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In the Matter of Arbitration Between: )  
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ARCELORMITTAL USA )  
Riverdale, Il. Plant )  
 )  
and )  
 )  
UNITED STEELWORKERS, )  
Local 1010. )  
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Grievant: Kienzynski  
Issue: Discharge  
Arbitrator Docket No. 190810

Case 107

**BEFORE ARBITRATOR JEANNE M. VONHOF**

**INTRODUCTION**

The undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on November 1, 2019 in Riverdale, Il.

Mr. Jack Klinker, assisted by Mr. Christopher Kimbrough, Labor Relations Representatives, represented ArcelorMittal USA, Riverdale, hereinafter referred to as the Employer or the Company. Mr. Nick Pappas, Division Manager, Labor Relations; Mr. Nicholas Furdeck, Division Manager of Operations; Mr. Erik Anderson, BOF Manager; and Ms. Barbara Sauvage, Nurse Practitioner in Occupational Health, testified on behalf of the Company.

Mr. John Wilkerson, represented United Steelworkers Local 1010, hereinafter referred to as the Union or the Local.

Each party had a full and fair opportunity to present evidence at the hearing. Both parties made closing arguments at the hearing.

**ISSUE:**

Did the Company have just cause to discharge the Grievant, and if not, what shall the remedy be?

## **Background**

The Grievant was discharged for violating the Company's policy against coming to work under the influence of drugs. Mr. Nicholas Furdeck testified that he has worked as Division Manager of Operations at Riverdale for the past two and a half years, and has worked in the steel industry for another 17 years. Furdeck testified that the Grievant held the positions of a Scrap Crane Operator and Furnace Gunner at the time of the events leading to this grievance. The Grievant had worked for the Company for about 20 months at the time of his discharge, and had requested and was granted Sickness & Accident leave beginning October 15, 2018. He was contacted by the Company to return to work in a letter dated February 1, 2019.

On the morning of February 4, 2019, the Grievant initially swiped in at the plant at 5:55 AM. He was scheduled for a pre-shift meeting at 6:45 AM. Furdeck testified that the Grievant swiped into his Department, demonstrating that he intended to work, and entered the office area of the BOF. Mr. Erik Anderson, BOF Manager for the day shift at Riverdale for the past two years, testified that the Grievant walked into his office and Anderson told the Grievant to go to the clinic for a fitness-for-duty exam. The Union stipulates that the Grievant was validly subjected to a return-to-work physical, including drug and alcohol testing, because he had been on leave from work for more than 90 days.

Ms. Barbara Sauvage, Nurse Practitioner in Occupational Health at the Riverdale plant, testified that she has held that position for four years and has been a nurse for 26 years. On February 4 the Grievant was sent to her by Anderson for a fitness-to-work exam. Sauvage testified that when she told the Grievant that he was required to take a drug and alcohol test as part of the exam, the Grievant became agitated and then calmed. He said that he did not want to take the test at that time, and that he wanted to talk to a Union representative. Sauvage testified that she reported this situation to Human Resources Manager Rucker Odem.

The Grievant left the testing area and went to talk to the Union Steward. The Company presented evidence showing that the Grievant then left the plant. Furdeck testified that he was told that the Grievant had refused to take the test and had left the plant. According to Furdeck, he conferred with Odem at that point and they concluded that the Grievant should be given a five-day suspension pending discharge for failing to take the drug and alcohol tests.

About two and half hours later, the Grievant returned to the plant clinic and presented himself for testing. Sauvage checked with Odem and received approval for the Grievant to be

tested. The preliminary test showed a positive result for marijuana. Sauvage said that she provided the results to the Grievant, and sent the sample off for a confirmatory test to Quest Labs. She also sent a copy of the preliminary results to the plant's Medical Review Officer at FS Solutions. An employee with a positive preliminary test is not allowed to return to work at least until the confirmatory result is returned.

Furdeck was told that the Grievant had tested positive for marijuana by the onsite clinic. He conferred with Odem again, and issued the Grievant a second letter dated February 4, 2019, for a five-day suspension pending discharge, for violating the Company's rule against reporting to work or being on Company premises under the influence. The Company demonstrated that the Grievant had been provided with a copy of the Company rules when he began working for the Company in 2017.

The Company submitted a confirmatory laboratory report dated February 12, 2019 indicating that the Grievant's February 4 urine sample tested positive for marijuana metabolites, at 1166 ng/mL. The Medical Review Officer at FS Solutions issued a report stating, "Final Verification – Positive Marijuana." Sauvage testified that the Medical Review Officer at FS Solutions does not examine whether the employee is impaired, but only examines whether there is any medical reason to explain positive drug test results, such as the employee taking prescription medication.

Nurse Sauvage acknowledged that the test does not show whether the employee is intoxicated or impaired. She said that whether the Grievant was impaired when he took the test is a difficult question, but that no examination of physical factors, such as his heart rate or blood pressure, was conducted at the time of the testing. BOF Manager Anderson testified that he could not recall whether he did any evaluation of whether the Grievant was impaired at the time he sent him to the clinic.

Furdeck testified that he did not determine whether or not the Grievant was impaired on February 4. He stated that the Grievant tested positive and a positive test result is a violation of the Company's rule. The five-day suspension was converted to a discharge, after Furdeck consulted with the Labor Relations and Management representatives. He said that they discussed extending a Last Chance Agreement to the Grievant but decided against it because of his short tenure, attendance record, and because he had had other counseling and coaching sessions.

The Union presented evidence that another Riverdale employee, [REDACTED], was sent for an alcohol and drug test during the same time period as the Grievant, and the preliminary test showed a positive result for marijuana. [REDACTED] was presented with an identical letter as the Grievant, placing him on a five-day suspension pending discharge on February 11, 2019. The Union presented documentation showing a laboratory test dated February 15, 2019 from Quest Labs, confirming that [REDACTED] sample tested positive for marijuana. On the same day, [REDACTED] underwent a fitness-for-work evaluation, conducted by Dr. Ted R. Niemiec, the Certified Medical Review Officer and director of the Medical Department at the Indiana Harbor facility. The form states, in relevant part: "Confirmed results of the evaluation have been recorded as follows: Drug Impairment – Negative." [REDACTED] five-day suspension was never converted to a discharge, but was reduced to a three-day suspension for possession of alcohol on Company premises.

Furdeck testified that it was his understanding that [REDACTED] confirmatory test came back negative for marijuana. He also noted that Riverdale has a separate medical clinic from Indiana Harbor. He testified that he did not know whether Dr. Niemiec also oversees the Riverdale facility. The Company presented an email from Odem to Wilkerson memorializing a settlement reached, "without precedent or prejudice," over the grievance that had been filed by the Union over [REDACTED] five-day suspension. The terms of this settlement included the reduction to a three-day suspension.

### Timeliness Issue

The Union has raised a preliminary matter, arguing that the Company's failure to respond to the steps of the grievance procedure in a timely manner means that the grievance must be sustained, under the terms of the collective bargaining agreement. The Company disputes this claim, based upon the past practice between the parties.

Mr. Nick Pappas, Division Manager, Labor Relations, Indiana Harbor, has worked for the Company for 37 years, the last 12 of them in Labor Relations. He testified that Local Union 1010 took over representing the Riverdale facility and more recently, Indiana Harbor Management assumed control over the Labor Relations functions at Riverdale. Indiana Harbor took over about four months before the arbitration hearing on November 1, 2019, after Riverdale Human Resources Manager Odem left the Company.

According to Pappas, in his dealings with Local 1010, the Union and the Company have never strictly enforced the deadlines for any of the steps of the grievance and arbitration procedure. He added that in his 12 years in Labor Relations, Local 1010 has never argued that there was a timeliness issue at the arbitration level. In addition, he stated that the Union has never put the Company on notice that they were going to begin enforcing the deadlines strictly.

Pappas said that he believed that the parties were operating in the same way at Riverdale as they did at Indiana Harbor, with regard to deadlines. He testified that in his discussions with Odem, Odem never stated that the deadlines were strictly enforced at Riverdale. Pappas testified further that he was aware that the Local had expressed displeasure about the speed of scheduling grievances for arbitration, including this grievance, but said he did not consider these communications as notice that the Union intended to strictly enforce the timelines.

### **The Company's Position**

- With regard to the Union's timeliness argument, the Union did not present evidence to refute the Company's testimony that the parties have been lax in applying the timelines to the grievance and arbitration procedure.
- Where there has been lax enforcement of timelines in processing grievances, the party wishing to enforce the timelines must notify the other party first of their intent to change the practice. In this case no such notification took place.
- What the Union claims as notice here are communications which were not made in advance of the Union's attempt to enforce the timelines strictly. Instead, the Union attempted to enforce the timelines midway through the grievance procedure over this grievance.
- The Union is only trying to apply the strict timelines to this grievance, and not to all grievances. For all of these reasons the Union's procedural argument should not be sustained.
- The Grievant was an employee with less than two years' tenure with the Company. As the parties stipulated, the Grievant was validly required to take the fitness-for-duty exam, due to his absence of more than 90 days.
- The Grievant was discharged for failing the drug test in the fitness-to-work evaluation and for the circumstances surrounding his failure, including initially trying to evade the test by leaving the premises because he knew that he would fail the test.

- In regard to the Union's arguments regarding insubordination, the Grievant here was not charged with insubordination. He was charged with evading the drug test and then failing the drug test.
- The Company rule states that an employee may not report for work under the influence of alcohol or drugs and states that if they do so, they are subject to immediate suspension and discharge.
- The Union suggests that the Grievant was not reporting for work, but was only reporting for his return-to-work physical. However, the Grievant swiped into the Dayforce payroll system in his Department, and had to be sent for the physical at about the time of the pre-shift meeting. The Grievant was clearly attempting to report to work, which made him subject to the rule.
- The Union conceded that the Grievant was on Company property, so the rule applied anyway.
- The Grievant had a high amount of marijuana metabolites, 1166 ng/mL, in his system on the day in question.
- Neither the rule nor the BLA set forth impairment as the appropriate standard. To the extent that the BLA mentions impairment, the Company is entitled to rely upon the laws of the governing legal jurisdiction, in this case Illinois, to define impairment.
- The law of the State of Illinois does not recognize impairment as the appropriate standard for drivers, but rather whether the person is "under the influence."
- The Grievant's level of marijuana far exceeded the limit set by the Illinois state law for drivers.
- The [REDACTED] matter was settled before this arbitration and therefore should not be cited here.
- However, if the Arbitrator does consider the [REDACTED] case, then the Company relies upon the fact that [REDACTED] was not evaluated at the Riverdale facility, or under the process used at the Riverdale facility.
- Instead [REDACTED] was evaluated at the Indiana Harbor facility under their process, and his grievance is therefore distinguishable from the grievance at issue here. In addition, he was evaluated in Indiana, which has different laws than Illinois.
- The BLA language specifically permits the Company to enforce plant rules and that is what occurred here.
- Discharge is the appropriate result for the Grievant's violation of this rule, especially given his short tenure with the Company. His length of service distinguishes his case from

another case relied upon by the Union, and is more in line with other decisions by this Arbitrator.

- For the foregoing reasons, the Company requests that the Arbitrator deny this grievance and uphold the discharge of the Grievant.

### **The Union's Position**

- The Company should not be allowed to present the Illinois DUI Handbook as evidence, or present its argument that Illinois law applies in this case. This argument was never raised prior to arbitration.
- If this argument had been raised earlier in the grievance procedure, the Union could have presented evidence, including expert testimony, to refute it.
- In this case two employees at Riverdale both tested positive for marijuana at around the same time. Their grievance meetings were heard on the same day. One employee was issued a suspension and the Grievant was terminated. There is no reasonable explanation for the difference in treatment.
- The fact that one employee was examined in Illinois and one in Indiana, is not relevant. Both worked at Riverdale and were under the same management.
- The parties have never relied upon either state's DUI standards in determining impairment under this BLA.
- In arbitration Award 1027, the grievant had a blood alcohol level far exceeding the parties' limits. The parties agreed that he was impaired, and the only question was whether rehabilitation was appropriate. In this case the Union is arguing that the Company has not established that the Grievant was impaired at all when he was tested.
- The cause for termination in this case was impairment. In Award 960 the Arbitrator ruled that the Company had not established that the Grievant was under the influence of cocaine on the day he was tested, and therefore, had failed to meet its burden of proof.
- In Award 960, the Arbitrator held that for cocaine to show up in the employee's urine meant that the employee probably had ingested it within a few days of the testing. However, it is widely accepted that marijuana metabolites may remain in the urine of someone who has used marijuana for 30 days or more.
- Award 769 is similar case to this case, and the arbitrator in that case held that the grievant's positive test for marijuana did not demonstrate that the grievant was impaired when he reported to work, or when the accident occurred.

- If the Arbitrator here accepts the Company's argument that it did not rescind the discharge for failing to take the test when the Grievant returned to take the test, the question becomes what is the appropriate penalty. The Grievant was not informed at the time that if he refused the test, he would be terminated, and therefore he cannot be disciplined for insubordination.
- There is no evidence that the Grievant was using or bringing alcohol or drugs on Company property, and therefore the Justice and Dignity clause should apply to the first suspension for refusing to take the test.
- The BLA states that "employees who are found through testing to have abused alcohol or drugs will be offered rehabilitation in lieu of discipline." The Grievant has completed alcohol and drug rehabilitation, and should not be discharged for the positive drug test.
- The BLA and the rules have consistently been interpreted in the past to mean that there must be a showing of impairment. The Company is arguing now that if an employee shows any level of marijuana metabolite in his urine when tested, that demonstrates impairment, under the same rules.
- The BLA section permitting discipline for violation of plant rules permits the Company to discipline and discharge an employee for destroying Company equipment, for example, while impaired. The language is not intended to mean that the Company can discharge an employee under its plant rules regarding alcohol and drugs, without consideration of the language in the BLA requiring an offer of rehabilitation.
- The Union requests that the Grievant be reinstated with full backpay.

## **Findings and Decision**

### **Timeliness Issue**

The Union argues that the Company failed to meet the time limits of the grievance procedure with regard to this grievance, and therefore the grievance must be sustained. Under Article Five, Section I(4)(j) of the BLA, if the Company does not meet the time limits, "then the grievance shall be considered granted with the requested appropriate contractual remedy to the grieving party." The Company does not argue that it met the time limits of the grievance procedure in this case. Instead, the Company argues that the parties have not strictly enforced time limits for grievances in the past and therefore, this provision should not be enforced by the Arbitrator now.

Mr. Nick Pappas, Division Manager, Labor Relations, testified that Local 1010 and the Company have not strictly observed the time limits during his 12 years in Labor Relations at Indiana Harbor and that he believed that the same practice applied at Riverdale as well. The Union

did not present evidence to refute the Division Manager's testimony about the practice at Indiana Harbor. In addition, the Union did not show that the time limits have been strictly observed at either plant.

When parties have engaged in lax enforcement of time limits, a party who wishes to begin enforcing the contractual deadlines must first inform the other party in advance of their intention to do so. The Union argues, however, that the delay in this case was unusually long, especially considering that this is a discharge case which the Union repeatedly tried to advance more quickly. Nevertheless, the Union's protests about the Company's delays during the grievance procedure do not constitute proper *advance* notice of a decision to change the existing practice and to begin strictly enforcing the time limits.

The Union cites an award between the Company and USW Local 2604 (Grievance No. 7078; Morgan, Arb. 2005) in which the arbitrator denied the grievance as procedurally defective because the Union never appealed the grievance to Step 3 and scheduled the grievance for arbitration a year after the Company's Step 2 response. The Union argues here that if contract time limits are to be enforced against the Union, they should be equally enforced against the Company. The arbitrator in that case concluded that the parties' custom and practice at that plant was that after Step 2, the contractual time limits were strictly observed. The Union missed the deadline for appealing to Step 3, skipped that step altogether, and waited a year to appeal to arbitration. For these reasons the arbitrator denied the grievance as untimely.

In this case there is no evidence in the record that the parties have strictly observed the time limits at any point in the grievance procedure between Local 1010 and the Company. Considering the past practice of lax enforcement between these parties, which the Union does not dispute, the Union was required to notify the Company first that the Union intended to begin enforcing the time limits strictly, before attempting to apply them in the middle of the grievance procedure over this grievance. The Union did not provide adequate advance notice and therefore, this grievance will not be sustained solely on the basis that the Company failed to meet the time limits.

### The Merits of the Grievance

There is little dispute over the facts in this case. The Grievant was required to submit to a drug and alcohol test after taking an extended leave of absence. He declined to take the test at first, but then returned a few hours later and provided a urine sample. The Grievant tested positive for marijuana, and the preliminary test was later confirmed by laboratory testing. He was discharged for violating the Company's rule against reporting for work or coming onto Company property under the influence of alcohol or drugs. According to the Company, he also was discharged for initially evading the test.

The BLA states at Article 3, Section G(5) that employees who are found through testing to have abused alcohol or drugs "will be offered rehabilitation in lieu of discipline." This language requires the Company to offer rehabilitation to an employee who has tested positive, as an alternative to discipline. The language of Section G(5) reflects the intent of Section G(1), in which the parties have agreed to recognize alcoholism and drug abuse as "treatable medical conditions."

The Company relies upon the next sentence of Section G(5), which states, "However, this provision does not affect the right of the Company to discipline Employees for violation of plant rules or for working or attempting to work while knowingly impaired." With regard to whether the Grievant was attempting to work while knowingly impaired, the Manager said that he could not recall conducting any evaluation of whether the Grievant showed signs of impairment when he sent the Grievant to the clinic. There would have been no need for the manager to do so because he was sending the Grievant for testing because the Grievant had been on an extended leave. Thus, there is no evidence in the record that the Grievant's physical condition, demeanor or conduct on February 4 demonstrated that he was "working or attempting to work while knowingly impaired." The only evidence of impairment the Company has offered is that the Grievant tested positive for marijuana.<sup>1</sup>

The Company argues, however, that it need not prove that the Grievant was attempting to work while knowingly impaired. According to the Company, the first half of the last sentence of

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<sup>1</sup> I have considered whether the Grievant's initial failure to take the test indicated that he believed he was under the influence of marijuana that time. He stated that he initially refused the test because he believed that he would test positive. However, it is widely known that marijuana metabolites remain in the user's body for days or weeks, which may cause a positive test result even if the employee is not affected by the psychoactive compounds in the drug at the time of testing. Therefore, the Grievant initially refusing to take the test was not a tacit admission that he knew that he was impaired or under the influence at the time.

Section G(5) also permits the Company to discipline employees for violating its plant rules. The Company argues that the Grievant violated the plant rule that states that employees are forbidden to report for work or come onto Company property under the influence of alcohol or narcotics. The rule subjects the employee to immediate suspension and discharge if an employee comes on the property under the influence.

Because the BLA and the Company's rule do not define what constitutes impairment or being under the influence, the Company argues that it is reasonable to apply the standards established by Illinois' motor vehicle law, which states that a "statutory summary suspension" will be imposed upon a driver whose test results show "a THC of either 5 nanograms or more per milliliter of whole blood or 10 nanograms or more per milliliter of other bodily substance." The Company notes that the Grievant's test results for marijuana far exceeded these limits.

The Company did not raise this argument during the grievance or arbitration procedure. Generally I will not consider arguments that are raised for the first time at arbitration, without the other party having an opportunity to prepare a response. Furthermore, there is no evidence in the record that the parties agreed to intended to rely upon Illinois motor vehicle law to set testing limits for determining whether an employee of the Riverdale plant is under the influence of marijuana.

The plant rule requires that the Company show that the employee is under the influence of a drug at the time of testing. While the Company wishes to rely upon the positive drug test alone, testing for marijuana involves well-known technical problems in determining whether the employee is impaired or under the influence at the time of testing. In Ormet Primary Aluminum Corporation v. U.S.W.A. Local 5724, (2003) Arbitrator Helen Witt stated,

"While there may be arbitration cases that find that a positive drug test showing high levels of the metabolites of cannabis are indicative of impairment, the great weight of scientific literature on the subject disagrees. There is substantial support for the fact that a drug screen for cannabis will show whether cannabis was used, but it does not show when or how much was used... Therefore, the theory that a positive test equates to impairment is not generally recognized as sound."

Without any evidence about the Grievant's physical condition or behavior at the time of the testing, and in the absence of established testing limits, I cannot conclude that the Grievant was impaired

or under the influence of marijuana when he was tested. Therefore, there is not sufficient evidence on this record to conclude that the Grievant violated the plant rule.

Even if the Grievant's positive test were sufficient to show that he had violated the plant rule, however, the Company must follow the BLA language that requires an offer of rehabilitation to those who test positive. The Union disputes that the Company may rely upon the "plant rules" exception to deny rehabilitation to an employee. According to the Union, the reference to "plant rules" in Section G(5) refers to rules such as those prohibiting employees from damaging Company property. If an employee damages Company equipment and then tests positive for drugs or alcohol, the Company clearly may discipline the employee separately for the property damage.

In this case, however, the plant rule that the Company seeks to enforce would impose summary discharge on the Grievant based solely upon a positive drug test. The parties' intent to offer rehabilitation to employees who test positive for drugs or alcohol is clear from the language of Section G(1) and (5). Permitting the Company to enforce its plant rule under the second sentence of Section G(5) would directly contradict the language in the first sentence requiring an offer of rehabilitation in lieu of discipline when there is a positive drug test. I cannot conclude that the parties intended under this BLA language to permit the Company to unilaterally impose a plant rule that would undermine and eliminate the employee's right to an offer of rehabilitation. The Grievant was not offered rehabilitation and therefore there is not just cause for his discharge for failing the drug test. As Arbitrator Dilts stated in ISG, Riverdale Group v. USW Local 9481 (2004),

"In this Arbitrator's considered opinion the language of the parties' Agreement recognizes that corrective action is appropriate for alcoholism or drug addiction... Therefore discharge is not appropriate without a showing of possession or use on Company property."

The arbitration awards cited by the Company in support of discharge are based upon facts which are significantly different from the facts at issue here. For example, in Award No. 1027 the grievant admitted to coming to work under the influence of alcohol on two occasions about a year apart. He was offered rehabilitation after the first instance and failed to pursue it. In this case, this was the Grievant's only offense of the alcohol and drug policy and he was not offered rehabilitation.

In reaching the conclusion that there was not just cause for discharge, I have not relied upon the Union's argument that the Company imposed lesser discipline for the same offense upon Riverdale Employee [REDACTED], who tested positive for marijuana during the same time period as

the Grievant. Like the Grievant, [REDACTED] was initially issued a five-day suspension pending discharge. The Union filed a grievance and the parties settled that grievance by reducing [REDACTED] five-day suspension to a three-day suspension. The settlement between the parties states that it is without precedent or prejudice.

Many factors may be considered in reaching a settlement agreement over a grievance. An arbitrator who ignores the parties' agreement about the non-precedential nature of a grievance settlement discourages the settlement of later grievances. The Company initially treated both employees the same, and any better treatment afforded to [REDACTED] was due to a favorable non-precedential settlement of his grievance, and cannot be considered by this Arbitrator as evidence of disparate treatment of the Grievant.

The Company also argues, however, that the Grievant was discharged for failing to submit to a drug test as part of his return-to-work physical. The Grievant was required to take a drug test under the terms of the BLA, after being absent from work for more than 90 days. He initially failed to do so, went to see his Union representative and then left the plant. The Grievant returned after about two and half hours, presented himself for the test and the Company allowed him to take it.

The Company has not charged the Grievant with insubordination, or leaving the plant improperly, but argues instead that the Grievant was evasive or elusive initially about taking the drug test. However, the charge as stated in the discipline letter is failure to take a drug test. Management permitted the Grievant to take the test after his absence from the plant, and he did so. He did not fail to take the drug test.

The Grievant was not placed on notice that he was subject to suspension and discharge when he left the testing site to consult with his Union Steward, or once he returned to take the test and the Company allowed him to do so. No rule or policy was introduced regarding the consequences of failing to take a drug test or delaying a test. There was no evidence about any policy or practice covering the unusual situation here, where the test was part of a return-to-work physical after a lengthy absence, and the Company permitted the Grievant to take the test after a delay.<sup>2</sup>

Considering the sequence of events in this case, it is not clear that the Company would have imposed a suspension pending discharge for failure to test if the discipline letter had been

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<sup>2</sup> There is also no evidence that the Grievant's delay in taking the test affected his test results for marijuana metabolites.

prepared after the Grievant returned and was permitted to take the test. The record raises doubt that the Company clearly intended to continue pursuing this discipline after the testing, and after Management discharged the Grievant for failing the drug test. Therefore, under the circumstances present here, the evidence does not support discipline of the Grievant for failing to take the drug test.

The Union argues that the Grievant has completed rehabilitation. However, there is little evidence in the record regarding his rehabilitation efforts. Therefore, the Grievant shall be required, upon his return to the plant, to consult the EAP in order to be evaluated for drug abuse problems. He shall also be required to follow any recommendations of the EAP.

### **Award**

The grievance is sustained. There is not just cause for discharge. The Grievant shall be reinstated and made whole for all compensation and benefits lost as a result of his discharge. Upon reinstatement, the Grievant shall be required to undergo a drug abuse assessment with the EAP, and to follow their recommendations. The Arbitrator will retain jurisdiction solely over the remedy portion of this Award.

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Jeanne M. Vonhof  
Labor Arbitrator

Decided this 31 day of March 2020.