IN THE MATTER OF AN ARBITRATION

(AH 725)

BETWEEN

TEAMSTERS CANADA RAIL CONFERENCE

(the "Union")

AND

CANADIAN PACIFIC RAILWAY

(the "Company")

RE: Grievance of Locomotive Engineer David Zanon

ARBITRATOR: John M. Moreau QC

Appearing for The Union:

Aleisha Stevens	-Counsel, Caley Wray
Ed Mogus	- General Chairperson, Locomotive Engineers East
Randy Carroll	- Local Chairperson, Locomotive Engineers (Sudbury)
Dave Fulton	- General Chairperson CTY West
David Zanon	- Grievor

Appearing for The Company:

Diana Zurbuchen	- Labour Relations Manager
Francine Billlings	- Labour Relations Manager

A virtual hearing was held on March 25, 2021

EX PARTE STATEMENT OF THE UNION

Dispute:

The dismissal of Locomotive Engineer D. Zanon of Sudbury, Ontario, following a post-incident test.

Ex Parte Statement of Issue:

While working as Locomotive Engineer on assignment U51-02 at 23:59hrs on December 2nd, 2019, Locomotive Engineer Zanon was involved in a side-swipe of equipment (Subject of a separate appeal). Due to this incident the crew was requested to undergo post-incident substance testing. Locomotive Engineer Zanon was subsequently issued a Discipline form 104 which read "Please be advised that you have been dismissed from the Company Service effective January 7th 2020, for falling to ensure that at all times while working on duty, or subject to duty you were fit to work and free from adverse effects of prohibited and illegal substance as evidence by a positive Urine Drug Screen post-incident substance test collected on December 3rd, 2019."

Union Position:

First and foremost, the Union contends that the September 1, 2019 Company's revised Drug and Alcohol Policy HR 203 and Procedure HR 203.1 violate the Consolidated Collective Agreement; violate the June 16, 2010 Agreement; violate members' privacy rights as guaranteed by the applicable jurisprudence and legislation; violate the applicable legislation including the Canadian Human Rights Act; violate applicable standards with respect to workplace substance testing as defined in leading arbitral jurisprudence; and is unreasonable. This policy and the revised Policy of October 2018 are subjects of separate appeals.

The Union further contends that the form 104 as written, a positive urine test on its own does not establish impairment as supported by countless CROA awards and, the substance Mr. Zanon tested positive for is neither prohibited nor illegal.

Notwithstanding the above arguments and appeals, the Union contends that Mr. D suffers from addiction, known to the Company and recognized within the Canadian Human Rights. Contrary to Superintendent Harter's dismissal of the step one appeal, stating the Mr. Zanon "…should have sought assistance prior to being involved in a safety incident at work." Superintendent Harter failed to recognize that Mr. Zanon, within the investigation and within the step one appeal, readily admitted being an addict for which he had previously been assisted by OHS and EFAP.

The Union further contends that the Company, as was properly objected to by the Local Chair during the investigation, violated the June 16th, 2010 agreement by disclosing the quantitative values to the investigating officer, in breach of Mr. Zanon's privacy. Contrary to the investigating officer's response to Union Local Chair Carroll's objections at Q's & A's 21 and 23, at no time has the TCRC ever acknowledged that the June 16th 2010 letter has no application. This very letter is a part of both appeals regarding revised Drug & Alcohol policies to which the Company is certainly aware. It should be noted, as corroborated in Appendix B, the immediate Supervisor, Assistant Superintendent D. Purdon contacted Labour Relations where is was agreed to allow Mr. D to redact the consent form, specifically the disclosure to supervisors of the quantitative values. The Company reneged on allowing Mr. Zanon to redact the form, insisting he sign an un-redacted form on December 11th, 2019 or be deemed as having refused the test, even though

the test had already been completed on December 3rd, 2019. Mr. Zanon complied with the Company's demand stating verbally to Mr. Purdon "signed under duress and without prejudice to my unions position that this authorization form is overbroad and inappropriate". As witnessed by a co-worker.

Mr. D never attempted to conceal why he tested positive for marijuana. He was forthright and honest since the incident took place even sharing openly with Assistant Superintendent Purdon following his test. (Appendix B) He has been proactive in his rehabilitation to manage his addiction with supporting evidence. Some of which was shared at the investigation of December 19th, 2019.

The Company sent their response to the Step 2 grievance via email notification that it is accessible on GMS, therefore the Union is not in possession of the Company's position on the matter and leaves the Union at a disadvantage. The delivery of the response, in the Union's view is in violation of the CBA Article 40, the Letter Re: Management of Grievances and the Scheduling of Cases at CROA as well as Arbitrator Weatherill's Award dated September 25, 2019 on the Establishment of a Grievance Management System

For all of the reasons and submissions set forth in the Union's grievances, which are herein adopted, the Union contends the Company has an obligation to accommodate Mr. D with his disease. A disease which can be managed with support, counselling and programs. The Union further contends Canadian Pacific had no grounds to dismiss Mr. Zanon due to his disability and therefore asks that Mr. Zanon be reinstated immediately as a Locomotive Engineer, with full Seniority, wages and benefits lost or, in the alternative, that he be accommodated as per the Human Rights in a suitable position until such time as he demonstrates his addiction is controlled with payment for lost wages and benefits and no loss of seniority or, the Union requests that the discipline be substituted for such lesser penalty as the Arbitrator sees fit.

Company Position:

The Company chose not to provide its position to the Union.

FOR THE UNION:

John Campbell
General Chairperson
LE East

June 30, 2019

EX PARTE STATEMENT OF ISSUE OF THE COMPANY

DISPUTE:

The dismissal of Locomotive Engineer David Zanon of Sudbury, Ontario, following a post-incident test.

COMPANY STATEMENT OF ISSUE:

While working as Locomotive Engineer on assignment U51-02 at 23:59hrs on December 2nd, 2019, Locomotive Engineer Zanon was involved in a side-swipe of equipment (Subject of a separate appeal). Due to this incident the crew was requested to undergo post-incident substance testing. Locomotive Engineer Zanon was subsequently issued a Discipline form 104 which read:

In connection with your tour of duty, more specifically the incident that occurred at the west end of the CREO while working as the Locomotive Engineer on assignment U51-02 at Sudbury Yard on December 02nd 2019, where post incident drug and alcohol testing was conducted which produced non-negative result in accordance with Policy HR 203.

Formal investigation was conducted on December 19th, 2019 to develop all the facts and circumstance in connection with the referenced occurrence. At the end of that, investigation it was determined the investigation record as a whole contains substantial evidence proving you violated the following:

- Policy # HR 203 Alcohol and Drug Policy (Canada) effective January 1st, 2012 and revised September 1, 2019
- CROR Rule G
- Train and Engine Rule Book – Section 2.2 While on Duty

Please be advised that you have been dismissed from the Company Service effective January 7th 2020, for falling to ensure that at all times while working on duty, or subject to duty you were fit to work and free from adverse effects of prohibited and illegal substance as evidenced by your positive Post Incident Oral Fluid Drug test and your positive Post Incident Urine Drug test collected on December 3rd, 2019."

The Company disagrees and denies the Union's Grievance in its entirety.

The Company maintains following a fair and impartial investigation on December 19, 2019 in connection with the Grievor's post incident substance testing, the Grievor was found culpable of violation the Company's Alcohol and Drug Policy HR #203, CROR Rule G and T&E Rule Book 2.2 – While on Duty.

With respect to the June 16, 2010 Agreement, the Union maintains the Agreement is still in effect and any new policy or revision by the Company must conform to the content of the agreement. The Company maintains the Union has failed to further advance this Policy grievance, which was filed with CROA June 5, 2015. Further, the Union Executive Leadership has confirmed to the Director Labour Relations this letter no longer has any application in the current Alcohol and Drug policy.

The Company did not enter into an Agreement which would restrict its ability to make future change or introduce a new policy, particularly in the area of Alcohol and Drugs which is an ever changing area in law.

The Company simply cannot agree that the Grievor suffers from an addiction known to the Company. The Grievor has been cleared for Safety Critical duties as of November 2011. Further the Grievor consumed THC as a means of self-medication and used this drug without medical authorization. As such, the Company maintains the Grievor's Human Rights were not violated and the Company's Alcohol and Drug Policy and Procedures are in keeping with the decision of Stewart v. Elk Valley Coal Corp, 2017 SCC 30. The Grievor knew yet failed to comply with HR 203 and 203.1 when he failed to disclose his alleged, unsubstantiated substance abuse issue and when he also failed to disclose any medical cannabis use before an incident, as required of him as a Safety Critical Employee. This in itself is a violation of HR 203 and 203.1.

The Union further contends the Grievor was dismissed for a "positive urine test" which "on its down does not establish impairment" yet fails to mention the Grievor also tested positive and was dismissed for his Post Incident Oral Fluid Drug test, a CROR Rule G violation, in addition to HR #203 and T&E Rule Book Section 2.2 – While on Duty. The CROA office has long established that CROR Rule G violations are significant infractions where dismissals have consistently been upheld.

The Company maintains no violation of the Grievor's Privacy Rights have occurred and that given the particular safety sensitive nature of railway operations, there must be an inevitable balancing of interests between the privacy rights of employees and the interests of a railway employer to ensure safe operations. Further, the Company maintains even with the redacted acknowledgement form in reference to releasing the Grievor's quantitative levels, this does not change the process in any way as it is still deemed sufficient to release testing information to the Program Administer.

Based on the aforementioned reasons, the Company maintains that dismissal was just and warranted, given the circumstances. The Company maintains the dismissal should not be disturbed.

FOR THE COMPANY:

Lauren McGinley
Assistant Director
Canadian Pacific Railway

AWARD

PRELIMINARY MATTERS

The Union agreed, after a brief conference with the Arbitrator, and without prejudice to their right to raise the issue at subsequent proceedings or during the course of their submissions if required, to set aside during this hearing any arguments included in their *Ex Parte Statement of Issue* respecting the Company's revised Drug and Alcohol Policy HR 203 and Procedure 203.1, as well as issues arising out the Substance Testing Agreement of June 10, 2016.

The Union also requested that the grievor's name be anonymized in this Award. After hearing submissions of the parties, I agree with the Company that labour arbitration is not a private system of dispute resolution but rather one that is statutorily mandated under the *Canada Labour Code* and an essential component of the collective agreement between the parties. In the absence of an agreement between the parties, and despite the disclosure of the health-related history of the grievor, I do not find a compelling basis to deviate from the normal practice of this office of including the grievor's name in this Award.

BACKGROUND

The grievor began his service with the Company on August 8, 1991 in Engineering Services. He qualified as a Conductor on August 22, 1994 and then as a Locomotive Engineer in April 2018. He was removed from service after a safety violation occurred on

December 2, 2019. He attended for post-incident drug testing and tested positive on both the oral fluid and urine drug tests.

The grievor was dismissed from his employment on January 7, 2020 having been found culpable of violating the Company's Alcohol and Drug Policy as well as CROR Rule G and T& E Rule Book 2.2. His 20-day suspension for rule violations is the subject matter of a separate grievance.

TIMELINE

The Union provided a lengthy and detailed history of the grievor's medical disabilities, which includes years of his struggles with anxiety and depression conditions, as well as a substance abuse disorder. The grievor's disabilities have been managed for almost 20 years by CP's OHS professionals. A timeline outlining the grievor's medical history, as set out in the supporting OHS documents beginning in 2003, is helpful:

> 1991- 2003: The grievor, was considered as "healthy" during this period of employment according to his medical records.
>
> 2003-As the Union pointed out in its brief, "everything changed" for the grievor at this time. He became addicted to cocaine. The attending physician, Dr. Lynch, from the Company disability insurer, assessed the grievor as suffering from depression and drug addiction. He further indicates in his report of October 21, 2003 that the grievor was unable to work "…until he gets drug rehab and sees psychiatrist". The grievor entered a treatment program on October 27, 2003 and successfully completed it in December 2003. The grievor signed a "Contract For Successful Treatment" on December 10, 2003, prepared by the EFAP and OHS, where he agreed to abstain from drugs and alcohol, attend rehabilitative meetings and maintain contact with EFAP for two years. On December 23,

2003, the grievor was determined by OHS to be medically fit to return to his pre-illness duties.

2004-2007. The grievor was monitored by OHS during this time. A February 27, 2006 note from his OHS physician, Dr. Lynch, indicates the grievor was "…doing well with rehabilitation and could work without restrictions". On January 17, 2007 the grievor contacted the EFAP indicating concerns "about a substance abuse problem". He entered treatment again on January 31, 2007 for 12 weeks. His discharge report from the treatment clinic indicates that the grievor "…may need more help dealing with his anger and improving his social skills" and recommended ongoing participation in AA/NA programs.

By May 2007, the grievor had been referred by Dr. Lynch to another specialist, Dr. Berthiaume, for further assessment. In a memo to OHS of May 22, 2007, Dr. Berthiaume indicated that it was reinforced to the grievor *"…the need to be abstinent all his life for drug and alcohol".* The Company and the grievor entered into a Relapse Prevention Agreement on May 27, 2007 where the grievor agreed to: total abstinence from all substances, compliance with EFAP program (dated May 24, 2007), participation in unannounced alcohol and substance testing for 2 years, and attending follow-up medical examinations by OHS's Dr. Lynch. On May 28, 2007, Dr. Berthiaume wrote to Dr. Cunningham, a psychiatrist specializing in addictions at the Homewood Health Centre, requesting that he evaluate the grievor. Dr. Cunningham provided a detailed report on June 12, 2007 with a DSM assessment that the grievor's drug and alcohol dependency was in remission. In another memo to OHS of September 26, 2007, Dr. Berthiaume noted the grievor's family physician, Dr. Mather, had indicated in a recent report that the grievor was drug-free, attending ANA meetings and continued to work. During this time, the grievor was undergoing substance screening testing and was negative for alcohol and drugs.

2008-The grievor was removed from service on November 14, 2008 when he tested positive for cocaine after undergoing substance screening. The grievor maintained it was a false-positive test. Dr. Berthiaume wrote to Dr. Cunningham on December 4, 2008 requesting a further assessment of the grievor's fitness to work in a safety-sensitive position. In his report of December 12, 2008, Dr. Cunningham confirmed that the presence of cocaine was minimal, that it had likely been obtained by handling money at an NA meeting, that he did not believe the grievor had relapsed, and that he saw no reason that the grievor should not continue working in his safety sensitive position. On December 30, 2008, the grievor entered into a second Relapse Prevention Agreement.

2009-On August 28, 2009, the grievor tested positive in a urinalysis for marijuana. He was removed from service and he applied for Weekly Indemnity Benefits with Manulife. His Manulife physician statement confirms a diagnosis of "cannabinoid addiction" and the grievor was re-admitted to a 2-day treatment centre program for drug addiction. The physician from the treatment centre confirmed that the grievor had successfully completed the program from October 6, 2009 to October 27, 2009 for alcohol, cocaine and THC abuse.

2010-The grievor completed a 15-week continuing care program on February 10, 2010. He continued to test negative for drugs and alcohol in the early months of 2010. On April 1, 2010, the Chief Medical Officer of OHS, Dr. Cutbill, wrote to specialist physician Dr. Bobrowski asking for an addictions' evaluation of the grievor along with his return-to-work recommendations. In his letter of April 1, 2010, the Chief Medical Officer traced the grievor's addictions history, starting in 2003. He noted in his letter that there were…*[s]everal notes on file of the challenges by OHS in getting Mr. Zanon to attend unannounced drug testing when advised to do so in accordance with his signed RPA."* In a lengthy report dated April 10, 2010, Dr. Bobrowski DSM assessment confirmed the

grievors cocaine, cannabis and alcohol dependencies [with the notation “early sustained remission by history”] as well as mood disorders. He recommended a graduated return-to-work to a non-safety sensitive position with assessment at the end of 24 months. The OHS department, in a report dated May 10, 2010, determined the grievor was “permanently unfit” for performing in a safety-sensitive position but fit to return to work in a non-safety sensitive position. He returned to work as a gang labourer on February 28, 2011 after resolving a human rights complaint against the Company regarding accommodated labourer work in the Maintenance of Way Division.

2011- The grievor continued to attend recovery programs through the year, including 12-step meetings. A physician’s assessment from September 2011 at Toronto’s Western Hospital confirms that the grievor was very active in AA and had been abstinent for two years. In October 2011, the grievor’s physician Dr. Steinmann, an M.D. with a specialty in addictions, stated that the grievor had sufficiently recovered from his addictions to return to a safety-sensitive position. The grievor signed a third Relapse Prevention Agreement on November 4, 2011 having been cleared to return to safety-sensitive work as a Yard Service Helper.

2012-2015 The grievor relocated to Sudbury. He tested negative for periodic and unannounced drug screening in accordance with his Relapse Prevention Agreement of November 4, 2011, including on 8 separate occasions in 2013. The grievor was dismissed on August 28, 2014 for failing to properly line a switch in his position as a Conductor. He was reinstated on May 14, 2015 with a 258 days unpaid suspension substituted for his dismissal. He was confirmed to be fit to return to work as a Conductor on July 7, 2015. An SUD report indicated that the grievor remained abstinent and was attending NA meetings three times per week.

2015-2018-The grievor continued to be abstinent according to Company OHS records from July 7, 2015 and July 27, 2018. A medical note from his family physician, Dr. Hayes, of November 26, 2018 indicates the grievor attended for anxiety and mood issues on July 17, 2017 at which time he was prescribed medication. His medication for the same issue was increased slightly after his June 15, 2018 visit. At the request of OHS, Dr. Hayes provided a further medical report on November 26, 2018 which indicated that the grievor's anxiety symptoms had resolved with the medication and that he was fit to return to work.

2019-The grievor, having qualified as a Locomotive Engineer in April 2018, was working in that capacity in Sudbury on December 2, 2019 when his movement was involved in a side-swipe of equipment. The crew were all asked to undergo post-incident substance testing. The grievor tested positive for both the urine and saliva tests. On December 5, 2019, the grievor attended his physician, Dr. Hayes. She wrote a letter to OHS on December 5, 2019 stating that the grievor had advised her that his anxiety was poorly controlled and that he had resorted to THC without medical authorization. Dr. Hayes also indicated in her letter that the grievor needed to remain off work for 6 weeks during which time he would be prescribed alternate medication (SSRI to SHRI) to control his anxiety.

2020-The grievor, as noted in the Union's brief, confirmed at his investigation that he had used one marijuana cigarette between 10 and 11 a.m. on December 2, 2019. The grievor was discharged effective January 7, 2020 for having tested positive in a post-incident drug test on December 3, 2019 in violation of the Company's Alcohol and Drug Policy.

2020-2021-The grievor began a treatment program with Norwood Recovery Clinic in Sudbury on December 19, 2019. A letter from his treating psychiatrist, Dr. Koka, of September 29, 2020 states that the grievor had attended for substance screenings twice each month since January 8, 2020. Dr. Koka stated that he was negative on each test.

The grievor also underwent further testing for cannabinoids and other substances at the direction of Dr. Hayes in January 2020 which also confirmed the absence of illicit drugs. The grievor's condition has been managed with Sertaline medication since February 2020. He has also continued to attend regular NA/AA meetings three times per week, most recently on-line due to the COVID pandemic, A letter dated September 20, 2020 from Dr. Van Diepen, a physician in Sudbury, indicates that the grievor was doing well since his relapse, that he was attending a weekly addiction clinic as well as 12-step program at a local church.

ANALYSIS

The grievor has a longstanding history of documented substance dependency. Substance abuse, including alcohol and drug addiction, is recognized by the courts as an illness and a disability falling under the prohibited grounds of discrimination set out in the *Canadian Human Rights Act*.

There is no dispute that the grievor has demonstrated a connection between the presence of marijuana on the date of the incident and his longstanding drug dependency and anxiety issues. Similar to the grievor in **CROA 4667**[1], the grievor has met the tripartite test required to establish *prima facie* discrimination authored by the Supreme Court of Canada in *Stewart v Elk Valley Corp* [2017] 1 S.C.R. 191[2]. The Company's refusal to

[1] As Arbitrator Clarke notes at paragraph 41: "In applying principles from these SCC decisions, the arbitrator has concluded that the TCRC met the three elements to demonstrate prima facie discrimination. The evidence is that i) LE Paisley suffered from alcohol addiction; ii) he suffered an adverse impact when he lost his employment and iii) that his alcoholism was a factor leading to the adverse impact.

reinstate the grievor in the face of his disability can accordingly be justified as being non-discriminatory only if accommodation of his needs would impose an undue hardship on the Company[3].

The Company maintains that it has in fact accommodated the grievor to the point of undue hardship, including through three Relapse Prevention Agreements. The Union, for its part, submits that the Company has not met the undue hardship test and that the grievor should be further accommodated by reinstatement to his former position as a Locomotive Engineer. A reinstatement order, from the Union's perspective, would necessarily include ongoing random drug testing and other conditions imposed by the Arbitrator.

This case is not dissimilar from a number of other decisions of this office involving a recognized disability which requires accommodation. The Company, in its reply submission, cited **CROA 3269** where the grievor received two separate last chance agreements as well as the benefit of the Company's EFAP program. The Company notes the comments of Arbitrator Picher, who dismissed the grievance:

> The Arbitrator is compelled to conclude that the Company's treatment of Mr. Caruso, over two separate "last chance" agreements, including the services of its EFAP, did constitute reasonable accommodation of his disability, to the point of undue hardship. Bearing in mind the safety sensitive nature of his duties, I cannot conclude that yet another "last chance" is justified, or that a third "last chance" would be short of undue hardship on the employer.
>
> The progress recorded by Mr. Caruso in dealing with his condition, apparently undertaken some months following his discharge, is commendable. It does not change the fact,

[2] The grievor, as noted, has met the tri-partite test set out in *Elk Valley*: 1) he has suffered for years from a substance dependency; 2) he has suffered an adverse impact when he was terminated; 3) his substance dependency was a factor which led to the adverse impact.

[3] Section 15(2) of the *Canadian Human Rights Act.*

> however, that his employer did meet its obligation of reasonable accommodation, for the reasons related above.

The Union, for its part, cites several accommodations cases from this office, including a later decision of Arbitrator Picher's in **CROA 3355** (cited in **CROA 4472)** where he dealt with a long-term employee who, similar to the grievor, had also remained in control of his addiction over a period of time before relapsing. Arbitrator Picher states:

> The material before the Arbitrator confirms that Mr. Martin appears to have remained in control of his condition as an alcoholic from the time of his reinstatement in 1996 to the time of the unfortunate events leading to his second discharge on December 10, 2001. Having carefully reviewed the file, and bearing in mind the obligation of accommodation that is owed to a person suffering from the medical disability of alcoholism, a condition which can involve a relapse, I am satisfied that this is an appropriate case for fashioning a remedy that will give the grievor a last chance, in terms which will also protect the Company's interests. (emphasis added).

The Company has gone to extensive lengths over the years to assist the grievor with his rehabilitation, primarily through the efforts of the Company's EFAP program and OHS. The grievor himself acknowledged those efforts at his interview when he stated: *"Ten years ago this program saw me through far worst times and for that I will forever have a debt of gratitude".* As the Company pointed out, those accommodation efforts included the requirement that the grievor adhere to the terms and conditions set out in three Relapse Prevention Agreements signed by the grievor in 2007, 2008 and 2011.

The Arbitrator commends the efforts of the Company. The grievor, it must also be acknowledged, has also gone to great efforts of his own to try and combat his drug dependency which tragically began in 2003 with cocaine use, a highly addictive

substance. The grievor worked his way back into a non-safety-sensitive position as a gang labourer in February 2011 after having tested positive for marijuana and removed from service in August 2009. He signed the 2011 Relapse Prevention Agreement after being cleared for safety-sensitive work as a yard helper in November of that year.

The grievor has undergone frequent and unannounced substance abuse testing since 2012. The detailed OHS records indicate that he has conformed to the Relapse Preventions Agreement requirements and tested negative on each occasion through to the incident of December 2, 2019. During that time, he has also sought counselling and participated regularly in NA meetings. He continues to do so today. The medical evidence also indicates that the grievor suffers anxiety issues for which he has been prescribed medication, most recently since the incident, but also for symptoms for which he was treated by Dr. Hayes starting in July 2017.

The legal test to be clear is one of accommodation of an employee like the grievor with a disability to the point of undue hardship. The point at which undue hardship is reached is a fact-driven exercise. The following comments of Arbitrator Silverman in **CROA 4375** are pertinent to this case:

> In view of the grievor's long service, the requirements to accommodate the grievor to the point of undue hardship under the Canadian Human Rights Act, the grievor's continuing and ongoing rehabilitation efforts and the relevant CROA& DR jurisprudence, reinstatement with conditions is appropriate.

The arbitrator similarly notes the grievor's own ongoing rehabilitative efforts to deal with his drug addiction in a career spanning almost 30 years with the Company, mostly in a safety sensitive position. In my view, he should be allowed a further opportunity to complete his career, hopefully without further incident. This is truly a last chance for the grievor to prove that he can stay clean and do his job.

CONCLUSION

The grievance is allowed in part. The grievor is to be reinstated into his employment, without loss of seniority but without compensation for any lost wages or benefits. His return to work is also subject to the following conditions, which are similar to those ordered in **CROA 4375, 4472, 4652, 4767**:

1. The grievor shall not be returned to work until such time as he is confirmed by the Company's medical officer to be physically fit to work and perform his regular duties as a Locomotive Engineer, including any addiction problems assessment which the Company's medical officer deems appropriate.

2. Upon being confirmed fit to return to work by the Company's medical officer the grievor shall be subject to the following conditions for a period of two years:

a) The grievor shall continue to abstain from the consumption of alcohol or drugs;

b) The grievor shall be subject to random, unannounced drug and alcohol testing, to be administered in a non-abusive fashion;

c) The grievor shall continue to attend regular NA meetings and other similar support organizations that he is currently attending;

d) The grievor shall engage in such periodic contact and follow-up with the Company's EFAP program as the parties may agree is appropriate, and failing their agreement as shall be determined by the Arbitrator.

Should the grievor violate any of the above conditions, he shall be liable to termination without further recourse to arbitration, except to the extent of determining whether a violation of these conditions has occurred.

The Arbitrator will remain seized should clarification be required in respect of any of the above conditions

Dated at Calgary, this 6th day of April, 2021

JOHN M. MOREAU, Q.C.

ARBITRATOR