the time. In documented cases of refusal to test a negative inference may be taken by the Company in a subsequent investigation.

The grievor has denied that he had anything to drink while subject to duty on December 24, 2013. He repeatedly asserted that there was no reason for him to be tested and that he felt that his rights were being violated by the Company's request, which I have found to be for cause. The grievor refused to submit to a test.

The Company is entitled to draw a negative inference from the grievor's refusal. In **CROA 1703** after reviewing the relevant jurisprudence and other transportation industry practices, Arbitrator Picher wrote:

> What guidance do the foregoing considerations provide in the instant case? It appears to the Arbitrator that a number of useful principles emerge. The first is that as an employer charged with the safe operation of a railroad, the Company has a particular obligation to ensure that those employees responsible for the movement of trains perform their duties unimpaired by the effects of drugs. To that end the Company must exert vigilance and may, where reasonable justification is demonstrated, require an employee to submit to a drug test.
> ...
> The refusal by an employee to submit to such a test, in circumstances where the employer has reasonable and probable grounds to suspect drug use and the risk of impairment, may leave the employee liable to removal from service. It is simply incompatible with the obligations of a public carrier to its customers, employees and the public at large, to place any responsibility for the movement of trains in the hands of an employee whom it has reasonable grounds to suspect is either drug-dependent or drug-impaired. In addition to attracting discipline, the refusal of an

> employee to undergo a drug test in appropriate circumstances may leave that employee vulnerable to adverse inferences respecting his or her impairment or involvement with drugs at the time of the refusal. … However, where good and sufficient grounds for administering a drug test do exist, the employee who refuses to submit to such a test does so at his or her own peril.

By refusing to submit to testing, the grievor did so at his peril. Adverse inferences can be rebutted. However, I am of the view that the Smith Falls crew's perspectives together with that of Ms. Pieur do not rebut the negative inference to be drawn in this case, namely that the grievor reported for work in an unfit condition on December 24, 2013, in violation of Rule G.

The grievor refused to submit to testing even after he was informed very clearly and very specifically of the implications that could follow if he chose to refuse testing. The grievor said he did not understand. Considering how Superintendent Ross explained matters to the grievor, I do not accept that the grievor did not understand. He knew that if he had had nothing to drink that the test would show that. It was also made clear to him by Superintendent Ross that there could be very serious consequences if he refused to take the test. In the result, I find that despite the grievor's denials, he used alcohol while subject to duty on December 24, 2013.

The grievor has been a Conductor with the Company since 1999. He has only 10 career demerits, and his record was clear at the time of the events of December 24, 2013. The use of alcohol by an employee in a safety critical position is an extremely serious offense and the need for the Company to deter similar conduct by other employees is an

appropriate consideration in determining whether the grievor's discharge was justified (see **CROA 2695**).

By refusing to undergo testing in the circumstances of this case, only one reasonable conclusion can be drawn: the grievor was not being truthful in his denial of any involvement in drinking at the time he was confronted by Trainmaster McRobbie in the Hotel lobby and by Superintendent Ross in his truck. Nor was he being truthful in the subsequent investigation or, for that matter, in the hearing of this case. In these circumstances there is little basis upon which I can consider substitution of a lesser penalty (see **CROA 2994**) irrespective of the grievor's length of service and his commendable disciplinary record.

For all of the above reasons, the grievance is therefore dismissed.

November 10, 2014

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CHRISTINE SCHMIDT

ARBITRATOR