Case Name:

Federated Co-Operatives Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-417 (Shewchuk Grievance)

IN THE MATTER OF An Arbitration
Between
Federated Co-Operatives Limited ("Employer"), and
IWA - Canada, Local 1-417 ("Union")

[2002] B.C.C.A.A.A. No. 76
Award no. A-060/02

British Columbia
Collective Agreement Arbitration
C. Taylor, Q.C., Arbitrator

Heard: (Salmon Arm, B.C.) February 6 and 7, 2002.
Award: March 18, 2002.
(98 paras.)

Re: John Shewchuk ("Grievor")

Appearances:

Gary Catherwood, for the Employer.
Neil Hain, for the Union.

AWARD

I

¶ 1 The Employer is an integrated forest products company with a sawmill and plywood plant at Canoe, British Columbia. It has approximately 320 employees, of which, 130 work at the plywood plant.

¶ 2 This arbitration arises out of decisions taken by the Employer on April 16, 2001 and May 9, 2001. The first in time denied a leave of absence and the second decision terminated the Grievor's employment "for being absent without authorized leave and for failing to show up to work".

¶ 3 The Grievor is 47 years old. He has occupied various jobs in the plywood plant for some 30 years.

¶ 4 On August 3, 1999, the Grievor, while on vacation, was involved in a serious motor vehicle accident in which one person was killed and another seriously injured.

¶ 5 On April 18, 2001, the Grievor pleaded guilty to charges of impaired driving causing death and impaired driving causing bodily harm arising out of the operation of a motor vehicle. He received a two-year concurrent sentence of imprisonment.

¶ 6 On December 17, 2001, the Grievor was released from prison and is currently on probation. The terms of the probation do not prevent the Grievor from working at the Employer's mill.

¶ 7 In anticipation of being sent to jail, the Grievor sought a meeting on April 10, 2001 with the Employer at which he requested a leave of absence for the period during which he would be incarcerated. The Employer denied the leave. The Grievor began serving his jail sentence on April 18, 2001.

¶ 8 On May 9, 2001, the Employer dismissed the Grievor for being absent from work without leave.

II

¶ 9 Mr. John Walker is the Plywood Manager. He attended the meeting on April 10, 2001 with Human Resources Manager, Monty Jones. The Grievor was accompanied by Union Second Vice-President, Albert Vanderlaan.

¶ 10 The meeting was of short duration, perhaps 10 or 20 minutes. The Grievor said he would likely be going to jail on April 18th and requested a leave of absence for the period of his incarceration. Mr. Jones cautioned the Grievor against "false hopes" and said "historically, the company right across Western Canada, has not done this".

¶ 11 Mr. Walker testified that, in consultation with Mr. Jones, it was decided to deny the leave. The decision was communicated to the Grievor by letter dated April 16, 2001:

> "I am in receipt of your letter, of which Federated Co-operatives Limited (FCL) received on April 12, 2001, requesting a leave of absence for the period of time you are expected to be incarcerated.
>
> After giving this due consideration, FCL has decided to deny your request."

¶ 12 Mr. Walker testified that the factors which he considered in reaching the decision to deny the leave were the following:

1. The Grievor's employment record:

(a) On July 16, 1993, the Grievor was sent home for reporting to work under the influence of alcohol. He was offered assistance through the Employee Assistance Program but he did not take up the offer.

(b) On April 29, 1994, the Grievor telephoned the Employer and said he could not attend work because he had been drinking. He received a one-day suspension. In the letter of discipline, Mr. Walker wrote:

"You are considered a good employee, John, when you are at work, but you are of little value to FCL when you fail to show up for work."

(c) On June 20, 1994, the Grievor was suspended for 4 days for falling asleep on the job. He had been drinking.

(d) On October 25, 1995, the Grievor received a written warning for leaving work early.

(e) On 6 occasions between August 1996 and October 1998, the Grievor was "written up" for unsatisfactory job performance incidents.

2. The Grievor's requested leave was, said Mr. Walker, "open-ended". He could have been in jail for 2 years, whereas, he said, the collective agreement provides for a maximum leave of 6 months.

3. The Grievor's long service with the Employer (ie. 30 years).

4. Mr. Walker testified that he "tried to balance length of service" with:

(a) the Grievor's employment record;

(b) the impact on the Employer of rescheduling an employee to fill the Grievor's position, including the cost of training another employee;

(c) the Employer covers the cost of the AD&D and life insurance benefit for employees on leave for compassionate grounds.

Mr. Walker described a process which would likely involve a chain reaction of 10 or 12 postings in filling the Grievor's position.

5. The impact on other employees. Mr. Walker said that the accident in which the Grievor had been involved had caused "negative comments" and one employee had said he "couldn't stand" to work with the Grievor.

¶ 13 Mr. Walker testified that "in his personal opinion", "incarceration is not a valid reason for applying for a leave of absence". He said there was nothing in the collective agreement which speaks to a leave of absence for jail time.

¶ 14 In cross-examination, Mr. Walker said, "going to jail is not a just reason for receiving a leave of absence". He said the collective agreement "doesn't say leave for going to jail".

¶ 15 In the result, the leave was denied. The Grievor went to jail which made him absent from work without leave and he was dismissed.

¶ 16 In cross-examination, Mr. Walker agreed that there was no discussion at the April 10th meeting about the Grievor's absentee record, discipline record, safety issues or employee morale as a result of the motor vehicle accident. He said that Mr. Jones told the Grievor at the outset of the meeting that the Employer's policy was not to grant a leave of absence for incarceration.

¶ 17 Mr. Walker testified that on April 10, 2001, when the Grievor requested the leave of absence, he was then on a medically-approved leave which had commenced January 16, 2001, arising from a recurring back injury.

¶ 18 Mr. Walker said the Employer did not object to medically-approved leaves. He did not identify any problem filling the Grievor's position while he was off on that leave and said the Grievor's job had not been posted.

¶ 19 The Grievor's last job, before going off on January 16, 2001, was operating the Reimann Patcher. Mr. Walker testified that of 42 employees on the day shift (the Grievor's shift), "upwards of 15 would have experience on the Reimann". The Plant Manager said that once a person learns how to grade, he or she would quickly learn to operate the Reimann. For someone "off the street", Mr. Walker thought it might take a week to satisfactorily perform the Reimann job.

¶ 20 The Grievor's evidence was that, with his past experience, he needed a day to learn the operation of the Reimann Patcher.

¶ 21 The Grievor was granted leaves of absence for the following periods:

1. September 13 to 22, 1997
2. September 9, 1999 to November 3, 1999
3. March 29, 2000 to September 24, 2000
4. January 15, 2001 to April 10, 2001

¶ 22 Leaves 1, 3 and 4 were for injuries to his back which necessitated an operation in March 2000.

¶ 23 Leave 2 was to attend an EAP program.

¶ 24 Mr. Walker agreed, in cross-examination, that the Employer, in granting those leaves, did not consider the Grievor's employment record or the other factors which it took into account in denying the leave request for the period of incarceration.

¶ 25 Mr. Walker testified that there were no work performance issues in the period following the August 3, 1999 motor vehicle accident nor were there any alcohol-related work issues.

III

¶ 26 Mr. Jones has been the Human Resources Manager since 1990. He "suspected" the Grievor would be seeking a leave of absence and had reviewed the personnel file in advance of receiving a request from Mr. Vanderlaan for the meeting which occurred on April 10, 2001.

¶ 27 Mr. Jones said the meeting was no more than 5 or 10 minutes. The Grievor asked "the company to hold his job open while he was in jail".

¶ 28 The Human Resources Manager said he asked if a plea bargain had been arranged. The Grievor told the meeting he would likely receive a jail term of 2 years.

¶ 29 Mr. Jones testified that "we listened", he told the Grievor he could not hold out "false hopes" and the company had not, historically, allowed leaves for incarceration.

¶ 30 He said that he and Mr. Walker met "to make sure we were considering everything". Mr. Jones testified, "[he] was a 30 year employee. It was clear and evident to me that, without a leave of absence, he would be terminated if he went to jail."

¶ 31 Mr. Jones said that in considering the leave of absence he took into account:

* The personnel file;
* That the Grievor was a "problem" employee over the years;
* Letters of reprimand;
* Verbal warnings;
* Absenteeism;
* Safety risk to the Company (ie. the Grievor's alcoholism).

¶ 32 The "key" factor, said the Human Resources Manager, was that the request was "open ended". The Grievor expected a jail term of 2 years but, said Mr. Jones, it could have been longer.

¶ 33 He also referred to the "word on the plant floor" that employees did not want to work with the Grievor.

¶ 34 Mr. Jones discussed the cost of granting the leave of absence; the cost at the "bottom of the ladder"; the cost of hiring new employees and the fact that the person on the "tail end" of the spare board "goes home and we pay benefits of $200 a month for 4 months in addition to $35 a month for benefit costs of the Grievor".

¶ 35 Mr. Jones said he considered the collective agreement which only allows for a 6-month leave of absence.

¶ 36 As to the termination, Mr. Jones testified he knew that by denying the leave of absence, the Grievor would be absent without leave and that would mean consideration of termination.

¶ 37 In cross-examination, Mr. Jones was asked why he didn't wait until April 18, 2001, at which time he would have known the sentence imposed upon the Grievor and why he did not contact the Grievor's counsel to determine how much time the Grievor would actually serve. The Human Resources Manager's response was simply that he didn't do that.

¶ 38 Mr. Jones agreed in cross-examination that in the four leaves of absence granted to the Grievor, the Employer did not consider his employment record or the other factors which it took into account in the case at hand.

¶ 39 Mr. Jones testified that the Grievor had been absent in excess of 400 days in the past 10 years but he did not have the record of absenteeism over the 30 year period of the Grievor's employment.

¶ 40 Mr. Jones agreed in cross-examination that, notwithstanding the many employment difficulties which he attributed to the Grievor, he had returned to work following the motor vehicle accident and the EAP program and there were no performance issues or alcohol-related difficulties which had come to his attention.

¶ 41 Mr. Jones agreed in cross-examination that the Employer was not prevented from offering the Grievor a six-month leave of absence, at the end of which it could have considered its position.

IV

¶ 42 It is evident from the record of employment and his evidence that the Grievor has a serious alcohol problem. In addition, he has had recurring back pain for several years for which he underwent surgery in March 2000 which involved the removal of 70% of a disk.

¶ 43 He has occupied a number of positions in his 30 years of service with the Employer, most recently that of Reimann Patcher which, given his previous experience, required only 1 day of training.

¶ 44 The Grievor described himself as "devastated" after the August 3, 1999 motor vehicle accident and, shortly thereafter, he stopped drinking. He testified that he has maintained sobriety since that time which now gives him some 2 1/2 years of being alcohol-free.

¶ 45 Beginning in August 1999, the Grievor attended alcoholism counseling and continues to do so.

¶ 46 He voluntarily attended a 28-day residential treatment program at Crossroads in Kelowna from February 22, 2001 to March 21, 2001.

¶ 47 The Grievor entered an EAP program from September 9, 1999 to November 3, 1999. He returned to work and performed his duties with no apparent problem until March 2000 when he underwent back surgery. This kept him out of the workplace until September 2000.

¶ 48 The Grievor performed his work duties with no apparent job-related difficulties until January 2001 when back problems recurred and he was granted a leave of absence which was in effect when he went to jail on April 18, 2001.

¶ 49 During his time in jail, the Grievor engaged in courses which he described as:

(1) Cognitive Skills;
(2) Substance Abuse Program;
(3) Choices (related to alcoholism).

V

¶ 50 Article XI, Section 8 of the collective agreement reads as follows:

> "Section 8: Compassionate, Educational, Etc. Leave
>
> By mutual agreement leave of absence will be granted to a maximum of six (6) months without pay to Employees for compassionate reasons or for educational or training or extended vacation purposes, conditional on the following terms:
>
> (a) That the Employee applies at least one month in advance unless the grounds for such application could not reasonably be foreseen.
>
> (b) That the Employee shall disclose the grounds for application.
>
> (c) That the Company shall grant such leave where a bona fide reason is advanced by the applicant, or may postpone leave for educational or training purposes where a suitable replacement is not available.
>
> (d) That the Company will consult with the Shop Committee in respect of any application for leave under this Section.
>
> (e) Employees on extended leave of absence pursuant to this Section will pay their own premiums for the Medical Services Plan, Extended Health Benefit, and Dental Plan, while the premiums for Group Life Insurance and Accidental Death and Dismemberment Insurance will be paid by the Employer during such extended leave of absence."

¶ 51 The Employer accepts that an application for leave to serve a jail sentence falls under "compassionate reasons" in Article XI, Section 8.

¶ 52 The Employer takes no issue with the date of the Grievor's application for leave even though it was not made within the time period specified in Section 8(a).

¶ 53 The obvious hurdle for the Union is the duration of the proposed leave of absence. The Grievor applied for a leave of indeterminate length -- one which would cover the period of his incarceration. He told the Employer that a plea bargain had been agreed which, if accepted by the Court, would result in a 2-year sentence. This did turn out to be the sentence imposed upon the Grievor who obtained release after serving 8 months.

¶ 54 The parties have agreed in Section 8 to a leave of absence of six months "maximum".

¶ 55 The Union argued that the Employer was not prevented from granting a six month leave, following which, the Grievor could apply for another leave or for an extension of the first leave. The issue, however, is not whether the Employer was prevented from following that course of action but whether it was obligated to do so.

¶ 56 There is no obligation for the Employer to grant a leave of absence beyond six

months. Indeed, the words which the parties have used to express their bargain say it is a maximum of six months.

¶ 57 Article XI provides for various types of leaves of absence. Section 1 speaks to injury and illness for which there may be leave "up to six (6) calendar months" with the right to apply for additional time.

¶ 58 There is no limit on the duration of leaves for Union business (Section 3), nor is there any limit on leaves to assume public office (Section 10).

¶ 59 There is a maximum of 3 days for bereavement leave.

¶ 60 With respect to compassionate leave, the parties have agreed in Section 8 that the maximum duration is six months and, unlike illness and injury leave, there is no provision for an addition to that upper limit. Thus, even if the Employer had granted the maximum of six months, it would have been insufficient. The Grievor would have been absent without leave for two months.

¶ 61 There is no support to be found in the plain language of Section 8 for the argument that the Employer ought to have granted the maximum of six months and then considered a second application at the end of that period. That is not contemplated by the plain and ordinary language of Section 8.

¶ 62 I, therefore, conclude that the Employer was not obligated by the collective agreement to grant a leave of absence for the indeterminate period requested by the Grievor. It was required to consider a leave of absence for a maximum of six months which would have been insufficient to cover the period of incarceration.

VI

¶ 63 I turn next to the termination grievance.

¶ 64 The Grievor was dismissed after 30 years of service for being absent without leave.

¶ 65 The parties have agreed in Article XI, Section 8, that a compassionate leave shall be granted for bona fide reasons up to a maximum period of six months. I have determined that the Employer did not breach that provision in denying the Grievor's application for an indeterminate leave to serve a jail sentence of two years.

¶ 66 The contractual duty on an employee to be available for work when called upon is well-understood. Extended absence from work without leave or proper excuse may be cause for discipline. In the absence of an authorized leave, the Grievor was absent from the workplace without permission for which he was dismissed. That, it might be persuasively argued, is the necessary and inevitable result given the parties' bargain in Article XI, Section 8. But, there is no principle which deems absence, in and of itself, to warrant automatic dismissal, even if the absence is due to incarceration. Moreover, while the agreement which the parties have struck respecting absences of six months and no more than six months for compassionate reasons, is a compelling factor in this case, I am not bound by that in considering whether or not the dismissal of the Grievor was for just cause.

¶ 67 The Employer's decision must be put to the test prescribed by Wm. Scott & Company Ltd. and Canadian Food and Allied Workers Union, Local P-162, [1977] 1 Can. L.R.B.R. 1 (Weiler):

> "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 discharge excessive, what alternative measure should be substituted as just and equitable?" (p.5)

¶ 68 The board in Wm Scott said that in considering the second question, "the arbitrator's evaluation of management's decision must be especially searching" (p.5). The question is whether "in all of the circumstances" the employer's decision to dismiss the employee was an excessive response. It follows that the inquiry must go beyond the single fact of being absent without leave which, given the parties' bargain in Article XI, Section 8, is a compelling factor in this case.

¶ 69 In Re Alcan Canada Products and United Steelworkers (1974) 6 L.A.C. (2d) 386, (Shime), the board said:

> "It is clear that the employer has an interest in not having production disrupted and in not being unduly inconvenienced due to absenteeism for a jail sentence. While it is understandable that an employee may be excused for absenteeism resulting from illness, the same tolerance may not be forthcoming when an employee is absent because he is serving a jail term. However, the employee has also an interest that is deserving of protection. An employee's service with the company and a good work record should be entitled to some protection with the result that in each case there must be a balancing of interests in order to determine whether the discharge is for just cause. There is no reason for a board of arbitration to consider absence per se as a basis for discharge. In this type of situation, the employer's interest in having production free from disruption must be balanced against the employee's work record, the nature of the offence and the duration of the jail sentence." (pp.393-394)

¶ 70 Similar comments are found in Re: Canada Safeway Ltd. and United Food & Commercial Workers, Local 1518, (1988) 1 L.A.C. (4th) 435 (McColl) where, at p.443, the board said:

> "There is a common law principle imposed upon every contract of employment that an employee who fails to report for work through his own wanton act is dischargeable. Generally speaking, that principle has been applied to contracts of employment governed by the terms of a collective agreement: see Brown and Beatty, Canadian Labour Arbitration, 2nd ed. (1984), paras. 7:31110, 7:3112, pp.353-7.
>
> On the other hand, in the absence of special language in the collective agreement there is no concept which deems incarceration in and of itself tantamount to automatic dismissal. Certainly, in British Columbia, at least, the legislation governing dismissals establishes the basis upon which dismissals will be adjudicated: see the Wm. Scott case (Wm. Scott & Co. Ltd. and Canadian Food & Allied Workers Union, Loc. P-162, [1976] 1 Can. L.R.B.R. 1, [1976] 2 W.L.A.C. 585).

> The Wm. Scott case is the seminal interpretation of the statutory authority given to arbitrators to review dismissals. It has been universally adopted by arbitrators in this jurisdiction. It establishes the fundamental principle that disciplinary cases must be adjudicated upon the individual merits pertaining to the dispute which gives rise to the hearing."

VII

¶ 71 The Grievor is 47 years old. He has worked the whole of his adult life for the Employer. During those 30 years, he has filled a number of positions.

¶ 72 The Grievor's record is certainly not without blemishes, supra pp.3-4, but they occurred during the time when the Grievor had a serious alcohol problem. The Employer took an enlightened and compassionate attitude towards the Grievor's difficulties with drinking. It accommodated his disability by offering assistance through the EAP program, an offer which the Grievor did not take up until after the tragic motor vehicle accident occurred.

¶ 73 The Grievor was absent 400 days in his last ten years of employment. That unenviable record must be considered in the light of his alcoholism and back injury. It should also be pointed out that the Grievor has 30 years of service with the Employer. There is no evidence as to his absenteeism over the whole of his employment.

¶ 74 On April 29, 1994, Mr. Walker wrote to the Grievor and said, in part:

> "... you were honest enough to call in and let me know that you were not coming in to work as a result of your consumption of alcohol.
>
> You are considered a good employee, John, when you are at work, but you are of little value to FCL when you fail to show up for work."

¶ 75 The Grievor stopped drinking after the accident and has maintained sobriety since that time -- a period of about two and one half years.

¶ 76 He has attended alcohol counseling since August 1999 and continues to do so. The Grievor voluntarily attended and completed a residential alcoholism treatment program in early 2001.

¶ 77 The motor vehicle accident was not work-related. It occurred when the Grievor was on vacation; it did not involve Employer property and there is no evidence to suggest it reflected adversely on the Employer.

¶ 78 The Grievor's post-accident work record reflects no performance or alcohol-related issues.

¶ 79 In his evidence, Mr. Jones referred to the "word on the plant floor" that employees did not want to work with the Grievor but, aside from that hearsay, there is no evidence that employee morale has been adversely affected by the Grievor's presence. He did work with his fellow employees after the accident and there is no evidence of any difficulty.

¶ 80 There were, in my view, two factors which loomed large in the Employer's decision to deny

the leave of absence. One was the indeterminate period of the leave, although its probable duration was reasonably ascertainable. The other was Mr. Walker's belief that a leave of absence was not for the purpose of going to jail. The Plywood Manager was most candid in expressing those so-called "personal opinions" (supra, p.5) but it would be unrealistic to suggest that they did not influence the Employer's decision.

¶ 81 Compassionate leave does include incarceration and the Grievor's employment performance issues are related to the period when he was involved with alcohol. His subsequent rehabilitation was an important factor to be taken into account when the Employer took the decision to terminate the Grievor's employment on May 9, 2001.

¶ 82 The Employer submitted that it would have been disruptive to its operations to continue the employment of the Grievor as well as costly.

¶ 83 It is obvious that the absence of an employee for a period of time, for whatever reason, causes some measure of inconvenience to his employer and loss of productivity. If this were not so, the Employer would have no reason to employ the Grievor in the first place. Such inconvenience and loss of productivity occurs whether the absence is culpable or non-culpable.

¶ 84 The Grievor has been accommodated by the Employer during periods of illness arising from a back problem which required surgery in March 2000. It may be assumed that those periods of disability caused inconvenience and loss of productivity. The Employer accommodated the Grievor's illness. There is, of course, more tolerance for absenteeism resulting from illness than absenteeism resulting from incarceration.

¶ 85 The point, here, is that the Employer accommodated the Grievor's absences caused by physical disability. There was no suggestion that considerations of inconvenience and productivity entered into the decisions of the Employer to accommodate the Grievor's physical disability.

¶ 86 The Grievor was granted leaves of absence for 2 months in 1999, 6 months in 2000 and 3 months in 2001. There is no suggestion that the Employer had difficulty in filling the Grievor's position during those periods. Indeed, the evidence is that of 42 employees on the Grievor's shift, "upwards of 15" had experience on the Reimann Patcher. The Grievor could not be considered to have occupied a position that other employees could not adequately fill during his absence. The disruption, if any, would be minimal.

¶ 87 I accept that the Grievor's absence would come at a direct cost to the Employer. The Employer would be put to hiring costs such as interviews, reference checks, pre-employment medicals, training, as well as the costs incurred in layoff if the Grievor returned to the workplace, supra p.9.

¶ 88 The Grievor was sentenced to two years in jail and served 8 months. The time he would actually serve was reasonably ascertainable. It is not as if the Employer would be unable to determine, with reasonable certainty, the probable duration of his absence.

¶ 89 The factors which do not favour interference with the Employers response to the Grievor's unauthorized absence from work are:

1. Article XI, Section 8 of the collective agreement by which the parties have agreed to a maximum leave of absence of six months.
2. The Grievor's absence without leave.
3. The duration of the absence - 8 months.
4. The Grievor's discipline record and absenteeism.
5. The Employer's interest in not having production disrupted due to absenteeism to serve a jail sentence.
6. The Employer's costs incurred due to the Grievor's absence and readmission into the workplace.

¶ 90 The factors which weigh in favour of arbitral interference in the decision to dismiss are:

1. The Grievor's long service - 30 years.
2. The penalty imposed has created an economic hardship for the Grievor. This is the only employer he has known in his adult life and he has been unable to find another job.
3. The Grievor's age and dismal prospects for finding another job.
4. The motor vehicle accident was unrelated to the Employer and did not reflect adversely on the Employer.
5. The Grievor's remorse.
6. The Grievor's initiative in achieving sobriety; voluntarily seeking assistance and maintaining sobriety for two and one half years.
7. The Grievor's discipline record was alcohol-related and the Grievor has taken responsibility for the underlying cause.
8. The overwhelming majority of the absenteeism was non-culpable.
9. The Grievor's post-accident work record is free of performance issues or alcohol-related issues.
10. The Grievor's position could be readily filled during his absence.
11. There is no evidence that the Employer had any difficulty filling the Grievor's position during his absences for physical disability. The difference, in this case, is that the Grievor's absence was to serve a jail sentence.
12. The Grievor was not integral to the Employer's operation. Indeed, during the Grievor's absence from January 2001 to April 2001, the Employer did not post his position.

13. The Employer, in 1994, acknowledged in writing that the Grievor was a good employee when he was at work. His difficulties, then, were alcohol-related and the Grievor has put that to rest.

¶ 91 The Grievor has given just and reasonable cause for some form of discipline by the Employer.

¶ 92 In addressing the second question in Wm. Scott, Chairman Weiler, at p.6, said:

> "... it is the statutory responsibility of the arbitrator, having found just cause for some employer action, to probe beneath the surface of the immediate events and reach a broad judgement about whether this employee, especially one with a significant investment of service with that employer, should actually lose his job for the offence in question."

¶ 93 The parties' bargain in Article XI, Section 8 is a major factor in this case. The parties agreed to a leave of absence of six months and only six months. In other circumstances that would likely tip the scale in favour of the dismissal. But, in many respects, this is a unique case. The Grievor has a significant investment of service with the Employer -- the whole of his adult life. It is now well-established that alcoholism is a disease, to be treated as such and accommodated. The Grievor appears to have turned the corner and got his life in order.

¶ 94 Having conducted the inquiry required by Wm. Scott, I have concluded that the employment relationship is restorable and the Grievor should not lose his job for being absent without leave.

¶ 95 The Grievance is allowed. The dismissal is set aside. In its place, I substitute a period of suspension equivalent to the period of the Grievor's incarceration.

¶ 96 The Grievor shall be reinstated to his employment as soon as reasonably practicable for both the Employer and the Grievor. The facts do not support an entitlement to compensation.

¶ 97 I retain jurisdiction to deal with any disputes arising out of this award or its implementation including the terms of reinstatement.

¶ 98 A final word. The Grievor should consider himself most fortunate to be given this opportunity to put his life back together. Should he fail to fully grasp and live up to this opportunity, he should expect no sympathy; he should expect to be dismissed.

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