ARBITRATION AWARD

BETWEEN:

THE UNITED STEELWORKERS LOCAL 5795
(hereinafter called the "Union")

AND:

IRON ORE COMPANY OF CANADA
(hereinafter called the "Employer")

GRIEVOR: Heather Pollard

COUNSEL: For the Union

Joshua Joy

For the Employer

Darren Stratton

ARBITRATOR: James C. Oakley, K.C.

1 The arbitration hearing was held by videoconference on March 25, 26, 27 and April 7, 2026. The parties agreed as follows:

- The Arbitrator was acceptable.
- The Arbitrator had jurisdiction to hear the grievances.
- The grievance procedure was properly followed or any requirements waived.
- The Arbitrator would remain seized of the matter, to give notice to the Arbitrator within sixty (60) days following publication of the Award, in the event of an issue of interpretation or compensation arising from the Award.
- Witnesses were excluded from the hearing until called.

2 The following exhibits were entered at the hearing:

C - 1	Grievance Form, Grievance G-18346, dated January 20, 2025
C - 2	Infraction Report and Disciplinary Action Form dated January 17, 2025
C - 3	IOC Substance Abuse Prevention Policy
C - 4	IOC Progressive Discipline Policy
C - 5	IOC Respect, Inclusion and Diversity Policy
C - 6	Collective Agreement between Iron Ore Company of Canada and the United Steelworkers, Local 5795, March 1, 2023 to February 29, 2028
DM - 1	IOC Mining Operations Traffic Management Plan, reissued May 26, 2020
DM - 2	Email messages from D. Moriarity to Human Resources, January 3 and 4, 2025
DM - 3	Reasonable Cause Checklist, January 4, 2025
DM - 4	Text messages exchanged between D. Moriarity and C. Rogers, January 3 and 4, 2025
RP - 1	Drug and Alcohol Testing Forms completed on January 4, 2025
RP - 2	Excerpt from Security Log entries, January 4, 2025

RP - 3 Security Incident Report re occurrence No. 25-001, January 4, 2025

RP - 4 Email from R. Parrill to K. Stockley, January 4, 2025

GJ - 1 Resume of Gregory J. Johnstone

GJ - 2 Pharma Tox Inc. Report to IOC re H. Pollard, dated March 26, 2026

GJ - 3 Letter from Darren C. Stratton to Gregory J. Johnstone

HP - 1 IOC Mine map

Nature of the Grievances

3 The Union grieves the discharge of the Grievor, Heather Pollard, from her employment with the Employer. The Union requests that the Grievor be reinstated with full compensation. The Employer submits that it discharged the Grievor for just cause. The Employer submits that the Grievor violated the Employer's Substance Abuse Prevention Policy when she reported to work under the influence of drugs and operated a vehicle on site, and that the Grievor violated the Employer's Respect, Inclusion and Diversity Policy when she behaved in a disrespectful manner towards a staff member.

Collective Agreement

4 The Collective Agreement between Iron Ore Company of Canada and the United Steelworkers, Local 5795, dated March 1, 2023 to February 29, 2028 states, in part, as follows:

> ARTICLE III - MANAGEMENT RIGHTS
>
> 3.01 The Union recognizes the right of the Company to operate and manage its business in all respects and in accordance with its commitments and responsibilities. Subject to terms of this Agreement, such rights include but are not limited to, the following rights to:
>
> 3.01 a) hire, manage, promote, determine qualifications and competencies, demote, discipline for just cause, transfer, assign and direct employees;

. . .

6.10 TERMINATION

An employee shall be terminated for any of the following reasons:

. . .

6.10 b) if the employee is discharged for just and sufficient cause and is not reinstated pursuant to the provisions of the grievance procedure;

. . .

ARTICLE X - DISCHARGE CASES

10.01 a) If an employee who has acquired seniority feels he/she has been discharged without just and sufficient cause, the case may be taken up as a grievance and processed according to the following provisions which shall be taken in order.

. . .

10.06 Such grievance may be settled by confirming the management's action in dismissing the employee, or reinstating the employee with compensation for lost time, or by any other arrangement which is just and equitable in the opinion of the conferring parties. If the matter is not settled through the procedure outlined in this article and is taken to arbitration, the arbitrator will have full jurisdiction to uphold or reject the discharge or change the discharge to a lesser penalty of suspension and fix the duration of such suspension. In the event that the arbitrator rejects the discharge or changes the discharge to a lesser penalty of suspension, the employee shall be reinstated and paid his/her wages at his/her regular basic rate (less amounts earned by him/her during the time lost) for the time lost since the date of discharge, or for the period of time not covered by the suspension, limited to the scheduled work week for a maximum period of one hundred and eighty (180) days on which he/she would have been scheduled to work on an eight (8) hour shift or one hundred and twenty (120) days on which he/she would have been scheduled to work on a twelve (12) hour shift, to which will be added the number of days that the arbitration was delayed at the request of the Company. On the other hand, should the arbitration be delayed at the request of the Union, the number of days that the arbitration was delayed at the request of the Union will be deducted from any days to be paid.

Evidence

5 The witnesses called by the Employer were Danielle Moriarity, Drill and Blast Supervisor; Dixon Clements, Pit Supervisor; Rob Parrill, Emergency Response Team Coordinator; Clarence Rogers, Superintendent of Drilling, Blasting and Pit Electrical; and Gregory Johnstone, Pharmacologist and Toxicologist. The witnesses called by the Union were

Wanda Head, Driller; Bradley Leaman, Shop Steward and Heavy Equipment Operator and Heather Pollard, the Grievor.

6 The Grievor was discharged from employment on January 17, 2025. The Employer's Infraction Report, for the infraction dated January 4, 2025, states as follows:

> Detailed description of infraction:
>
> "Employee violated IOC's Substance Abuse Prevention Policy in that she reported to work under the influence of drugs and operated a vehicle on site. Furthermore, employee behaved in a disrespectful manner towards a staff member, which is a violation of IOC's Respect, Inclusion and Diversity Policy."

7 The Disciplinary Action Form, dated January 17, 2025, issued by the Employer to the Grievor, states as follows:

> DISCIPLINARY ACTION
>
> Following the Infraction handed to you on January 17, 2025 and after seriously considering your past personal file, your past conduct and your behavior, the following disciplinary action has been decided.
>
> "You are discharged"

8 The Employer's Substance Abuse Prevention Policy states, in part, as follows:

> SUBSTANCE ABUSE PREVENTION
>
> 1 PURPOSE
>
> - The Iron Ore Company of Canada (IOC) is committed to maintaining a safe, healthy, and productive work environment for all employees, contractors, and visitors. A key pillar to this commitment is IOC's Substance abuse prevention policy. IOC recognizes that knowledge is fundamental to protecting its working environment and to promoting and enhancing workplace safety. This document combines drug and alcohol testing with education,

supervisor and employee training and access to professional assistance as required.

- IOC has zero tolerance for the use, possession, distribution, sale or offering for sale of alcohol or other drugs or drug paraphernalia at any IOC work location. The policy is designed to ensure that employees are able to safely and acceptably perform assigned duties without any limitations due to the use or after-effects of alcohol, cannabis (including all its derivative, such as marijuana, hashish or cannabis resin), illicit drugs, prescription and non-prescription medications, solvents, or inhalants.

- Our employees are essential partners in this process. We believe that every employee has a role to play in maintaining a safe, healthy, and productive work environment and each employee has a responsibility to report for work in a fit condition and to work safely throughout their work period. The responsibility of promoting prevention and treatment is shared among IOC, unions, contractors, and employees. IOC encourages employees and contractors affected by substance abuse to seek assistance with the assurance of our support and confidentiality through that process.

. . .

3 DEFINITIONS

. . .

- Fitness for Duty and Fit for Duty: Means personal fitness on an individual's ability to perform their work competently and safely. Refers to a functional physical, mental and emotional state.

. . .

4 PROCESS

. . .

4.3 Grounds for drug & alcohol testing

. . .

4.3.4 Reasonable cause testing

An individual in a Safety Critical Job will be tested for alcohol and / or drug use where a company supervisor or other official, trained to identify drug and alcohol use, makes observations that form a reasonable basis for suspecting that an employee has not complied with this policy.

. . .

4.4 Drug and Alcohol Testing

Drug and Alcohol Testing procedures will be conducted in accordance with the guidelines and standards of the Substance Abuse and Mental Health Services Administration (SAMHSA), the certifying agency for forensic drug testing laboratories in Canada. Only certified laboratories

will be contracted to conduct drug laboratory analysis for confirmation of a non-negative point of care collection test. When testing for the presence of alcohol, an approved testing device will be utilized.

4.5 Violations

Violation of any provision of this policy will subject the employee to the discipline policy, as appropriate, up to and including termination with potential referral to law enforcement agencies for investigation (drug trafficking / drug possession/etc.). However, IOC acknowledges its duty to accommodate as per Human Rights Legislation.

9 The Employer's Respect, Inclusion and Diversity Policy states, in part, as follows:

1 Purpose

The Iron Ore Company of Canada (ICC), in cooperation with our employees, is committed to provide and maintain a work environment where individuals are treated with respect and consideration, and where an individual's dignity, ability and contributions are valued. As part of the global Rio Tinto community, we strive to create an inclusive culture in which differences are recognized and valued.

. . .

4 Definitions

. . .

4.3 Respectful Workplace Code

The Respectful Workplace Code defines a set of expected behaviours that individuals on IOC sites are expected to display.

These behaviours include:

- using courteous, respectful and appropriate language;
- cooperating with co-workers by sharing knowledge and experience;
- providing the information required to complete a task;
- paying attention and listening to expectations;
- respecting differences;
- communicating with integrity by sticking to the facts and talking about the problem directly with the people involved;
- respecting confidentiality of information.

No individual at an IOC site should tolerate any lack of:

- respect;
- cooperation;
- politeness and courtesy;
- integrity;
- good manners.

10 The Employer's Progressive Discipline Policy states, in part, as follows:

1 Introduction and Purpose

Employee performance and conduct should positively contribute to IOC's mission, values and business interests. When an employee's conduct or performance is unsatisfactory, fails to meet IOC's standards, or is in violation of a company policy or procedure, corrective action may be taken using progressive discipline. The nature of discipline is intended to be corrective, and its purpose is to motivate employees to comply with those standards, policies, and procedures.

. . .

3 Overview

Progressive discipline is the process of using increasingly serious measures to correct behaviors and to improve an employee's performance and/or conduct. The goal of progressive discipline is to communicate the employer's expectations for performance or conduct and to afford the employee with the opportunity to improve his/her performance or conduct.

Progressive discipline may be issued to employees even when there are infractions of different rules, policies, performance or conduct. That is, violations of different rules shall be considered the same as repeated violations of the same rule for purposes of progressive discipline. This demonstrates a pattern of misconduct.

Depending on the mitigating factors, the Leader, in consultation with the Human Resources Department, will determine the most appropriate form of disciplinary action in consideration of the infraction in question and the employee's disciplinary record. Disciplinary action may begin on any level based on the severity of the offence. More serious offences may result in suspension or dismissal without progressing through verbal or written reprimands.

> In situations in which the Leader decides that an employee should be removed from the workplace while an investigation is ongoing, the employee would be suspended with pay pending investigation.
>
> . . .
>
> 4.4 Termination for cause
>
> When an employee's misconduct or poor performance is sufficiently serious such that the employment relationship is irreparably damaged, the employer may terminate the employment relationship for cause.
>
> Termination of employment usually applies only where there has been an occurrence of intolerable misconduct or where efforts to correct the employee's misconduct or poor performance have occurred through the application of progressive discipline and the employee's conduct or performance continues to demonstrate that they are unsuitable for continued employment. Documentation confirming termination of employment will be provided to the employee and a copy shall be included in the employee's personnel file.
>
> *There are exceptions to progressive discipline, which occur when a single incident of serious misconduct in immediate termination. These are exceptional events and always of a critical nature. Immediate termination will occur if it has been determined that an employee has violated a significant health and safety rule, or any other standard established by IOC stating immediate termination as the consequence.*

11 At the time of her discharge from employment, the Grievor was employed as a Drill Operator (Driller) in the classification of Operator Maintainer at the mine site. She has about 16 years employment with the Employer and 14 years experience as a Driller. She was employed on the drilling crew on Shift 3 with a work rotation of seven days on and seven days off. She held a safety sensitive position and was employed at a safety sensitive workplace.

12 The incident that led to the Infraction Report occurred on January 4, 2025. Witnesses testified about events on January 3 and 4, 2025. The events of January 3rd are part of the context for the events of January 4th. The Grievor's crew commenced a seven day rotation on January 1, 2025. Danielle Moriarity was the Supervisor of the Grievor's crew at that time. Ms. Moriarity's first shift on her own as Supervisor occurred on January 1, 2025. She commenced employment with the Employer in December, 2023. She attended the Employer's Supervisor Development Program. She job shadowed another Supervisor until she took over the position.

13 As Supervisor, Ms. Moriarity reported to Clarence Rogers, the Superintendent at the relevant time. Mr. Rogers reported to the Manager of Mining Operations. Mr. Rogers testified that he had about 28 years of employment with the Employer, which ended in November, 2025. He was employed by Tacora Resources on the date of his testimony. Mr. Rogers testified that the Grievor, as a Driller, reported indirectly to him through her Supervisor. In January, 2025, Mr. Rogers' work schedule was on day shifts from Monday to Friday.

14 The day shift for the drilling crew starts at 7:15 a.m. The crew and Supervisor have a toolbox meeting at the start of the shift at the Mine Engineering Building (MEB). The Supervisor holds separate toolbox meetings with the drilling crew and the blasting crew. Toolbox meetings are usually 10 to 15 minutes in length, and include discussion of safety issues and work assignments.

15 Each Driller is assigned to operate a rotary blast hole drill. The drills are operated according to a pattern that sets out the holes in an area to be drilled. The Blasters take over and use explosives after the holes are drilled. There may be more than one drill operating in a pattern. There are safety considerations for the entry of persons and equipment into a pattern. Permission is required to enter a pattern. The Employer's Mining Operations Traffic Management policy document (the "Traffic Management Policy") sets out guidelines for entering patterns. The Traffic Management Policy, reissued May 26, 2020, states, in part, as follows:

> 5. 50 METER HME EXCLUSION ZONE
>
> 50 Meter Drill / Blast Site Exclusion Zone Protocol:
>
> Drill and blast sites are restricted areas delineated by berms, marked by signage and blasting cones.
>
> - With the exception of blasting personnel and drillers, all other personnel wishing to enter a blast site must gain permission to enter the area from the drill and blast supervisor.
> - After permission from the supervisor has been granted all personnel, including blasters and drillers, must contact the driller(s) of operating drill(s) on the radio using Drill and Blast talk

group for permission to enter the site.
- Enter the site only after permission has been granted.
- Notify the drill operator(s), via two-way positive radio communication, when clearing the exclusion zone.
- With the exception of blasting personnel and drillers all other personnel must also notify the drill and blast supervisor when exiting the site.

16 There was evidence about whether the practice followed by employees was consistent with the Traffic Management Policy. The Traffic Management Policy states that, to enter a pattern, permission must be obtained from the Driller operating a drill on the pattern. There were conflicting accounts about whether permission was also required from the Drill and Blast Supervisor to enter the pattern. Ms. Moriarity testified that permission is required from her, as Supervisor, and from the Driller, to enter the pattern, except that a Blaster or Driller can request permission directly from the Driller and bypass the Supervisor.

17 With respect to entering a pattern, Wanda Head, a Driller on Shift 3, testified that personnel wishing to enter a pattern stop outside the gate and obtain permission from the Driller. If there are no drills operating, then permission is obtained from the Supervisor. She said permission was not required from the Supervisor if there were Drillers present to give permission. She said that when there is more than one drill operating on a pattern, then normally the Drill Operator closest to the gate would give permission to enter the pattern and then permission would be given by other Drill Operators to move towards their drills. The Grievor testified that the practice was to first obtain permission from the Driller. Permission from the Supervisor was not required for a Driller or Blaster to enter the pattern. She said that the Traffic Management Policy did not require that permission be obtained from the Supervisor for everyone entering the pattern.

18 On January 3, 2025, at the toolbox meeting, Ms. Moriarity reminded the Drillers about the correct procedure for positive two way radio communication to enter a drill pattern. Ms. Moriarity testified that there had been a recent safety incident partly caused by lack of positive two way radio communication. The Superintendent had asked her to speak to the crew about the importance of positive two way radio communication, to ensure safety, when entering the drill

pattern. In positive two way radio communication, two numbers are used for identification purposes, one number to identify the vehicle or equipment calling in and one number to identify the vehicle or equipment calling out. In his testimony, Mr. Rogers confirmed there had been a recent safety incident where one of the causal factors had been lack of positive two way radio communication, and that he had given direction to the Supervisors to remind their crew about proper communication.

19 Ms. Moriarity testified that, at the toolbox meeting on January 3, 2025, she reminded the crew about the proper way to enter a drill pattern and use two way radio communication. The Grievor told her in the meeting that her description of the procedure was not correct. Ms. Moriarity testified that the Grievor was resistant to using two numbers in the radio communication. The Grievor also raised a safety issue that Blasters had entered her pattern on the blind side of her drill without her knowledge. Ms. Moriarity testified that she told the Grievor that she would relay the concern to the Blasters. She said that she met with the Blasters at a separate toolbox meeting after the Drillers meeting. The Blasters had no issue with the procedure of not entering a pattern unless the Driller gave permission. Ms. Moriarity said the Grievor was very rude, irritable and aggressive when speaking to her at the toolbox meeting on January 3, 2025. She said that the Grievor's behaviour at the meeting was unsettling.

20 Ms. Moriarity testified that, on January 3, 2025, she asked the Superintendent, Mr. Rogers, for guidance with respect to the Grievor's behaviour at the toolbox meeting. They discussed the reasonable cause Checklist for a drug and alcohol test. Mr. Rogers suggested that he would ask another Supervisor to bring the Grievor to the office. Ms. Moriarity testified that, on her way to the office to meet Mr. Rogers and the other Supervisor, the Grievor called her and said she had to go home for a family emergency. The Grievor left the site, and they were unable to do a drug and alcohol test that day. Ms. Moriarity testified that, at the suggestion of Mr. Rogers, she sent an email to Human Resources describing the Grievor's disrespectful behaviour on January 3, 2025, and requesting that disciplinary action be taken.

21 Ms. Moriarity testified that she regularly monitors the drill and blast channel on her radio. On January 3, 2025 she did not hear any harassment directed towards the Grievor. She said that

the Grievor was assigned to operate Drill 44 on January 3, 2025. She said that, on one occasion on January 3rd, she told the Grievor on the radio that she needed to use two numbers in her radio communication about requests to access the pattern. Ms. Moriarity testified that the Grievor usually operates Drill 45, but that drill was down on January 3rd. Drill 44 and Drill 45 were located in different areas of the mine at that time.

22 The Grievor, Heather Pollard, testified that, at the toolbox meeting on January 3, 2025, there was a focus on positive two way radio communication because of a previous safety incident. She testified that she stated at the meeting that Blasters were not calling her on the radio before coming within the 50 meter zone for her drill. Ms. Moriarity told her she would speak to the blasting crew. The Grievor testified that she felt the issue did not seem important to Ms. Moriarity. She did not believe that she was being disrespectful towards Ms. Moriarity at the meeting. After the toolbox meeting, she drove herself and another worker to their drill locations.

23 The Grievor testified that, while she was operating her drill on January 3, 2025, she received requests on the radio to enter the pattern. She answered "ok" on the radio in response to one request. A member of the blasting crew called her on the radio and said that "ok" was not correct positive two way radio communication because she did not state the two vehicle numbers. The Grievor testified that, on the same day, the same blasting crew member waited at the gate, and held up trucks behind her, until she heard radio communication from the Grievor. The Grievor felt that she was being harassed and bullied by the blasting crew member because she was correcting her radio communication but not correcting the radio communication of other Drillers. She left the workplace before the end of shift on January 3rd because she was upset with the bullying and harassment. She told Ms. Moriarity that something came up at home and she had to leave work. She acknowledged in her testimony that she did not tell Ms. Moriarity that the real reason she left work was harassment. She said she did not report harassment on January 3rd because she did not want to get her co-worker in trouble.

24 Mr. Rogers testified that, on January 3, 2025, at about 9:00 a.m., Ms. Moriarity reported to him that, at the toolbox meeting, the Grievor had exhibited abrasive and aggressive behaviour. He said that Ms. Moriarity explained her concerns, including a concern about the Grievor's

fitness for work. They discussed the reasonable cause Checklist. Mr. Rogers was informed later that day that the Checklist was not completed because the Grievor left the worksite. At his suggestion, Ms. Moriarity documented the incident and contacted Human Resources to request disciplinary action. Mr. Rogers said that they did not reach any conclusion about the Grievor's fitness for work that day. He said the Employer did not deactivate the Grievor's site access card on January 3rd because the Employer only deactivates an access card when an employee is suspended pending investigation, and the Grievor had not been suspended.

25 Ms. Moriarity testified that, at the toolbox meeting at 7:15 a.m. on January 4, 2025, she told the crew they were doing a good job with two way radio communication. The Grievor then stated at the meeting that she had been harassed the previous day. When Ms. Moriarity asked her why she alleged harassment, the Grievor told Ms. Moriarity that if she had been paying attention to the radio, she would know why. Ms. Moriarity testified that she told the Grievor that she had been paying attention to the radio, heard employees use proper communication, and had not heard any harassment. Ms. Moriarity asked the Grievor if she wanted to discuss her concerns privately after the meeting, but the Grievor declined. The Grievor told her at the meeting that it was a toxic workplace, and she was not going back to Drill 44. Ms. Moriarity told her that she had been assigned to Drill 45. Ms. Moriarity felt the Grievor was being insubordinate by asserting that she was the boss about her work assignment. She described the Grievor's behaviour on January 4, 2025 as more assertive, angry and irrational than the previous day. At the meeting, the Grievor spoke with a raised voice and waved her hands, in a manner Ms. Moriarity believed was belligerent body language. Ms. Moriarity was concerned that the Grievor's behaviour at the toolbox meeting was an amplification of her behaviour on the previous day. She considered that her behaviour could be substance abuse related.

26 After the toolbox meeting on January 4, 2025, the Grievor proceeded to drive two of her co-workers in a Company pickup truck to their drill locations. Ms. Moriarity testified that she does not assign pickup trucks, the Drillers do that among themselves. Ms. Moriarity did not know, at the time the Drillers left the toolbox meeting, whether the Grievor would be driving the truck. Ms. Moriarity was asked in her testimony why she allowed the Grievor to proceed to work, if she felt the Grievor was unfit for work at the time of the toolbox meeting. Ms. Moriarity

replied that she had not had time to process the events, and she tried to avoid confrontation. She said she needed additional support from her Superintendent, Mr. Rogers, to make sure she was doing everything correctly before taking action.

27 A printout of text messages exchanged between Ms. Moriarity and Mr. Rogers, about the events on January 3 and 4, 2025, was entered as an exhibit. Mr. Rogers was not present at the worksite on Saturday, January 4th because his regular work schedule was from Monday to Friday. Ms. Moriarity testified that she went to Mr. Rogers' office after the toolbox meeting on January 4th, but he was not there. Soon after, at 9:07 a.m., Mr. Rogers sent her a text message. The message stated that he hoped her morning went well. Ms. Moriarity sent a reply with a report on the Grievor's behaviour at the toolbox meeting. Ms. Moriarity then spoke to Mr. Rogers by telephone, and they decided to do a reasonable cause Checklist. Mr. Rogers asked her to reach out to Supervisor, Dixon Clements. Ms. Moriarity testified that she and Mr. Clements met in her office and discussed the Grievor's behaviour. She then asked Brad Leaman, Shop Steward, to bring the Grievor to the office.

28 Mr. Rogers testified that he was not aware that, after the toolbox meeting, the Grievor drove two other Drillers to their drill location and proceeded to her own drill. He said this was not part of the context of his conversation with Ms. Moriarity at about 9:00 a.m.

29 Ms. Moriarity testified that, at about 10:35 a.m. on January 4, 2025, she printed a copy of the Employer's Post Incident/Reasonable Cause Checklist. Section 3 of the Checklist lists "Specific and Observable Indicators" under headings for "physical" indicators and "behaviour" indicators. The physical indicators are listed under headings for "Speech", "Odor", "Appearance" and "Movements/Walking/Balance". On the Checklist completed for the Grievor, dated January 4, 2025 (Exhibit DM-3), Ms. Moriarity did not check off any of the boxes listed under physical indicators. Ms. Moriarity checked the boxes listed under behaviour indicators for "irrational", "belligerent", "irritability" and "hostile". Under the heading "Comments", Ms. Moriarity wrote the following: "Disrespectful in meeting (demanding) regarding going on what piece of equipment, saying not going on Drill 44. Nonreceptive to PREV coaching (plus two way)". Ms. Moriarity also checked the box to state "Yes" to reasonable cause to test.

30 Ms. Moriarity testified that she checked the boxes and filled out the Checklist after the Grievor and Mr. Leaman had arrived at the office and then stepped outside to meet privately. She testified that they returned to the office and she reviewed with the Grievor the boxes on the Checklist that she had checked. She told the Grievor that there was reasonable cause for a test. She said that Mr. Clements was not present at the toolbox meeting, but signed the Checklist to verify that she filled it out based on her observations of the Grievor. She said that she and Mr. Clements signed the Checklist at about 11:40 a.m. after she went through the Checklist with the Grievor.

31 Ms. Moriarity testified that she completed online training for drug and alcohol indicators, and the signs of impairment that indicate whether a person is fit for duty. The training was arranged by the Employer and provided by J.J. Keller.

32 Ms. Moriarity testified that Mr. Leaman told her at her office that the Checklist was not filled out correctly, because she had checked off the behaviours before Mr. Clements had an opportunity to observe the Grievor.

33 Ms. Moriarity testified that she and Mr. Clements in one vehicle, and the Grievor and Mr. Leaman in another vehicle, drove from the Supervisor's office to the security building. She gave the Checklist to Rob Parrill, Emergency Response Team Co-ordinator, and requested that he conduct a drug and alcohol test.

34 Dixon Clements testified that he is a Pit Supervisor in Mine Operations. He commenced employment with the Employer in August, 2019. He previously worked as a Drill and Blast Supervisor, at which time the Grievor worked under his supervision.

35 Mr. Clements testified that, on January 4, 2025, he met with Ms. Moriarity at her office. She told him that the Grievor was disrespectful towards her during the toolbox meeting that morning. The Grievor attended at Ms. Moriarity's office with the Shop Steward, Mr. Leaman. Ms. Moriarity went through the Checklist. Mr. Clements said he signed the Checklist as verifier, based on Ms. Moriarity going through the Checklist with the Grievor, and his observation that

the Checklist was completed properly. He did not make his own independent observation of the Grievor's behaviour, for the purpose of the Checklist. He described the Grievor as being "on her best behaviour" when Ms. Moriarity went through the Checklist.

36 Bradley Leaman testified that he was contacted to be the Shop Steward for a reasonable cause Checklist. He has been employed for 19 years by the Employer. He has served as a Shop Steward for 15 years and has been present as Shop Steward for several drug and alcohol tests. He testified that, on January 4, 2025, at about 10:30 a.m. he was asked to report to the Supervisor's office. Ms. Moriarity told him about incidents at the toolbox meetings that day and the previous day. They asked him to bring the Grievor to the office for a reasonable cause Checklist. He picked up the Grievor from the lunch trailer. When he told the Grievor about the request for the drug and alcohol test, she was visibly upset and did not understand why it was necessary.

37 Mr. Leaman testified that, in his experience, there are normally two Supervisors who go through the Checklist together with an employee and make observations. The two Supervisors then jointly determine whether there are grounds for the drug and alcohol test. He said that when he and the Grievor went to Ms. Moriarity's office, Ms. Moriarity already had the boxes checked in Section 3 of the Checklist. He did not recall whether the "Comments" section was filled in at that time. He told Ms. Moriarity and Mr. Clements that he did not agree with the procedure of filling out the Checklist before meeting with the Grievor. He suggested that they start over with a blank form and fill it out with the Grievor present, but they did not follow his suggestion. He said the process they followed was not consistent with the correct process based on his experience. He said the role of the verifier is to make his own observations and not to simply confirm what he has been told. Mr. Clements could have observed the Grievor's behaviour when they reviewed the Checklist with the Grievor.

38 Mr. Leaman said that he drove the Grievor in a company vehicle from the Supervisor's office to the security building. He told Mr. Parrill his concerns about the Checklist, in particular, his concern that Mr. Clements had not witnessed the Grievor's behaviour. Mr. Parrill left to

check with someone about the concerns. When he returned, he said they would continue with the test. The Grievor went with Mr. Parrill to complete the test.

39 Mr. Leaman testified that his observation was that the Grievor did not exhibit any of the behaviours that were checked off on the Checklist. He did not observe the Grievor to be hostile or belligerent. He said she was upset because of the situation. Mr. Leaman said Ms. Moriarity told him that reasonable cause for the test was based on the Grievor's behaviour at the toolbox meeting that morning.

40 The Grievor testified that, on January 4, 2025, she drove herself to work. She said she was fit for work that day. At the toolbox meeting, she told Ms. Moriarity that she was not going to go on the Drill 44 pattern because she did not want to put up with harassment and bullying. Drill 45 was on a pattern in a different location. Ms. Moriarity asked her if she wanted to talk about the harassment and she replied, "not here". The Grievor testified that Ms. Moriarity did not offer to talk about the harassment allegation after the meeting. Ms. Moriarity told the Grievor at the meeting that she had not heard anything on the radio amounting to harassment.

41 The Grievor testified that, after the toolbox meeting, she drove two co-workers to their drills using a Company pickup and then drove to Drill 45. She did not operate the drill because it did not have power at the time. She proceeded to the lunchroom. She drove a total distance of about 10 kilometers on the mine site that morning.

42 The Grievor testified that Mr. Leaman called her on the radio at about 10:30 a.m. He told her that she was being taken for a drug test based on an incident at the toolbox meeting that morning. She said she was confused and upset. She went with Mr. Leaman to the Supervisor's office. Ms. Moriarity told her the boxes that were checked on the Checklist but did not elaborate. The comment section on the Checklist was not filled out at that time. The Checklist had already been signed by Ms. Moriarity and Mr. Clements. She did not agree that she had behaved in the manner stated in the boxes checked on the Checklist.

43 The Grievor testified that Mr. Leaman drove her from the Supervisor's office to the security building. She completed the alcohol and drug test with Mr. Parrill. He told her that her alcohol breath text showed zero alcohol. He told her that she had a non-negative test result on the screening test for cocaine and amphetamine. After the test, Ms. Moriarity told her that she was suspended pending investigation and she was not allowed to drive home.

44 Mr. Parrill testified that, on January 4, 2025, at about 12:00 noon, the Grievor, the Shop Steward, Mr. Leaman and the Supervisors, Ms. Moriarity and Mr. Clements arrived at the security building. He reviewed the Checklist to ensure that it was signed and verified. He said it was not his practice to review the particulars stated on the Checklist. Mr. Leaman told him that the Checklist was completed incorrectly because Mr. Clements did not witness the behaviour noted on the Checklist. Mr. Parrill testified that he told Mr. Leaman the purpose of the verifier was to state that the Checklist was completed. He said that Security Officers are often working alone when they make observations, and they obtain verification from another Officer after the fact.

45 Mr. Parrill testified that the Grievor signed authorization forms for the collection of samples. He testified that he used the VeriCheck screening device for the drug screening test. He used a swab to collect a saliva sample and placed it into an absorbent test strip. The sample is absorbed into 10 ports in the test strip to test for 10 different substances. There are two lines on each port in the strip, and the second line will indicate if the substance is not detected. He believed the equipment was working according to specification. He informed the Grievor that the test was non-negative for cocaine and amphetamines.

46 Mr. Parrill testified that he collected another saliva sample from the Grievor for a laboratory confirmation test. He placed the sample in a test tube, and sent the sample to the lab. He heard that the sample could not be tested because it was damaged in transit. Mr. Parrill also administered a breathalyzer test using the Lifeloc Technologies machine. The result of the breath test was zero for alcohol. Mr. Parrill completed a Security Incident Report. He was not involved with the Grievor's case after he sent the sample to the lab.

47 Mr. Rogers testified that he was informed on January 4, 2025, that the Grievor had failed the drug test. He asked Ms. Moriarity to tell the Grievor she was suspended and could not drive home. Ms. Moriarity informed the Grievor that she was suspended pending the laboratory test results and the Human Resources investigation.

48 Mr. Rogers testified that he attended a human resources investigation meeting with the Grievor on January 7, 2025. Also, in attendance were Danielle Parsons, Human Resources Advisor, and Union representatives Mike Furlong and Sam Gavin. He said the Grievor stated at the meeting that she spoke to Ms. Moriarity at the toolbox meeting on the morning of January 4, 2025 about a blind spot on the camera of Drill 44. She stated she had been bullied and harassed on the radio on January 3, 2025, by a member of the blasting crew. She said she told the Supervisor she was not going back to work on Drill 44 because it was a toxic workplace. The Grievor told them that she went to the Supervisor's office where Ms. Moriarity reviewed the Checklist for drug and alcohol testing. She told them that the Checklist was already completed. She told them that Mr. Clements did not make any observations of her that day. When they discussed the non-negative screening test result, the Grievor told them that the last time she used cocaine was on December 28, 2024, which was the anniversary date of her father's passing and she had a "slip". She told them that she did not use cocaine regularly and did not use amphetamines. She said that she takes medication for anxiety, depression and other medical conditions and the medication could have cause the non-negative test result. The Grievor told them that she felt fit for work on January 4, 2025. The Grievor told them that nothing had been done about the bullying and harassment that she alleged had occurred on January 3rd. Mr. Rogers said the Grievor did not apologize or show any remorse for her disrespectful conduct towards Ms. Moriarity during the toolbox meeting.

49 Mr. Rogers testified that he made the decision to discharge the Grievor for the infractions. The decision was supported by his Manager and by Human Resources. The reasons for discharge included the seriousness of the infractions. The Grievor showed disrespect by giving work directions to the Supervisor. The Grievor violated the Substance Abuse Prevention Policy because she failed the drug test and she was not fit for work. He said the Employer considered that the Grievor showed lack of ownership of her behaviour.

50 Mr. Rogers testified that he followed up on the Grievor's allegation of harassment. He concluded that the blasting crew was using positive two way radio communication. He said the Grievor had declined to meet with Ms. Moriarity when she offered to meet with her after the toolbox meeting. He was satisfied that there was no harassment.

51 The Grievor testified that she attended the investigation meeting on January 7, 2025. She raised the issue of bullying and harassment but there was no response. She was told that there was no laboratory test result. She asked to take another drug test, but they said it was not done that way. She told them that the prescription drugs she was taking could have caused the non-negative test result for amphetamine and cocaine. She admitted at the meeting that she used cocaine on December 28, 2024.

52 The Grievor testified that she did not use cocaine between December 28, 2024, and January 4, 2025. She said she did not use cocaine regularly. She referred to her usage of cocaine on December 28th as a "slip", meaning that she had made a mistake that day.

53 The Grievor testified that her discharge from employment has had a devastating impact on her personally and financially. She has not had any full time employment since her discharge.

54 Gregory Johnstone testified with respect to his qualifications as an expert in pharmacology and toxicology. He testified that toxicology is the study of the harmful and toxic effects of chemicals and drugs on the body. Mr. Johnstone has been qualified to testify as an expert witness in other proceedings. The Union did not object to Mr. Johnstone's qualifications. However, the Union disputed the probative value of Mr. Johnstone's opinion on the Grievor's fitness for duty having regard to the fact there was no confirmation laboratory drug test.

55 Gregory Johnstone was qualified as an expert witness in pharmacology and toxicology and with respect to five areas listed in a letter to him from Mr. Stratton. Those areas were as follows:

1. Pharmacology and toxicology; specifically, with respect to the absorption, distribution, elimination and effects of cocaine and amphetamines on the body.

2. Occupational health and safety in relation to the use, direct effects and after effects of cocaine and amphetamines on a person employed in a safety sensitive position, i.e., one in which job performance requires the employee to be alert, to be physically coordinated, and to exercise good judgment, and where impaired performance could result in a significant incident affecting the health and safety of employees and other persons, property, or the environment.

3. The detection of cocaine and amphetamines through point of collection testing via oral fluid and what such detection, using the equipment employed by Iron Ore Company of Canada, indicates about the fitness for duty of an employee employed in a safety sensitive position at the time the sample was provided.

4. The likelihood of identified prescribed or over the counter medications resulting in a false positive for cocaine or amphetamines.

5. Heather Pollard's fitness for duty when she reported for work on Saturday, January 4, 2025.

56 Mr. Johnstone described cocaine and amphetamine as Central Nervous System (CNS) stimulants. He testified that they are drugs that overstimulate most body systems, and as a result, impact thinking and behaviour. He testified that cocaine has the shortest duration effect, while amphetamine has a much longer effect. He said that cocaine and amphetamine may be mixed when sold as a street drug. He stated the direct effects of cocaine and amphetamine on the body included impulsive responses, exaggerated emotions, lack of focus, impatience, and overestimating capacity relative to risk. He said the residual effects included irritability and agitation.

57 Mr. Johnstone testified that the body gets rid of 98% of the drug ingested within 6 to 12 hours for cocaine and within 12 to 35 hours for amphetamine. He said the direct effects of cocaine would be felt for a period of 6 to 12 hours and the indirect effects for a period of 12 to 36 hours after ingestion. He said the residual effects could impact fitness to operate equipment or vehicles. He said that, in the situation of the Grievor, it was unlikely that a test would detect

cocaine and amphetamine on January 4, 2025, if it had been last ingested 7 days earlier, on December 28, 2024.

58 Mr. Johnstone testified with respect to the prescription drugs and over the counter drugs used by the Grievor. He said that the ingredient pseudonephrine in Advil Cold and Sinus medication could cause a false positive for amphetamine but not for cocaine in the screening test. He said the laboratory confirmation test would verify whether amphetamine was the drug present. Mr. Johnstone said it was unlikely, but he could not be certain, whether the Grievor's escitalopram medication could cause a false positive. He testified that a non-negative test result for cocaine in the Point of Collection screening test would be consistent with cocaine usage within the previous 24 hours, and most likely within the previous 6 to 12 hours. He said that the confirmation test by the laboratory confirms the drug present. He said that the VeriTech System, used to test for cocaine and amphetamine, measures the parent compound and not the metabolites. The Point of Collection screening test does not give a percentage concentration of the drug in the body. He said a laboratory test based on a saliva sample is a reliable indicator of the concentration of the drug in the bloodstream.

59 Mr. Johnstone testified that the Point of Collection screening test is usually confirmed by the laboratory test. He described the screening test as a quick test, like the rapid test used for COVID screening. He was aware that something happened to the specimen that was sent to the laboratory and there was no confirmation test. He said a non-negative cocaine screening test was more likely to be confirmed by the lab than a non-negative amphetamine test. The laboratory test gives the actual concentration of the drug in the system, and determines if the screening test is accurate or false. His opinion on the Grievor's fitness for work was qualified by the lack of a confirmation laboratory test.

60 With respect to the Grievor's fitness for duty, Mr. Johnstone said he looked at the combination of drugs, including the prescription drugs. He said that if all drugs were present in the system, then there was a high risk. He said whether there was a problem with fitness depended on the amount of drugs. He said that, when applying the precautionary principle, it is better to take the person away from harm.

61 Mr. Johnstone submitted a Report, dated March 26, 2026, that stated, in part, as follows:

Background and context of this matter:

The Grievor was employed by IOC as a Drill Operator, a safety-sensitive position. She worked a shift schedule of 7 on, 7 off. She would work seven 12-hour day shifts followed by seven days off, then work seven 12-hour night shifts followed by seven days off. Day shifts start at 0715 hours.

The Grievor commenced a seven-day shifts cycle on Wednesday, January 1, 2025. At 12:10 p.m. on Saturday, January 4, 2025, she provided an oral fluid specimen to a member of IOC's security staff for analysis via a VeriCheck®Oral Fluid on site Drug Test, the 10-drug panel testing device used for point of collection testing by the Company. The test detected the presence of cocaine/amphetamine (the parent drug) and amphetamine (the parent drug). A breath alcohol test was negative with a reading of 000.

A second oral fluid sample was collected via a Quantisal device in order to transmit it to a laboratory for testing. Unfortunately, the sample was rejected for testing due to insufficient specimen volume arising from a leak during transit.

In a subsequent investigation, the Grievor indicated that she had ingested 2 or 3 lines of cocaine/amphetamine sometime on Saturday, December 28, 2024, seven days before she was tested. She also indicated that she has been prescribed medications for medical conditions.

. . .

c. The Grievor's fitness for duty in a safety sensitive position at that time.

Response and Opinion:

Given all the above information, and assuming the Grievor had the four drugs noted in 3, b, above, plus cocaine and or amphetamine, there is significant drug related complexity to consider, relative to this question of fitness for safety sensitive duties.

When the **combinations** of thugs and **concentrations** of each are considered, it is clear to me that the Grievor would have been "under the influence" of each drug. Knowing how each drug would affect her is not possible to determine in the absence of more information. However, there would have been both additive and competing effect occurring in many body systems concurrently at the material time. I would expect those effects would contribute a measurable amount of disruption, individually and collectively, which she would not perceive, or be able to compensate for in real time.

> This net effect would contribute to a reduction in her functional capacities (i.e., impairment) and hence her fitness for safety sensitive duties. However, I am not able quantify in any meaningful manner in the absence of necessary information. Such a situation is the essence of risk.
>
> My opinion is that the Grievor's fitness for safety sensitive duties would have been compromised as a result of the collective effects of the drugs present in her at the time.
>
> **Conclusion:**
>
> The dilemma I have is not having enough verified information to make a clear determination of her drug use, related drug impairments to offer more clarity of quantitative impacts on her fitness for safety sensitive duties. However, notwithstanding that, I would be concerned if such a worker is permitted to continue performing safety sensitive duties when there is evidence of ingestion of one or more impairing drugs. I believe the application of the **"precautionary principle'** is appropriate in such circumstances and is in keeping with the concept of prevention of harm and duty to ensure the safety of all workplace parties.
>
> I would characterize Ms. Pollard's involvement with drugs as high risk, and incompatible with safety sensitive work. Such use of drugs for recurring and unresolved needs, renders the use of drugs itself as another unmanageable challenge, thereby increasing workplace safety risk. In my experience, without effective intervention and management, such an approach has a poor prognosis of resolving itself.

Employer Submission

62 The Employer submitted that it had just cause to discharge the Grievor for her behaviour on January 4, 2025. The Grievor violated the Substance Abuse Prevention Policy by reporting to work under the influence of drugs and operating a vehicle on site, and violated the Respect, Inclusion and Diversity Policy by behaving in a disrespectful manner towards her Supervisor.

63 The Grievor was employed as a Drill Operator in a safety sensitive position. On January 4, 2025 the Grievor was not fit for duty, based on her behaviour at the toolbox meeting, by reason of usage of the drugs cocaine and amphetamine, as shown in the Point of Collection screening test.

64 To the extent there was any conflict in the evidence with respect to the Grievor's behaviour at the toolbox meeting, the Employer referred to the test for credibility in *Faryna v. Chorny* 151 CarswellBC 133 (BCCA). In particular, the Employer referred to the factors of the opportunity for knowledge, the interests of the witnesses, and the most likely probabilities.

65 The Employer submitted that the issue in this case was not about the Grievor's allegations of harassment by other employees, or the correct use of positive two way radio communication to access a drill pattern. The issue was about the Grievor's behaviour and violation of the Employer's policy. The Grievor's disrespectful behaviour and irritability were likely caused by the effects of drug usage and gave rise to reasonable cause testing.

66 The Grievor's Supervisor, Ms. Moriarity, had received training in the signs of impairment by drugs and alcohol. She testified about her observations of the Grievor's behaviour at the toolbox meetings on January 3 and 4, 2025. On January 3, 2025, the Grievor was irritable, disrespectful and aggressive. Ms. Moriarity received advice from the Superintendent, Mr. Rogers, and commenced steps to do a reasonable cause drug test. However, the Grievor left the work site before the test could take place. On January 4, 2025, the Grievor claimed that she had been harassed the previous day about using two way radio communication. She spoke rudely when she told the Supervisor that she would have known what her harassment claim was about if she had been listening to the radio. The Grievor demanded that she not be assigned to Drill 44 because it was a toxic workplace in that location. The Grievor spoke in a raised voice and used aggressive body language.

67 Ms. Moriarity believed the Grievor's behaviour could be affected by substance abuse and sought additional support before taking any action. Ms. Moriarity and Mr. Rogers decided to bring the Grievor in for drug and alcohol testing. Ms. Moriarity completed the Checklist. Supervisor Dixon Clements did not observe the Grievor's behaviour at the toolbox meeting, but he signed the Checklist as verifier to state that it was completed according to the observations of Ms. Moriarity. Section 4 of the Checklist was completed after Ms. Moriarity went through the Checklist with the Grievor.

68 The Employer submitted that the observations marked on the Checklist by Ms. Moriarity confirmed reasonable cause for testing. Ms. Moriarity informed Mr. Clements about the Grievor's behaviour at the toolbox meeting. Mr. Clements confirmed that the Checklist was completed properly. He agreed with the decision to test based on what Ms. Moriarity told him. Mr. Parrill testified that he collected the saliva samples for the screening test and for the laboratory confirmation test. He said Mr. Leaman had raised with him the issue that Mr. Clements had not personally observed the Grievor and could not be the verifier. However, Mr. Parrill considered the verifier to be someone who confirmed that the Checklist was filled out completely. Mr. Parrill reported that the result of the screening test was non-negative for cocaine and amphetamine. The sample sent to the laboratory was damaged and could not be tested.

69 Mr. Rogers testified that he attended an investigation meeting on January 7, 2025, at which the Grievor said she had been harassed and bullied by members of the blasting crew. The Grievor told them that she had used cocaine on December 28, 2024, which was the anniversary of her father's death, and that she had a slip. The Grievor told them she did not regularly use cocaine and did not use amphetamines. She told them that she takes medication that could result in the non-negative screening test. Mr. Rogers said the Grievor did not show any remorse for her conduct. He made the decision to discharge the Grievor because she failed the drug screening test and violated the Substance Abuse Prevention Policy. He considered the seriousness of her actions, and her failure to take ownership of her actions.

70 The Employer submitted that Gregory Johnstone was qualified to give an expert opinion on five issues, including the Grievor's fitness for duty. He testified that the nature of cocaine and amphetamine, as a central nervous system stimulant, is that it may impact thinking and behaviour and cause agitation and impulsiveness. He said the after-effects of cocaine usage included irritability and fatigue. He said both the effects and after-effects of cocaine and amphetamine usage is inconsistent with fitness for duty. He testified about the drug testing systems and how they are used. The oral swab test result is consistent with having the drugs in the blood at the same time, in the absence of any contamination of the oral cavity. The non-negative test for cocaine indicates ingestion most likely within the period of 6 to 12 hours before the test. He said that ingesting cocaine on December 28th would not likely be the cause of a

positive test result on January 4th. He said that an ingredient of the Grievor's Advil medication had a similar structure to amphetamine and could cause a non-negative result for amphetamine but would not cause a non-negative result for cocaine.

71 The Employer submitted that the testimony of Wanda Head, with respect to the toolbox meeting, confirmed that there was a conversation about two way radio communication and there was a disagreement about the procedure required to enter a drill pattern. Although Ms. Head said that nothing stood out about the Grievor's behaviour, she also said she was on the other side of the room and did not hear everything that was said. The Employer submitted that the testimony of the Shop Steward, Mr. Leaman, about the ability of the verifier to sign the Checklist, was based on his experience with post-incident testing. The Employer did not agree with his statement that the verifier needs to observe the behaviour before signing the Checklist.

72 The Employer submitted that, at the toolbox meeting on January 4, 2025, Ms. Moriarity told the Grievor that she had not heard any harassment on the radio on January 3rd. The Grievor testified she did not believe that she had been disrespectful. She testified that she drove the company vehicle on the mine site on January 4th. She was permitted to proceed to work after the toolbox meeting.

73 The Employer submitted that Ms. Moriarity needed guidance from the Superintendent as a new Supervisor, with respect to the grounds for conducting a drug and alcohol test. The Employer acknowledged that the delay in completing the Checklist had prolonged the risk and was not the best practice. However, the evidence showed that the Grievor was not fit for duty that morning. The Grievor's conduct at the toolbox meeting provided the basis for the reasonable cause test.

74 The Employer referred to the following arbitral authorities on drug and alcohol testing: *Weyerhaeuser Company Ltd. and Communications, Energy and Paperworkers Union, Local 447*, (2006) 154 L.A.C. (4th) 3, August 10, 2006 (Sims) (the "*Weyerhaeuser*" case); *Canadian National Railway and CAW, Local 100* (2013) 230 L.A.C. (4th) 148 (M. Picher) (the "*CNR*" case"); *TTC and ATU, Local 113* (2024) 366 L.A.C. (4th) 203 (Kaplan) (the "*TTC*" case); *United*

Steelworkers, Local 5795 and Iron Ore Company of Canada (Bennett), April 17, 2025 (Buffett) (the "*Bennett*" case); *Imperial Tobacco Canada Ltd. and BCTGM, Local 364T (Lambert)* (2001) 65 C.L.A.S. 100 (Lynk) (the "*Imperial Tobacco*" case); and *United Steel Workers, Local 5795 and Iron Ore Company of Canada (Whitten)*, March 10, 2014 (Buffett) (the "*Whitten*" case).

75 The Employer submitted that the *Weyerhaeuser* case confirmed that the purpose of reasonable cause testing was to detect and deter employee behaviour and to minimize the impact on employee privacy. The reasonable belief that an employee was not fit for duty was based on the Supervisor's assessment of the indicators of drug or alcohol usage. The Employer's Supervisor was trained to identify signs of impairment. In the *CNR* case there was a discussion of the preference to have a second opinion from another supervisor who was in a position to observe the behaviour, but this was not a requirement. In the *TTC* case, the arbitrator did not accept the union's claim that, while supervisors observed the bus driver's appearance when he was found asleep in the bus, the supervisors did not know if the bus driver always had that appearance. It was appropriate to show deference to the employer's judgment about reasonable cause in a safety sensitive workplace. Although the grievor in the *TTC* case was permitted to drive home after the drug test, that did not mean that the supervisors did not have reasonable cause at the time they requested a drug test. In the *Bennett* case, the grievor was sent home based on performance when driving a forklift during a driving test. There was an odour of beer on his breath, and he admitted drinking beer that morning. The employer reasonably concluded that the grievor was not fit for duty. The *Imperial Tobacco* case underlined the importance of health and safety in the workplace, and that safety violations were grounds for discipline up to discharge. Under Section 26 of the *Occupational Health and Safety Regulations*, the Grievor had a duty to not be impaired and endanger health and safety. In the *Whitten* case, the Grievor had a substance dependency, which was not applicable in this case. The cases submitted by the Union could be distinguished. The *Langdon* case and the *Weyerhaeuser* case were prior incident testing cases.

76 The Employer submitted that there was reasonable cause for drug and alcohol testing of the Grievor under Section 4.3.4 of the Substance Abuse Prevention Policy. The Policy referred to the Supervisor, meaning that one person could make the observation. The Policy did not

require a verifier. The Checklist does not contain any statement that it must be completed in the presence of the employee or any statement that the verifier has to observe the same behaviours at the same time as the Supervisor. In this case, Ms. Moriarity was the only Supervisor present at the toolbox meeting. The verifier, Mr. Clements, could confirm that the Checklist was completed properly. Mr. Clements stated that, at the point he observed the Grievor after she was brought in for the test, she was "on her best behaviour". Although there was no confirmation test result from the laboratory, the Policy does not require a laboratory test result to make a finding on fitness for duty.

77 The expert opinion of Mr. Johnstone was that the non-negative result in the Point of Collection screening test was unlikely to be a false positive for cocaine, and was likely the result of cocaine ingestion within 6 to 12 hours prior to the test. The Point of Collection screening test result, and the expert opinion of Mr. Johnstone, proved that the Grievor reported to work not fit for duty and under the influence of cocaine.

78 The Grievor violated Section 1 of the Substance Abuse Prevention Policy by reporting to work unfit for duty. The potential effects of reporting to work unfit for duty were catastrophic. Under Section 4.4 of the Employer's Progressive Discipline Policy, termination may be imposed having regard to the seriousness of the offence.

79 The Employer submitted that the Grievor violated the Respect, Inclusion and Diversity Policy when she was rude and disrespectful to the Supervisor on January 4, 2025. The Grievor's actions were hostile, irrational and consistent with someone under the influence of drugs. The Employer did not object to the Grievor raising a safety issue, the problem was the way the Grievor raised the issue.

80 The Employer submitted that the penalty imposed should serve as a deterrent to other employees. Although the Grievor had long service with the Employer, she did not demonstrate any remorse and made no admission of wrongdoing. The Employer requested that the discharge be upheld and the grievance dismissed.

Union Submission

81 The Union submitted that the Grievor was unjustly terminated from her employment. The Grievor was not under the influence of drugs on January 4, 2025. The Employer did not have grounds for discipline for substance abuse. The Grievor did not violate the Substance Abuse Prevention Policy or the Respect, Inclusion and Diversity Policy.

82 At the toolbox meeting on January 3, 2025, the Supervisor, Ms. Moriarity, reviewed the Policy for entry into a drill pattern. She said the Grievor was not receptive to the requirements of the Policy. Ms. Moriarity testified that it was part of the Policy that the Supervisor give approval, however the Drillers give final approval. The Policy was not being followed properly. The Union submitted that it was troubling that an employee who raised a safety concern about the Policy could be subjected to a reasonable cause drug and alcohol test and found unfit for duty.

83 The Union submitted that, on January 3, 2025, the Superintendent, Mr. Rogers, provided guidance to Ms. Moriarity to fill out the reasonable cause Checklist and have it verified by another Supervisor. This process occurred six hours after the Grievor had been assigned to operate a vehicle and equipment in a safety sensitive workplace. The Grievor informed Ms. Moriarity she was going home and, as a result, the test was not completed that day. The Employer did not deactivate the Grievor's access card to prevent site access the next day. The Employer did not have reasonable cause based on the events of January 3rd.

84 The Union submitted that, on January 4, 2025, at the toolbox meeting, the Grievor spoke out about harassment the previous day. The harassment allegation explained why she wanted to move to a different drill. The Employer claimed that the Grievor dictated to the Supervisor what tasks she wanted. Ms. Head attended the meeting and testified that the Grievor did not display the behaviour alleged. She said the Grievor was slightly irritated when her concerns were not addressed. Although Ms. Moriarity later initiated the reasonable cause Checklist, she allowed the Grievor to enter the mine site, start her shift and drive co-workers to their drill pattern. Ms. Moriarity did not assess the Grievor before the start of the shift based on the events of the

previous day. Ms. Moriarity asked the Grievor about her harassment allegation in front of the crew. She did not investigate the Grievor's claim of harassment.

85 Mr. Leaman testified that he had prior experience as Shop Steward with drug and alcohol testing. He said that the process followed by the Employer on January 4, 2025, was inconsistent with his experience. He stated that the Checklist was already completed before Ms. Moriarity met with the Grievor. He questioned the process because the second Supervisor, Mr. Clements, had not had any opportunity to observe the Grievor before the Checklist was completed. The Union disputed the Employer's claim that the role of the verifier is to state that the Checklist was filled out properly. The Union referred to the *Weyerhaeuser* case and its finding that drug and alcohol testing was not justified if important factors were overlooked. It was necessary to ask the employee for their explanation of events. In these circumstances, there were no reasonable grounds for the test, and the test should not have been administered.

86 The Union referred to *United Steelworkers, Local 5795 and Iron Ore Company of Canada (Langdon)*, September 29, 2017 (Buffett) (the "*Langdon*" case) where there was a motor vehicle accident, but the checklist did not have any boxes checked. In the *Langdon* case, the employer did not comply with the policy and could not rely on the test results. In this case, the test results should not be considered. Although the screening test was non-negative for cocaine and amphetamine, the sample sent for the confirmation test at the laboratory was damaged. There was no laboratory test result to support the allegation the Grievor was under the influence of cocaine and amphetamine. There was no test result to confirm that the Grievor was not fit for duty. Mr. Johnstone's report stated that there was not enough information to make a clear determination. The Union submitted that there should be very little weight placed on the report of Mr. Johnstone. The Union referred to *MSC Toronto and United Steelworkers Local 3950-65 (Sutton)*, 2026 CanLII 6010 (ON LA) (Bandhu) (the "*MSC*" case) where the arbitrator found that there was no evidence of the amount of drug consumed and no proof of impairment.

87 The Union distinguished the Employer's authorities. In the *CNR* case, other supervisors also observed the employee, which was a distinguishing factor from this case. In the *TTC* case, two supervisors observed the grievor and then completed the reasonable cause Checklist, which

was a distinguishing factor. In the *Whitten* case, the employee had signed two last chance agreements, which was a different situation than the present case.

88 The Union submitted that the Grievor was not treated fairly by the Employer. The Grievor had been subjected to harassment, which was not addressed by the Supervisor. She was unfairly subjected to the reasonable cause Checklist. There was no quantitative laboratory test result. The discharge of the Grievor placed hardship on the Grievor and her family. In the event the Arbitrator found cause for any discipline, then the penalty should be less than discharge. The Union requested that the Grievor be reinstated with full redress.

Considerations

89 The Union grieves the Employer's discharge of the Grievor, Heather Pollard, by Disciplinary Action, dated January 17, 2025. The Disciplinary Action referred to the Grievor's behaviour and to the Employer's Infraction Report, for the infraction dated January 4, 2025. The description of the infraction was stated as follows:

> Employee violated IOC's Substance Abuse Prevention Policy in that she reported to work under the influence of drugs and operated a vehicle on site. Furthermore, employee behaved in a disrespectful manner towards a staff member, which is a violation of IOC's Respect, Inclusion and Diversity Policy.

90 The grievance alleges a violation of the Collective Agreement. Article 3.01 (a) refers to the Employer's management right to discipline for just cause. Article 10.01 (a) states that an employee may grieve that a discharge is without just and sufficient cause. The Union requests that the Grievor be reinstated to employment with full redress, or alternatively, a lesser disciplinary penalty be substituted for the discharge. The Employer submits that it had just cause to discharge the Grievor.

91 The issues before the Arbitrator are whether the Employer had just cause to impose discipline against the Grievor for the offences in the Infraction Report. If the Employer had just cause for discipline, the next issue is whether the Employer had just cause to impose the penalty of discharge, and, if not, what penalty should be substituted for the discharge.

92 The Grievor was employed as a Drill Operator (Driller) in the mine operated by the Employer. She has about 16 years of employment with the Employer and about 14 years experience as a Driller. She is a member of the drilling crew, under the supervision of the Drilling and Blasting Supervisor. Drillers are assigned to drill holes according to a pattern. The Grievor works a 12 hour shift on a rotation of seven days on and seven days off. On the date of the incident on January 4, 2025, the Grievor was working a day shift, which started with a toolbox meeting at 7:15 a.m.

93 The parties agreed that the Employer's mine operation is a safety sensitive workplace, and that the Grievor was employed in a safety sensitive position.

94 The alleged infractions arose from events at the toolbox meeting on January 4, 2025. The allegation that the Grievor behaved in a disrespectful manner is based on the Grievor's behaviour at the meeting. The allegation of reporting to work under the influence of drugs arises from the Supervisor's observations of the Grievor's behaviour at the toolbox meeting. The Employer submits that these observations by the Supervisor provided reasonable cause for a drug and alcohol test. The Employer relies on the non-negative result for cocaine and amphetamine of the Point of Collection screening test, and the opinion of the expert witness, Gregory Johnstone, to demonstrate that the Grievor was under the influence of drugs.

95 I will first consider the facts related to the alleged infraction of disrespectful behaviour and then consider the facts related to the alleged infraction of reporting to work under the influence of drugs.

96 With respect to the allegation of behaving in a disrespectful manner towards a staff member, in violation of the Respect, Inclusion and Diversity Policy, I have considered the Policy

and the Grievor's behaviour on January 4, 2025. Section 4.3 of the Policy states that the expected behaviour of individuals on IOC sites include "using courteous, respectful and appropriate language". The Policy also states that no individual shall tolerate any lack of "respect", or lack of "politeness and courtesy". The purpose of the Policy, as stated in Section 1, is to "provide and maintain a work environment where individuals are treated with respect and consideration". Based on the content of the Policy, if the Arbitrator finds that the Grievor behaved in a disrespectful manner towards a staff member, then such behaviour will also amount to a violation of the Policy.

97 The Employer alleges that, on January 4, 2025, the Grievor was disrespectful towards Supervisor Danielle Moriarity at the toolbox meeting with the drilling crew. Three witnesses testified about the events at the meeting, namely, Ms. Moriarity, the Grievor and Wanda Head, a drilling crew member. Ms. Moriarity was the only Supervisor present at the meeting. However, Ms. Moriarity reported her observations of the meeting to her Superintendent, Clarence Rogers, and to Human Resources, on the same day as the meeting.

98 Ms. Moriarity testified that, at the toolbox meeting on January 4, 2025, the Grievor spoke to her in a rude and aggressive tone. At the meeting, the Grievor alleged she was harassed in the workplace on the previous day. When Ms. Moriarity asked the Grievor what harassment she was referring to, the Grievor replied that if Ms. Moriarity had been listening to the radio, then she would know about the harassment. Ms. Moriarity said she told the Grievor she did listen to the radio and she had heard positive two way radio communication being used. Ms. Moriarity believed the Grievor was being insubordinate when she told her she was not going back on Drill 44 that day. Ms. Moriarity told the Grievor that she had assigned her to Drill 45, a drill in a different location. Ms. Moriarity also testified that she asked the Grievor if she wished to meet with her after the meeting, to discuss her allegation of harassment, but the Grievor declined the invitation. Ms. Moriarity understood that the Grievor's allegation of harassment was that a member of the blasting crew told her she was not using the correct positive two way radio communication. On the previous day, January 3, 2025, at the toolbox meeting, Ms. Moriarity reminded the crew about using positive two way radio communication, which included stating

the number of the vehicle or equipment requesting permission to enter a pattern and the number of the vehicle or equipment granting permission.

99 The Grievor testified that she did not believe that she had been rude or disrespectful in her statements to Ms. Moriarity at the toolbox meeting on January 4, 2025. She testified that she believed she had a good reason to request that she be assigned to another drill that day, because she had been harassed by a member of the blasting crew on the previous day about her radio communication. Wanda Head, a Driller on the Grievor's crew, testified that she attended the toolbox meeting. She said that she did not hear any disrespectful comments by the Grievor towards Ms. Moriarity. Ms. Head described the Grievor as being a bit irritated about Ms. Moriarity's lack of response to her harassment complaint. Ms. Head also testified that she was not in a location at the meeting where she could hear everything that was being said on the other side of the room.

100 I have considered the issue of credibility, and applied the factors discussed in *Faryna v. Chorny* 151 CarswellBC 133 (BCCA). With respect to the events at the toolbox meeting, on January 4, 2025, I find that Ms. Moriarity's testimony is credible. She was able to recall details of what was said at the meeting. Her testimony was consistent with what she reported in an email to Human Resources and her conversations with her Superintendent, Mr. Rogers. It is not likely she was mistaken in her testimony that the Grievor was making a demand about her work assignment at the meeting, and was not making a request in a respectful manner. The Grievor's testimony that she raised the allegation of harassment and told Ms. Moriarity that she would not go back to her previous drill assignment, confirms the topic of the discussion. The Grievor disagreed that she behaved in a disrespectful manner. However, the Grievor had an interest in the outcome of the proceedings, and her version of events is less likely than Ms. Moriarity's version.

101 I find that the events at the toolbox meeting occurred as described by Ms. Moriarity. I find that the behaviour of the Grievor at the toolbox meeting, on January 4, 2025, was disrespectful towards Ms. Moriarity, including her rude comment about Ms. Moriarity not listening to the radio, and her insubordinate demand that she be assigned to a different drill. I accept Ms. Moriarity's testimony that the Grievor was behaving in a disrespectful manner by

speaking in a raised voice and using aggressive body language by waving her arms when she was speaking. I also find that Ms. Moriarity did not provoke or aggravate the Grievor. Ms. Moriarity had been giving direction to the crew and reminding them about positive two way radio communication, in the context of a prior safety incident. I also do not agree with the Grievor's assertion that she raised the issue of harassment and Ms. Moriarity did nothing about it. Ms. Moriarity offered to meet with the Grievor after the toolbox meeting to discuss her allegation of harassment, but the Grievor declined to meet with her. Therefore, the Employer has proven that the Grievor behaved in a disrespectful manner in violation of the Respect, Inclusion and Diversity Policy.

102 The Employer had just cause to discipline the Grievor for the infraction of behaving in a disrespectful manner and violating the Employer's Respect, Inclusion and Diversity Policy.

103 I will consider whether the Employer had just cause to discipline the Grievor for the alleged infraction of reporting to work and operating a vehicle on site under the influence of drugs, in violation of the Substance Abuse Prevention Policy. There is no dispute that the Grievor reported to work on January 4, 2025 and that she operated a vehicle on site that day. She drove her own vehicle onto the site. She also operated a Company vehicle to drive herself and two other workers from the location of the toolbox meeting to their drills to commence work. The Grievor's drill did not have power, and she then drove from her drill to the lunchroom. The issue in dispute is whether the Grievor was under the influence of drugs at the time and violated the Substance Abuse Prevention Policy.

104 I have considered the language of the Substance Abuse Prevention Policy and the alleged violation. The Policy does not list specific drugs or state specific concentrations of drugs, as determined by a drug test, that will be a violation of the Policy. The Policy refers to the use of drug and alcohol testing as part of protecting the working environment and promoting and enhancing workplace safety. Section 1 states that the Policy is designed to ensure employees can safely perform duties without any limitations due to the use or aftereffects of illicit drugs. The alleged infraction of being under the influence of drugs, in effect, is the same as the statement in the Policy that employees are expected to perform their duties without any limitations due to

illicit drugs. Section 1 of the Policy also states that it is an obligation of each employee to report to work in a fit condition. Section 3 of the Policy defines fitness for duty as fitness to perform work competently and safely, and refers to "a functional physical, mental and emotional state". Section 4.5 of the Policy states that violation of any provision of the Policy will subject an employee to the Discipline Policy up to and including termination. Having considered the language of the Substance Abuse Prevention Policy, I find that being under the influence of drugs in the workplace is a violation of the Policy.

105 I will consider the evidence with respect to whether the Grievor was under the influence of drugs on January 4, 2025.

106 The Employer referred to the result of the Point of Collection screening test on January 4, 2025, and the expert witness testimony of Gregory Johnstone. There may be situations where an employee is proven to be under the influence of drugs or alcohol, or not fit for duty, without evidence of a drug and alcohol test result. This situation occurred in *United Steelworkers, Local 5795 and Iron Ore Company of Canada (Bennett)*, April 17, 2025 (Buffett). In that case, discharge was upheld on the grounds that the grievor was not fit for duty because of alcohol consumption. The finding of alcohol consumption was based on observation of the grievor's behaviour, and the odour of beer on the grievor's breath. However, in this case, the Employer relies on the screening test result, and expert witness testimony, to prove that the Grievor was under the influence of drugs. Therefore, it is necessary to address the issue of whether the Employer may rely on the screening test result.

107 For the Employer to rely on the drug screening test result, the saliva sample must be collected in compliance with the Substance Abuse Prevention Policy, and with other legal requirements for drug testing in the workplace. The issue of compliance with the Employer's Substance Abuse Prevention Policy was addressed in *United Steelworkers, Local 5795 and Iron Ore Company of Canada (Langdon)*, September 29, 2017 (Buffett) (the "*Langdon*" case). In that case, the arbitrator found that the employer did not follow the policy, and therefore could not rely on the drug test result. The arbitrator found that, although the grievor caused damage to equipment when operating a truck, the employer did not demonstrate reasonable cause for the

drug test, because the supervisors did not check any boxes on the reasonable cause checklist. The arbitrator stated that a drug test was not automatic in a post incident situation. He referred to arbitral jurisprudence concerning drug and alcohol testing in the workplace and the need to balance the two competing interests of the privacy of employees and respect for bodily integrity, on the one hand, and the employer interest of ensuring a safe working environment, on the other hand.

108 The balancing of interests described in the *Langdon* case, and in other arbitral authorities, is based on the decision by the Supreme Court of Canada in *Irving Pulp & Paper Ltd. v. CEP, Local 30*, 2013 S.C.C. 34. The Supreme Court of Canada found that random drug testing was not permitted except under the specific conditions of a demonstrated workplace problem, however drug testing could be allowed in reasonable cause or post incident situations.

109 In this case, Section 4.3 of the Substance Abuse Prevention Policy lists the grounds for drug and alcohol testing. Section 4.3.4 describes reasonable cause testing as a test where a supervisor, "trained to identify drug and alcohol use, makes observations that form a reasonable basis for suspecting that an employee has not complied with this Policy".

110 The drug and alcohol test of the Grievor was conducted by the Employer as a reasonable cause test. Based on the arbitral authorities, for the drug test result to be admissible as proof an employee is under the influence of drugs, the Employer is required to demonstrate that there was reasonable cause for the test. In the event there was no reasonable cause, then the Employer is not entitled to rely on the drug test result.

111 When assessing whether the Employer had reasonable cause for the drug test, I have considered the factors discussed in the arbitral authorities. In *Canadian National Railway and CAW, Local 100* (2013) 230 L.A.C. (4th) 148 (M. Picher), the arbitrator states as follows:

> 12 There is relatively little jurisprudence with respect to what constitutes reasonable and probable cause to direct an employee to undergo drug and alcohol testing. The Union does refer the Arbitrator to one reported case: *Weyerhaeuser Co. v. C.E.P., Local 447* (2006), 154 L.A.C. (4th) 3 (Alta. Arb.) (Sims). In that

award the arbitrator found that in fact supervisors did not have reasonable grounds to direct drug and alcohol testing of two employees. The arbitrator concluded that the employees were entitled to damages for "personal indignities and mental suffering". In that case Arbitrator Sims came to the conclusion that there was no real exercise of judgement by supervisors in their decision to require the employees to be tested. As he put it:

> My conclusion in relation to each investigation is that the desire to test was foremost in the decision-makers' mind; that rather than doing as full an investigation as time allowed in the circumstance. They believed they could test if they could complete the checklist and did not look beyond that and make reasoned judgement based on all the available information. I can only conclude that they felt the introduction of testing would work as a deterrent in the workplace and they were anxious to see that happen. Certainly the comments made to the Union suggest such an attitude prevailed.

. . .

14 I consider it important to recognize that the determination of whether there is or is not reasonable cause to require an employee to undergo a drug test is one that will inevitably involve a degree of subjectivity and that each case must turn on its own particular facts. Reasonable persons may or may not agree on what conclusions should or might be drawn from an individual's outward appearance or other surrounding facts. However, in a highly safety sensitive work place, some degree of deference must be given to supervisors who exercise that judgment. It is obviously not necessary that they be proved correct as to their concern. In my view it is sufficient that they or a delegate have sufficiently observed the individual employee, have directed their mind to the person's physical appearance, including such factors as their speech or gate, have weighed any other relevant information at their disposal and ultimately have exercised their judgement in good faith. Other relevant information could, for example, include the presence of a drug or drug paraphernalia. Moreover, in keeping with the Company's policy, wherever practicable, a supervisor who contemplates directing an employee to undergo drug and alcohol testing based on his or her observations should seek the benefit of a second opinion from another supervisor or other person in a position to observe the employee in question.

112 The Employer submitted that reasonable cause for the drug test was demonstrated by the testimony of the witnesses and the completion of the reasonable cause Checklist. Ms. Moriarity testified that she completed the Checklist based on the behaviour of the Grievor at the toolbox meeting. She did not complete the Checklist based on any observation of the Grievor performing tasks in the workplace or any observation of the Grievor after she was brought to the Supervisor's office to meet with her and Mr. Clements. The Checklist contains a list of

observations with boxes that may be checked. Under the heading for physical indicators, which includes the subheadings of "Speech", "Odour", "Appearance" and "Movements/Walking/Balance", Ms. Moriarity did not check any of the boxes. Under the heading for behaviour indicators, Ms. Moriarity checked the boxes for "Irrational", "Belligerent", "Irritability" and "Hostile". Mr. Clements testified that he did not make any independent observations of the Grievor's behaviour. He signed the Checklist as verifier, based on what he was told by Ms. Moriarity. He said that he was verifying that Ms. Moriarity told him she made the observations recorded on the Checklist and that she believed she had reasonable cause for a drug and alcohol test. He also said that he did not consider his own observations of the Grievor, because the Grievor knew she was being brought to the office for a drug and alcohol test, and she was "on her best behaviour". Therefore, Mr. Clements made no independent observations to support reasonable cause for a drug and alcohol test.

113 The Union submitted that the Employer did not follow proper procedure, and the drug test did not comply with the Policy, because the Checklist was completed before Mr. Clements and Ms. Moriarity met with the Grievor, and it was not proper for the verifier to sign the Checklist without having made an independent observation. However, the Policy does not require that the verifier make their own independent observation of the person to be tested. I accept the Employer's submission that there are circumstances where there may be only one person who observes the behaviour or makes the observations that support reasonable cause for the drug test. In those circumstances, the verifier could sign the Checklist to verify that the Checklist accurately records the observations of the Supervisor. However, the fact that the verifier has not made any independent observations to support reasonable cause for testing, may be considered when assessing whether there was reasonable cause for the drug test.

114 I have considered whether there was reasonable cause for the test in this case. The Employer's grounds for reasonable cause were based solely on Ms. Moriarity's observation of the Grievor at the toolbox meeting. The behaviour of the Grievor at the meeting, while disrespectful, may be explained by reasons other than being under the influence of drugs. For example, the Grievor may have been irritated because she believed she had been subjected to harassment on the previous day with respect to her radio communication. She believed she had a

legitimate reason to request that she be assigned to a different drill. She wanted to avoid the member of the blasting crew that she alleged had been harassing her. This issue was not investigated by Ms. Moriarity as a possible cause of the Grievor's behaviour, before she completed the Checklist and decided there was reasonable cause for drug testing. This does not mean the Grievor's disrespectful behaviour was justified. However, the Employer did not investigate and consider what factors could have caused the Grievor to be disrespectful, other than the influence of drugs.

115 It is also a significant factor that the Supervisor permitted the Grievor to leave the toolbox meeting and proceed to the workplace to operate her drill. The Grievor drove a Company pickup truck on the mine site from the location of the toolbox meeting to her work location. She also drove two other Drillers to their work locations. She did not commence work to operate the drill, because the drill did not have power. She then drove to the lunchroom. If Ms. Moriarity had reasonable cause at the toolbox meeting to believe the Grievor was under the influence of drugs, then it would be inconsistent with reasonable cause to allow the Grievor to drive on the roads at the mine site to her place of work at the drill. It was not until about three hours after the toolbox meeting that Ms. Moriarity asked the Shop Steward to bring the Grievor to the Supervisor's office for a drug and alcohol test. The significance of permitting the Grievor to proceed to her work location at her drill may also be considered in the context of the events of the previous day. On that day, the Employer commenced the process for a reasonable cause drug and alcohol test, but the testing did not proceed because the Grievor left the workplace. The Employer took no action related to the previous day, when the Grievor was allowed to report to work on January 4, 2025, and proceed to her drill to commence work.

116 I have considered the discussion of reasonable grounds for a drug test in *TTC and ATU, Local 113* (2024) 366 L.A.C. (4th) 203 (Kaplan). In that case, the parties disputed whether there were reasonable grounds for a drug and alcohol test. Two supervisors made observations of the grievor, a bus driver, who had parked the bus on a side street and fallen asleep. The driver was observed to be dishevelled, sweaty and unable to give a believable explanation for why he parked the bus. One of the factors raised by the Union in that case was that the supervisors had permitted the grievor to drive home after the drug and alcohol test. The arbitrator observed that

the supervisors had made their decision, based on reasonable grounds to conduct a test, and the test was conducted. It was only after the test was conducted that the supervisors made their inappropriate decision to permit the grievor to drive home. However, in this case, the Supervisor's decision to permit the Grievor to proceed from the toolbox meeting to the drill location in the mine, and commence her duties as Driller, was made prior to the decision on reasonable cause for the test. I find that the Supervisor permitting the Grievor to proceed on the mine site to her drill location is a factor to be considered when assessing reasonable cause for the drug and alcohol test.

117 Having considered the relevant factors and the evidence presented at the hearing, I find that the Employer did not have reasonable cause for the drug and alcohol test. The Employer did not comply with the Policy with respect to reasonable cause testing. Therefore, the drug test result is not admissible and may not be considered when determining whether the Grievor was under the influence of drugs.

118 The Employer issued the infraction report for reporting to work under the influence of drugs based on the drug test result. Having found that the drug test result is not admissible, the Employer has not proven this infraction as a ground for discipline.

119 I have considered the evidence and submissions on the issue of the probative value of the Point of Collection screening test. The Point of Collection screening test gave a non-negative result for cocaine and amphetamine without giving any concentration level. A saliva sample was collected and sent to the laboratory for analysis. The laboratory confirmation test would have given the concentration level of drugs. However, the saliva sample was damaged in transit, and the laboratory was unable to complete the confirmation test. Therefore, the only test result available is the screening test which does not give the concentration of drugs in the body.

120 Mr. Johnstone gave expert witness testimony based on the screening test. His testimony about the Grievor's fitness for duty was qualified by the lack of a laboratory confirmation test. However, having found that the Employer did not have reasonable cause for a drug and alcohol test, and that the screening test result is not admissible, it is unnecessary to make a finding on

whether the Point of Collection screening test, together with the testimony of Mr. Johnstone, establishes that the Grievor was under the influence of drugs.

121 I find that the Employer did not have just cause to discipline the Grievor for reporting to work and operating a vehicle while under the influence of drugs in violation of the Substance Abuse Prevention Policy.

122 Having found that the Employer had just cause to discipline the Grievor for disrespectful behaviour but did not have just cause to discipline the Grievor for being under the influence of drugs, I will consider whether the Employer had just cause to impose the penalty of discharge. The Employer submits that the penalty of discharge was justified for the infractions. However, the alleged infraction of being under the influence of drugs is the more serious infraction and is the type of infraction for which a penalty up to discharge could be upheld based on the arbitral authorities. The infraction of disrespectful behaviour is less serious, and, by itself, does not provide just cause for discharge.

123 I have considered what disciplinary penalty is appropriate for the infraction of disrespectful behaviour, having regard to the aggravating and mitigating factors and the seriousness of the conduct. The Grievor's disrespectful behaviour towards her Supervisor was in violation of the Employer's Respect, Inclusion and Diversity Policy. The disrespectful behaviour included an insubordinate demand by the Grievor to her Supervisor about her work assignment. There was no provocation of the Grievor by the Supervisor. The Grievor has not demonstrated appreciation for the need to use respectful behaviour when raising her concerns. She did not express any regret or remorse for her behaviour. The mitigating factors include that the Grievor has about 16 years of service and there was no evidence of a disciplinary record. In these circumstances a three (3) day suspension is appropriate.

124 In summary, I find that the Employer had just cause to discipline the Grievor for disrespectful behaviour towards her Supervisor and violation of the Respect, Inclusion and Diversity Policy. The Employer did not have just cause to discipline the Grievor for violation of the Substance Abuse Prevention Policy or for being under the influence of drugs in the workplace, because the Employer has not demonstrated reasonable cause for a drug and alcohol test. For the infraction of disrespectful behaviour, the Employer did not have just cause to discharge the Grievor. It will be ordered that the Grievor be reinstated in employment with full redress, subject to a disciplinary penalty of a three (3) day suspension.

Decision

125 The grievance is allowed, in part. The Employer had just cause to discipline the Grievor for the infraction of disrespectful behaviour towards her Supervisor but did not have just cause to discipline the Grievor for the infraction of being under the influence of drugs in the workplace. The Employer did not have just cause to discharge the Grievor. It is ordered that the Grievor be reinstated in employment, effective from the date of discharge, with full redress, subject to a disciplinary suspension of three (3) days for the infraction of disrespectful behaviour.

Dated this 7th day of May, 2026.



James C. Oakley, K.C.
Arbitrator