

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

CASE NO. 5196

Heard in Edmonton, July 8, 2025

Concerning

CANADIAN NATIONAL RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE

DISPUTE:

Appeal on behalf of Conductor Patrick Taylor (204545) of McLennan, AB, concerning the assessment of discharge for: "Violation of the Drug and Alcohol Policy while on CN Property at Smith bunkhouse on October 4, 2024".

JOINT STATEMENT OF ISSUE:

The facts are not substantially in dispute. On October 4, 2024, the Grievor was in possession and acknowledged consuming alcohol on Company Property while in the CN bunkhouse.

The Union's position is that the Company has failed to meet the standard of proof based on the balance of probabilities that the Grievor was in violation of CN's Drug and Alcohol Policy. In the event the Grievor is found to have been in violation of CN's Drug and Alcohol Policy, which we don't agree with, it is the Unions position that discharge is excessive and unwarranted and in any case in violation of the Canada Human Rights Act.

It is the Union's position the Grievor's discipline must be expunged or in any case reduced. The Grievor must be returned to employment with CN and be made whole for all lost wages and benefits.

The Company maintains that the Grievor was in violation of CN's Drug and Alcohol Policy. The Company respectfully disagrees with the Union's contentions and has denied the grievance.

For the Union:

(SGD.) R. Donegan

General Chairperson

There appeared on behalf of the Company:

R. Singh

M. Stevenson

W. Abdelaal

T. Ullrich

For the Company:

(SGD.) J. Girard

Senior Vice President Human Resources

– Senior Manager Labour Relations, Edmonton

– Superintendent, Edmonton

– Director CMC, Edmonton

– Occupational Health Nurse, Edmonton

And on behalf of the Union:

R. Church

J. Thorbjornsen

R. Donegan

– Counsel, Caley Wray, Toronto

– Vice General Chairperson, CTY-W, Saskatoon

– General Chairperson, CTY-W, Saskatoon

P. Boucher	– National President, TCRC, Ottawa
M. Kernaghan	– General Chairperson, LE-C, Trenton
P. Taylor	– Grievor, Sarnia

AWARD OF THE ARBITRATOR

Background, Issue & Summary

- [1] The Grievor was employed as a Conductor and was hired on June 12, 2023. The Grievor was discharged approximately 18 months later, on October 16, 2024, for “[v]iolation of the Drug and Alcohol Policy while on CN Property at Smith bunkhouse on October 4, 2024.”
- [2] The Policy referred to is the *Policy to Prevent Workplace Alcohol and Drug Problems* (the “Policy”).
- [3] Specifically, the Company maintained the Policy was violated when the Grievor brought alcohol into his room at the Smith bunkhouse.
- [4] A Grievance was filed against that discharge.
- [5] The issues between the parties are:
 - a. Did the Grievor breach the Policy?
 - b. If so, does the Rule G Bypass Agreement apply?
 - c. If so, was the discipline assessed just and reasonable?
 - d. If not, what discipline should be substituted by the exercise of this Arbitrator’s discretion?
- [6] For the reasons which follow, the Grievance is allowed, in part. The evidence established the Grievor was aware the Company prohibited the possession and use of alcohol on its premises. He was not confused or otherwise misled as to that requirement by either the Policy or the Company’s training materials.
- [7] However, discharge was not a just and reasonable response on these circumstances. The Grievor should have been offered the process under the Rule G Bypass Agreement.
- [8] The discharge is set aside and a remedial process imposed in substitution by the exercised of this Arbitrator’s discretion.

The Facts

- [9] The facts are largely not in dispute and can be briefly summarized.

- [10] On October 4, 2024, the Grievor was called as a Conductor for Train A41851 from McLennan, Alberta to Smith, Alberta.
- [11] Smith, Alberta is approximately two hours north of Edmonton, Alberta. CN owns and operates a “bunkhouse” in Smith where crews are able to take their rest.
- [12] The Grievor was familiar with this tour of duty and had stayed at the Smith bunkhouse on many occasions, as this was typically his main assignment.
- [13] After his trip to Smith on October 4, 2024, the Grievor tied up at 1935.
- [14] The Grievor’s evidence is that after tying up, he walked to the beer store in Smith and *“grabbed some beers to take back to my room”* (Q/A 16).
- [15] The reference to his “room” is a reference to his room at CN’s bunkhouse.
- [16] Ultimately, the Grievor consumed approximately three and one half beers in his room in the bunkhouse on his rest, before going to sleep.
- [17] Later that evening, acting on a tip from a fellow employee that the Grievor had offered him beer, the Company became concerned the Grievor had alcohol in his room, which it maintained was prohibited by the Policy.
- [18] The Company maintained that under its Policy, the bunkhouse was “dry”, and that the Grievor was not entitled to bring alcohol onto Company premises, or consume alcohol on Company premises.
- [19] The Union was unaware of the details of this “tip” until the filing of Briefs, although it was aware the Company’s suspicions were aroused by a “tip” as that was made clear in the Investigation.
- [20] As a result, Transportation Manager (“TM”) Sertic traveled from Edmonton to Smith, Alberta late in the evening on October 16, 2024. An undated Memorandum written by TM Sertic was filed into these proceedings by the Company.
- [21] TM Sertic’s evidence was that once he arrived at the bunkhouse in the early hours of October 5, 2024 (around 1 a.m. according to the Grievor’s evidence in the Investigation), he knocked on the Grievor’s door in an attempt to wake him up.
- [22] After multiple attempts to wake the Grievor by knocking - without a response - TM Sertic called the bunkhouse attendant, who let him into the Grievor’s bedroom. Once inside the bedroom, TM Sertic turned on the light, woke up the Grievor, introduced himself and explained to the Grievor why he was there.

- [23] TM Sertic's evidence was that he noticed empty beer cans immediately in the room, along with a *"very faint smell of alcohol in the air"*. TM Sertic's evidence was also that the Grievor's initial comment to him was that he *"wasn't aware that he couldn't drink after work on CN property."*
- [24] A *"Reasonable Cause/Post Incident Report Form"* was completed by TM Sertic. That Form noted that the behaviour observations were normal but checked the box that there was a *"smell of alcohol or marijuana"*.
- [25] In the section for "comments made by employee", TM Sertic noted that *"employee mentioned he wasn't aware that he wasn't able to drink after work"*.
- [26] On p. 2 of that form, the *"reasonable cause"* box which is checked is:
- Report of drug or alcohol use, possession, sale, solicitation, or transfer of drugs while on duty or on company property, or while operating company vehicles, machinery, or equipment while at work or on duty (emphasis added).
- [27] TM Sertic arranged for a breathalyzer test. The Grievor blew a 0.22. TM Sertic then sat down and spoke to the Grievor, and asked the Grievor if he was aware of the Policy.
- [28] TM Sertic's evidence was that *"[h]e then mentioned that he was and he knew that there was not to be any alcohol on CN property."* His evidence was the Grievor *"did admit that he has dealt with a drinking problem for some time"*.
- [29] TM Sertic asked the Grievor if he was *"aware of the EFAP program and he told me no"*. The EFAP Program is the Company's employee assistance program. TM Sertic mentioned to the Grievor that *"all new hires are told about EFAP and where to find it, but still acted like he was not aware of it"*.
- [30] The Grievor then blew for the second time 15 minutes later, and blew a 0.19. His "pee test" was described as TM as "hot".
- [31] The Grievor was pulled from service until further notice.
- [32] The Grievor was Investigated on October 7, 2024, two days later. In that Investigation, the Grievor did not have evidence to refute the evidence filed by the Company, which included his work history, the Notice to Appear, the Policy, the Driver Check report on the results of his testing, his *"360 employee record"* of

- taking a course on CN's policies for drugs and alcohol; and the Memo to file from TM Sertic (Q/A 5).
- [33] While the Company filed a PowerPoint which is stated was part of the training, those training materials related to *"Operations Managers"*.
- [34] Under the CROA process, an Arbitrator is entitled to solicit evidence. This Arbitrator asked the Company to provide the materials for the training course which was referred to at Q/A 5, and applied to the Grievor. Those materials were provided by the Company and were reviewed as part of the deliberations leading to this Award.
- [35] The Grievor's evidence was he *"walked to the beer store in Smith and grabbed some beers to take back to my room"*. His evidence was consumed three full beers and half of a fourth beer, which was left on his night stand.
- [36] In the Investigation, the Grievor was read the paragraph of the Policy which is reproduced below and asked to explain *"what part of the policy you did not understand when you stated to the TM that you were not aware that you could not drink after work on CN property?"* (Q/A 22).
- [37] The Grievor answered *"I am aware of the policy but I was startled by the TM entering my room at 0140"*. When asked in the next question if he had complied with the policy while staying at the bunkhouse, the Grievor answered *"no"* (Q/A 23).
- [38] His evidence was he did not have the drinking problem he discussed with TM Sertic until after he was hired on at CN and that he had not attempted anything to address it, such as EFAP or AA meetings.
- [39] The Union asked what reasonable cause TM Sertic had to enter the Grievor's room, and he answered *"I got a tip and had to respond to it"*. When asked to elaborate on that tip, he stated that question was *"not relevant"*.
- [40] As his final response (Q/A 27), the Grievor stated he planned to contact EFAP and would be *"more than willing to enter some type of program or contract to ensure my sobriety, this is the best job I've had and I don't want to lose it"*.
- [41] The Union did not file any evidence that the Grievor suffered from a substance abuse disorder, or that he made any attempts at rehabilitating such condition, post-termination. That evidence is often provided when a substance abuse disorder is recognized by an employee.
- [42] The Grievor was not offered a Rule G Bypass Agreement.

The Relevant Provisions

The Policy

[43] The Policy is stated to “*consolidate*” the Company’s various programs and initiatives “*pertaining to alcohol and drug use by our employees*”. It is described as an “*important component of CN’s overall safety program to minimize risk in all operations*”.

[44] The “*Policy Statement*” on which the Company relied is:

All employees are required to report and remain fit for duty, free of the negative effects of alcohol, cannabis and other drugs. It is strictly prohibited to be on duty or to be in control of a CN vehicle or equipment while under the influence of alcohol or other drugs, including the after-effects of such use. Specifically, the use, possession, presence in the body, distribution or sale of illegal drugs while on duty (including during breaks), on or off company premises, in company vehicles and equipment, or while on company business is prohibited. Possession, distribution, or sale of alcoholic beverages or cannabis and the consumption of any form of alcohol or cannabis is prohibited while on duty (including during breaks), on or off company premises, in company vehicles and equipment, or while on company business (emphasis added).

CROR Rule “G”

- (i) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.
- (ii) The use of mood-altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.
- (iii) The use of drugs, medication or mood-altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty, is prohibited.
- (iv) Employees must know and understand the possible effects of drugs, medication or mood-altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

Arguments

[45] The Company argued the Policy is clear and unambiguous that the Grievor is prohibited from possession or consuming alcohol on its premises even when he is off duty; that the facts establish the Grievor was aware of and violated the Policy; and that dismissal was just and reasonable in all of the circumstances.

- [46] The Company maintained that the Rule G Bypass Agreement did not apply, because the Grievor was not “*subject to duty*” or “*on duty*”.
- [47] The Company argued the Policy has always been interpreted to create a “dry” bunkhouse (in the words of this Arbitrator). It argued the Grievor’s bald statements cannot establish he had a substance abuse disorder and so that possibility is not a mitigating factor, neither was its duty to accommodate triggered.
- [48] In its Reply, it noted there was no evidence of rehabilitative efforts by the Grievor although he stated he was alcohol-dependent. It also argued the Grievor was fully aware of the consequences of his actions. The Company also distinguished the Union’s jurisprudence.
- [49] The Union’s primary argument was that the Company cannot discharge its burden of proof that the Grievor violated the Policy, *notwithstanding* the Grievor’s own knowledge.
- [50] It argued the focus must be on the wording of the Policy, which is the basis for the discipline; that the Policy only prohibits possession or consumption “*on duty*” as the phrase “*on or off company premises*” in the Policy had to qualify the phrase “*subject to duty*” or “*on duty*”. It argued that phrase could not broadly apply to an employee’s actions on his or her own rest time, or that phrase would prohibit all alcohol consumption at any time whether working or not, which would not be reasonable. The Union pointed out the Company could have said the prohibition applied “*in company accommodation*” or “*while in the bunkhouse*”, but it did not and that it is bound to its Policy, which does not capture these circumstances. It argued the Grievor was neither “*on duty*” or even “*subject to duty*” at the time of these events and the terms of the Policy did not apply to him.
- [51] Alternatively, the Union argued that the Grievor had admitted to a substance dependence disorder, which is a disability under legislation, and that that Company failed in its duty to accommodate the Grievor, which duty it violated by terminating him. It argued these mitigating circumstances warranted a substitution of a lesser penalty, short of termination. The Union also argued its oral submissions that the investigation was not fair or impartial as the Union was not aware of the details of the “tip” prior to the hearing. It also pointed out the Grievor’s commitment to maintaining sobriety. The Union in its Reply noted it was not contesting the Grievor’s requirement to submit to testing in this case.

Analysis and Decision

- [52] All jurisprudence filed has been reviewed, although not all will be mentioned.
- [53] As a preliminary point, the Union made several arguments relating to accommodation, including in mitigation.
- [54] Accommodation is not a process which serves to “mitigate” discipline as urged by the Union. The concepts of accommodation and mitigation are distinct. For a duty to accommodate to arise, the Union bears the initial burden establish an employee has suffered a disability resulting in adverse effect and therefore *prima facie* discrimination is established. It is only then that the Company’s duty to accommodate a disabled employee is triggered and arises.
- [55] If the Union does not file any evidence to meet its burden to establish the Grievor suffered from a substance abuse disability, the duty to accommodate does not arise. In this dispute, the Grievor’s own statements of dependence do not establish he suffered from a disability, neither does his stated willingness to undergo rehabilitation.
- [56] No other evidence was filed to substantiate that the Grievor in fact suffered from a substance use disability. No duty to accommodate the Grievor was therefore triggered.
- [57] However, as noted below, the Grievor’s own comments regarding his substance abuse concerns are relevant for considering the application of the Rule G Bypass Agreement, which is discussed below.
- [58] This Grievance raises several important issues. While the Company’s application of the Policy is at issue, so is the question of whether that Rule G Bypass Agreement should have been offered to the Grievor, if the Policy was violated.
- [59] The Company filed the Rule G Bypass Agreement, which is the first occasion this Arbitrator has had to review that document.

The Wm. Scott Questions

- [60] Turning to the discipline assessed, the first question in the *Wm. Scott* framework requires an Arbitrator to consider if an employee is culpable for his behaviour.
- [61] The Company bears the burden of establishing that the Grievor was culpable for some form of discipline.

- [62] If that is established, the second and third questions arise, being whether the discipline assessed was just and reasonable, and if not, what discipline is appropriately substituted.
- [63] Arbitrators are united in determining that use of drugs or alcohol either while on duty - or when an inference can be drawn of impairment from consumption shortly before reporting for duty - is very serious and significant misconduct in this industry.
- [64] To support its arguments, the Company relied on several decisions where the use of drugs and alcohol were found when the employee was “*on duty*”. The Company relied on **CROA 2603** where the individual was found to have six bottles of rum on Company premises during his workday; or **CROA 4453**, where the Grievor purchased alcohol while on duty and transported it in his Company vehicle.
- [65] This case, however, is not an “*on duty*” case in that same manner, but an “*on Company property*” case.
- [66] More similar in that factual context is **CROA 3377**, where the Grievor was found to possess illegal drugs on Company property (marijuana, located behind the coffee maker, adjacent to his bed). In that case, that was found to be in violation of Rule 1.8 of the Algoma Track Program Hotel and Camp Rules. That Rule stated: “*The use or possession of alcoholic beverages, mood altering agents, any types of firearms or any illegal weapon is strictly prohibited on Company property or motel rooms*”.

Did the Grievor Violate the Policy?

- [67] The first issue is whether the Grievor is culpable for breaching the Company’s Policy.
- [68] This is a dispute which calls into question the *application* of the Company’s Policy to the Grievor. The Company argued the fact the Grievor *admitted* he *was* aware he was not to have alcohol on its premises – and knew he was in contravention of the Policy - was relevant to whether its application of discipline was reasonable.
- [69] The Union argued the focus of whether the Policy was properly applied to the Grievor is narrow, and placed on the meaning of the Policy wording itself. The Union’s position was that the Policy in this case does not have the required clarity to prohibit the Grievor’s actions.

- [70] While the Union's position does have initial appeal, on close consideration of the evidence in this case, it is not compelling.
- [71] In this case, the Grievor was on "rest", but was enjoying that rest on the Company's premises, in its bunkhouse. The bunkhouse is the Company's property. The Company is free to determine what types of limitations it wishes to impose on its own property.
- [72] There are good reasons why the Company would want its bunkhouse to be "dry". As this Arbitrator – and other arbitrators in this industry have noted – drugs and alcohol and the railroad simply do not mix.
- [73] However, the question raised by this case is not whether the bunkhouse should or should not be "dry", but whether the Grievor was culpable for his possession and consumption of alcohol in the Company bunkhouse.
- [74] In considering the appropriate evidence, it must be remembered this is not a case of contract interpretation or of legislative interpretation, where the "plain and ordinary" meaning of a word or phrase must be considered, and where extrinsic evidence is limited.
- [75] Rather, this is a case of determining if the Grievor has violated limitations on his behaviour of which he was aware, while he was on Company premises.
- [76] When assessing discipline for breach of a Policy, the Company bears the burden of establishing such a breach occurred.
- [77] As evident from a close review of the facts in the leading decision of *Re Lumber & Sawmill Workers' Union, Local 2537 and KVP Co. Ltd.* ("KVP"), the concern to be addressed in the application of a unilateral policy is that an employee should not be bound by a policy the standards of which he did not know – or should not have known – would apply.
- [78] As noted at p. 85, a unilateral rule must have been "*clearly brought to the attention of the employee concerned*". That requirement accords with logical sense, common sense and labour relations sense.
- [79] Both the Policy itself – as well as any training the Grievor received about its application – are relevant to determining what the Grievor knew – or should have known – about the Company's Policy and the standards that would be enforced against him.

- [80] The facts underlying the *KVP* decision itself support that conclusion. In *KVP*, the employee could neither read nor write. He was unable therefore to physically read the wording of the Policy. Yet, it was established in that case that he had become aware of the unilateral policy of the employer from his peers.
- [81] That policy was not challenged based on the fact the Grievor was not able to obtain that knowledge from the wording of the Policy itself, but on other grounds.
- [82] In this case, the Union challenged the wording of the Policy itself as not making clear that the Grievor could not possess or consume alcohol on Company premises.
- [83] For convenience, the phrasing in the Policy is:
- Specifically, the use, possession, presence in the body, distribution or sale of illegal drugs while on duty (including during breaks), on or off company premises, in company vehicles and equipment, or while on company business is prohibited. Possession, distribution, or sale of alcoholic beverages or cannabis and the consumption of any form of alcohol or cannabis is prohibited while on duty (including during breaks), on or off company premises, in company vehicles and equipment, or while on company business (emphasis added).
- [84] The Union argued that the phrase “*on or off Company premises*” had to refer to when an employee was “*on duty*” as noted earlier in the sentence, as any other interpretation would mean an employee could never consume drugs or alcohol even when off duty and at his own home.
- [85] The Company could have included a statement such as appears in its “*Reasonable Cause Form*” that “*while on duty or on company property*” employees are not allowed to possess or consume alcohol or drugs.
- [86] However, when the Policy is viewed in conjunction with the training materials and with the evidence in this case, I am satisfied the Grievor was appropriately made aware that he was not to possess or consume alcohol on Company premises.
- [87] He was not in doubt that this was the Company’s rule.
- [88] A policy with the importance of the Company’s response to Drug and Alcohol issues does not stand in a vacuum. When onboarded, employees receive “*training*” in how a particular policy is interpreted and could apply to them.

- [89] The Grievor received that training 18 months earlier. The Investigation in this case referred to the training record for the Grievor, for this Policy, at Q/A 5.
- [90] Under the CROA process, Arbitrators are entitled to solicit evidence. That is unique in arbitration practice. This Arbitrator requested the training materials referred to in the Investigation. Those training materials were provided and have been carefully reviewed.
- [91] The training materials discuss what is not allowed “*when at work*”, and also when an employee is considered to *be “at work”*.
- [92] Under A06 of those materials – “*What’s Prohibited at Work*” - The question is asked in the materials “*When am I at work?*” .
- [93] The Company has trained its employees that they are considered to be “*at work*” for the purposes of the Policy when they are on Company premises.
- [94] The answer to the question of “*when am I at work*” states:
 On company premises, including CN’s vehicles and equipment.
- [95] The materials then go on to state:
 It is strictly prohibited to be on duty or to be in control of a CN vehicle or equipment while under the influence of alcohol or other drugs, including the after-effects of such use....You are also considered at work off company premises, when working at home, from an airplane, or from a hotel room. As long as you are working or paid to be available for work”.
- [96] I am satisfied the training the Grievor received on the application of the Company’s Policy was that when he was on the Company’s premises, he was “*at work*” for the purposes of the Policy. I am further satisfied from his own evidence – and the lack of any explanation at his Investigation to the contrary – that he had the requisite knowledge that he was not to possess and consume alcohol on Company premises; he was not confused as to that requirement and he admitted in his Investigation that he was in contravention of the Policy.
- [97] I am further satisfied that the Grievor’s own evidence bears out this training and in particular his knowledge that he was not to possess or consume alcohol on Company premises.
- [98] While the Grievor initially told TM Sertic he “didn’t know” he could not do so, that explanation was quickly dropped and was not again repeated when he was questioned at the Investigation.

- [99] TM Sertic's evidence was the Grievor admitted to him that he was aware of that requirement. That is not the only evidence, though.
- [100] Nowhere in is Investigation does the Grievor ever rely on the explanation that he did not know he was not allowed to possess or consume alcohol on Company premises, to explain his behaviour.
- [101] In fact, when he is questioned, he admits to contravening the Company Policy, by stating he was not in compliance with the Policy.
- [102] Given the totality of the evidence, culpability for breaching the Company's Policy has been established on the Grievor's own evidence.
- [103] That does not resolve this Grievance, however.
- [104] The Union has argued in the alternative that discharge was an excessive response.
- [105] For the reasons which follow, I agree with that assessment, but not on the basis relied upon by the Union. I am satisfied the Grievor was an employee to whom the Rule G Bypass Agreement applied and that he should have been provided that process.

The Rule G Bypass Agreement

- [106] In May of 1990, more than 35 years ago, the Company entered into an agreement with several of its unions, which has come to be known as the "*Rule G Bypass Agreement*".
- [107] The "*purpose and intent*" of that Agreement was stated to be designed to "*...provide a mechanism that will prevent employees, occupying safety sensitive positions, who are under the influence of alcohol and/or drugs from being involved in the operation of trains*".
- [108] The parties attached an "Appendix "B"" to their agreement which details how the "Rule G Bypass" works.
- [109] The parties also provided several comments to clarify their intent.
- [110] The parties noted that "*subject to duty*" as used in that Appendix would be as defined in **CROA 557**, to be when an employee accepts a call, applicable to both the home and away-from-home-locations.

[111] While CROR Rule G itself prohibits possession or use while “*subject to duty*” or “*on duty*”, the parties did not only limit their agreement to those situations.

[112] Upon careful review of the Rule G Bypass Agreement, it becomes apparent that the parties expanded the application of their agreement beyond situations to which CROR Rule G applies, and have included employees who are “*not on duty or reporting for duty*” but yet have a “*problem with alcohol or drugs*”:

In addition, as another indication of the preventative nature of this program, we have agreed that in the event the Company is made aware of an employee who, while not on duty nor reporting for duty, **is reported to have a problem with alcohol and/or drugs such employee will also be given the benefits of item 2 of Appendix “B”** (emphasis added).

[113] Item 2 states that if the incident occurs when the employee is reporting for duty, he or she will be sent home without pay and will be required to report as soon as an interview can be mutually arrange, but in any event within 48 hours. The following “NOTE” is also located in item 2:

It is understood that provided the employee has not commenced work, i.e., reported for duty and is on pay, he or she will be afforded the same consideration whether or not such incident is reported by a fellow employee or company officer...(emphasis added).

[114] Item 3 specifically refers to an incident which occurs “*on duty*”.

[115] Item 4, then refers to the “*interview*” noted in Item 2 and states:

If during the joint interview it is considered that the violation may have been caused by poor judgment only (i.e. no abuse problem) the employee will be, for greater certainty, interviewed by Employee and Family Assistance Program Personnel (EFAP Personnel) within 30 days of the joint interview. If EFAP Personnel confirms that no abuse problem exists, then the employee will be counselled on the seriousness of his or her actions and warned in writing with a record retained on his or her personal file that a repeat offence will result in his or her dismissal (emphasis added).

[116] Item 5 speaks to the situation where the employee is found to have a substance abuse issue:

If, on the other hand, if it is determined that the employee may have an abuse problem, the employee will be referred to EFAP Personnel as soon as an appointment can be arranged. Should EFAP Personnel confirm that

an abuse problem exists the employee will be afforded the terms and conditions contained in Article 3 – Employee Assistance Program of the Joint Union Management Agreement on the Control of Drug and/or Alcohol Abuse and a record retained on his or her personal file.

- [117] There is also reference in item 5 to an employee referring his case to his or her own drug abuse specialist if he disagrees with the assessment, and to the situation that if the employee is determined not to have a problem, then item 4 would apply.
- [118] Failure of an employee to “*take advantage of such opportunity*” if a drug or alcohol abuse problem is identified, “*could, after proper investigation of his or her case, result in dismissal*”.
- [119] I am satisfied that the Grievor – having raised an issue of alcohol dependency to a Company Officer at a time when he had not yet commenced work – was entitled under item 2 to be treated to the Rule G Bypass process.
- [120] While it was reasonable for the Company to conclude the Grievor had violated its Policy, the Grievor in this case should have been offered the ability to access the Rule G Bypass Agreement process, given his stated concerns with alcohol dependency which were made to a Company official, while he was on the Company’s premises and before he had reported for work.
- [121] As the Grievor was discharged, he was not put through the EFAP assessment process which that Agreement contemplates.
- [122] That the Grievor has not yet chosen to undertake any rehabilitation efforts for what he states he recognized as alcohol dependence (as often happens once recognition occurs once dismissal happens) is troubling.
- [123] It is not clear why that has not occurred, if the Grievor is in fact willing to undertake those efforts, as he stated he was in his Investigation.
- [124] The fact he has taken no steps may impact he is not at the stage to willingly undergo rehabilitation, which will be assessed as part of the Rule G Bypass process.

Remedy

[125] In determining an appropriate remedy, the following directions are intended to provide to the Grievor the opportunity he was denied in 2024, which is to proceed through the Rule G Bypass process.

[126] If the Grievor was properly allowed a Rule G Bypass Agreement, one of two outcomes would have resulted.

[127] Either:

- a. He would have been found to *have* a substance use disorder, with the requisite limitations on his earning ability due to such factors as: whether or not he was willing to rehabilitate (if not, he could have been dismissed); the time away from work to undergo rehabilitation; and the possibility he would not have been able to comply with return to work conditions, such that any accommodation obligation was ultimately brought to an end;

or

- b. He would *not* have been found to have a substance use disorder, and would have therefore received a written warning with a notation that any future offence would result in his dismissal. This would have resulted in a very precarious employment situation for the Grievor between that time and the date of this Award.

[128] To remedy the loss of access to that process in 2024, the following directions are provided:

- a. The Grievor is directed to undergo a substance use assessment by the Company's EFAP personnel, as noted under the Rule G Bypass Agreement.
- b. This will qualify as the Grievor's single opportunity to engage in the Rule G Bypass process.
- c. If a substance use disorder is not found, the Grievor is to be reinstated with a written warning and with a notation that any repeat offence will result in his dismissal, as required by the Rule G Bypass Agreement.
 - i. That reinstatement is to be without loss of seniority, but with compensation reduced by 25% (once mitigation efforts are subtracted), for the contingency that had this occurred in 2024 his

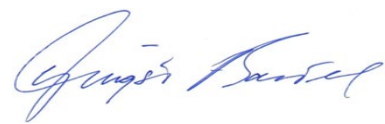
employment could have ended with a reoffence, or he would have been found to be unwilling to address his dependency, given his lack of efforts at the time of this hearing.

- d. If a substance use disorder is found, then whether or not the Grievor is subject to receive compensation will ultimately depend on whether the Grievor is – or is not – willing to undergo the rehabilitation that Agreement imposes. It will also be dependant on whether he is able to comply with the conditions which are reasonably applied for alcohol testing *after* that rehabilitation; what work income would be lost to him during the time of that rehabilitation process; and whether he was able to comply with any conditions imposed for his return to work, such as substance use testing.
 - e. Given those multiple contingencies, if a substance use disorder is found to exist, the Grievor's compensation for reinstatement will be without deduction, but will not be owed by the Company until such time as the Grievor has demonstrated he is willing to rehabilitate from that dependency, as required by the Rule G Bypass Agreement process.
 - i. Had he been offered the Rule G Bypass Agreement in 2024 and been found to be substance dependant, he would have had these issues to face to maintain his employment and therefore his income, for the intervening year.
- [129] If the parties are unable to agree on whether compensation is owing to the Grievor after this assessment and/or the amount of such compensation, either party can request that this issue be placed onto the schedule for a CROA Session over which I preside.

[130] The Office is hereby directed to schedule that issue on an expedited basis.

I retain jurisdiction to address any issues arising from the implementation of this Award and from its remedial directions; to correct any errors and to address any omissions, to give this Award its intended effect.

July 25, 2025



CHERYL YINGST BARTEL
ARBITRATOR