CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 5222

Heard in Montreal. November 12, 2025

Concerning

CANADIAN PACIFIC KANSAS CITY RAILWAY

And

TEAMSTERS CANADA RAIL CONFERENCE - MAINTENANCE OF WAY EMPLOYEE DIVISION

DISPUTE:

The dismissal of Mr. Nathan McCool (Union file 11-2395: company file CAN-CP-MWED-2025-00044855).

JOINT STATEMENT OF ISSUE:

On January 10, 2025, the grievor, Mr. Nathan McCool, was issued a Form 104 that stated:

> A formal investigation was held in connection with "your post-incident substance test and results related to your substance test samples taken on November 28, 2025 (sic.). " The post-incident test was following your involvement in damage to a mainline switch machine at Wakely east for which you have been assessed 20 demerits. The results of the post-incident test were positive for marijuana as follows:
>
> ORAL FLUID: Positive for Marijuana - THC Parent. Quantitative level - 9 ng/ml URINE: Positive for Marijuana - marijuana/THC metabolite. Quantitative level- 400 ng/ml.
>
> Your culpability was established for violations of the following:
>
> HR 203 Alcohol and Drug Policy; HR 203.1 Alcohol and Drug Procedures; CROR - Rule G
>
> Please be advised that you have been DISMISSED from Company service effective immediately. »

A grievance objecting to the discipline assessed was filed on January 12, 2025, and denied by the Company on February 24, 2025.

The Union contends that:

1. The grievor's oral fluid test result was Marijuana-Positive 9 ng/ml;
2. Based upon these results, and the absence of any other indicators, the Company was and is unable to prove that the grievor was impaired at work, thus no discipline could legitimately be assessed;
3. Given the circumstances, the Company had no right to test the grievor at all:

4. The grievor's dismissal was improper and illegitimate.

The Union requests that:

The Arbitrator order the Company to reinstate the grievor immediately without loss of seniority and with full compensation for all wages and benefits lost.

Company Position:

The Company denies the Union's contentions and declines the Union's request.

The Company maintains the Grievor's culpability as outlined in the discipline letter was established following a fair and impartial investigation and that the Grievor was properly subject to incident testing, pursuant to the Company's Alcohol and Drug Policy and Procedures.

Discipline was determined following a review of all pertinent factors, including those that the Union describes and the severity of the violation. The Company's position continues to be that the quantum of discipline assessed was just, appropriate and warranted in all the circumstances in accordance with the Company's Alcohol and Drug Policy and Procedures, the Hybrid Discipline Guidelines and the Wage Agreement.

The Grievor tested positive following a positive post incident test at 9 ng/mL in his oral fluid for marijuana-THC and 400 ng/mL in his urine for marijuana-THC metabolite some 19 hours after the start of his shift and over 4 hours after the triggering incident which led to his post incident testing. The evidence provided by the Company established that the Grievor was impaired while on-duty. The evidence provided by the Grievor proved to be non-credible.

Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests that the Arbitrator be drawn to the same conclusion.

For the Union:
(SGD.) W. Phillips
President

For the Company:
(SGD.) A. Cake
Assistant Director Labour Relations

There appeared on behalf of the Company:

S. Oliver	– Manager Labour Relations, Calgary
S. Scott	– Manager Labour Relations. Calgary

And on behalf of the Union:

W. Phillips	– President, TCRC MWED, Frankford
G. Pompizzi	– Director Atlantic Region, Montreal
J. Donnelly	– Teamsters Canada, Montreal

AWARD OF THE ARBITRATOR

Overview

[1] The Grievor, a Machine Operator with approximately 6 years of employment, was dismissed on January 10, 2025, for a positive post-incident substance test.

[2] The Office must decide if the Employer was correct in requesting the Grievor to be tested for drug use. In the affirmative, the Employer will have to show that the Grievor's test results were above the acceptable level and if so, what level of discipline was appropriate.

[3] The Office finds that the Employer could require the Grievor to be tested but failed to prove that the test results were above the acceptable results. Therefore, the dismissal must be quashed and the Grievor reinstated.

Analysis and Decision

- **The law**

[4] Several recent cases address the issue of post-incident substance testing in the rail industry. It is well recognized that this type of testing must always take into consideration the right to privacy of employees and, therefore, be done only in certain specific circumstances[1].

[5] One of those circumstances is where an incident or accident occurred in which the employee to be tested had a significant role. Procedure # HR 203.1, titled "Alcohol and Drug Procedure (Canada)" specifies in section 4.3 the circumstances under which post-incident testing can occur, and the cut-off levels adopted by the Employer.

[6] The procedure specifies that testing may be required if a significant work-related incident causes significant loss or damage to the Company property, equipment or vehicles. What can be deemed "significant" for the application of this policy is not specified.

[7] It is also clear from the jurisprudence that a positive result to urine analysis is not sufficient to prove impairment, while a positive to the saliva test usually is.

[1] See *Communications, Energy and Paperworkers Union of Canada, Local 30* v. *Irving Pulp & Paper Ltd.* 2013 SCC 34, CROA 5222, CROA 4840, etc.

- **The Facts**

[8] On November 28, 2024, at the end of his shift, the Grievor was involved in an incident in which the plow of the Snow Fighter he was operating encountered a mainline switch, causing damages to the switch cover and to the heater ducts. The damages are evaluated at more than $23,000.

[9] The Grievor reported the incident and was questioned by his supervisor as to his use of substances in the previous hours or days. He admitted having smoked marijuana approximately 19 hours before the start of his shift. He admitted he could not explain why he had not realized that his plow had not lifted all the way up.

[10] He was tested approximately 5 hours later, and the tests results were the following:

a. Urine: Marijuana Metabolite: 400 ng/ml

b. Oral / Saliva: Marijuana: 9 ng/ml

c. Alcohol: Negative

[11] The Employer relies on an expertise by Melissa Snider-Adler signed on December 18, 2024. Her conclusions are that the Grievor's level of Marijuana "would have far exceeded the 10 ng/ml at the start of the shift." [2] The expert also says that "the quantitative level at the time of the incident cannot be confirmed."[3]

Analysis

- **Could the Employer require the Grievor to be tested?**

[12] The Employer maintains that the incident was significant enough to warrant post-incident testing, which the Union strongly contests. This is the real point of contention between the parties since they both agree that the Grievor's actions were necessarily a contributing factor to the incident.

[13] In their brief, the Employer maintains that the incident was significant because it happened on track and had the potential for greater damages to the equipment.

[2] Page 9 of the Expert Report, Tab F of Company Exhibits.
[3] Page 10 of the Expert Report, Tab F of Company Exhibits.

They point to the cost of more than $23,000 as being a significant amount of damages.

[14] The Union contends that by way of imposing 20 demerits points to the Grievor for this incident, the Employer recognized that it was a minor incident. If the Employer had taken the position that it was a major incident, it would have imposed a multiple-day suspension, which it did not.

[15] Considering the amount involved, the damages caused to equipment and the inexplicability of the incident, I rely on CROA 3841 where Arbitrator Piche found that the lack of a reasonable explanation for an incident could support a decision to submit an employee to a substance test. Therefore, I find the Employer was justified in requesting a post-incident substance test. This part of the grievance is dismissed.

- **Has the Employer shown the Grievor's test results were above the acceptable level?**

[16] I find that the Employer has not shown that the Grievor was impaired, or unfit for duty, at the time the incident occurred.

[17] The Employer maintains that the test result of the Grievor means that he was necessarily above the 10 ng/ml cut-off level at the time of the incident and probably more at the start of his shift, which is sufficient to find impairment.

[18] I have to agree with the Union when they argue that the probable level at the time of the incident, even based on an informed hypothesis, is not sufficient evidence to conclude that the rule was breached. What is needed is actual proof that the substance level, at the time of testing, was at or above 10 ng/ml. The consequences on employees are simply too great to allow the Employer to rely on a hypothesis[4] about a past event instead of the actual level found as a result of the test.

[4] It must be stressed that even the expert could not be certain of the level at the time of the accident.

[19] In this case, there is no dispute that the test revealed a level of 9 ng/ml, which is below the threshold recognized by the jurisprudence (see CROA 4804, 4789 and 5084).

[20] Furthermore, the Supervisor Track Inspection Devon Henry mentioned in his memo written on the date of the incident, “I did not notice anything indifferent about Nathan, he was acting normal, I had no suspicion of impairment.”

[21] In my opinion, this shows that the Employer has failed in his burden to show that the Grievor was impaired or unfit for duty, either at the time of the accident or at the beginning of his shift.

For all the reasons set above, the Office of Arbitration:

GRANTS the grievance;

CANCELS the dismissal;

ORDERS the Grievor to be reinstated and made whole for any loss;

RETAIN jurisdiction for any issues relating to the implementation of this Award, and to correct any errors or omissions necessary to give it the intended effect.

December 9, 2025

MAUREEN FLYNN
ARBITRATOR