

2018 CarswellBC 159
British Columbia Arbitration

Conifex Inc. and USW, Local 1-2017 (Kristoffersen), Re

2018 CarswellBC 159, 134 C.L.A.S. 104, 288 L.A.C. (4th) 208

**IN THE MATTER OF AN ARBITRATION UNDER THE LABOUR
RELATIONS CODE, R.S.B.C. 1996, c. 244 (as amended)**

Conifex Inc. (Fort St. James Division) (The "Company") and United Steelworkers, Local 1-2017 (The "Union")

Robert B. Blasina Member

Heard: January 9, 10, 2018

Judgment: January 26, 2018

Docket: None given.

Counsel: Sarbjit S. Deepak, for Union

Drew G. Demerse, for Company

Subject: Public; Labour

Related Abridgment Classifications

Labour and employment law

I Labour law

I.10 Discipline and termination

I.10.a Grounds

I.10.a.ix Lateness for work

Labour and employment law

I Labour law

I.10 Discipline and termination

I.10.c Factors considered

I.10.c.vi Work record

Labour and employment law

I Labour law

I.10 Discipline and termination

I.10.c Factors considered

I.10.c.vii Personal circumstances

Labour and employment law

I Labour law

I.10 Discipline and termination

I.10.d Kinds of discipline

I.10.d.v Discharge

I.10.d.v.B Just cause

Headnote

Labour and employment law --- Labour law — Discipline and termination — Grounds — Lateness for work

Labour and employment law --- Labour law — Discipline and termination — Factors considered — Work record

Labour and employment law --- Labour law — Discipline and termination — Factors considered — Personal circumstances

Labour and employment law --- Labour law — Discipline and termination — Kinds of discipline — Discharge — Just cause

Table of Authorities

Cases considered by *Robert B. Blasina Member*:

Canadian Broadcasting Corp. v. C.U.P.E. (1979), 23 L.A.C. (2d) 227, 1979 CarswellNat 1023 (Can. Arb.) — referred to
Houston Forest Products Co. v. I.W.A., Local 1-424 (1984), 17 L.A.C. (3d) 211, 1984 CarswellBC 2636 (B.C. Arb.) — referred to

William Scott & Co. v. C.F.A.W., Local P-162 (1976), [1977] 1 Can. L.R.B.R. 1, [1976] 2 W.L.A.C. 585, 1976 CarswellBC 518 (B.C. L.R.B.) — followed

GRIEVANCE by union challenging grievor's discharge for culminating incident of lateness.

Robert B. Blasina Member:

I INTRODUCTION

1 The Grievor, Nicola Kristoffersen, was employed at the Company's sawmill in Fort St. James, B.C. Her job category was Warehouse/Watch/First Aid. She commenced her employment on March 14, 2011 and was discharged by letter dated June 8, 2017:

The grounds for termination are in regards to repeated culpable attendance incidents, the most recent being June 06, 2017 and the previous discipline and history on file.

2 The British Columbia Labour Relations Board, in *William Scott & Co. v. C.F.A.W., Local P-162*, [1977] 1 Can. L.R.B.R. 1 (B.C. L.R.B.) ("*Wm. Scott*"), described the analysis to be undertaken by an arbitrator in a discharge case:

Instead, arbitrators should pose three distinct questions in the typical discharge grievance. First, has the employee given just and reasonable cause for some form of discipline by the employer? If so, was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case? Finally, if the arbitrator does consider the discharge excessive, what alternative measure should be substituted as just and equitable? (p. 5)

3 On the first *Wm. Scott* question, the Union acknowledges that the Grievor gave just and reasonable cause for some form of discipline. However, on the second question, the Union asserts that the discharge was excessive in all of the circumstances of the case, The burden of proof is on the Company to show that its decision to discharge the Grievor was not excessive; meaning that the discharge fell within a range of reasonable possible outcomes.

4 The Company called two witnesses; Melissa Wilson, Purchaser, and Karen Andros, Human Resources Co-ordinator. The Union called one witness, the Grievor.

II BACKGROUND

5 The Grievor is 32 years old, of First Nations descent. She was raised in Fort St. James, and her family and community connections are rooted in the area. She is a single mother with a 12 year old son with ADHD. She describes her family as supportive, particularly in assisting her with her son. Her son attends a First Nations elementary school. She describes the school as also being supportive.

6 The Grievor testified that she "loved" her job. She liked working for her supervisor, Ms. Wilson. She earned over \$31.00 per hour, plus benefits under the collective agreement. The Grievor is now employed at a local gas station earning minimum wage.

7 As a Warehouse/Watch/First Aid person, the Grievor worked a four-on-four-off, 12-hour shift, rotating between dayshift and nightshift. The dayshift goes from 6:00 a.m. to 6:00 p.m., and the nightshift from 6:00 p.m. to 6:00 a.m. The watchperson and first-aid attendant duties are safety-related. The Grievor was required to walk around the mill and regularly monitor the state of the kilns, as well as the fire suppression equipment and equipment locations, and to accurately fill out required reporting forms. The Grievor holds a Level III First Aid Certificate which qualifies her as a first-aid attendant. By regulation, the mill cannot operate without a qualified first-aid attendant on site.

8 Employees in other job categories normally work an eight hour shift. Although others may be present who hold a Level III First Aid Certificate, in practice the Warehouse/Watch/First Aid person remains at work until relieved by his/her counterpart on the incoming shift, or until management figures out who else could cover. The waiting Warehouse/Watch/First Aid person would be paid at double-time for the overtime incurred. However, these are not circumstances which necessarily would offset the imposition upon the waiting employee. The overtime would be unscheduled and unplanned, and the waiting employee would have already put in a 12-hour dayshift or nightshift, and, although overtime is voluntary, remaining at the job is an understood responsibility.

The Culminating Event

9 The Grievor was on dayshift on June 6, 2017, and was expected to report at 6:00 a.m. She slept in. Her son had taken her mobile telephone, and she was not awakened by the alarm. She testified that she had set the alarm, but she did not hear it. She conceded that she had not heeded the advice of her supervisor, Ms. Wilson, to back up her phone alarm with an alarm clock. The evidence was that Ms. Wilson in the past had advised her to have one or two clocks as a back-up alarm system. I find as fact the narration contained in Ms. Wilson's investigation report:

Nicola was nearly an hour and a half late for her 6am shift on Tuesday June 6, 2017 (she arrived at approximately 7:20am). Her cross shift attempted to call her at just after 6am with no answer. I called and left her a voicemail on her cell phone at approximately 6:20am. Nicola returned the call at 6:23am and said that her son took her phone out of her room. I asked her if she was on her way, she said yes and then didn't show up until approximately 7:20am. Once she got to work I asked her again what happened and she gave the same reason, that her son had taken her phone out of her room. When I asked her why it had taken her nearly an hour to get to work when she lives right in town and the drive is only 10-15 minutes she said that she needed to calm down after punishing her son. (as written)

10 Ms. Wilson sent the Grievor home. Two days later, after discussion with Ms. Andros and upper management, she issued the termination letter partially cited above.

11 The Grievor testified that she woke up, and looked for her phone to see what time it was. She testified that she called Ms. Wilson and told her she was sorry, she had slept-in, her son had taken her phone and she could not hear the alarm, and she would be in as fast as she could.

12 The Grievor testified that it usually takes her a half-hour to get out of the house, but she was delayed this day because she was so upset. She said she was screaming at her son and blamed him, and she should not have done so. She said she was in no condition to be on the road, and she needed a few minutes "to get myself together."

13 The Grievor arrived at approximately 7:20 a.m. She testified Ms. Wilson told her, "If it only took you 15 minutes, I could have let it go." I do not find this evidence credible, considering the Grievor's work history. I note that Ms. Wilson denied this, and, at the termination meeting of June 8, neither the Grievor, or her father who acted as her job steward at this meeting, asserted that Ms. Wilson had said this.

III ANALYSIS AND DECISION

14 The Union rightly concedes the first *Wm. Scott* question. The Grievor was almost an hour-and-a-half late for her shift of June 6, 2017. She slept-in. This was a culpable event as it was preventable. Indeed, the Grievor had not heeded the repeated advice of her immediate supervisor to establish a back-up alarm to ensure she did not sleep-in. The Grievor's lateness manifested carelessness on her part.

15 It is over the second *Wm. Scott* question that the parties take issue: "was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case?" Here, the employer's decision is in question. Does it exceed a possible range of reasonable outcomes? An arbitrator is required to consider the relevant and material circumstances.

16 I thank the parties for their submissions, and the arbitral authorities provided. The Company submits the Grievor was impervious to correction. The Union submits the following as mitigating circumstances of the case:

- the Grievor was not a short service employee;
- the Grievor's disciplinary record is not as serious as the Company would assert;
- there is a nine-month gap between the Grievor's discharge and her previous incident of lateness;
- the Grievor's lateness of June 6, 2017 was not wilful, deliberate, or insolent;
- lateness itself is not so serious an offence;
- the Grievor apologized, and she recognizes her mistake, and is genuinely remorseful; and,
- the Grievor is experiencing economic hardship, exacerbated by her personal circumstances - the Grievor is female, First Nations, a single mother of a 12-years old son with ADHD, with a grade 10 education, with roots in Fort St. James where she has support from her family, and where she has only been able to obtain a minimum wage job, and her income is insufficient to make ends meet.

17 I note the following provisions of the collective agreement:

ARTICLE III - MANAGEMENT

Section 2: Employee Selection

Discipline will remain on the employees' (*sic*) file for 24 months and will not be used after that period provided no other discipline has occurred

ARTICLE VII - HOURS OF WORK AND OVERTIME

Section 11: Advance Notice of Absence

When an employee is unavoidably prevented from reporting for his scheduled shift, if reasonably possible, he must give notice to his foreman, or at the Company office, at least two (2) hours before the shift commences.

18 A provision such as Article III, s. 2 is commonly referred to as a "sunset clause", In regard to Article VII, s. 11, a breach could give cause for discipline, and adherence would not pardon an otherwise culpable absence.

Circumstances of the Case

Length of Service and Seriousness of the Conduct

19 The Grievor had six years seniority when she was discharged. This is not a short period of time, but neither would it fall within the range of long service,

20 Lateness is a disciplinable employment offence. It is specifically noted as such in the Company's *Employees' Handbook of Policies, Procedures, Rules and Regulations*: "Employees who are late will be subject to disciplinary procedures," Although an isolated incident would not necessarily be serious, the Grievor exhibited a pattern of sleeping-in for which she was progressively disciplined. The purpose of progressive discipline is to inform the employee to correct his/her behaviour, and, failing correction, to enable the employer to justly end the employment relationship. Otherwise undaunted, an employee could continue with minor offences without regard for the employer's right to manage an orderly workplace.

Work History

21 The Company provided a chart summarizing the Grievor's negative work history over the two years and one week preceding the discharge. The chart was used as a reference document at the hearing, and the veracity of the contained notations was established by the evidence; I therefore reproduce the chart below (as written):

Nicola Kristoffersen — Table of Admissible Discipline/Counselling

	DATE	INFRACTION	OUTCOME	DETAILS
1.	June 1, 2015	Late	Counselling/Work Instruction meeting	No show for 6 am shift.
2.	February 19, 2016	Late	Verbal Warning	35 minutes late for 6 pm shift.
3.	June 9, 2016	Late	Written Warning	1 hour late for 6 pm shift. Texted co-worker to say slept in. Failed to follow proper call-in procedure.
4.	June 20, 2016	Work Performance	1 day suspension	Assigned tasks regarding kiln check not completed. Falsified documents.
5.	July 20, 2016	Late	1 day suspension	40 minutes late for 6 am shift.
6.	July 21, 2016	Late	3 day suspension	58 minutes late for 6 am shift.
7.	August 15, 2016	Late	5 day suspension	13 minutes late for 6 pm shift. Failed to follow proper call-in procedure.
8.	September 26, 2016	Late	5 day suspension	Late start to shift
9.	January 18, 2017	Work Performance	Decision Making Day	Failed to perform assigned tasks. Falsified documents.
10.	June 8, 2017	Late	Termination	80 minutes late for 6 am shift.

22 Other than for the termination on June 8, 2017, the Grievor did not grieve these matters. She was represented by a job steward at discipline and counselling meetings, The Company says the first item is not excluded by due operation of the sunset clause, The Union does not object to the admissibility of this information. However it asserts that the first and ninth items are not matters of disciplinary record.

1. June 1, 2015

23 I find the June 1, 2015 counselling meeting was not a disciplinary event. However, this item concerns an infraction by the Grievor which management brought to her attention. Although no "Discipline Notification" form was issued to the Grievor, she was given a "Work Instruction/Counselling/Note to File", completed by Ms. Wilson, which stated:

On Saturday May 29, 2015 Nicola did not show up for her scheduled 6am shift. The supervisor on call was not able to get a hold of her until approx. 8am. Nicola stated that she thought she wasn't scheduled to work until Sunday morning. The supervisor then instructed her to be at work for 10am.

Nicola has been advised that it is her responsibility to know her schedule and be on time for work. Going forward if she does not receive a copy of her schedule she will ask for one or photocopy the one posted on the wall. When she knows that she will be late for work she is to call either myself or the supervisor on call. She has been notified that any further infractions will result in further disciplinary actions.

2. February 19, 2016

24 On February 19, 2016, the Grievor received a verbal warning for lateness, indicated by a "Discipline Notification" stating:

On Friday February 19, 2016 Nicola was late for work. Nicola called at 6am to advise that she would be late and arrived at work at 6:35am. (as written)

25 The standard Discipline Notification form used by the Company also contains the following warning:

Note: Further violations of conduct/work performance will result in further discipline up to and including discharge.

3. June 9, 2016

26 On June 9, 2016, the Grievor received a written warning for lateness, indicated by a Discipline Notification stating:

On Thursday, June 2, 2016 Nicola was late for her scheduled 6pm shift and did not follow the process to report to her supervisor that she would be late. She texted her co-worker at 5:59pm and let her know that she slept in and then did not arrive to work until approximately 7pm. (as written)

4. June 20, 2016

27 On June 20, 2016, the Grievor received a one-day suspension for poor work performance, indicated by a Discipline Notification stating: "*Poor job performance: assigned tasks are not completed.*" (as written) Although the Warehouse/Watch/First Aid person works a 12-hour shift, each suspension day is measured by eight hours as that is the normal working shift in the mill. The minutes of the discipline meeting indicate that on June 17 the Grievor had not put away supplies as she was instructed, and she failed to do the 3:00 a.m. kiln check, and then filled-in the report form with false data.

5. July 20, 2016

28 On July 20, 2016, the Grievor received a one-day suspension for lateness, indicated by a Discipline Notification stating:

On Wednesday July 20, 2016 Nicola was late for her 6am scheduled shift. She called in at in 6.05am to report that she had just woke up and showed up at approximately 6:40am. (as written)

29 All of the Grievor's lateness was because she slept-in, Ms. Wilson testified that on more than one occasion she advised the Grievor to get an alarm clock, or two, to back-up her reliance on her mobile phone. Ms. Wilson told this to the Grievor at the July 20, 2016 discipline meeting, and she told the Grievor she was not seeing any improvement, and that a three-day suspension could be next. She advised the Grievor that it does not matter if she were five minutes late or thirty minutes late; it is still lateness. There is no doubt that the Grievor understood, or should have understood, that she was on a perilous path with respect to her future job security. Indeed, Ms. Wilson told her, "You do not want to continue down this path." Nevertheless, the Grievor was late again the next day.

6. July 21, 2016

30 On July 21, 2016, the Grievor received a three-day suspension for lateness, indicated by a Discipline Notification stating:

On Thursday July 21, 2016 Nicola was late for her 6am scheduled shift. Supervisor phoned her at 6:27am and woke her up. She showed up for work at 6:58am (as written)

31 At the discipline meeting that day, Ms. Wilson asked the Grievor, "What is going on?" She replied, "Can I just sign this thing and get going?"

7. August 15, 2016

32 On August 15, 2016, the Grievor received a five-day suspension for lateness, indicated by a Discipline Notification stating:

On Sunday, August 14, 2016 Nicola was late for her 6pm scheduled shift and did not show up until 6:13pm. (as written)

33 At the discipline meeting, on August 15, Ms. Wilson asked the Grievor, what the process was if she were going to be late? The Grievor answered, "Drive faster."

34 Ms. Wilson thought the Grievor was not sorry, and did not appreciate the imposition she was causing to the Warehouse/Watch/First Aid person on the cross-shift. Ms. Wilson testified that, after a five-day suspension, the next discipline step would usually be discharge. However, the Grievor received a five-day suspension, the next time she slept-in.

8. September 26, 2016

35 On September 26, 2016, the Grievor received another five-day suspension, for lateness on September 23. The Maintenance Superintendent, Joe Vogl, issued a discipline letter to the Grievor. He reviewed her work history, and stated in part:

As per the doctrine of discipline we are within our rights to terminate your employment immediately but are refraining from doing so and you are being giving another 5 Day (40 Hour) Suspension and it is our hope that commencing immediately you will follow all Company Policies, (as written)

36 Ms. Andros testified that she had had to argue with the Mill Manager and the Maintenance Superintendent not to fire the Grievor. She considered the Grievor a valued employee with her Level III First Aid Certificate, and she knew the Grievor to be a single mother, Ms. Andros testified that the Grievor's personal circumstances were the "tipping point" in the decision not to terminate her at that time.

37 At the discipline meeting of September 26, Ms. Wilson asked the Grievor if she knew where she was at with her discipline? The Grievor answered "Yes." In all the instances of being late, the Grievor never gave any reason other than having slept-in. Ms. Wilson asked the Grievor if there was anything the Company should know about. The Grievor answered "No." Ms. Wilson nevertheless provided the Grievor with a card with a contact number for the EFAP program.

38 The Grievor was not late again until June 6, 2017. In the interim, she received a one-day suspension with pay.

January 18, 2017

39 On January 18, 2017, Ms. Wilson found that the Grievor had failed to recertify, recharge, or inspect/test, or re-supply fire extinguishers; failed to check and accurately report on the state of the hydrant shacks; and failed to follow correct procedures regarding "hot permits". Ms. Wilson testified that the Grievor "put the plant in jeopardy," and she could not trust the Grievor. The Company suspended the Grievor for one day, with pay, with instructions to consider whether she really wanted to continue working for the Company; and, if so, how was she going to change her ways. This was referred-to as "Decision Making Day".

40 Ms. Andros testified this was "a new thing we were trying." According to the minutes of the meeting with the Grievor, on January 19, Ms. Andros told the Grievor that she was not being disciplined, although Ms. Andros (who had not been the writer of the minutes) testified that she considered the suspension with pay to be a form of discipline. Ms. Andros emphasized with the Grievor that she was a single mother, her job was very important to her, she needed her job, and she would have a hard time finding another one that paid as well, or had as good a benefit package. She told the Grievor that the Company was within its rights to terminate her immediately, and this was her "last chance", and to go home and think about it.

41 The Grievor's next shift was on January 27, 2017. When she reported to work, she told Ms. Andros, "I will do the job the way you want it done." She told Ms. Andros she understood there was "no grey area."

June 8, 2017

42 The Company discharged the Grievor on June 8, 2017 following her lateness of June 6. The culminating incident is described above.

43 Ms. Wilson signed the termination letter. She testified she was aware that the Grievor was 32 years old, First Nations, a single mother, with a 12 year old son, with significant roots in the community. She knew the Grievor's sister and father work in the mill. Ms. Wilson testified she took into account the matter of economic hardship. However, in a tone of frustration, she said in cross-examination, "Of course she had personal circumstances, but she put herself there."

The Discipline/Counselling Record

44 I find that the Grievor's formal discipline record within the two years preceding her discharge consisted of:

- a verbal warning for lateness (February 19, 2016),
- a written warning for lateness (June 9, 2016),
- a one-day suspension for unsatisfactory work performance (June 20, 2016),
- a one-day suspension for lateness (July 20, 2016),
- a three-day suspension for lateness (July 21, 2016),
- a five-day suspension for lateness (August 15, 2016), and,
- a five-day suspension for lateness (September 26, 2016).

45 Prior to the events listed above, the Grievor was counselled about lateness on June 1, 2015. More immediately, between the five-day suspension of September 26, 2016 and the Grievor's termination on June 8, 2017, the Grievor was given a one-day suspension with pay. It seems from the meeting of January 19, 2017 that the Grievor was told she was not being disciplined. Therefore, I consider this a counselling event. Nevertheless it was still significant in her work history.

46 "Decision Making Day" was a response by the Company to the Grievor's poor work performance, which included placing incorrect information on a reporting form, as she had done in June 2016, for which she received a one-day suspension. The Grievor's poor work performance was at least as indicative of a careless attitude as was indicated by her sleeping-in and being late. The Grievor was told to go home and decide if she wanted to work for the Company or not. She was at the doorstep of discharge, and she had to know it.

47 In sum, the Grievor exhibited a pattern of carelessness, despite progressive and hoped-to-be corrective discipline. She proved herself to be an unreliable employee.

48 There was evidence presented of a leadhand posting being anticipated, and Ms. Wilson having suggested to the Grievor that she apply for it. The Union therefore argued that the trust factor, basic to a continuing employment relationship, was not broken. However, Ms. Wilson testified that, "in fairness", she passed this suggestion to all the employees under her supervision. In the circumstances, I find that Ms. Wilson included the Grievor as any other employee; not that she was recommending her.

Apology

49 The Grievor claims, whenever she was late, she apologized to her counterpart on the cross-shift. She testified that she said she was "sorry" to Ms. Wilson when she called-in on June 6, 2017, and when she arrived at work. In cross-examination, she conceded she had not expressed a second apology. Ms. Wilson testified that she did not recall the Grievor ever apologizing; and, had the Grievor apologized, she would have made a note of it. At the termination meeting on June 8, neither the Grievor or her father asserted that she had apologized.

50 I accept the Grievor's testimony that she said she was "sorry" on the phone. However, I cannot find it to have been any more than a polite *pro forma* utterance. It made no impression on Ms. Wilson, and it was not significant enough for the Grievor to assert, or to be asserted on her behalf, at the termination meeting. I accept the Grievor's testimony that she always expressed an apology to her counterpart on the cross-shift. This evidence was uncontradicted. However, the circumstances belie contrition.

51 In explanation of her conduct, the Grievor testified that all along she had thought she would easily find another job. This admission is an aid to understanding her carelessness, and to assessing the depth of any apology. There is also the repetitive lateness and the two events of poor work performance preceding her discharge. The Grievor never seriously took responsibility for her conduct. On July 21, 2016 she was asked what was going on, and on August 15, 2016 she was asked what the process was when she was late? In the former, she answered, "Can I just sign this thing and get going?" and in the latter she answered, "Drive faster." The Grievor acknowledged that she should have heeded Ms. Wilson's advice to get a back-up alarm clock. In fact, she never did.

Nine Months Without Being Late

52 The Grievor maintained good attendance between September 23, 2016 and June 6, 2017. This would be a circumstance in her favour; albeit not weighty.

53 A crucial concern for arbitrators in these cases is the employee's prospects for acceptable behaviour: *Canadian Broadcasting Corp. v. C.U.P.E.* (1979), 23 L.A.C. (2d) 227 (Can. Arb.) (Arthurs), pp. 230-1; *Houston Forest Products Co. v. I.W.A., Local 1-424*, [1984] B.C.C.A.A. No. 301 (B.C. Arb.) (Germaine), para. 37. During this nine-month period, the Grievor displayed carelessness in her work. While she was given a one-day suspension with pay, she was warned this was her "last chance", and she should think about whether she really wanted to work for the Company. Then five months later she slept-in and was late, again.

54 In the two years preceding her discharge, the Grievor received a verbal warning, a written warning, two one-day suspensions, a three-day suspension, and two five-day suspensions. The "sunset clause" agreed-to under the collective agreement stipulates that "Discipline will remain on the employees' (*sic*) file for 24 months and will not be used after that period provided no other discipline has occurred during that time." A nine-month period of good attendance does not truncate the "sunset clause", A "sunset clause" should provide an incentive to an employee to maintain good behaviour for the full period stipulated. Had the Grievor done so, she would have attained seven and one-half years seniority, with a discipline-free work record. She did not do it.

Personal Circumstances and Economic Hardship

55 The Union argues that the discharge is excessive because of the Grievor's personal circumstances and economic hardship. The evidence is that there are other heavy industry employers in the area, although it is not disputed that the wages and benefits provided under the collective agreement would be at the top of the range. The Grievor was able to obtain about two months of work as a First Aid Attendant during "fire season", and in October 2017 she obtained a regular job at minimum wage as a cashier and "gas jockey" at a local gas station. Realistically, it would be a hardship for her to leave the Fort St. James area, considering her roots in the community, her son's schooling, and the proximity of a supportive family. I note the following passage from Brown and Beatty, *Canadian Labour Arbitration, Fourth Edition*:

7:4426 Economic hardship

Arbitrators may take account of the seriousness of the economic hardship that an employee will face following his or her termination from employment as a basis for substituting a less severe penalty than dismissal. Not surprisingly, such considerations are likely to be utilized more frequently in periods of high unemployment, and in the case of older workers, employees with disabilities, females and members of minority groups whose employment opportunities may be restricted. For example, it has been held that the economic hardship that would be felt by an employee who is discharged close to the time the employee is eligible for his or her pension entitlement is a mitigating factor. However, if economic hardship is

the only mitigating factor an employee can advance in his or her favour, it is unlikely to count for very much. (footnotes omitted)

56 Arbitrators are concerned with "special" economic hardship, as would be related to factors as indicated for example in the above cited passage. The Union submits the Grievor is female, First Nations, and a single mother with a grade 10 education. However, these factors did not prevent the Grievor from working for the Company, and there was no evidence presented from which to conclude that these factors themselves would be an impediment to her finding good employment in the Fort St. James area. Indeed, before she was discharged, the Grievor herself, who grew up in the area, assumed she would have an easy time finding comparable work.

57 Despite the assistance the Grievor receives from her family and to some degree from her son's school, an unfortunate feature of this case is that her son is necessarily negatively affected - a sad and not unusual outcome for dependants of employees who lose their jobs. Indeed, this was a concern which the Company addressed with the Grievor, and took into account when it did not terminate her employment earlier.

58 The Company applied progressive discipline, but this did not have the corrective effect which the Company had a right to expect, and for which - the circumstances would indicate - the Company hoped. I cannot conclude that the Company's decision to discharge the Grievor was an excessive response in all the circumstances of the case,

59 Finally, I should address the Grievor's personal circumstances from a human rights perspective, lest any ambiguity remain from the mere raising of those circumstances. The Union did not argue discrimination; and rightly so. The Grievor's personal circumstances were not a factor in the Company's decision to discharge her, and, her personal circumstances do not excuse or diminish her negative work history. This is not a human rights case. However, the Union's emphasis on the Grievor's personal circumstances can be seen as a plea for accommodation. Considering accommodation, despite finding that the discharge was not excessive, and the Grievor was not discriminated against, to now compel the Company to reinstate the Grievor, I find, would impose an undue hardship.

IV CONCLUSION

60 The Grievor's discipline record in the two years preceding her discharge, weighs most heavily against her. She proved to be a careless and unreliable employee. At the time of discharge, she gave no confidence that were she not discharged, she would have changed.

61 Presently concerned with the second *Wm. Scott* question, I must conclude that the Company's decision to discharge the Grievor was not an excessive response in all of the circumstances of the case. The grievance is dismissed.

Grievance dismissed.