CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5118

Heard in Montreal, December 10, 2024

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE - MAINTENANCE OF WAY EMPLOYEE DIVISION

DISPUTE:

Dismissal of R. Kapsha.

JOINT STATEMENT OF ISSUE:

On May 17 2024 the grievor Mr. Robert Kapsha was advised by the Company that he was dismissed from Company service. More specifically, the Form 104 stated:

On May 3, 2024, you attended an investigation in connection with “the alleged refusal to submit to a reasonable suspicion drug and alcohol test on April 24th, 2024.”

Following the fair and impartial investigation, it was determined that your refusal to participate in a drug and alcohol test was a violation of the Company’s Alcohol and Drug Policy and Procedures:

- CPKC Policy HR203 - Alcohol and Drug Policy (Canada)
- CPKC Procedure HR203.1 – Alcohol and Drug Procedures (Canada)

Please be advised that you have been DISMISSED from Company service effective May 17, 2024.

A grievance was filed on May 31 2024 and was denied by the Company on July 5 2024.

The Union contends that: 1) In the circumstances, the Company did not did have the right to demand a substance test from the grievor. Random or unsupported testing is not permitted in Canada; 2) The "Reasonable Suspicion Signs and Symptoms Checklist" filled out on April 24 2024 was insufficient insofar as establishing legitimate grounds for "reasonable suspicion" were concerned; 3) It is evident in the investigation that Company officers made mistakes with respect to the Reasonable Suspicion testing checklist. Furthermore, the Checklist was not completed by the person who observed whether "reasonable testing" might be required. All this had the effect of denying the grievor a fair and impartial investigation in violation of Article 15.1 of the collective agreement; 4) The grievor did not refuse testing. Rather, he didn't want to leave his truck and belongings. In addition, he wanted to communicate with his Union rep; 5) The dismissal of the grievor was unwarranted and unfair.

The Union requests that: The Company be ordered to strike the dismissal from the grievor's record and to reinstate him into active service immediately without loss of seniority and with full compensation for all wages and benefits lost as a result of this matter.

THE COMPANY POSITION:

Preliminary Objection:

The Union has inappropriately expanded the scope of their grievance. Absent from the Step 2 correspondence submitted is any allegations regarding “random or unsupported testing” and whether it is permissible in Canada.

This new argument at the doorstep of Arbitration is contrary to the Memorandum of Agreement Establishing the CROA&DR, specifically item 9. As such, the Arbitrator has no jurisdiction to address these issues.

Within their grievance correspondence, the Union fails to articulate – clearly and cogently – the issues that they feel an Arbitrator ought to address.

Notwithstanding the aforementioned, the Company denies the Union’s contentions and declines the Union’s request.

Within, the Step 2 grievance from the Union, they accept the Grievor’s culpability and simply request a lesser penalty. This request would not be in line with current jurisprudence relating to a refusal to test.

The Union has inappropriately and erroneously attempted to discredit Company Officers.

The Union’s submission also overlooks the principle of work now, grieve later.

By refusing to test, the Grievor opened himself up to a negative inference. The Grievor’s culpability was established through the fair and impartial investigation. Discipline was determined following a review of all pertinent factors. The Company has an obligation to provide a safe and drug free environment to all employees and must deter any behaviour that undermines that environment.

The Company maintains there has been no violation of the Collective Agreement or the testing process as alleged. The discipline assessed was just, appropriate, and warranted in all the circumstances. Accordingly, the Company cannot see a reason to disturb the dismissal and requests that the Arbitrator dismiss the Union’s grievance in its entirety.

For the Union:	**For the Company:**
(SGD.) W. Phillips	**(SGD.) L. McGinley**
President, MWED	Director, Labour Relations

There appeared on behalf of the Company:

S. Scott	– Manager, Labour Relations, Calgary

And on behalf of the Union:

W. Phillips	– President, Frankford
G. Pompizzi	– Assistant to the President, Montreal

AWARD OF THE ARBITRATOR

Context

1. The grievor was a six year Machine Operator with a good discipline record, who was dismissed for a refusal to test.

Issues

A. Preliminary objection;

B. Were there reasonable grounds for the Company to request a "reasonable suspicion" drug and alcohol test?

C. Was there a refusal by the grievor to take the drug and alcohol test?

D. Were there grounds for discipline, and if so, was the discipline imposed excessive in the circumstances?

A. Preliminary objection

Position of Parties

2. The Company makes a preliminary objection with respect to a Union argument advanced for the first time in the JSI with respect to "Random or unsupported testing is not permitted in Canada".

3. The Company invokes the CROA Rules which prevent arguments being advanced at arbitration, when they have not previously been discussed during the grievance process.

4. The Union, in its Reply Brief and at arbitration, indicated that it did not intend to rely on this argument.

Analysis and Decision

5. Given the Company objection and the Union decision not to advance this argument any further, the argument will not be considered in this Award.

B. Were there reasonable grounds for the Company to request a "reasonable suspicion" drug and alcohol test?

Position of Parties

6. The position of the Company is that it had grounds to conduct a "reasonable suspicion" drug and alcohol test on the grievor.

7. It relies on the following grounds:

1) Repeated absences from work, repeated late arrivals, failure to advise;
2) Odd behaviour of grievor when STI Horwood attempted to contact at hotel;
3) Observation by Roadmaster Leroux that the grievor appeared "tired, distracted and withdrawn at work";
4) Reaction of grievor when he met with STI Breitenbach, acknowledging his mistakes and appearing disheveled;
5) Checklist of observed appearance and actions.

8. The Union takes the position that the Company has failed to provide sufficient evidence to warrant a "reasonable suspicion" test. As the Company was not entitled to test, it cannot rely on any refusal to test, as this would be "using fruit from the poisoned tree".

9. The Union makes multiple submissions concerning flaws in the reasonable suspicion checklist and a failure to provide union representation (see paras 47-58, Union Brief).

Analysis and Decision

10. There does not appear to be disagreement between the Parties that requiring drug and alcohol testing must be founded on reasonable grounds, given the legal imperative to balance privacy rights of the employee with the legitimate business interests of the employer. As Arbitrator Picher noted in **CROA 1707**:

> 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. On the other hand, it is not within the legitimate business purposes of an employer, including a railroad, to encroach on the privacy and dignity of its employees by subjecting them to random and speculative drug testing. 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 (underlining added)

11. If these reasonable grounds do not exist, then any negative results from the testing may not be considering by the decision maker (see **AH 732** and **AH 807**).

12. The issue, then, is did the Company have reasonable grounds to require the grievor to submit to drug and alcohol testing?

13. I will go through each of the grounds advanced by the Company and the objections or qualifications made by the Union. In the final analysis, however, the Company bears the onus to demonstrate by clear, convincing and compelling evidence that, taken together, there were reasonable grounds to suspect that the grievor was impaired while at work.

14. The first ground advanced by the Company were the repeated absences and arriving late for work in the days preceding the requested test. The behaviour of the grievor was made more troubling by the fact that he failed to inform the employer ahead of time that he would be absent or late. As noted by Roadmaster Leroux (see Tab 12, Ex. 1, Company documents):

> April 15, 2024, was Robert's first day on the Cranbrook Utility 4/3 crew after bumping into the position. He did not show up to work on Monday April 15th and did not call in to myself or any of the other Supervisors. Robert did not show up for work again on Tuesday April 16th and did not call in again. I called him multiple times on Tuesday with no answer, he finally called me back almost at end of shift and said he fell back asleep. On Wednesday, the crew waited for him for an extra 25 mins and he was a no show again. I tried calling him and he never answered his phone. He finally called me

> back at 1000, saying he over slept again and didn't hear his 4 alarms or my 3 phone calls, Rob ended up showing up to the jobsite 4 hours late in his personal truck.

15. The grievor works as part of a team and being absent or turning up late affects not only his personal productivity but also that of others. The Union did not contest the absences or arriving late by the grievor, but argued that all employees have sick days and can occasionally be late. That is true, but most employees would advise of this ahead of time, or provide very good reasons for not doing so. At the very least, the behaviour of the grievor was odd.

16. The Company also points to the odd behaviour of the grievor when STI Horwood attempted to deliver a Notice to Appear:

> At approximately 0938 pst, I showed up to the Fernie Stanford Resort to hand Mr. Robert Kapsha his notice to appear. I knocked on his room door (207) try to make first contact with Mr. Robert Kapsha. After knocking on his door sounded like someone got up and came to the door and couple seconds after that you can hear someone rummaging around the room and dropping thing on the table. I Knocked on the door two more time and nothing. I walked away and tried to call his cell phone at approximately 0947 pst with No avail.

17. The answers of the grievor concerning his failure to answer the door are not convincing:

> 50.Q. Why did you not answer the door?
> 50.A. Can't speak on it
>
> 51.Q. Were you trying to clean up your room in case Troy came in for an inspection?
> 51.A. This is offensive.

18. The Company relies on the observation of Roadmaster Leroux that the grievor appeared "tired, dishevelled and withdrawn" at work. While the grievor contested saying

to Roadmaster Leroux: “You should just send me home”, he did not contest his observation of the grievor’s demeanor at work (see Tab 12, p. 4, Tab 12(7), Company documents).

19. The Company further relies on statements made by the grievor to Supervisor Breitenbach: “I talked to Rob to ask him what’s going on, was everything okay and if he was feeling all right. He told me he was tired and knew that he messed up and kept saying it over again acknowledging his mistakes” (see Tab 12 (3) Company documents). The grievor does not contest this part of their exchange.

20. The Company lastly relies on the observations contained in the Reasonable Suspicion Signs and Symptoms Checklist and Referral Form (Tab 12 (6), Company documents).

21. The Union objects that the Checklist was filled out by Director Cote, although the observations were made by STIs Breitenbach and Beland. It takes issue with many of the reported observations during the investigation (see Tab 12, pages 2-5, Company documents). It notes that the grievor did not display any of the “classic” signs of drug or alcohol impairment.

22. The Alcohol and Drug Procedure #HR 203.1 (see Tab 10, Union documents) notes the following at para 4.2:

> If there are grounds to suspect that an employee is unfit to be at work, 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.
>
> If immediate medical attention is not required, during the interview the employee should be able to provide a reasonable explanation for their behavior or condition. If a Supervisor still has concerns about the employee, the Supervisor should consult with another member or the management team (on site if possible) and an

> Experienced Company Operating Officer (ECOO) i.e. Senior Vice President (SVP), Assistant Vice President (AVP), General Manager (GM), Superintendent, Director or Chief Engineer.
>
> The Supervisor and ECOO will determine whether to proceed with Reasonable Suspicion alcohol and drug testing:
>
> - For Safety Sensitive Positions and Safety Critical Positions, Reasonable Suspicion alcohol and drug testing will be required if the supervisor has reasonable grounds to believe that the actions, appearance or conduct of an employee while on or subject to duty are indicative of possible use of alcohol and/or drugs.

23. It further notes what is to be documented on the form:

> The basis for this decision will be documented. The referral for a test will be based on specific, personal observations and indicators including but not limited to:
>
> - observed use or evidence of use of a substance (e.g. smell/odour);
> - erratic or atypical behaviour or changes in behaviour of the employee;
> - changes in the physical appearance or speech patterns of the employee, for example dilated pupils or other physical signs of alcohol and/or drug use;
> - an event or chain of events suggesting reckless, irrational, and/or dangerous behaviour;
> - agitation, sleeping or drowsiness at the workplace, or evidence of impaired judgment or thought processes;
> - any other observations that suggest the employee may be unfit to be working on Company premises due to the use of alcohol and/or drugs.

24. The process laid out in the Procedure can be summarized as follows:

1) An interview by the Supervisor where the employee is 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 that this does not cause undue delay;
2) If the Supervisor still has concerns after the interview, he should consult with an Experienced Company Operating Officer;

3) The Supervisor and the ECCO will determine if reasonable suspicion testing should be done, based on the Supervisor having reasonable grounds to believe that the actions, appearance or conduct of an on duty employee are indicative of possible use of drugs or alcohol;
4) The basis for the decision will be documented, based on personal observations of “erratic or atypical behaviour or changes in behaviour of the employee”, changes in the physical appearance or speech patterns of the employee” or “any other observations that suggest the employee may unfit to be working on Company premises due to the use of alcohol and/or drugs”.

25. The evidence discloses the following with respect to these four steps:

1) STI Breitenbach did meet with the grievor to find out if there were explanations for the grievor’s behaviour. It is not clear whether Union representation was sought, or whether it was available without undue delay;
2) STI Breitenbach did consult with an ECCO, Director Cote;
3) The observations of STI Breitenbach were discussed with Director Cote. The Supervisor noted that: “While he was talking, he was swinging back and forth side to side, his eyes looked a bit glossy” (see memo STI Breitenbach, Tab 12 (3), Company documents). Based on the checklist, they noted: “signs of unfocused blank stare, dirty, messy appearance, distracted, sleepy, restless, depressed and withdrawn behaviours” (see memo Director Cote, Tab 12 (6), Company documents). Director Cote records that the grievor spoke slowly and “Levi said something seems off with him” (see memo Director Cote, Tab 12 (7), Company documents;
4) Based on the numerous absences and late arrivals, often without notice, it appears that the grievor was behaving “erratically or atypically”. At the meeting with STI Breitenbach, there appears to have been changes to the appearance and speech patterns of the grievor.

26. It is clear that the Company must demonstrate that it has reasonable suspicions before testing becomes permissible. However, this bar must be met while taking into account real world realities. As Arbitrator Silverman noted in **GCT Canada Limited Partnership v. International Longshore and Warehouse Union Ship and Dock Foreman v Local 514**, 2020 CanLii 108870:

> "In arriving at my conclusion, I accept that whether there is or is not reasonable cause to require an employee to undergo drug and alcohol testing is a decision that inevitably involves a degree of subjectivity, and some degree of deference must be given to supervisors who exercise that judgment in a real-life context that is often time sensitive."

27. Here, Supervisors Breitenbach and Beland both had concerns about the appearance and behaviour of the grievor. Director Cote, the ECOO, clearly shared those concerns, based both on the previous behaviour of the grievor and the observations of the Supervisors. While I appreciate that the grievor was not exhibiting the "classic signs" of impairment (see para 53, Union Brief), this does not mean that the grievor could not be suffering the effects of the "crash" phase of drug use. This is exactly the reason for drug testing, if other indicia of impairment are present.

28. I have concerns about the lack of information about the presence of a Union representative. There is a dispute between the Parties as to which Union representative was advised. But even if I discount any statements made by the grievor without Union representation made in the initial interview, I am still left with Company officers being in possession of facts about the grievor's prior behaviour and their observations of him in person. Those facts led to a reasonable suspicion that the grievor could be impaired and that testing was necessary. I do not find that there is a necessary requirement, based on the Procedure, for the ECOO to personally observe the grievor. There is a requirement for a consultation between the Supervisor and the ECOO, which was done.

29. In **CROA 4822**, Arbitrator Hodges found that, in the circumstances of that case, that there were not reasonable grounds to order a drug test. He noted:

> "In this case there is no evidence that the Grievor was properly interviewed by a Supervisor. Or that any documentation was made of symptoms, chain of events or other observations that the Grievor was unfit. There is no evidence that an ECOO was consulted."

30. This matter is distinguishable from **CROA 4822**, as the Grievor was interviewed, documentation was made and an ECOO was consulted.

31. In **CROA 4668**, Arbitrator Clarke noted that: "Each decision in this area is limited to the specific facts of the case". In that matter, the arbitrator found that the facts did not warrant testing after an arbitrator awarded reinstatement. Those facts are not present here.

32. In **CROA 5030**, Arbitrator Yingst-Bartel found that an admission by the grievor that he might not pass a drug test is: "part of the relevant context for determining whether the Company's suspicion was "reasonable". Here, there is no such admission, but the appearance and actions of the grievor are part of the relevant context in assessing whether the Company had reasonable grounds to order testing.

33. Based on a review of all of the evidence, including the rebuttals made by the Union and grievor at the investigation, I find that the Company had sufficient legitimate concerns to warrant a "reasonable suspicion" test. The conclusion of STI Breitenbach cannot be ignored: "This isn't the Rob I know." (Q and A 2c, Tab 12, Company documents).

C. Was there a refusal by the grievor to take the drug and alcohol test?

Position of Parties

34. The Company takes the position that there can be no doubt that the grievor refused to take the drug and alcohol test. When he was informed that he was going to be drug tested, he jumped out of a moving truck to avoid the test. He was informed that failing to

take the test would be viewed as a refusal, a negative inference could be made and that he would be held out of service. The grievor expressed remorse as he left.

35. The Union takes the position that the grievor never refused to take the test. Rather, he expressed concerns about leaving his belongings and truck behind, and wished to speak to his Union representative.

Analysis and Decision

36. In my view, the facts establish that the grievor clearly refused a drug and alcohol test.

37. The memorandum and testimony of Supervisor Track Inspection Levi Breitenbach (Tab 12 and 12(3), Company documents) establish that he told the grievor he would be drug tested:

> "I went over to Rob, I told him to jump in the truck and let him know he'll be going for a drug test, that we would meet Marc halfway and that the union knows. I did a u turn and Rob told me "I call in sick and I get random tested, tell Marc to call me" I drove back to find Rob, he was loading up his truck with his stuff. I told him (h)e was removed from service for refusing the drug test…"

38. While the grievor later claimed not to have been informed of the need for drug testing (see Q and A 21), his rebuttal evidence shows clear knowledge of the requirement:

> "I told Levi he could follow me in my pickup to Marc Cote for the drug test. I would do it when I get to town with them following" (Investigation, Tab 12 Company documents, page 3).

39. The grievor got out of a moving vehicle in order to avoid Supervisor Breitenbach driving him for a drug test. His exiting a moving vehicle is not denied by the grievor, while his explanation for having done so is not credible:

> Q55. In your response to Q24. Did you exit a moving vehicle in order to avoid a drug and alcohol test? You replied: I asked Levi to slow down in order for me to exit the vehicle. Why did you need to exit the vehicle?
> A55. Because I was not leaving my shit behind.

> Q56. Just prior to you exiting the vehicle did Levi advise you that he was taking you for a Drug and Alcohol test?
> A56. Prior to entering the vehicle he was taking me to work. As he was turning around he advised me he was taking me in for a D&A test.

40. The explanation given by the grievor that he got out of the vehicle in order not to leave his belongings behind, and not to avoid a drug test, makes no sense. The grievor would have left his belongings in the hotel every working day for at least 8 hours. His belongings would have stayed in the hotel while he was drug tested.

41. I find that the grievor, by both his words and actions, clearly refused to take a drug and alcohol test.

D. Were there grounds for discipline, and if so, was the discipline imposed excessive in the circumstances?

42. The Company's Alcohol and Drug Policy (HR 203) and Procedure (HR 203.1) clearly set out that a refusal to test is a ground for discipline:

> 3.0 Consequences
> ...
> 3.4 Disciplinary action up to and including dismissal will be taken where CPKC has determined that violations of the Policy and Procedures have occurred.
>
> 4.0 Drug Testing Procedures for All Employees
> …
> 4.6 Refusal to Participate in an Alcohol and/or Drug Test – "Refusal to Test"
> Refusing to participate in an alcohol and/or drug test is a violation of the Policy and Procedure. "Refusal to Test" violations include, but are not limited to, the following:
> - Failure of an employee to report directly for a test;
> - Refusal to submit to a test;
> - Failure to provide a valid specimen;
> - An attempt to tamper with a test sample;
>
> …

> Employees cannot be forced to submit to an alcohol and/drug test as it requires informed consent. However, refusal to submit to an alcohol and/or drug test is considered a violation of the Policy and Procedure. If an employee refuses to submit to an alcohol and/or drug test, management must document the events surrounding the Policy and Procedure violations. This documentation should include documentation about the triggering incident, identification of any witnesses, and observations about the employee's condition at the time or around the time of the triggering incident. Refusal to test may be taken as a negative inference by the Company in its subsequent investigation. (underlining added)

43. Here, there has been a finding that the grievor refused a valid "reasonable suspicion" test. The Company is entitled to make a negative inference from the refusal to test. As such, he is subject to discipline.

44. The next issue is to determine whether the discipline imposed, termination, was unreasonable in the circumstances.

45. The Policy makes clear that: "Disciplinary action up to and including dismissal will be taken for violations", a refusal to test is a violation, and there "may be a negative inference" taken by the Company (see Tab 12 (5A), Company documents).

46. The jurisprudence is consistent that the proper reaction for an employee contesting the validity of drug testing is to "obey now, grieve later" (see **CROA 3581**, **CROA 3727** and **CROA 4865**). Grievances are effective in the case of invalid testing, as the results will be considered the "fruits of a poison tree" and set aside (see **AH 732**, **AH 807**). However, an employee who does not consent to a valid request for testing does so at considerable risk, as noted by Arbitrator Picher in **CROA 1703**:

> 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 a 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. On the other hand, it is not within the legitimate business purposes of an employer, including a railroad, to encroach on the privacy and dignity of its employees by subjecting them to random and speculative drug testing. 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.

47. The jurisprudence also notes that deterrence is a factor to be considered when deciding the consequences of a refusal of a valid request for testing (see **Stewart v Elk Valley Coal Corp.** 2017 SCC 30, **CROA 5030**).

48. Here, the grievor was personally very familiar with the Alcohol and Drug Policy and Procedure, having been previously post-incident tested, dismissed and reinstated as a result of an arbitral decision (see Tabs 10-11, Company documents).

49. It also appears that the grievor was aware at the time of his refusal that he was in violation of the Policy and Procedure. As noted by Supervisor Breitenbach: “After he drove off he phoned me and started saying he was sorry and acknowledged his mistakes and I told him again he was removed from service and he acknowledged and said okay, and he understands and that he was frustrated at himself” (Tab 12 (3), Company documents). It is noteworthy that while the grievor contested other portions of the memo of Supervisor Breitenbach, the statement above was not contested.

50. The discipline record, length of service and seriousness of the offence, all factors from the well-known **William Scott** matter, were considered by the Company in assessing whether termination was appropriate.

51. The grievor had a good discipline record (see Tab 11, Company documents), but was not a long service employee, having some six years of seniority.

52. The primary focus of the Company was the seriousness of the offence, given the importance of safety in a dangerous industry. The primary focus of the Union was whether testing was appropriate in the circumstances. However, the Union does not appear to contest that the consequences to a refusal of a legitimate request for testing are severe.

53. Here I have found that the request for testing was reasonable and the grievor's refusal to test must attract discipline. The dismissal of a much longer service employee was upheld by Arbitrator Moreau in **CROA 3727.** The Arbitrator held:

> The importance of adhering to this principle cannot be emphasized enough, particularly in this industry where employees like the grievor are required to be constantly vigilant in directing the movement of train equipment. Although an individual has a right to have his or her privacy rights respected at all times, there are circumstances like the present case where it is proper for the Company to insist that employees, particularly those in the running trades, demonstrate that they are free from any substances that might inhibit their performance while on the job. This is the case here where the Company was confronted with a long service employee, with no rules' violations on his record, whose assignment was conducted in a manner that was out of the norm for him. **The proper response from the grievor under the circumstances would have been to accept that the drug test was an understandable employer response due to the accident, and file a grievance afterwards if he disagreed with the process. (Emphasis added)**

54. A similar conclusion was reached by Arbitrator Yingst-Bartel in **CROA 4865** with a 20 year employee:

> "The Grievor's actions are very concerning. **A strong message must be sent that leaving work when unauthorized to avoid a potential positive substance test will be met with serious and significant discipline. The "work now; grieve later" principle, which is fundamental to labour relations, must be respected. After considering all of the facts and circumstances of this case, the Company's response was in a reasonable range of possible outcomes for what was significant and serious misconduct**. I do not consider this is a

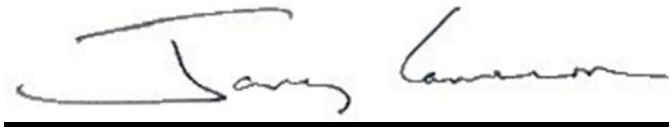
> situation which would attract my discretion to disturb that decision."
> (**Emphasis Added**)

Conclusion

55. The grievor here was a relatively short service employee at six years, and the Company was entitled to draw an adverse inference from the refusal to test. I find that the Company decision falls within the range of reasonable discipline measures which could have been imposed, and do not see sufficient reason to intervene.

56. In the circumstances, I must decline the Union grievance and uphold the dismissal of the grievor.

57. I remain seized for any questions concerning the interpretation or application of this Award.



February 7, 2025

JAMES CAMERON
ARBITRATOR