**********
**In the Matter of Arbitration Between:**

**ARCELORMITTAL**

**and**

**UNITED STEELWORKERS, LOCAL 1010.**
**********

**Grievant: P. Vela (Termination)**
**Arb. Docket No. 110603**
**Grievance No. 26-Y-014**

INTRODUCTION

The Undersigned Arbitrator was appointed according to the rules of the applicable collective bargaining agreement. The hearing was held on July 7, 2011 in East Chicago, IN.

Mr. William Carey, Staff Representative, represented the United Steelworkers, Local 1010, hereinafter referred to as the Union or the Local. Mr. Paul Vela, Grievant and Mr. Matt Beckman, Secretary of the Grievance Committee, testified on behalf of the Union.

Mr. Philip Brzozowski, Labor Relations, represented ARCELORMITTAL, hereinafter referred to as the Company or the Employer. Mr. Dennis Elam, Shift Supervisor/Trainmaster; Mr. James Couch, Fire Department Capt. and Security Guard; Dr. Ted Niemiec, Plant Medical Director; and Mr. Bill Calhoun, Manager of Rail Operations, testified on behalf of the Company.

Each party had a full and fair opportunity to present and cross-examine witnesses and to present evidence at the hearing.

**Issue(s)**

Was the Grievant terminated for just cause and if not, what shall the remedy be?

## Relevant Contract and Rules Language

Relevant Contract Language

ARTICLE THREE—HEALTH , SAFETY AND THE ENVIRONMENT

**Section G. The Right To A Reasonable Policy On Alcoholism And Drug Abuse**

1. Alcoholism and drug abuse are recognized by the parties to be treatable medical conditions. The Company and the Union agree to establish an Employee Assistance Program (EAP), administered and funded by the Company, to facilitate the rehabilitation of Employees afflicted with alcoholism or drug abuse. The EAP will utilize professional and Employee peer counselors and will operate under conditions of strict confidentiality.

2. The Company may require an Employee to submit to a medical evaluation performed by qualified personnel, which may include a drug or alcohol test, only where there is reasonable cause, based on objective evidence, to believe that the Employee is legally intoxicated or impaired by drugs on the job. Employees involved in an accident will be tested only when an error in their coordination or judgment could likely have contributed to the accident. In addition any Employee who incurs an extended leave of absence (except Union leave) of greater than ninety (90) days may be required to submit to a drug and alcohol test as a part of a return to work physical.

3. Employees will not be required to submit to drug or alcohol testing for any other reasons, unless such testing is required by law.

Relevant Rules Language

Personal Conduct Rules

1. Management requires the cooperation of its employees in its efforts to make every employee familiar with all Plant safety and operating rules, in order that accidents may be prevented and effective performance promoted.

2. The following offenses are among those which may be cause for discipline, up to, and including suspension preliminary to discharge.

...

B. Being on Company property impaired by drugs not prescribed by a licensed physician for personal use while at work; being in possession of, or use of, such drugs while on Company property, or bringing such drugs onto Company property.

C. Any employee suspected of being impaired by drugs may be required to submit to a drug screening test to determine their fitness to work. Any employee failing to submit to such test will be considered to be impaired by drugs.

D. Reporting for work in a state of being intoxicated or "Unsafe to Perform Duties" by intoxicating beverages; being in possession of, while on Company property, or bringing onto Company property, intoxicating beverages and/or including non-alcoholic beer and/or wine.

E. Any employee suspected of being intoxicated or "Unsafe to Perform Duties" by intoxicating beverages may be required to submit to a breathalyzer test to determine their fitness to work. Any employee failing to submit to such test will be considered to be intoxicated.

**Background**

The Grievant has been discharged for refusing to take a drug test and the Union challenges that termination. On June 12, 2010 the Grievant was assigned to work as a train conductor at the Company's lakeside train yard. He also was assigned to train another conductor on that date. Shift Supervisor/Trainmaster Dennis Elam testified that he went to the south side of the train yard on that date and noticed the Grievant's trainee Tim Hubbard switching train cars out by himself. Elam said that he located the Grievant in the engine of the train and asked him why his trainee was switching cars out by himself. According to Elam he had found the trainee switching cars alone the previous day and had told the Grievant that he must stay with his trainee while he was switching cars.

When the Supervisor asked the Grievant why he was not with the trainee on the 12th he reported that the Grievant responded angrily that he had been training people for 30 years, and that Elam could not tell him how to do his job. The Supervisor said that the Grievant seemed frustrated and angry and that he was yelling and cursing at the Supervisor. Elam said that the Grievant came down off the engine, was yelling at him and "got in my face." Elam

stated that he wasn't too sure of the Grievant's intentions and that he went behind a pickup truck. He felt like the Grievant continued to follow him around the pickup truck, yelling at him.

Elam testified that he did not expect this type of reaction from the Grievant. He said that he had known the Grievant for 10 years and had never had any issues with him or seen him act this way. He stated that this type of behavior was not normal for the Grievant and that he seemed to be acting out of character. In fact, he stated that he considered him one of his better switch men. He testified that although the Grievant did not directly threaten him, he felt threatened by the Grievant's behavior.

Supervisor Elam testified that at this point he told the Grievant that he was sending him for a fitness-to-work evaluation (FTWE). He said that he called Plant Protection and his superior Mr. Bill Calhoun, Manager of Rail Operations. He and Calhoun had a discussion about whether to pull the Grievant's pass and Calhoun said he should wait until after the Grievant took the fitness-for-duty exam before pulling the pass.

Plant Protection came and Elam filled out a fitness to work checklist describing what caused him to send the employee for an evaluation. He marked a box for "safety concern" because of the trainee working alone. The only other box he marked was under the category of "mood and behavior (departure from employee's normal behavior?)" where he marked a box for "aggressive or angry." There were no boxes marked for any observations of other changes in the Grievant, such as flushing of skin, slurred speech, stumbling, errors in coordination, or any of the other many physical and behavioral symptoms listed on the form. The Supervisor said that he was not intending to send the Grievant for a fitness-to-work evaluation based solely on his

failure to be present observing the trainee. It was the Grievant's angry conduct towards the Supervisor that led to the fitness-to-work evaluation.

The Supervisor testified under questioning from the Union that although the Grievant was cursing at him and using profanity, he could not remember any of the words the Grievant used towards him. The Supervisor acknowledged that the trainee was nearly done with his training in the yard on June 12th. The Union presented evidence that June 12th was in fact his last day of training, although the Supervisor thought at the time of the incident that he had two more weeks of training. The Supervisor stated that the Grievant did not tell him on either the 11th or the 12th that the trainee was in his very last days of training. Elam also stated that on the last day of training the trainee could work by himself but that the trainer should still be there observing him.

The Supervisor acknowledged that he made no physical observations that would lead him to believe that the Grievant was legally intoxicated or under the influence of drugs or alcohol at that time. He also agreed that he did not state in the "additional comments" section of the fitness-to-work evaluation form that the Grievant was yelling, cursing, using profanity, threatening him or chasing him around the truck.

Mr. James Couch, Fire Department Capt. and Security Guard, testified that he was called initially to pick up an aggressive or unruly employee. He said that when he arrived at the scene the Grievant and Supervisor Elam were sitting in the pickup truck together. He said that he gave the Supervisor the fitness-to-work checklist form to fill out. He also said that he read to the Grievant the form advising him that failing to submit to the fitness-to-work evaluation could lead to discipline up to discharge.

The Grievant proceeded to the clinic and began to cooperate with the fitness-to-work evaluation. He went through much of the test cooperatively, and took a breathalyzer exam. However, he refused to take the urine analysis test. He said that it was against his religion, which he gave as Catholic or Christian.

Dr. Ted Niemiec, Medical Director at the plant, testified that he is a Certified Medical Review Officer in regard to drug and alcohol testing. He testified about the patient assessment conducted on the date in question, which showed that the Grievant was calm and relaxed, his speech was clear, he was walking without difficulty and his thoughts were logical, and clear. There was no unusual odor on his breath. Dr. Niemiec testified that this assessment standing alone is not sufficient to determine whether an employee is impaired. Despite all these normal indicators the employee could be impaired, he said; for example, an employee could be impaired for 24 hours after taking cocaine for tasks that have important safety consequences. The Company also considers the information provided by the supervisor and from any drug or alcohol testing in order to determine whether the employee is impaired.

Under cross-examination, Dr. Niemiec stated that there was nothing in the patient assessment that would lead one to believe that the Grievant was legally intoxicated or impaired. He said that in general there is no separate decision made by the Medical Department to conduct drug or alcohol testing once an employee is sent for a fitness-to-work evaluation. The decision is made by the supervisor to send an employee for a fitness-to-work evaluation and the alcohol and drug testing is part of that evaluation.

Mr. Matt Beckman, Secretary of the Grievance Committee, testified that during the second step hearing Supervisor Elam said that he called Bill Calhoun, Manager of Rail

Operations and asked him what to do with the Grievant. According to Beckman, Elam said that he was only going to send the Grievant home on the 12th until he talked to Calhoun, and then he sent him for a fitness- to-work evaluation instead. Beckman testified that the Union requested, but did not receive phone records in order to determine whether Elam's call to Calhoun was made before or after he called Plant Protection.

Calhoun testified on rebuttal that he did not make the determination to send the Grievant for a fitness-to-work evaluation. He said that when Supervisor Elam called him that day he wanted to know whether he should pull the Grievant's pass. He described the situation to Calhoun and Calhoun said that it sounded like it might be a case of insubordination. Calhoun said he told the Supervisor that since he already had called Plant Protection and the Grievant was being sent for a fitness-to-work evaluation they should wait until the results of that evaluation were received before making a decision whether to pull his pass. Calhoun testified that it is not the Company's position that all insubordinate employees are sent for fitness-to-work evaluations.

The Grievant testified that he had worked as a Switchmen Conductor for 33 years and as a trainer for the prior 10 years before his termination. He said that on June 12th, it began to rain and he went back to the locomotive to get his rain jacket. He said that Supervisor Elam ran up to him, got in his face, and said, "Why isn't your fucking ass over there?" The Grievant, testified that he said, "Are you questioning the way I train?" and that Elam responded, "I told you yesterday not to leave him alone." The Grievant testified that he then said, "Dennis, I've been training guys longer than you've been working. Are you questioning the way I train? Do you want to train him?" The Grievant said that the Supervisor then said to him, "I'm through with you. I'm pulling your pass" and the Grievant responded "Okay" and went to get his lunch box.

He said that he went and sat in the pickup truck because he thought Elam was sending him home. The Grievant testified that he did not curse, swear at or threaten the Supervisor that day. He said that he reacted like any reasonable person. He said that he started yelling back at the Supervisor, but only because it was loud and they were near the locomotive.

The Grievant testified that at this point Plant Protection came and took him to the clinic. He was surprised because he thought he was only being sent home. He said that he took the breathalyzer test but did not take the drug test because he was tired of being there and thought that he was going home. He also continues to claim his religion as a reason for not taking a test. After he refused to take the test his locker was searched and no contraband was found. He was sent home.

The Grievant testified that new trainees are placed with the best qualified employee whom the Company believes can best teach the new trainee. He said that there is no manual for training an employee. Originally the trainee is supervised closely but is given more leeway as the trainee progresses. The Grievant testified that Hubbard had trained with him for only about a week, because the Grievant prefers to take employees once they have had at least four weeks of training. He said that June 12th was this trainee's last day of training. Under questioning from the Company the Grievant testified that he felt comfortable leaving the trainee alone to a certain extent because he was in his last days of training and also was qualified from experience with an outside railroad. The Grievant said that he is the employee who graduates the trainees. Trainees may be required to undergo additional training if they are not ready.

The Grievant acknowledged that he had submitted to drug testing in the past but that in this case he was being harassed and there was no just cause for the testing. He said that he was

not made aware at the clinic that refusing the drug test would lead to discharge until after the fact. He also testified that he could not recall Supervisor Elam stating to him on the 11th that he should stay with the trainee at all times.

**The Company's Position**

- There is no dispute that the Grievant refused to submit to a drug test which is a violation of ArcelorMittal's Personal Conduct Rules. Rule 2. C states that: "Any employee suspected of being impaired by drugs may be required to submit to a drug screening test to determine their fitness to work. Any employee failing to submit to such a test will be considered to be impaired by drugs."
- The Grievant was advised that his refusal to submit to a drug test would result in a presumptive violation of rule 2. B, which prohibits "Being on Company property and impaired by drugs not prescribed by a licensed physician for personal use while at work; being in possession of, or use of, such drugs while on Company property, or bringing such drugs onto Company property ." A violation of this rule "may be cause for discipline, up to, and including suspension preliminary to discharge."
- The Company had reasonable cause to send the grievant for an FTWE based on the facts and circumstances of this case.
- Despite being told only the day before of the necessity of staying with his trainee at all times, the Grievant again left him on his own.
- The Grievant behaved in an angry and belligerent manner, yelling and cursing and following his Supervisor, who was trying to move away from him.
- A Supervisor, who had known the Grievant for 10 years and supervised him for two years, based his decision to send him for a FTWE on what he concluded was uncharacteristic behavior on the part of the Grievant.
- The evidence does not support the position that Calhoun made the decision to send the Grievant for evaluation. Both Calhoun and Elam testified that Elam made the decision.
- There is not convincing evidence here that the Supervisor was using the fitness-to-work evaluation as a vendetta against the Grievant. The decision to send the Grievant for an evaluation was based not only on his angry and argumentative behavior, but also on the safety concern around the Grievant leaving his trainee to work alone. In addition, the

Supervisor felt threatened by the Grievant's conduct, even though he did not write that down in the checklist.

- This case is not like Award No. 1020 because here the Supervisor made his decision that the Grievant was acting in an uncharacteristic fashion based on over 10 years of knowledge of the Grievant.

- The Company had reasonable cause to send the Grievant for a FTWE. He refused to submit to a drug test, a violation of Company rules. There was just cause for his discharge and the grievance must be denied.

**The Union's Position**

- This case began with a dispute between a supervisor and an employee over the proper method of training a new employee. The testimony over who was angry first, who was angrier and who used profanity is disputed. Initially, the Supervisor decided to send the Grievant home. After making a phone call to his own Supervisor, Elam decided to send him for a FTWE. Although the Grievant refused to provide a urine sample and was subsequently discharged for his failure, he was not charged with any other offenses.

- The collective bargaining agreement balances the goal of avoiding accidents caused by drug impairment or alcohol intoxication with the employee's right to privacy. The Union relies upon language in the collective bargaining agreement which requires an Employee to submit to a medical evaluation which may include a drug or alcohol test only where there is reasonable cause based on objective evidence to believe that the employee is legally intoxicated or impaired by drugs on the job. Employees are not required to submit to drug and alcohol testing for any other reason, unless such testing is required by law.

- Under the agreement, before the Company requires any employee to submit to drug and alcohol testing, they must demonstrate that the managers making this decision had: 1) reasonable cause; 2) based on objective evidence; 3) to believe that the Grievant was intoxicated or impaired by drugs on the job. The Company has failed to meet this burden in this case. The only evidence the Company provided to justify their decision that they believed the Grievant was legally intoxicated or impaired by drugs on the job was that he was angry and argumentative.

- The Company cannot rely upon the Grievant's refusal to take the drug test as evidence supporting its decision to send him for drug testing in the first place.

- The report from the clinic, where the Grievant was taken for the FTWE, states that the Grievant was cooperative, calm and relaxed; he walked without difficulty; his speech was clear and not slurred; there was no odor to his breath; and his Breathalyzer reading showed .000 blood alcohol. Under the collective bargaining agreement, the Company

may require an employee to submit to a medical evaluation where the inclusion of a drug or alcohol test is clearly discretionary, and it was completely unwarranted in this case.

- Similarly, the Fitness To Work Checklist signed by Dennis Elam on June 12, 2010 noted only that the Grievant's mood was aggressive or angry and that safety concerns prompted the FTWE. A large number of behaviors usually associated with drug or alcohol use were not checked off on this form. The Security Incident Report by Captain J. Couch also does not describe any behavior that might be attributed to drug or alcohol induced impairment.

- The Supervisor's judgment about the Grievant's behavior that day was "off." He acknowledged that trainers have discretion with regard to how to structure training. He was mistaken about the extent of the trainee's training. The Grievant was not observing the trainee because he had just gone to get his raincoat. The Grievant responded angrily because the Supervisor talked to him in an angry way, using obscenities, and was uninformed about the situation.

- The Supervisor's testimony at arbitration does not jibe with the reports from that day. If the Grievant cursed him or threatened him that day he would have been charged with use of profane, abusive or threatening language towards a supervisor. This evidence would have shown up on the Supervisor's report detailing why he was sending the Grievant for an FTWE. In addition, it does not seem likely that the Grievant would have been sitting in the pickup truck with the Supervisor if he had just threatened him.

- Although he may have been angry, the Grievant's behavior simply does not rise to the level of reasonable cause, based upon objective evidence, to believe that he was legally intoxicated or impaired by drugs on the job. Other arbitration awards between the parties have found that an employee being argumentative is not sufficient reasonable cause to send the employee for a drug test. Therefore the Union asks that the grievance be sustained and that the Grievant be returned to employment, making him whole for all monies and benefits lost.

**Findings and Decision**

This is a case involving the termination of a long-term employee for refusing to take a drug test. The Company rules permit that any employee suspected of being impaired by drugs may be required to submit to a drug screening test to determine the employee's fitness to work. Any employee failing to submit to such test will be considered to be impaired.

The Company rules are not the only standard at issue here, however. The parties have negotiated language contained in the collective bargaining agreement that limits when the Company may require an employee to submit to a drug or alcohol test to only those situations "where there is reasonable cause, based on objective evidence, to believe that the Employee is legally intoxicated or impaired by drugs on the job." Therefore the Company bears the burden of proving in this case that on the date in question there was objective evidence sufficient to support a belief that the Grievant was legally intoxicated or impaired by drugs on the job. Furthermore, as the parties agreed at the hearing, reasonable cause must exist at the time the employee is ordered to take the test. The Grievant's failure to cooperate in taking the test once he arrived at the clinic, therefore, cannot be considered in determining whether there was reasonable cause to send him for the test in the first place.

The Union argues that in the second step of the grievance procedure the Supervisor said that he initially intended only to send the Grievant home for the day and not for a fitness for duty examination. The Union suggests that it was Supervisor Elam's superior Calhoun, who made the actual decision to send the Grievant for an FTWE, and Calhoun never witnessed the Grievant's behavior first-hand. However at arbitration both Elam and Calhoun denied that this was the case

and testified that Elam made the decision and there was not sufficiently convincing evidence presented to contradict their testimony.

Assuming that Supervisor Elam made the decision to send the Grievant for a fitness for duty exam, it is clear that he did so on the basis solely of the Grievant's conduct during a brief discussion over training in the rail yard. Elam filled out a fitness to work checklist when Plant Protection arrived regarding his reasons for sending this employee for an evaluation. The checklist includes nearly 60 possible physical and behavioral symptoms. The Supervisor did not check any physical manifestations indicating that the Grievant was under the influence of drugs at that point, such as odor of alcohol or marijuana, flushing of the skin, watery or bloodshot eyes, errors in coordination, poor judgment, stumbling or staggering, confusion, slurred or rambling speech or any of many other symptoms.

On the checklist the Supervisor checked only "other – safety" and "aggressive or angry." He testified at arbitration that he would not have sent the Grievant for a fitness to work evaluation on the basis of the safety violation -- his failure to be present to observe his trainee when the trainee was switching railcars. The Supervisor's testimony demonstrates that his decision to send the Grievant for testing was based solely upon the Grievant's behavior in the discussion the two had about the training situation.

According to the Supervisor, he did not expect the Grievant to react as he did that day, based upon his past experience with the Grievant. The parties have argued whether this case is like that in Award No. 1020, where the Arbitrator found that the person making the decision about the need for the fitness to work evaluation had no significant prior experience with the employee from which to make the decision that his conduct was out of character. Here there was

sufficient evidence that the Supervisor had worked with the Grievant enough to have a reasonable idea of his ordinary working demeanor.

The Supervisor testified at arbitration that the Grievant was yelling and cursing at him and that he felt somewhat threatened by the Grievant's behavior on that day, although the Grievant did not overtly threaten him. The Supervisor could not recall anything specific that the Grievant said to him except for the comments reported above, where the Grievant asked the Supervisor if he was questioning the Grievant's training. In particular, the Supervisor could not recall specifically any profanity or curse words uttered by the Grievant, according to the Supervisor's testimony at arbitration.

The Supervisor did not report in the fitness to work checklist that the Grievant had threatened him or was yelling abusive, profane, or threatening remarks to him. In addition he did not mark "altercation" or even "belligerent" on the checklist either. The Company has a rule against employees using profane, abusive or threatening language towards Supervisors. That rule was not invoked against the Grievant in this case. Nor does it appear that the Supervisor reported to Calhoun that the Grievant had threatened him. In addition, when Plant Protection arrived a few minutes after being called, the Supervisor was sitting with the Grievant in the pickup truck. If he felt physically threatened by the Grievant, it is very unlikely that he would be sitting with him in the pickup truck just minutes later. Under these circumstances the Supervisor's testimony at arbitration that he regarded the Grievant's conduct on that day as threatening is contradicted and significantly weakened by some of the evidence from that day.

The Grievant reported that the Supervisor began the conversation that day by yelling and using profanity at him. The Supervisor did not admit making this comment, but he did not

specifically deny it either at arbitration. It makes sense that the Supervisor might have been angry when he confronted the Grievant on the 12th, since he believed that the Grievant was defying his order from the previous day to stay with the trainee when the trainee was working. The Union presented evidence that the trainee was in his last day or two of training and the Grievant, a very experienced trainer, believed that his level of supervision of the trainee's work at that time was sufficient. However, it is not clear that the Supervisor knew where the trainee was in the training process. The Grievant should have explained to the Supervisor more about the training situation on the 11th when the Supervisor first discussed it with him. On the 12th the Grievant had the obligation to obey the Supervisor's order from the previous day. However, the frustration that the Supervisor reported as observing in the Grievant may have arisen from the fact that the two men each had a different understanding of the facts involved in the training situation. The evidence indicates that both parties to this conversation were frustrated and suggests that both may have reacted strongly as a result of that frustration.

The Supervisor's own frustration and possible anger at the time also may have colored what should have been an objective evaluation of the Grievant's conduct for signs of drug or alcohol abuse. Under the circumstances, there is not sufficient objective evidence to conclude that there was reasonable cause to require drug testing for the Grievant. Even if the Grievant reacted angrily, his behavior was not so extreme or irrational as to support a reasonable belief that he was impaired by alcohol or drugs at the time. The Grievant was not even charged with insubordination here, either for the way he addressed his Supervisor or for failing to follow his direction from the 11th. Calhoun acknowledged, moreover, that it is not Company policy to send every employee for drug testing who is charged with insubordination.

Under these circumstances the Arbitrator cannot conclude that there was sufficient objective evidence to conclude that the Grievant was legally intoxicated or impaired by drugs at the time he sent him for a fitness-to-work evaluation. Other arbitration cases support this conclusion. In Award No. 1020 between these parties, Arbitrator Bethel found that the employee "did not display any of the classic signs of impairment" and the evidence of impairment was based solely upon an evaluation of his conduct towards a working supervisor that day. As in this case there was a claim that the supervisor there felt threatened that Arbitrator Bethel found was not substantiated by the record. Arbitrator Bethel went on to state that "strong emotions can sometimes accompany workplace disputes ...the fact that an employee is angry – or even that he acts like a jerk – does not of itself justify a decision to subject him to a possible drug test." In Award No. 960 I held that in viewing whether certain comments by an employee demonstrated impairment "the Grievant's comments were not so out of the ordinary for an employee who feels he has just been treated very unfairly."

In a similar case at USS the Arbitration Board reached a similar conclusion, stating,

> The record in this case does not establish that in directing Grievant to submit to a drug and alcohol test on March 10, 1999, Management had a good faith concern that drug or alcohol impairment may have been involved with his behavior or conduct. Grievant was not involved in an accident where human judgment or coordination could be a factor, and no Company witness testified to a personal belief that drug or alcohol impairment may have been involved in Grievant's case that day. In the Board's judgment, the fact that Grievant engaged in insubordination in response to a relatively routine change in work assignment on March 10, and that such misconduct was unusual for him and seemed irrational to the Casting Manager, is not sufficient to establish that, at the time Management requested this "for cause" test it had an actual good faith concerned that drug or alcohol impairment may have been involved.

USS, a Division of USX Corporation and United Steelworkers of America, Local 1014 (Case No. USS-41, 281; USS-41, 282, 2000).

Like these other cases, this is also a case in which the entire assessment of whether the Grievant was impaired by drugs at work was based solely upon certain comments that he made to a Supervisor in a heated discussion. These comments, even if out of character for the Grievant based upon the Supervisor's past experience with him, were not so irrational or extreme that they provided reasonable cause to conclude that the Grievant was intoxicated or impaired by drugs at that time. Therefore there was no reason to justify requiring him to undergo a drug test and there is not just cause for termination based upon this failure to take the test. For this reason, the grievance must be sustained and the discharge overturned.

AWARD

The grievance is sustained. The Grievant shall be reinstated with backpay and made whole for any other losses associated with his termination. The Arbitrator shall retain jurisdiction solely over the remedy portion of the award, in order to resolve any disputes that may arise in implementing the remedy.

Jeanne M. Vonhof

Arbitrator

Dated this 27th day of October, 2011.