IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE COLLECTIVE AGREEMENT AND THE
LABOUR RELATIONS CODE, R.S.B.C. 1996, c. 244

BETWEEN:

TOLKO INDUSTRIES (QUEST WOOD DIVISION)

AND:

UNITED STEELWORKERS, LOCAL 1-424

(R. Shaver Grievance)

ARBITRATOR:	Christopher Sullivan
COUNSEL:	Michael R. Kilgallin for Employer Natalie L. Gidora for Union
DATE AND PLACE OF HEARING:	August 20 and 21, 2014 Quesnel, BC
PUBLISHED:	November 24, 2014

14146

The parties agree I have jurisdiction to hear and determine the matter in dispute. The case involves a grievance filed by the Union on behalf of Millwright Robin Shaver, alleging unjust discharge. Mr. Shaver was terminated from employment by letter dated February 7, 2014.

The letter of discharge, authored by Finishing End Superintendent Barry Harley, summarizes the grounds relied upon by the Employer. The substance of that letter reads as follows:

> Dear Mr. Shaver:
>
> This letter is in regard to your scheduled work shift of February 2, 2014. You were one hour late for the scheduled commencement point of your shift, a clear neglect of your employment responsibilities. You are issued a notice of investigation on Sunday, February 2, 2014, and advised the matter would be reviewed. We solicited your explanation for the circumstances and reasons for being late and I've considered those in the course of our investigation and review. We've concluded that your tardiness on February 2 is culpable and grounds for disciplinary action.
>
> You have demonstrated a clear understanding of the principle of progressive discipline and you are aware of your own progressive discipline history. The details of that history were outlined to you in the context of a five-day suspension letter dated June 4, 2013. In addition, you received a formal written warning for culpable tardiness on November 10, 2013. That specific formal written warning outlined that although the stage you were at in progressive discipline may have warranted more serious disciplinary action, we elected the formal written warning and emphasized the clear expectations of you for the future. However, it was clearly outlined to you that the decision to do so was in no way, shape, or form a decision to abandon the application of progressive discipline. It was reiterated to you that future culpable neglect of your employment responsibilities would result in further disciplinary action, up to and including termination of your employment.
>
> We've conducted a full and thorough review of the entirety of the circumstances of February 2, 2014, coupled with a thorough consideration of your progressive discipline history. We have made the decision to

> terminate your employment effective on the presentation of this letter to you on the date outlined above.

The general background surrounding the grievance is not seriously disputed and may be summarized as follows. The grievor is a millwright in the Employer's maintenance department, with a seniority date of February 6, 1991. He worked a regular Monday to Friday shift and he regularly signed up for and worked weekend maintenance overtime shifts.

During the last week of January 2014, the grievor signed up for weekend maintenance work occurring Saturday, February 1, and Sunday, February 2. For the Sunday shift the grievor wrote, alongside his initials indicating he would work that day: "?? Not sure yet".

The evidence indicates that the usual start time for weekend maintenance overtime shifts is 7:00am, although employees may also commence at 6:00am, as this is when Level 3 first aid coverage begins. On the Sunday, February 2, 2014 weekend shift in question the grievor arrived at work at 8:00am. Shortly thereafter, Maintenance Supervisor Darren Reade confronted the grievor and asked him when he started work that day. The grievor acknowledged having started at 8:00am, and indicated he had made an arrangement with Superintendent Harley to do so. Mr. Reade then telephoned Mr. Harley and asked if he had approved an alternate start time for the grievor, and Mr. Harley told Mr. Reade that no such arrangement had been made.

Mr. Reade recalled that after speaking with Mr. Harley on the morning in question he approached the grievor and told him what Mr. Harley had said, and that the grievor replied he could not recall if he had spoken to Mr. Harley about his start time that day. Mr. Reade testified the grievor informed him he felt frustrated and singled out by

management, and indicated it was not important when he started work because he would only be working four to six hours that day.

The grievor testified that after the weekend maintenance sign-in form was taken down on the morning of Thursday, January 30, Mr. Harley spoke with him about what he had written on the sign-in form for the Sunday shift, which, as noted above was: "?? Not sure yet". The grievor recalled being asked by Mr. Harley on the Thursday morning if he could work on the Sunday and what time he would start work that day. During this conversation the grievor informed Mr. Harley he was unsure whether he could work the Sunday shift as he was not certain what time his daughter would be flying in from Abbotsford. The grievor recalls having told Mr. Harley that he would speak to his ex-wife regarding the daughter's arrival time, and would get back to Mr. Harley later that Thursday. The grievor left a telephone message for Mr. Harley on Thursday evening indicating they would discuss the matter on Friday morning.

The grievor testified he met with Mr. Harley at about 7:30am Friday morning, and at this time he again told Mr. Harley that he would only work four to six hours on the Sunday and further advised Mr. Harley he "did not have a start time yet" as he had not yet spoken to his ex-wife. Just after 8:00am on Friday the grievor spoke with his ex-wife and learned the time his daughter would be arriving in Quesnel at about 5:00pm on Sunday.

After the Friday maintenance meeting, which took place around 9:30 to 10:00am that day, the grievor became aware that there was some question as to whether he was required for the Sunday shift. The grievor went to Mr. Harley's office for clarification and was told he could work that day. The grievor reiterated he could only work four to six hours that day. The grievor testified Mr. Harley asked him what time he would commence work that day and the grievor replied "seven, eight", and Mr. Harley responded "OK". In his evidence the grievor added that if Mr. Harley had not asked him

what time he would be commencing work for the Sunday shift he would have come in at 7:00am as he knew this to be the established weekend maintenance shift start time.

In his evidence, Mr. Harley recounted the conversations he had with the grievor regarding the February 2 overtime shift, including the discussion they had on Friday, January 31 in Mr. Harley's office. Mr. Harley recalled the grievor told him he could only work four to six hours on the Sunday shift as he was expecting his daughter to be flying in to Quesnel that day. Mr. Harley testified that at no time during this or any other conversation was the grievor's start time for the Sunday shift ever raised or discussed, much less agreed to.

The evidence discloses the grievor ended up working eight and one-quarter hours on the Sunday February 2 shift and he completed the project he had commenced to ensure equipment was ready for the next day's operation. During the week following the Sunday shift the Employer concluded its investigation into the grievor's arrival time for that shift and, on February 7, 2014 it issued to the grievor the letter of discharge quoted at the outset of this award.

At these proceedings evidence was led to the effect that there had in the past been some issues with maintenance employees not reporting, or reporting late, for shifts they had accepted and, on November 16, 2012 the Employer's Maintenance Superintendent, Brad Turner, issued the following statement:

> **Weekend Sign-up**
>
> Recently there have been issues with some members of the Maintenance Crew that have not reported for Weekend Overtime or have reported late for Overtime shifts that they have been scheduled for and accepted.

> This causes us difficulties because we are not getting work done that we have scheduled and the management and fair treatment of the crew becomes an issue.
>
> If you sign a weekend Crew Interest Sheet and you are scheduled for overtime by a Supervisor you are expected to report to the shift on time and as scheduled. Failure to report to work for an overtime shift that you have been scheduled for and accepted will be treated as an AWOL.
>
> Weekend Overtime is scheduled to start at 7 am. If you want to start at a different time this should be worked out with the supervisor scheduling you before the start of that shift. Failure to arrive on time for a shift that you have been scheduled for and agreed to will be treated as a Late.

SUMMARY OF ARGUMENTS

On behalf of the Employer, Mr. Kilgallin argues just cause exists for the grievor's discharge. The grievor has an extensive disciplinary record that includes being late on a number of occasions, having made dishonest and baseless allegations against his supervisor Mr. Hartley, being insubordinate, and attempting to minimize his conduct.

Mr. Kilgallin asserts Mr. Harley's evidence should be preferred over that of the grievor in relation to the matter as to when the grievor was to commence his overtime shift on Sunday, February 2, 2014. The grievor's statement that Mr. Harley effectively agreed upon an arrangement whereby the grievor had a variable start time and could commence the shift at either 7:00am or 8:00am, or any time between, is self-serving and not truthful. The grievor had, in the past, indicated on the overtime sign-in form when he required a later start time, and he did not do so in the present case. The grievor knew full well what the weekend overtime shift start time was, and understood that disciplinary consequences would result for being late.

Mr. Kilgallin submits the grievor's misconduct in the present case constitutes a culminating incident, which opens up his entire work history and disciplinary record for

review. Counsel adds this history is dismal and that the grievor had been put on clear notice that his continued employment was in jeopardy. Despite progressive discipline the grievor was not capable of remedying his behaviour. The grievor's allegations to the effect that the Employer singled him out and was "out to get him" were without foundation.

The Employer cites the following authorities in support of its position: *Canadian Labour Arbitration*, (Brown and Beatty, paras. 7:4312 and 7:4422); *Canadian Freightways Ltd. and Teamsters Union, Local 31 (Mallette),* [1996] B.C.C.A.A.A. No. 676 (McConchie); *Richmond Steel Recycling and Ironworkers, Local 712 (Kahriman),* [2011] B.C.A.A.A. No. 132 (McEwen); *Weyerhaeuser Co. (Drayton Valley Operations) and United Steelworkers, Local 1-207 (Greaves)*, [2007] A.G.A.A. No. 14 (Power); and *Saskatchewan Association of Health Organizations and Canadian Union of Public Employees, Local 4777 (Moody)*, [2013] S.L.A.A. No. 17 (Hood).

On behalf of the Union, Ms. Gidora acknowledges the grievor's conduct in the circumstances warrants the imposition of some disciplinary sanction, but argues that discharge was excessive in all of the circumstances. Counsel asserts the grievor's misconduct in being one hour late for the weekend overtime shift in question was relatively minor, particularly given the fact the grievor ended up working beyond what he had initially informed the Employer he could work that day and, in fact, he worked in excess of eight hours to ensure the work he had commenced was completed, so that weekday production would not be impeded.

Ms. Gidora adds there are a number of additional mitigating factors that support a finding that discharge was inappropriate. Of note, the grievor had twenty-three years' seniority and a total of twenty-seven years with the Employer. He had worked for the Employer since he was twenty-one years old. Further, there was inconsistency in the progression of discipline issued to the grievor, as the last discipline on his file was a

written warning. Counsel adds the grievor has suffered a particularly harsh consequence by having been discharged for what was essentially a misunderstanding regarding his start time on the day in question, for which he accepts responsibility. In contrast, there was minimal, if any, hardship to the Employer by the grievor having commenced his shift when he did.

Ms. Gidora states the grievor has responded well to progressive discipline in the past as evidenced by a five-year gap in his employment where he received no discipline. Since having been discharged he has applied for a number of millwright positions elsewhere, but has been unsuccessful. If his termination is upheld he will likely have to move from Quesnel, where he has lived most of his life and where his family is based. The grievor has since come to realize through counseling that the Employer was not "out to get him" and the employment relationship is restorable.

The Union cites the following authorities in support of its position: *Wm. Scott and Company Ltd. and Canadian Food and Allied Workers Union, Local P-162*, [1976] B.C.L.R.B.D. No. 98; *United Steelworkers of America, Local 3257 and Steel Equipment Co.*, [1964] O.L.A.A. No. 5 (Reville); *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada), Local 114 and Hotel Grand Pacific (Dobby)*, [2012] B.C.C.A.A.A. No. 11 (Dorsey); *Overwaitea Food Group and United Food and Commercial Workers' Union,. Local 1518 (Atwal)*, [2006] B.C.C.A.A.A. No. 99 (Foley); *Mostad Publications Ltd. and Graphic Communications International Union, Local 525-M (Reddick)*, [1995] B.C.C.A.A.A. No. 17 (Taylor); *Health Employers Association of British Columbia and Hospital Employees' Union (Kemp)*, [1997] B.C.C.A.A.A. No. 604 (Laing); *Faryna v. Chorny*, [1951] B.C.J. No. 152 (BCCA); *Alcan Smelters and Chemical Ltd. and Canadian Association of Smelters & Allied Workers, Local 1 (Oliviera)*, [1993] B.C.C.A.A.A. No. 21 (Hope); *Stanley Bostitch, a Division of Stanley Canada Inc. and International Association of Machinists and Aerospace Workers, Local 235 (Samms)*, [1999] O.L.A.A. No. 326 (Carrier); *Alcan*

Smelters Inc. and Chemicals Inc. and Canadian Auto Workers, Local 2301 (Pegley), [1998] B.C.C.A.A.A. No. 596 (Hope); *Alcan Smelters & Chemicals Ltd. and C.A.S.A.W., Local 1*, [1991] B.C.C.A.A.A. No. 511 (Hope); *Alcan Smelters and Chemicals Ltd. and Canadian Association of Smelters & Allied Workers, Local 1 (Richards)*, [1993] B.C.C.A.A.A. No. 242 (Hope); *Hertz Canada Ltd. and Office and Technical Employees' Union, Local 378 (McKechnie)*, [1994] B.C.C.A.A.A. No. 416 (Hope), *Shoppers Drug Mart Inc. No. 297 and United Food and Commercial Workers Union, Local 1518 (Pasqua)*, [2004] B.C.C.A.A.A. No. 242 (Steeves); *Southern Railway of British Columbia and Independent Canadian Transit Union, Local 7 (Vail)*, [1996] B.C.C.A.A.A. No. 600 (Moore); *Pacific Press and Communication Energy and Paperworkers' Union, Local 115M*, [1997] B.C.C.A.A.A. No. 830 (Bruce); and *Steele (Re)*, [2001] B.C.L.R.B.D. No. 77 (BCLRB).

DECISION

In *Wm. Scott and Company Ltd. and Canadian Food and Allied Workers Union, Local P-162,* the British Columbia Labour Relations Board set out a three-question inquiry for arbitrators assessing discharge grievances. The first question is whether the grievor's conduct gave rise to just cause for the imposition of a disciplinary sanction. The second question is whether, having regard to all of the circumstances surrounding the grievance, discharge was an excessive disciplinary response. If so, what should be substituted as just and equitable.

The answer to the first question posed in *Wm. Scott* must be answered in the affirmative. The grievor committed misconduct as he arrived late for his Sunday, February 2, 2014 overtime shift. The evidence supports a conclusion that the grievor was well aware of the 7:00am starting time for that overtime shift and there was no offer or agreement to the effect that he could commence this shift at a later time. The evidence also reveals that, contrary to the grievor's testimony, he did not request a later start time

or otherwise indicate he would not be attending at the established shift commencement time.

Of note, the grievor in the past had informed the Employer he would attend a weekend overtime shift during a variable range of time and it was made clear with him that this was not acceptable and a specific start time had to be confirmed with management. This occurred as recently as the third week of December 2013 when, for the Saturday, December 21 shift, the grievor had written on the weekend maintenance sign up form that he would "be in at 8:30 – 9 AM" due to the fact he was working the afternoon shift on the previous day. Upon reviewing this notation Mr. Harley discussed the matter with the grievor and they agreed upon 8:30am as the grievor's start time for that weekend overtime shift.

The evidence also indicates that the grievor had on a number of occasions in the past signed up for a weekend maintenance shift and had noted a specific start time on the sign up form, and that in all such situations the revised time had to be agreed to by management. For example, for the Saturday, July 13, 2013 shift the grievor wrote alongside his initials that he would "start at 9:00 AM"; for the November 3, 2013 shift the grievor wrote down he would be "in at 9 AM".

The evidence supports a conclusion that the grievor was well aware of the weekend maintenance overtime shift start time of 7:00am, as explicitly summarized in its statement issued in November of 2012, quoted above. No prior arrangement had been made for the grievor to commence his Sunday, February 2, 2014 shift at 8:00am, and his being late gave rise to just cause for the imposition of a disciplinary sanction. The preponderance of credible evidence supports a conclusion that this was not merely a misunderstanding between the grievor and Mr. Harley, but that the subject of the grievor's start time on the day in question was never discussed between them at all as testified to by Mr. Harley.

The second question posed in *Wm. Scott* invites a searching review of all of the circumstances surrounding the grievance to determine whether or not the discharge that was imposed was excessive. Essentially, the question that arises is whether the employment relationship is restorable with the imposition of a lesser sanction.

The totality of evidence in the present case supports a conclusion that discharge was not excessive. In arriving at this outcome I accept that the grievor being one-hour late for the Sunday overtime shift in question was not an incident that can be characterized as major misconduct. Indeed, given the grievor's lengthy tenure with the Employer, together with the fact he worked beyond eight hours that day and completed his assigned job, his lateness was not something that would properly attract a significant measure of discipline. In and of itself the grievor's late arrival at work on the day in question would properly attract only a minor penalty. Unfortunately for the grievor, the mitigating factors that support his case are greatly outweighed by the factors against his reinstatement.

The grievor's lateness on the occasion in question properly triggers a review of the entirety of his work history, and his lengthy and established record of serious disciplinary sanctions becomes a relevant consideration that strongly compromises his case for reinstatement. Of note, the grievor's personnel record contains a double-digit number of disciplinary infractions, including seven written warnings and three suspensions for separate incidents involving attendance/tardiness, dishonesty and insubordination. Of particular relevance is that in the year prior to the grievor's discharge he received a two-day suspension and a five-day suspension for dishonesty and insubordination, together with a written warning for being late.

The most recent disciplinary incidents on the grievor's file prior to his termination from employment in February 2014 include a written warning issued on January 19, 2011

for having verbally abused and intimidated other employees; a two-day suspension issued on February 14, 2013 for dishonest, insolent and insubordinate behaviour; a five-day suspension issued on June 5, 2013 for his response to the explanation of the medical aid transportation policy and departure from the mill site; and a letter of warning issued on November 15, 2013 for being late for a weekend overtime shift.

In receiving these disciplinary sanctions the grievor was put on clear notice that his continued employment was in jeopardy. The fact that the discipline meted out to the grievor just prior to his discharge was a written warning, and not a lengthy suspension, does not necessarily lead to the conclusion that the Employer had departed from following a course of progressive discipline. That November 15, 2013 letter of warning related to the grievor being late for a November 10 weekend overtime shift, and the letter of warning expressly stated:

> This letter is in regard to your scheduled shift of November 10, 2013. You were 2 hours late for the scheduled commencement point of your shift, a clear neglect of your employment responsibilities. Upon inquiry, your explanation for your tardiness is of a nature such that we conclude that your behavior is culpable and grounds for disciplinary action.
>
> You are well acquainted with your progressive discipline history. The particulars of that history were outlined to you in the context of a five (5) day suspension letter dated June 4, 2013. In response to your lateness on November 10, 2013, the normal “progressive” nature of escalating disciplinary action for culpable neglect of one’s employment responsibilities should warrant a more serious disciplinary action than the five (5) day suspension applied in response to your last behavior that warranted discipline. However, given the less serious nature of culpable tardiness on spectrum of potential behavior that would warrant discipline, we have made the decision to not apply the next step of "progressive" discipline. Alternatively, please consider this letter as a formal written warning in response to your culpable tardiness of November 10, 2013.
>
> Please understand that our decision outlined above is in no way, shape, or form, a conscious decision to abandon the application of progressive discipline in the context of your employment relationship

> should you demonstrate any further behavior that is grounds for disciplinary action. We wish to make it clear that we are NOT effectively re-starting the escalation of your progressive discipline. Alternatively, we are taking this opportunity to re-stress to you your overall employment responsibilities and obligations, including reporting for work on time as scheduled or calling in if you're unavoidably prevented from reporting for your scheduled shift.
>
> Should you engage in any behavior in the future that warrants progressive discipline, you will be subject to further disciplinary action, up to and including termination of your employment. The basis for future decisions in this regard, if necessary, will be direct consideration of the point of progressive discipline you have reached, specifically the five (5) day suspension applied to you in June 2013.

The circumstances giving rise to the grievor's discharge on February 7, 2014 essentially involve an allegation by the grievor that Mr. Harley was untruthful to get the grievor in trouble. In his evidence the grievor acknowledged he may have misunderstood Mr. Harley's response to the grievor stating he would commence the February 2 Sunday overtime shift at "seven, eight", but I find this assertion was made by the grievor as a concocted self-serving way of avoiding or minimizing his responsibility for being late. There is simply no reason why Mr. Harley would have asked the grievor what time he was going to commence work Sunday during any of their discussions on the Thursday or Friday prior to that shift, as the grievor claims. If anyone initiated this specific inquiry it would very likely have been the grievor. The grievor's evidence to the effect that Mr. Harley asked the grievor what time he was going to start work for his Sunday shift is not believable. There is no indication that Mr. Harley felt this was a negotiable term in relation to the grievor working the Sunday shift, although if the grievor had raised the matter it might have been agreed upon.

In an email sent to Plant Manager Greg Johnston at about 8:00pm or 9:00pm on February 2, 2014 the grievor wrote, in part, as follows:

> Now on Fri Barry (Harley) asked me what time I will be in on Sunday, said didn't really want to be in but I knew we were short handed and told Barry 4-6 hrs. he said ok what time, I said 7,8. And then left. went into work at 8 and about 1130- 12 Darren came up and gave me another letter of investigation, late for work today. I am so confused Greg, Barry did not hear me say 8 as well. I'm not sure what happened, missed communication, I was in at 7 on sat day because I know start time is 7, I don't know what difference it would make on day I would only be there for 4-6 hrs if I came in at 7 or 8, when I obligate myself for a full shift then I understand, I got a written warning while back for being an hour late....

At the core of the grievor's claim he is making an assertion that his word should be accepted over the word of Mr. Harley. While the grievor in his evidence suggested that there may have been a miscommunication between he and Mr. Harley due to noise from outside Mr. Harley's office during their Friday morning conversation, this explanation is fundamentally lacking in that it does not account for everything the grievor asserts was stated by Mr. Harley. While the grievor's explanation might account for him concluding Mr. Harley agreed to the variable start time he allegedly put forth, it does not account for the grievor's assertion that it was Mr. Harley who raised the matter of the Sunday shift start time by asking the grievor when he would commence work that day.

To some extent the grievor's position at these proceedings is not unlike the claim he made in February 2013 that led to him receiving a two-day suspension for his dishonesty in calling Mr. Harley a "liar" to many employees. The suspension letter dated February 14, 2013 commented on this matter as follows:

> With respect to the aforementioned events, it is our conclusion that you have engaged in dishonest, insolent and insubordinate behaviour that is clearly grounds for disciplinary action. Your behaviour has not only

> ruptured the trust that holds employment relationships together but it has also detrimentally contributed to the working relationship you have with fellow employees and the trust they have in you as a union steward. The statements you made to your fellow employees were malicious, in the sense that you knowingly were aware that they were false, and in your position of leadership as a union steward you must be held accountable for this behaviour. Further to this, when management held meetings to correct the false information you were spreading through the crews you defended your false accusations and even went as far as calling a member of the management team a "liar" numerous times in front of your fellow employees when you knew this was not true and had been told to stop numerous times by another member of the management team. This resistant and defiant conduct is not only extremely rude but it shows a complete lack of respect for your employer's authority and is grounds for discipline in and of itself.
>
> As a result of these transgressions, we are imposing a two-day disciplinary suspension in line with progressive discipline. This suspension will be served on Thursday, February 14 and Friday, February 15, 2013. In the interest of your employment relationship with Tolko Industries Ltd. going forward, we sincerely hope you take the time to reflect on where your behaviour is taking you and take immediate steps to correct this behaviour. Please be aware that the severity of this incident could have warranted more severe discipline up to and including termination. Further behaviour of this nature will not be treated with such leniency. Alternatively we shall apply and follow the principles of progressive discipline. Should you feel that there may be some underlying condition that may be contributing to your propensity to act in this manner, please be reminded that the Employee and Family Assistance Program is available to you should you wish to access it.

To the grievor's credit in relation to this February 2013 matter he ultimately apologized to Mr. Harley for making untruthful statements, but the present situation occurring almost one year later shows the grievor has not learned from his past mistakes. The grievor has shown he is not above seeking to rely on his own untruthfulness as a way of getting out of a predicament he has put himself into.

The grievor's wrongful conduct was significantly exacerbated at these arbitration proceedings when he tendered as evidence a document he had handwritten that contained

false self-serving information, and then he lied, extensively, under oath about the veracity of that document. Specifically, the grievor sought to enhance his own credibility by relying on a document he asserted was written contemporaneous with his discussions with Mr. Harley relating to the Sunday overtime shift in question, but clearly was written at a later date. The handwritten letter proffered by the grievor while he was under cross-examination stated:

> Statement of Robin Shaver
>
> Jan 30, 2014
>
> Barry Harley was in millwright shop reading our log book at 8:30 AM on Jan 30, 2014. He asked me if I was going to work on Sunday Feb 2, 14 because on sign up sheet I said "Not sure yet" beside my name. I told him I didn't know what time my daughter would be home from visiting my other daughter on the coast. I said I will try to find out a.s.a.p. and he said "OK"....
>
> I phoned his work # from home at 8 PM on Jan 30, 14 on his work phone and left a message. Told him that I would work on Sunday for only 4-6 hrs. that's it....
>
> On Friday Jan 31, 2014 at 1st coffee break and after maintenance meeting, Darren said "don't need Robin on Sunday." I went to Barry's office and asked "I'm confused", you told me to work, Darren said no. Barry said to come in. Barry said "what time you going to be in"
>
> I said "7,8".
>
> Barry said "OK".
>
> I then continued to discuss temp. incumbency on car loader. We were in agreement until I chatted with Chaman.
>
> This is my statement to the best of my knowledge.
>
> Robin Shaver
> Jan 31, 2014

After having proffered this written statement during his cross-examination, and in response to questioning about when he had wrote it, the grievor explained it had been written on both January 30 and 31, or just January 31. He added he had learned to make such detailed notes of conversations through his involvement with the Union as a plant committee member. In the face of significant challenge as to when this document was actually drafted, the grievor clung to his clearly untruthful account that he wrote it – and specifically recorded Mr. Harley asking the grievor when he would start work on February 2 and his agreement to allow a variable start time that day – prior to the shift having occurred and the grievor getting in trouble for having been found by the Employer to be late. There can be no doubt that the grievor was being untruthful while under oath about when he wrote his note, but he was unable to acknowledge this, despite having been given ample opportunity to do so.

The evidence supports a conclusion that in addition to not telling the truth about what was discussed between him and Mr. Harley during the relevant time period, the grievor was also untruthful about when he wrote the note he tendered at these arbitration proceedings to buttress his own credibility.

Arbitrators have generally viewed dishonest grievors as poor candidates for reinstatement, but it has been recognized this behaviour is not necessarily fatal to one's prospect for reinstatement. While trust and honesty are inherently an integral part of most if not all employment relationships, a lack of candour should not automatically rule out the substitution of a lesser penalty. Having said this, an employee who fails to admit his dishonesty, or fails to give the arbitrator a basis for concluding that he has learned from the experience, is a doubtful candidate for rehabilitation.

In my view the grievor's testimony under oath at these proceedings was a watershed moment in the case and it constituted the tipping point where it became clearly

evident that the employment relationship could not be restored. For whatever reason the grievor could not help himself from adducing and seeking to rely on a document he wrote that contained falsehoods relevant to his grievance. The grievor was cavalier with the truth while under oath; his testimony went well beyond what may be described as willful stupidity or a clumsy lie, and entered the realm of what may be better characterized as deceit aimed solely at enhancing his own credibility. In remaining steadfast in his assertion that he had written his note before the February 2 shift the grievor conveyed to this board of arbitration that he felt he was somehow above having to tell the truth, but that he should be trusted nonetheless. At these proceedings the grievor was given every opportunity to clarify or recant what he had said on this point, but he essentially responded only by confirming what was clearly not true.

Of significance to the grievor's rehabilitative potential in the present case is the fact that he had plenty of opportunity to reflect on his behaviour since having been discharged, and had obtained counseling to address some personal issues that required attention. The grievor at these proceedings suggested he had corrected his behaviour, but apparently this is not the case. His false testimony reflects a serious deficiency in his perception of his obligations as an employee, and as a witness who has sworn an oath to tell the truth. To be clear, the grievor had an opportunity before this board of arbitration to accept responsibility for his actions and seek to make amends, but he effectively rejected this and actually made things worse for himself. He is the author of his own misfortune and must bear the consequences for his actions and representations.

Having regard to all of the circumstances surrounding the grievance, including the grievor's extremely poor disciplinary record, together with the substance and manner of the grievor's evidence at these proceedings, I cannot find the employment relationship is restorable with the imposition of a lesser sanction than discharge. The grievance must therefore be dismissed.

It is so awarded.

Christopher Sullivan