

UPS/Local 804 Panel  
CASE NO: 92-25-25  
GRIEVANT:

### COMPANY STATEMENT OF FACTS

The grievant, a part-time Preloader hired in September of 2017, worked in the Facility. The grievant was discharged on February 21, 2025, for the violation of the National Master Agreement Article 35 – Reasonable Cause Test. Specifically, the grievant's observable action, appearance, and conduct clearly indicated the need for a fitness-for-duty medical evaluation. The positive test result was more than eight (8) times greater than the cutoff level of 15ng/ml pursuant to the collective bargaining agreement.

**Company Exhibit 1 – Discharge Letter**  
**Company Exhibit 2 – Grievance**

The collective bargaining agreement defines reasonable cause as an employee's observable action, appearance, or conduct that clearly indicate the need for a fitness-for-duty medical evaluation. On February 07, 2025, the grievant was observed by Manager Supervisor ( ) and Supervisor ( ) exhibiting the behaviors noted on the observation forms. With the observation the Company had reasonable cause to issue a fitness-for-duty test. As required by Article 35 of the NMA, all three (3) management witnesses have received training in observing a person's behavior to determine if a medical evaluation is required.

**Company Exhibit 3 – HS Drug And Alcohol Awareness Certification Forms**  
**Company Exhibit 4 – Fitness-For-Duty Observation Forms**

The grievant start work time on February 07, 2025, was 5:15AM. The grievant was tested five (5) hours and twenty (20) minutes later at 10:35AM. The grievant's Controlled Substance Test Report shows a positive test for marijuana. When the Confirmatory Test results exceed the cutoff values listed in Article 35 Section 3.4, the test is determined to be positive. At 125ng/ml, the grievant's test results are 8.33 times higher than the 15ng/ml limit.

**Company Exhibit 5 – The Controlled Substance Test Report**  
**Company Exhibit 6 – NMA Article 35 Section 3.4 Confirmatory Test**

The failing of a Reasonable Cause Test subjects the grievant to discharge. The grievant has been discharged and there is no expressed agreement by the Company to any lesser penalty. The grievant's job as a Preloader, not being in a driving function, is subject to NMA Article 35 Section 3.13 Subsection i. which states:

- i. 1<sup>st</sup> offense – A positive test for cannabis/marijuana shall result in a warning letter (subject to successful completion of rehabilitation).

The grievant/Union via the L804 Business Agent \_\_\_\_\_ repeatedly informed the company that they would not seek to take advantage of any rehabilitation opportunities for the grievant. Business A \_\_\_\_\_ who was present at the facility on the day the grievant was tested, February 07, 2025, informed Manager \_\_\_\_\_ on the day of that the union would not enroll the grievant into the rehabilitation program. Days later, on February 22, 2025, the same business agent restated to Labor Manager V \_\_\_\_\_ the Union's decision to not take advantage of the collectively bargained option of rehabilitation for the grievant.

#### **Company Exhibit 7 – NMA Article 35 Section 3.13 Disciplinary Action**

Panel members, the grievant has clearly failed the reasonable cause test. The grievant and the Union were made aware of the test results which included the cutoff levels for which the grievant is accountable to. With company exhibit 5 the panel is also in the know. The union/grievant has clearly chosen to forgo the rehabilitation option. Grievant was paid for the time spent taking the examination during the working hours as contractually required. I remind the panel, that the Company is not bound to apply the outcome of any previous cases to the matter before you today. Based on the facts presented, the company respectfully requests that the panel deny the Union's grievance in its entirety and uphold the discharge.



February 24<sup>th</sup>, 2025

At

Ne Y  
K

Dear L...

This letter will make a record of a hearing that was held in the N facility on February 21, 2025. Present at this meeting were (Business Agent), L (Shop Steward), Division Manager), Jc (Business Manager), V (Labor Manager), (Security), Ro (Security) and yourself.

Under discussion at this hearing was your Notice of Discharge issued on February 7, 2025, for the violation of National Master Agreement Article 35 – Reasonable Cause Test.

After a review of the facts, it was determined that your discharge would be upheld and your employment with UPS is hereby terminated.

This is an official discharge notice between UPS and I.B.T., Local 804.

Respectfully,  
UPS, Inc.

Division Manager

Local# 804  
Center File



# LOCAL 804 GRIEVANCE FORM

44 South Bayles Ave Port Washington, NY 11050

WEB ADDRESS: <http://teamsterslocal804.org> PHONE: 718-786 5700 FAX: 718 786 5757

## GRIEVANT(S) INFORMATION

GRIEVANT(s) NAME: L	ID# 41
STEWARD NAME:	CLASSIFICATION: Preloader
BUSINESS AGENT: R	BUILDING: f.....
WAGE RATE: \$	SEN. DATE: 09/27/2017 FT <input type="checkbox"/> PT <input checked="" type="checkbox"/>

## GRIEVANCE

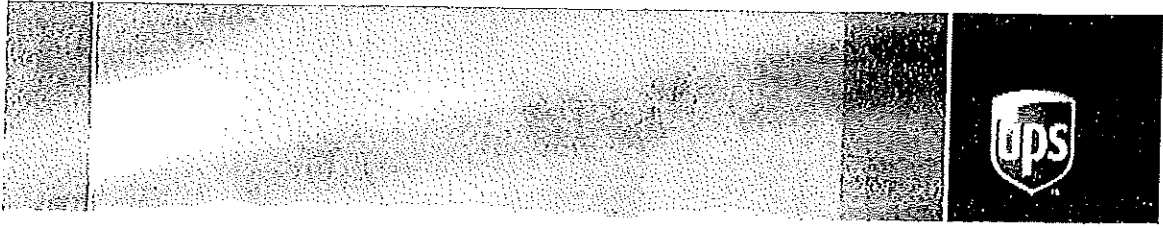
<b>CONTRACT ARTICLES VIOLATED:</b> <i>(including but not limited to):</i> NMA article 7, Sup art. 12 and all that applies
<b>WHO:</b> <i>(Management Involved):</i> Jo
<b>WHEN:</b> <i>(Date/Time of violation):</i> 2/7/2025
<b>WHERE:</b> <i>(Location of violation):</i> ME center
<b>WHAT HAPPENED:</b> <i>(Grievance in precise facts )</i> Employee was discharged without just cause. Employee was not paid for 72 he did not commit a cardinal sin according to article 12 in the supplement.  "In cases not involving the theft of merchandise an employee will remain on the job until a hearing is held with the business agent."

<b>SETTLEMENT REQUESTED:</b> <i>(The following to include being "made whole" in every way)</i> Re-instate employee back to work with full back pay and all contributions owed.
SIGNATURE OF GRIEVANT(s) <i>J.</i> <i>(for grievant)</i> DATE: 02/24/2025

DATE THIS WRITTEN GRIEVANCE SUBMITTED TO COMPANY BY STEWARD/AGENT:

COMPANY RESPONSE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EMPLOYER (Print Name) \_\_\_\_\_ (Sign Name) \_\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_



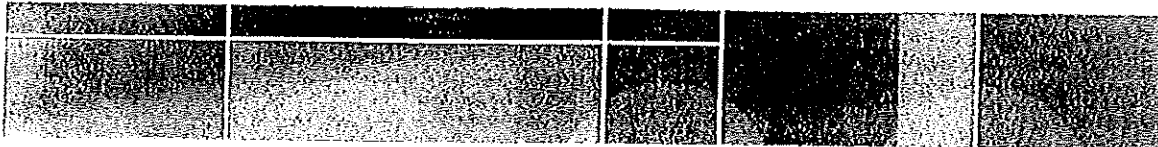
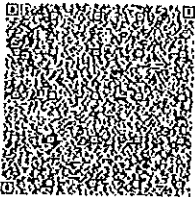
# Certificate of Completion

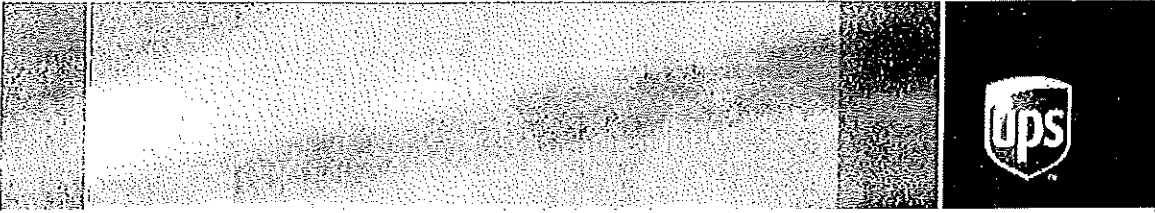
This is to certify that

has completed the course

0164 - HS Drug And Alcohol Awareness  
Certification Section 3 of 3

on 01/04/2024





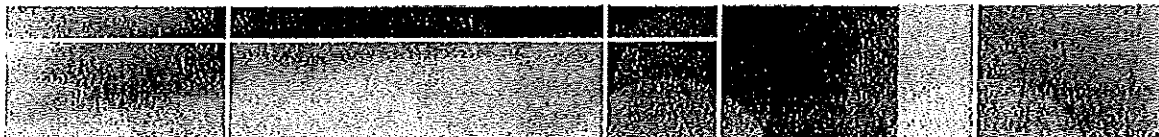
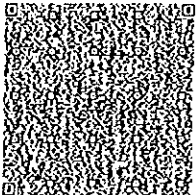
# Certificate of Completion

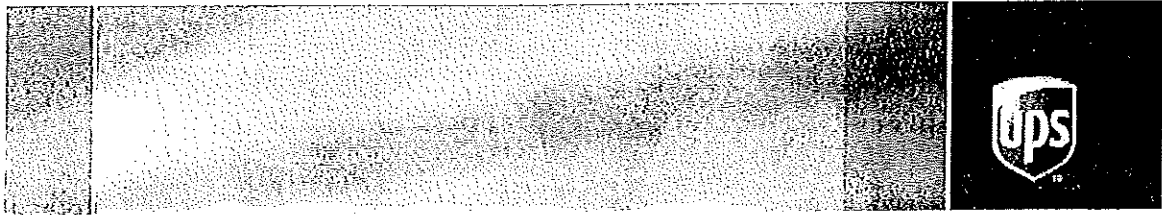
This is to certify that

has completed the course

0164 - HS Drug And Alcohol Awareness  
Certification Section 3 of 3

on 12/16/2024





# Certificate of Completion

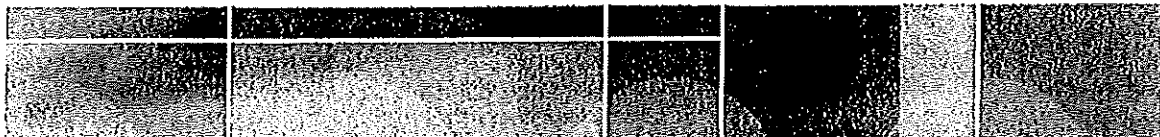
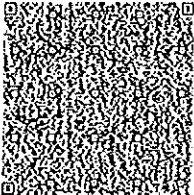
This is to certify that

**XXXXXXXXXX**

has completed the course

**0164 - HS Drug And Alcohol Awareness  
Certification Section 3 of 3**

on 01/08/2025





FITNESS-FOR-DUTY OBSERVATION FORM

Prepare this form each time an individual is suspected of abnormal actions, appearance or conduct which requires a fitness-for-duty evaluation.

EMPLOYEE'S NAME: \_\_\_\_\_ ID or SSN: \_\_\_\_\_

DATE OF OBSERVATION: 2/7/2025

TIME OF OBSERVATION: FROM: \_\_\_\_\_ AM/PM TO: \_\_\_\_\_ AM/PM

LOCATION: Preloud

<u>SPEECH</u>	<u>BALANCE</u>	<u>WALKING</u>
Rapid	Swaying	Stumbling
Slurred	Unsteady	Grasping for Support
Incoherent	Falling	Staggering
Excessively Talkative		

<u>EMOTIONAL INDICATORS</u>	<u>PHYSICAL INDICATORS</u>
Depression    Withdrawal	Dilated Pupils    Rapid Breathing
Anxiety        Moodiness	<u>Redness of Eyes</u> Tremors
Alienation <u>Irritability</u>	Cold Sweats        Odor of Alcohol

Other observed abnormal behavior:  
Smell of marijuana

To the best of my knowledge and belief, this report represents the appearance, behavior and/or conduct of the above-named employee, observed by me, and upon which I base my decision to require said employee to submit to a Fitness-for-Duty Medical Evaluation.

Behavior witnessed by:  
\_\_\_\_\_  
Signature of Supervisor/Manager

2/7/25  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Supervisor/Manager

\_\_\_\_\_  
Date

FITNESS-FOR-DUTY OBSERVATION FORM

Prepare this form each time an individual is suspected of abnormal actions, appearance or conduct which requires a fitness-for-duty evaluation.

EMPLOYEE'S NAME: \_\_\_\_\_ ID or SSN: 4115237

DATE OF OBSERVATION: 2-7-2025

TIME OF OBSERVATION: FROM: \_\_\_\_\_ AM/PM TO: \_\_\_\_\_ AM/PM

LOCATION: 1 Piazza

<u>SPEECH</u>	<u>BALANCE</u>	<u>WALKING</u>
Rapid	Swaying	Stumbling
Slurred	Unsteady	Grasping for Support
Incoherent	Falling	Staggering
Excessively Talkative		

<u>EMOTIONAL INDICATORS</u>	<u>PHYSICAL INDICATORS</u>
Depression	Withdrawal
Anxiety	Moodiness
Alienation	<u>irritability</u>
	Dilated Pupils
	<u>Redness of Eyes</u>
	Cold Sweats
	Rapid Breathing
	Tremors
	Odor of Alcohol

Other observed abnormal behavior:

Employee was sluggish moving around. Reclaiming slower than normal. The smell of marijuana was potent. He took his keys out and placed them on the desk. I saw the same car when he came back.

To the best of my knowledge and belief, this report represents the appearance, behavior and/or conduct of the above-named employee, observed by me, and upon which I base my decision to require said employee to submit to a Fitness-for-Duty Medical Evaluation.

Behavior witnessed by:

\_\_\_\_\_  
Signature of Supervisor/Manager

2/7/2025  
Date

\_\_\_\_\_  
Signature of Supervisor/Manager

\_\_\_\_\_  
Date

He accused me of going into his jacket because his keys were on the desk. He forget he took them out.



Occupational Health Services Corp.

11800 Exit Five Parkway, Suite 120  
Fishers, IN 46037  
Phone: 800-939-4782  
Fax: 855-626-5374

**Controlled Substance Test Report**

Attn: Benjamin Ivester  
10881 Lowell Ave Suite 300  
Overland Park, KS 66210

Client Name: UPS DT BILLING ACCOUNT ONLY  
Account Number: 450918-00000

Phone:  
Donor Name: L  
Donor ID:  
GDL Number: XXX

Employee ID:  
Employee ID 2: 4  
Emp Category:

Test Result: Positive  
Result Description: Positive  
Substances Found:  
MRO Verified Comment: Positive metabolite(s): Marijuana

Specimen ID: 3205343  
Collection Date: 2/7/2025 10:35 AM  
Testing Panel: Urine 5 Panel + 6MAM+MDMA + Oxycodone w/Nitrites  
COF Received: 2/11/2025  
Verified Date: 2/17/2025  
Reported Date: 2/14/2025 11:16 AM  
Collection Site: JDM Medical Associates LLC- Oxford  
Transmitted By: Abraham Hammell, D.O.

Test Reason: Reasonable Cause  
Test Type: Non-DOT  
Lab Account #: 11519898  
Lab Name: Quest Diagnostics  
Test Account #: 450918-00000  
Client Name: UPS DT BILLING ACCOUNT ONLY  
Cost Center:  
Location ID:

Comments:  
Marijuana 125:ng/mL  
Quantitative result is performed after initial screen is positive.

We are currently working to remove THC from all nonfederally regulated drug testing panels for work sites in the state of New York, to comply with recent guidance from the New York Department of Labor. Until such time as we have been able to remove THC from these panels, we are required to report laboratory positive results for THC to the employer. However, the employer for New York State work sites must not make any employment decisions based upon that positive THC result. Please consult your corporate legal counsel on this issue. Depending on how your current testing program setup in New York, be assured that Customer Success will work with you to address the above requirements. If you do not have a Customer Success representative, please reach out via phone at 800-888-5773 or via email at [cservice@fadv.com](mailto:cservice@fadv.com).

Certified Medical Review Officer:

MRO Phone:

Abraham Hammell, D.O.

800-939-4782

## **Article 35**

The employee's conduct must be witnessed by at least two (2) supervisors, if available. The witnesses must have received training in observing a person's behavior to determine if a medical evaluation is required. When the supervisor(s) confronts an employee, a Union representative should be made available pursuant to Article 4 of the National Master UPS Agreement as interpreted. If no steward is present, the employee may select another hourly paid employee to represent them.

Documentation of the employee's conduct shall be prepared and signed by the witnesses within twenty-four (24) hours of the observed behavior, or before the test results are released, whichever is earlier. In addition, a copy will be sent to the Local Union in a timely manner.

Note: (Reasonable Cause)

At the time the urine specimen is collected, the employee may opt to also give a blood sample. If the employee takes this option, the blood sample must confirm positive presence for the substance confirmed in the urine test. If no positive is confirmed in the blood specimen, the employee will be given a warning letter, offered an opportunity for rehabilitation as set forth in this Article, and the employee will be required to otherwise satisfy the requirements imposed by the DOT regulations. However, if there is a second occasion where reasonable cause testing results in a positive urine test, the employee will then be subject to discharge.

Non-DOT—Reasonable Cause:

In the event an employee (not covered by DOT) is tested pursuant to the discipline Article in the Supplemental Rider or Addenda to the National Master UPS Agreement, such test will be performed under the same procedures and requirements as those set forth in this Article. In the event the test result is positive, as set forth above, it shall be considered a dischargeable offense.

## **Section 3.9 Post-Accident Drug Testing**

DOT mandated drivers will be required to submit to a drug test after a DOT defined serious accident, which is one in which:

**NATIONAL MASTER  
UNITED PARCEL SERVICE AGREEMENT**

**Article 35. Employee's Bail, License, Substance and Alcohol Testing**

**Section 3.4 Confirmatory Test**

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed. The following cutoff levels shall be used to confirm the presence of drugs or drug metabolites:

Substance	Confirmatory Test Level (ng/mL)
Marijuana Metabolites (2)	15
Cocaine Metabolites	100
Codeine/Morphine:	2000
Hydrodone/Hydromorphone	100
Oxycodone/Oxymorphone	100
6-Acetylmorphine	10
Phencyclidine	25
Amphetamine/Methamphetamine(4)	250
MDMA(4)/MDA (5)	250

(1) For grouped analytes (i.e. two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

(2) An immunoassay must be calibrated with the target analyte, A-9-tetrahydrocannabinol 1-9-carboxylic acid (THCA).

(3) Alternate technology (THCA and Benzoylcegonine): When using an alternate technology initial test for the specific target analytes of THCA and Benzoylcegonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15ng/mL for THCA and 100na./mL for Benzoylcegonine).

(4) Methylenedioxymethamphetamine (MDMA).

(5) Methylenedioxyamphetamine (MDA).

In the event the initial drug test indicates a positive response the confirmatory test must be done.

On an initial drug test, the laboratory must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, the laboratory must conduct a confirmation test.

On a confirmation drug test, the laboratory must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

These substances and test levels are subject to change by the Department of Transportation as advances in technology or other considerations warrant.

Company Exhibit 6

**NATIONAL MASTER  
UNITED PARCEL SERVICE AGREEMENT**

**Article 35. Employee's Bail, License, Substance and Alcohol Testing**

**Section 3.13 Disciplinary Action**

→ Employees may be subject to discipline up to and including discharge as provided below if they test positive for drugs specified elsewhere in this Article.

→ 1. Reasonable Cause Testing

→ a. A positive test is a dischargeable offense unless the Union and the Employer expressly agree to a lesser penalty. Any such agreement will not be precedent setting.

b. Refusal to submit to a reasonable cause drug test is a dischargeable offense.

→ c. Non-Driving Reasonable Cause

→ i. 1st offense--A positive test for cannabis/marijuana shall result in a warning letter (subject to successful completion of rehabilitation)

ii. 2nd offense--A positive test for cannabis/marijuana five (5) or more years after the first offense shall result in a warning letter (subject to successful completion of rehabilitation).

iii. 3rd offense--A positive test for cannabis/marijuana is dischargeable offense.

2. Post-Accident Testing

a. A positive test is a dischargeable offense.

b. Refusal to submit to a post-accident drug test is a dischargeable offense.

3. Random Testing

a. 1st offense--A positive test shall result in a warning letter (subject to successful completion of rehabilitation).

b. 2nd offense--A positive test is a dischargeable offense.

c. Refusal to submit to a random drug test is a dischargeable offense.

4. Pre-qualification

a. 1st offense--A positive test shall result in disqualification/not considered for feeder list until the next feeder driver school is conducted (subject to successful completion of rehabilitation).

b. 2nd offense--A positive test is a dischargeable offense.

5. Other Dischargeable Offenses:

a. Failure to successfully complete rehabilitation.

b. A positive specimen as part of after-care drug testing.

c. Failure to comply with after-care treatment plan.

d. An adulterated or substituted specimen.



## **Part Time Preloader- Marijuana termination**

*(exhibits one & two – panel filing & NMA article 35)*

The Grievant is a non-DOT employee who was given a reasonable cause drug test per article 35 of the National Master Agreement. Article 35 is highly specific and had new language added to it in the 2023 through 2028 CBA. For an employee such as The Grievant, the CBA only allows for three possible outcomes: A warning letter subject to the successful completion of rehabilitation, a warning letter with rehabilitation merely made available, or nothing. There is no justification whatsoever to treat this case as a termination.

Assuming the company meets its burden of proof and establishes that The Grievant's urine test be considered positive for marijuana under the CBA, no penalty more severe than a warning letter may be issued. New language was negotiated into the 2023-2028 National Master Agreement as article 35 section 3.13 1(c)(i). That language makes clear that for "Non-Driving Reasonable Cause- 1<sup>st</sup> offense- "A positive test for cannabis marijuana shall result in a warning letter (subject to the successful completion of rehabilitation)." Nevertheless, this penalty is not justified as the company had serious procedural failures relating to The Grievant's testing.

*(exhibits three, four, & five- article 37 grievances, contemporaneous e-mails, & unanswered info request)*

There are essentially no facts in dispute. On February 7<sup>th</sup> 2025, The Grievant arrived at work for his normal start time of 5:15am. The two supervisors he normally worked with were not there that day and Grievant would have to report directly to The Center manager. The Center manager started the shift by asking any of the bargaining unit members whether they wanted to go home. The Grievant volunteered to go home, as he and The Center manager have a history, whereby Grievant has filed multiple harassment grievances against the center manager, rising to the level of a sit down between Grievant, the center manager, the union and the then division manager. The Center manager did not allow The Grievant to go home, stating that he "needed" Grievant. Grievant was then instructed to work as a scanner in a retain trailer and he complied.

It took approximately 30 to 45 minutes for the Grievant to complete the scanning in the retain trailer. The Center manager then moved Grievant to the sort aisle as a sorter, despite the fact Grievant

normally works as a scanner. Once again, the Grievant complied with the instruction without issue and his shop steward happened to be assigned to work as Grievant's scanner while Grievant sorted. For unclear reasons, The Center manager decided he would stand in close proximity to Grievant and observe him for essentially the entire time The Grievant was in the sort aisle. While The Grievant felt intimidated and over-supervised by The Center manager's bizarre behavior, he did not react and continued to do his job. At approximately 7:30 the preload went on break.

The Grievant submitted to a search and all other security procedures when exiting and entering the facility for his 10-minute break. At approximately 7:40, on the way back to his workstation, The Grievant saw his Business Agent. Grievant said to his BA, "Bossman, can you come by bay 4 and talk to me when you get a chance," intending to point out and report Center manager's over supervision and attempted intimidation that morning. Center manager saw this brief interaction and asked Grievant, "what was that you said?" to which Grievant responded, "I wasn't talking to you, I was talking to my shop steward." Grievant then continued to his workstation at bay 4. Center manager turned to the BA and exclaimed "I smell weed." The Center manager then followed The Grievant and instructed him to go to Center manager's office. Grievant stated that he needed a shop steward. Grievant then got his shop steward and the men went to Center manager's office.

When Grievant and his steward arrived in the manager's office, a supervisor and an OMS were already present. Immediately, The manager asked the supervisor and the OMS whether they smelled weed. Both responded yes. The manager then asked Grievant whether he smoked on break and Grievant responded no. The manager asked Grievant if he had anything on him and Grievant not only responded "no," he fully emptied out his pockets to show he had no prohibited items on him. The manager asked Grievant if he wanted to change his answer because the center manager would be calling a tester to the facility. At this point, Grievant and his steward caucused. When the men reentered, Grievant reaffirmed that he did not smoke on break and that he does not come to work under the influence. Grievant went on to state that he does smoke before he goes to sleep at night, and that he occasionally smokes after his shift is over. Both he and his steward stated that a blood test would prove he was not under the influence on the job. Both men specifically requested a blood sample be given at the time the urine sample was given. The center manager did not respond to the request for a blood test.

The tester did not arrive at the facility until approximately 11am. In approximately three hours between the meeting and the tester's arrival, The Grievant had no further discussions with management. During this time, there were conversations between the BA and management, mainly

focused on the lack of reasonable cause as well as discussions relating to the requested blood test. It was not until the tester arrived that Grievant and the union learned of an allegation related to alcohol. The manner Grievant and the union learned of this was a waiver form The Grievant was told he was required to sign or else he'd be fired. He signed the forms under protest, submitted to a breathalyzer test for alcohol and a urine test for drugs. The Steward and Grievant asked the tester for a blood test and the tester said that he was not qualified to take blood, and that would be a different tester and UPS did not call that tester. Center manager told the BA that the labor manager stated that Grievant had 24 hours to get his own blood test. No other instruction was given regarding how or where Grievant should go for such a test. As no member of Local 804 has ever been required to get their own blood test, The Grievant and the union still have no idea where to get such a test, how to pay for such a test, nor the procedure to tell the tester to follow in getting an acceptable test to a Medical Review officer. The Grievant did not have a blood sample drawn, and he was removed from the job, without a hearing with the business agent in violation of article 12.

On February 18<sup>th</sup>, 2025, the company provided some of the documents they are required to provide to the union pursuant to article 35. They provided the observation forms underlying the drug test, however, these forms are required to be completed within 24 hours of the observation and provided to the union "in a timely manner." It is unclear why the company withheld these observation forms for allegedly 11 days. Further, the company failed and refused to ever provide the alcohol observation forms despite it being required under the CBA and it being specifically requested. The company provided the urine test results, the breathalyzer test results, and what it alleges to be the supervisor's certifications. The second step hearing was held on Friday February 21<sup>st</sup>. The Grievant was terminated and offered the opportunity to attend rehabilitation for marijuana- he declined.

*(exhibits five, six, & seven- panel presentations and decision forms)*

As all the above facts were contemporaneously documented, the only issues before this panel relate to whether the company's procedural defects would still allow them to require The Grievant to attend rehabilitation for his off-duty marijuana use. First, the company must establish that it had reasonable cause to send The Grievant for a urine test. Assuming there was reasonable cause for a urine test, the next issue is whether the company may instruct the tester not to take a requested blood sample at the time the urine sample is given. There was no reasonable cause to test, and the company had no right to instruct the tester not to perform a blood test after The Grievant opted to take one.

In determining whether there was reasonable cause to test, this case is strikingly similar to another case, the termination of Grievant 2, a discharge for which The labor manager was one of the observers and represented the company at the second step hearing. In that case, Grievant 2 was an inside employee who had a box fall on his head and, when he attempted to file an injury report, management claimed he needed a fit for duty test. The company had Grievant 2 waiting for the tester, while injured, and without a worker's compensation number, for hours before Grievant 2 left to seek medical attention. The labor manager reviewed this and determined that it constituted a failure to submit to a test and terminated Grievant 2. The union challenged the validity of reasonable cause and the labor manager dug in. However, after exchanging information in anticipation of the panel hearing, the company withdrew the discipline and grievant 2 was reinstated with full back pay.

Approximately eight months later, the labor manager once again tried to terminate a non-DOT employee for alleged impairment on the job in another case the termination of Grievant 3. In that case, as in this Grievant's, grievant 3 had recently made harassment complaints against management and the response was a fit for duty test. In that case too, the company had the same dubious observations: "smelled of marijuana and redness of eyes." In that case, the company refused to administer the requested blood test. In that case, the panel decided to uphold the grievance and give the grievant the opportunity, but not requirement, to attend rehabilitation. It is worth noting that, unlike the instant matter, the company claimed in their presentation: "given what they saw and smelled, the supervisor couldn't walk away and allow the grievant to continue with his day routine while being impaired and thus putting his safety and those around him at risk." The Center manager claims that the observation was made while the Grievant was working, but the Center manager closely watched Grievant work for approximately 2 hours, with no break, and felt no need to stop him from doing so. This panel should rule the same way it did in Grievant 3's case.

Unfortunately, the labor manager still did not learn how to comply with article 35 after failing to do so in the other 2 cases. In December 2022, the labor manager terminated grievant 4 for alleged workplace impairment. In that case, grievant 4 had an argument with management the day prior and was forced to take a urine test for marijuana. In that case, as with this one, the grievant admitted to smoking marijuana the day prior but stated he was not currently impaired. The same factors, smell of marijuana, redness of eyes, and irritability (after wrongful accusation), were alleged to be observed. In that case, the company refused to administer a blood test. In that case, the labor manager cut and pasted the identical line from his Grievant 3 presentation, management "couldn't walk away and allow

the grievant to continue with his day routine while being impaired and thus putting his safety and those around him at risk.” The labor manager went on to describe the Marijuana Regulation and Taxation Act stating, “an employer must have specific articulable symptoms of impairment.” In the instant matter, there are no alleged signs of *impairment*. Smelling like marijuana and having red eyes do not affect performance, nor does it create health or safety hazards. Nothing was said to this Grievant while working and no steps were taken while he was working. This was pure retaliation, because after break the Grievant wanted to tell his BA about the Center manager’s behavior that morning. Regardless, Grievant 4’s case was settled in executive session for full back pay and the opportunity to resign, as grievant 4 did not attend his panel hearing and was not interested in returning to a part time job in a hostile and retaliatory workplace.

The company cannot be allowed to be lax when alleging reasonable cause. The reality is that the vast majority of part time employees in Local 804’s jurisdiction use marijuana in their off time. A trumped up fit for duty test, and refusal to give a blood test, is far too simple a way for the company to retaliate against workers. If someone is in fact impaired on the job, the union takes that seriously. But the Grievant was not impaired. The company’s retaliatory use of the alcohol test is evidence of their ill intent. The company either never bothered to fill out the observation forms or purposely withheld them. There should be an adverse inference as to either of the observers’ ability to identify impairment, or an assumption of malice. Most important is the fact that the Center manager watched the Grievant work for 2 hours and unlike the other cases, he “felt he could walk away”, not calling for a test until after Grievant had completed his pre-break assignment, went on break, and attempted to talk to his business agent. It is also worth noting that the Center manager has his own history of integrity issues, whereby, a few years ago, the Center manager was demoted for falsifying records. It is not a stretch to believe he falsified the observation form in this case. As there were no articulable signs of impairment, the urine test never should have been administered.

If the urine test is to be considered, the company still has no right to require rehabilitation due to the lack of a positive blood test. At no time before or after the three cases just described has UPS successfully refused to administer a blood test on the basis that an employee must get a sample taken themselves. There is no basis whatsoever for the company to take this position. The language is clear and unambiguous: “At the time the urine specimen is collected, the employee may opt to also give a blood sample”, not at a testing facility of the employee’s choosing within an arbitrary timeframe. Any ambiguity in this language is cleared up by the long standing and consistent practice of the blood sample

being taken. While the union can understand why the company wants to offload this cost and responsibility on to a part-time employee at risk of losing their job, the company did not bargain for this. Not only should the company be admonished for repeatedly trying and failing to gain something in panel they were unable to achieve in bargaining, but it is also particularly galling to force the burden on its most vulnerable workers.

As a final point, the company may try to argue that it is somehow problematic for an employee to decline rehabilitation for marijuana use. This is unfounded. Marijuana is legal and has been found to have positive medical properties, including but not limited to mental health. There is no reason to believe Grievant is an irresponsible user, as he does not use prior to or while at work. A rehabilitation program will not only be expensive and time consuming, but it will also require a year of full abstinence and ongoing testing for all drugs and alcohol. While we are not asking for any admissions, many people in this room would have significant negative effects on their mental well-being if forced to abstain from all intoxicants for a year. It is an excessive penalty for legal and responsible off duty conduct. The grievance must be upheld in full.

[j.pomeranz@teamsterslocal804.org](mailto:j.pomeranz@teamsterslocal804.org)

---

**From:** j.pomeranz@teamsterslocal804.org  
**Sent:** Tuesday, February 25, 2025 5:33 PM  
**To:**  
**Cc:**  
**Subject:** FW: [EXTERNAL] Info Request- e  
**Attachments:** ExtractPage1.pdf; L... t Love panel filing.pdf; Drug And Alcohol Awareness Certification.pdf; 4115237.pdf; Information\_Request- L... pdf

Thanks ^

Is there any reason the alcohol observations are not being provided? Were they destroyed or were they never written?

Also, as a supplemental request- can you please provide the training slides that the managers reviewed for their Certification? Thanks.

**From:** William@upsonline.com <William@ups.com>  
**Sent:** Tuesday, February 25, 2025 4:36 PM  
**To:** j.pomeranz@teamsterslocal804.org  
**Subject:** RE: [EXTERNAL] Info Request-

Josh,

The attached are exhibits that may be used at panel and well as the fulfilment of your information request to the extent that the records are kept and / or is available.

Labor Relations Manager  
North Atlantic District  
Email:



**CONFIDENTIALITY NOTICE:** This e-mail message, including any attachments, is for the sole use of the intended recipients and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** j.pomeranz@teamsterslocal804.org <j.pomeranz@teamsterslocal804.org>  
**Sent:** Tuesday, February 25, 2025 2:52 PM  
**To:** W... Labor Relations NY <laborny@ups.com>  
**Cc:** j.pomeranz@teamsterslocal804.org  
**Subject:** [EXTERNAL] Info Request- L...



**CAUTION!** This email originated outside of the organization. Please do not open attachments or click links from an unknown or suspicious origin.



## LOCAL 804 - DELIVERY AND WAREHOUSE EMPLOYEES

An Affiliate of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

44 SOUTH BAYLES AVENUE, PORT WASHINGTON, NY 11050 -TEL. (718) 786-5700 - FAX # (718) 786-5757  
EMAIL: EXECUTIVEBOARD@TEAMSTERSLOCAL804.ORG WWW.TEAMSTERSLOCAL804.ORG

February 25, 2025

E-mail: wd

Re: Information Request- Termination

Will:

In advance of the Panel hearing for [redacted] the Union is requesting the information below. Please provide it no later than March 11, 2025. If any of the information is available earlier, you may provide it immediately. If any part of this request is denied or if any material is unavailable, please provide whatever items are available as soon as possible, which the Union will accept without prejudice to its position that it is entitled to all documents, reports, or other sources which contain the requested information called for in this request. If you have a problem with providing any of these items, please contact the Union representative making the request regarding the difficulty immediately and in writing. Please note that this request may be used as an exhibit in the panel hearing.

### Requested Information

1. Per Article 35 Section 4.6, "documentation of the employee's conduct shall be prepared and signed by the witnesses within twenty-four (24) hours of the observed behavior. In addition, a copy will be sent to the Local Union in a timely manner." The Company sent Mr. [redacted] for an alcohol test and the documentation has not been provided pursuant to the CBA. Provide the documentation immediately.
2. The name of any employee sent for a reasonable cause test in Local 804's jurisdiction who paid for their own blood test and the date of the tests.
3. Any other statements given by witnesses, and any video or recordings of Mr. [redacted] alleged misconduct or behavior.