IN THE MATTER OF AN ARBITRATION

BETWEEN:

CARRIER LUMBER LTD.

(the "Employer")

AND:

UNITED STEELWORKERS UNION, LOCAL 2017

(the "Union")

CONCERNING:

Carrier Lumber Ltd. and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union, Local No. 1-2017 (Alan Normal – Discipline (#049-002/190919) (Section 104 – Case No. 2020-000189L)

ARBITRATOR:	Karen F. Nordlinger, Q.C.
FOR THE EMPLOYER:	Stephanie A. Vellins
FOR THE ASSOCIATION	Sarbjit Deepak
DATES OF HEARING:	Via Zoom Conference September 22 and 23, 2020 and January 4 and 5, 2021
DATE OF DECISION:	February 1, 2021

AWARD OF THE ARBITRATOR

1. The Grievor, Alan Norman, was demoted from his position as forklift driver for a period of two years, as the result of safety issues arising from his operation of the forklift. He has been employed by the Employer since 2003 and as a forklift driver since 2010.The Grievance was filed on September 16, 2019. It asks for reinstatement to the forklift position and compensation for any wage loss. The matter proceeded pursuant to s.104 of the Labour Relations Code with time extensions agreed to as the result of scheduling difficulties.

2. The Employer's position is that the Grievor's demotion was non-disciplinary and that previous incidents of unsafe operation that resulted in discipline may be considered in this arbitration, notwithstanding the existence of a Sunset clause in the Collective Agreement. If the demotion was non-disciplinary the factors in *Edith Cavell* would be applicable and have been satisfied. In the alternative, if the demotion was disciplinary, the Sunset clause applies and the discipline was not excessive.

3. The Union's position is that the demotion was disciplinary and excessive in the circumstances. Alternatively, if it was non-disciplinary, the *Edith Cavell* factors have not been complied with. In any event, the Grievor should be reinstated and made whole financially.

4. The parties and all of the witnesses agree that the workplace is a safety sensitive environment where it is critically important that everyone is vigilant as to their surroundings and conduct. The Grievor operated a forklift in the production areas of the lumber mill operated by the Employer. He was responsible for moving lumber, loading trucks and moving railcars when needed with a loader.

5. The incident giving rise to the demotion occurred on September 3, 2019 when the Grievor was operating a loader to move rail cars. There is not much dispute as to the facts. A loader is a forklift with a different mechanism on its front end, referred to by the Grievor as a "knuckle", instead of the forks. The Grievor was in his words "driving blind" as he was pushing the rail cars from behind and thus could not see ahead of him. Another employee, Tyler Connell, was the spotter assigned to assist the Grievor. His job was to call out distance over the radio to alert the Grievor when to stop pushing. The last communication the Grievor heard from Mr. Connell was at the 40 foot mark. The next call would have been at the 20 foot mark, however the Grievor did not hear it as he had inadvertently pushed a button on his radio which silenced it. As a result, the Grievor pushed the cars several feet past his stopping point, resulting in a derailment. The Grievor then left the loader and saw that he had gone past the derailer. He felt that the cars were too close to the CN main line, so he got back into the loader and reversed. In doing so he damaged several rail ties. In cross, he indicated that his spotter, Mr. Connell, was somewhat erratic in his calling of the distance markers and that he did not stop when he lost communication with him as he did not realize he had lost it until he felt the length of the silence was too long. He had given Mr. Connell an extra second or two because of the inconsistency of Mr. Connell's timing. He did not realize that this inconsistency was a safety concern as the distance is always an approximation.

6. The Grievor testified that he was wearing heavy protective gloves at the time of the incident and that they contributed to the difficulty he had in holding down the mike on his radio resulting in the loss of communication. He did not inform his supervisor of the derailment as required. The evidence suggests it was Mr. Connell who reported the derailment. The Grievor continued to work on the forklift that day until he was called into his supervisor's office, when he was advised that he would be removed from the forklift and reassigned pending an investigation, but at his forklift rate of pay. On September 5 he was informed that he was being taken off the forklift for a period of two years and that he was being reassigned to the planer mill. The wage differential is approximately $2.00 per hour.

7. The Grievor had worked on the loader for approximately two and a half years for 20-30 minutes a day. He did not agree that loader work was less pressure than forklift work, as the company has expectations as to production. He described the work as generally very busy in every area of the mill. He agreed that safety was paramount.

8. In cross, the Grievor agreed that he had been involved in 6 incidents involving unsafe operation of the forklift, since 2015:

   a. December 14, 2015, he ran into a post knocking it off its base;

   b. February 11, 2017, he failed to ensure a kiln door was open and drove into it causing damage;

   c. June 6, 2018, he ran into a pedestrian worker. He was deemed not to have been at fault in this incident as the other worker was distracted on his cell phone. At the hearing, the Employer stipulated that they are not relying on this incident in this arbitration.

   d. August 14, 2018, He was using the forklift to load lumber onto a truck. He attempted to load too high on the truck (referred to as "five high") and as a result the load he was lifting fell to the ground causing damage to the lumber;

   e. December 6, 2018, he backed into a fire hydrant shed causing damage to the shed and fire hydrant.

   f. September 3, 2019, he caused a derailment of rail cars he was pushing, as set out above.

9. The Grievor had received two one day suspensions for each of the first two incidents, in December 2015 and February 2017. His supervisor, Dylan Tobin, the Tabor Planer manager, testified that he was trying to correct the Grievor's behaviour with discipline. However, in 2018 he decided that coaching might be a better alternative. He described the Grievor as a good worker who they did not want to lose as the result of going down the discipline path. In his evidence the Grievor indicated that he did not grieve the suspensions as the incidents were his fault.

10. After the truck loading incident on August 14, 2018, the Grievor was not disciplined, but spoken to by Dion Hansen and Chris Ramsay. In cross, the Grievor agreed he had never loaded a truck that way before although he had watched others do it. He admitted that he had failed to do it correctly. The Employer has now changed the policy for loading trucks to prohibit the loading at "five high" after the incident. The Grievor did not report the incident at the time and the Employer found out the next day from the shipper.

11. Mr. Tobin was part of the investigation team of the December 2018 incident when the Grievor backed into the fire hydrant shed. Again the matter was dealt with by coaching. The Grievor agreed he was warned by Mr. Tobin that he may be removed from the forklift if there were further safety incidents. The Grievor testified that there were mitigating circumstances in this case because it was dark, he was focused on several factors including trying to keep the forks from bouncing as he was driving off the road and it was snowing heavily. He admitted that he could have made different decisions with respect to his operation of the forklift under those circumstances. He agreed that Mark Currie, the Safety Coordinator, discussed the incident with him and that the conclusion of the investigation was correct that the incident was caused by human error and misperception.

12. With regard to the derailment incident in September, 2019, the uncontroverted evidence is that the Grievor did not report the incident immediately and did not "freeze the scene" as required by the Canadian Railway Operating Rules (the "CROR"). Instead, he made matters worse by reversing the loader. At that time he did not advise Mr. Tobin that he was concerned about being too close to the main rail line and was approximately 30 feet from it. Nor did he immediately admit that he got out of the loader after the derailment. When Mr. Tobin advised the Grievor that he was being removed from the forklift but would retain his forklift pay rate pending the investigation, the Grievor was upset and reacted aggressively, commenting that he had hit another employee previously and wasn't removed. After the investigation, the Grievor was called to a meeting to which he brought union representation. He was advised that he was removed from the forklift for a period of 2 years. He was reassigned to the planer mill. Mr. Tobin described this result as non-disciplinary, however he felt that the Grievor had to be removed from the situation. He decided on 2 years as the result of having had success using the same time frame on other employees with safety infractions. They had been reinstated to

the forklift with no further problems after that time frame. He did not advise the Grievor what the expectation would be, *vis a vis* his forklift position, after 2 years. He did not become directly involved in further coaching and referred to Dion Hansen for that knowledge.

13. Dion Hansen, has been employed by the employer for 28 years and is currently the yard supervisor. He was responsible for the training of forklift operators and outlined the steps in that training which occurs annually. Forklift drivers must be recertified every 3 years. Mr. Hansen was responsible for training the Grievor, using internal training modules and third party trainers. He had never heard the Grievor express dissatisfaction with his training. The Grievor had done well on his skills assessments and was aware of the Company policies and procedures as well as the CROR. He had occasion to speak to the Grievor after some, but not all, of his safety incidents, and his impression was that the Grievor did not think they were serious. He told the Grievor at least one half dozen times that he could be removed from the forklift unless he was more careful. He spoke to the Grievor after the "five high" incident in August 2018 and explained that it was not common practice and he should not have tried it if he had not sought guidance on it. Again, he warned the Grievor that he could be removed from the forklift if he was not more careful. In cross, Mr. Hansen stated that at the time of this incident, he did not believe it warranted discipline because the Grievor was still learning and he had not been loading trucks for long. He was not advised by anyone to take a non-disciplinary approach.

14. The Grievor does not admit that he was told a half dozen time to be more careful or he would be removed from the forklift, but he does recall being told to be more careful after the instances giving rise to the one-day suspensions and that he was warned about being removed from the forklift after the fire hydrant incident. He does admit it may have been said to him after another incident but does not recall. He does admit the discussion with Mr. Hanson as to the proper loading of a truck after the "five high" incident and that it was a form of coaching.

15. Mr. Hansen was not involved directly with the fire hydrant incident in December 2018 and did not discuss it with the Grievor, as it had already been dealt with. He felt that it was a minor incident. One of the Recommendations of the investigative team was that there be a complete competency assessment of the Grievor to be done by Mr. Hanson or Mr. Mark Currie. Mr. Hanson did not do the assessment and did not know if Mr. Currie had. The Grievor denies that any competency assessment took place.

16. After the September derailment incident, Mr. Hanson attended the scene and advised the Grievor that he had made serious mistakes in not reporting it, reversing the cars and not freezing the scene. Mr. Hansen was not involved in the decision to remove the Grievor from the forklift, but supported the decision on safety grounds.

17. There was no competency assessment of the Grievor after the derailment incident. As to the possibility of future safety incidents if he should be reinstated to the forklift, the Grievor stated that he understood that safety was the priority in the workplace. He would be as conscientious as possible to be more aware of his surroundings.

18. Other safety concerns arising from an inspection of Mr. Hanson's daily log were put to him in cross. He testified that they were not necessarily related to only the Grievor but were concerns for all employees. They were more minor concerns. He also testified to another incident where the Grievor knocked over some packages behind him. Mr. Hanson did not feel discipline was warranted as it was minor. He was asked about the benefits of a refresher course for the Grievor, but stated that he thought it was unnecessary as the Grievor is a decent operator. He agrees with Mr. Tobin that he is a great worker 98% of the time. He also agreed that no one is perfect 100% of the time. His assessment is that as long the Grievor follows direction he should be fine. He also noted that the Employer has now erected a sign post at the side of the rail indicating the 20 foot mark, as the result of the recommendation of the investigation team on the derailment incident.

19. Mr. Chris Ramsay is a 21 year employee at the mill. He is currently the mill supervisor and the Grievor's supervisor. He investigated the fire hydrant incident in 2018 and decided not to remove him from the fork lift as he had worked long hours overtime that day, even though the Grievor stated

that he was not tired and felt fresh. He cautioned the Grievor that they would look at removing him from the forklift if he did not improve. The Investigation Report recommended a competency assessment of the Grievor. In January 2019, with the knowledge of the Grievor, Mr. Ramsay observed him working on the forklift for a period of 5-10 minutes and his performance was "fine". In cross, it was put to him that the Grievor did not know of the observation and Mr. Ramsay admitted he may not have told him.

20. Mr. Ramsay investigated the incident in 2017 when the Grievor drove into a kiln door. He imposed a one day suspension on the Grievor as a result of the incident, but otherwise had no issues directly with the Grievor, although he was involved with a recommendation to restrict the Grievor's overtime after the fire hydrant incident in December 2018.

21. The Grievor confirmed the training he had received to be a forklift driver was extensive and that he had never indicated to the Employer that he might require more training or that he did not understand anything. In fact, he stated that he had no issues with his training and did not fault it for his mistakes. He agreed that the issue was bad decision making. Although the Grievor admitted he had been told to work in a safe manner after the incidents, he denied that it amounted to coaching. He felt that coaching would involve a more thorough discussion about what went wrong with a more senior or experienced employee.

22. Somewhat ironically, the Grievor is on the Plant Safety Committee which consists of 2 people – himself and Stacey Ball. Safety incidents are discussed at the committee meetings which take place rather less than monthly. The Grievor does not take part in the committee discussion if he is involved in the safety incident. It was not clear with whom Ms. Ball would discuss matters if the Grievor was unable to participate. Safety incidents are also discussed at Crew meetings. The discussion length will depend on the seriousness of the incident.

23. He is also a shop steward and has represented employees at grievance meetings. He was aware of three of his colleagues who had been removed from the forklift for safety infractions for periods of one or two years, then reinstated successfully.

Analysis

24. The fundamental question in this matter is whether the demotion was non-disciplinary as submitted by the Employer or disciplinary as submitted by the Union. As Arbitrator Hope said in *Wire Rope Industries Ltd. and United Steel workers, Local 3910*, [1983] BCCAAA No. 661 "A non-disciplinary demotion is justified only where the employer is able to establish that the employee is incapable of meeting and maintaining a proper standard of work performance." (par. 5)

25. The Employer relies on its overarching responsibilities under the *Workers Compensation Act* to ensure the safety of all workers in its employ or at its workplace and to remedy any workplace conditions hazardous to the health or safety of its employees. It submits that the demotion of the Grievor was a non-disciplinary demotion in accordance with its statutory and Collective Agreement obligations as the result of all of the safety incidents set out above. The Employer had chosen to coach the Grievor after the initial two suspensions and their response to the derailment issue was non-disciplinary. In essence the Grievor was, in the Employer's view, incapable of maintaining a proper work performance. Thus the Sunset Clause in the Collective Agreement does not apply and the factors in *Re Edith Cavell Private Hospital Employees Union, Local 180* [1982] BCCAAA No. 495 must be satisfied. It relies on the following cases:

Prince Foods Inc. v. United Food and Commercial Workers International Union, Local 175 (Brisbois Grievance) 2004 OLAA No. 401; *Great Pacific News and Teamsters, Local 213* [1997] BCAAA NO.560; *Re Edith Cavell Private Hospital and Hospital Employees' Union, Local 180,* [1982] BCCAAA No. 495; *OI Canada Corp. v. Teamsters Local Union No. 213 (Duncan Grievance*), [2006] BCCAAA No. 68; *Olymel v. United Food and Commercial Workers Union Canada, Local 175 (Chuong Grievance)*, [2009] OLAA No. 279; *Weyerhaeuser Co. v. Industrial Wood and Allied Woodworkers Union of Canada, Local 1-3567*, [2004] BCCAAA No. 147; *Ivaco Rolling Mills v. United Steelworkers of America, Local 8794 (Ranger Grievance),* [2001] OLAA No. 831; *International Union*

of Operating Engineers, Local 721 and 721B v. Georgia-Pacific Canada Inc. (MacQuarrie Grievance), [2010] NSLAA No. 2; *Cargill Ltd. (Dunlop road Plan) v. United Food and Commercial Workers Canada, Local 175 (Ros Grievance),* [2011] OLAA No. 27; *Alberta Union of Provincial Employees v. Lethbridge Community College,* [2004[1 SCR 727

The Union relies on the following cases:

Mission Hill Vineyards Inc. v. Brewery, Winery and Distillery Workers' Union, Local 300 (Andruchow Grievance), [2009] BCCAAA No. 122; *OI Canada Corp. v. Teamsters Local Union No. 213 (Duncan Grievance),* [2006] BCCAAA No. 68; *Re Wire Rope Industries Ltd. and United Steelworkers, Local 3910* [1983] BCCAAA No. 661; *Re Edith Cavell Private Hospital and Hospital Employees' Union, Local 180,* [1982] BCCAAA No. 495; *Winnipeg (City) v. Canadian Union of Public Employees, Local 500 (Appleyard Grievance),* [2011] MGAD No. 5; *CPL Paperboard Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 1129 (Kowalski Grievance),* [1994] BCCAAA No. 114

26. The *Edith Cavell* factors relate to non-disciplinary demotions that arise from an employee's inability to perform the essential functions of the job, not related to culpable conduct.

27. In *OI Canada Corp. v. Teamsters Local Union No.213* [2006] BCCAAA No. 68, Arbitrator Hickling stated that the distinction between non-disciplinary demotion and disciplinary demotion is problematic because the conduct may be reasonably characterized as both. The circumstances in that case were similar to this case. The Grievor was a forklift operator who was demoted permanently for safety infractions. The Grievor repeatedly travelled with his forks in the air resulting in safety incidents, and although his performance would improve for a time after warnings, he would again fail with the forks. The employer demoted him indefinitely on the basis that he had demonstrated an inability to maintain proper job performance. Although Arbitrator Hickling questioned the use of an indefinite demotion, he supported the employer's non-disciplinary approach in that matter.

28. The situation is similar, yet different, here. In this case, each of the safety incidents resulted from a different set of circumstances which involved a lack of attention and judgement by the Grievor. He was not repeatedly performing the same unsafe practice as was the Grievor in *OI Canada*. He was, and I accept, warned on several occasions to be more careful. His attitude to the safety infractions was, it appears, somewhat casual. His supervisors did not believe that he took the incidents seriously. However, the derailment incident was very serious and the Grievor did not seem to appreciate that at the time. His comment to his supervisors afterwards, that he had not been removed when he had hit the pedestrian, is illustrative of his attitude. He thought the derailment was less serious. But as some of the witnesses pointed out, had the cars flipped over at the derailment, his spotter or other employees in the area could have been injured or worse and the rail cars damaged. The same type of potential risk to employees on the ground existed as the result of the falling lumber in the five high incident. The witnesses for the Employer and the Grievor himself referred to his lack of judgement as being to blame for the safety infractions. It is more than anything his casual attitude to the problem that needs correction. He is by all accounts a good forklift driver, but his job performance has been hampered by his attitude. Perhaps if discipline had been imposed earlier, the necessary correction would have taken place.

29. The Investigation reports of the last three incidents all state, as the immediate cause of the incidents, 'human error', and 'misperception' and, in the report on the derailment, 'lapse of attention'. In my view, the incidents were as the result of what can only be viewed as culpable conduct of the Grievor, arising from his negligence. In the derailment incident he made several mistakes in pushing the cars too far, failing to stop when he lost contact with the spotter, reversing the loader, failing to contact his superior, and not freezing the scene. He also admitted during this arbitration that there were steps he could have taken that may have prevented the other two incidents.

30. The fact that the Employer warned the Grievor that future safety incidents would result in his removal from the forklift, supports a finding that his ultimate removal was punitive, not just a coaching mechanism. In effect, the Employer tried the non-disciplinary route with the warnings of removal after the previous two incidents, but when confronted with a further serious incident, it determined to

effect the consequence of which it had warned, in the hopes it would have a positive effect on the Grievor's work performance. In cross, it was put to Mr. Tobin that the Grievor was demoted to correct his behaviour. Mr. Tobin said only that it was "a safety action". However, the evidence compels me to the conclusion that the demotion was disciplinary, based on the mistakes the Grievor made in the derailment incident. The employer knew of his safety record and it was a factor in its decision. However, it also took into account that 98% of the time he was a good worker. Thus, he had the ability to do the job, but had been negligent. In addition, the demotion was for a 2 year period which the Employer chose because it is a length of time that has worked in the past to rehabilitate other employees involved in safety infractions on the forklift. This disposition signals that the Employer does not believe that the Grievor is incapable of meeting and maintaining a proper level of work performance. Rather, it signals that the Employer believes that he needs time and discipline to improve his performance. Just because the Employer says its response was non-disciplinary does not make it so.

31. As I find that the demotion was disciplinary, the Sunset clause does apply in these circumstances. I do not therefore consider the earlier suspensions. The Sunset clause reads: "The disciplinary record shall not be used for disciplinary purposes if an employee has completed two (2) years of work without an additional disciplinary entry. In disciplinary cases involving harassment the time limits may be extended. The Employee must be informed of this decision at the time of the discipline". I take it, though it is not particularly clear, that the 2 years in this case would run from February 11, 2017, the date of his last Discipline Record. No discipline has been recorded since then. The fire hydrant and five high safety incidents arising later may be considered, as they did not result in discipline. There is some evidence that there were mitigating factors in the five-high and fire hydrant incidents. The company had no policy in place with regard to the five high stacking of lumber at the time of the incident and the Grievor was learning to load lumber at that point. The fire hydrant incident was as the result of decisions made by the Grievor to drive off the road in a snowstorm in the dark. However, in both cases the Grievor admitted there were steps he should have taken to avoid those incidents. I do not accept the Union's position that a lack of a policy alone removes the "five high" incident from consideration. The Grievor exhibited a lack of judgement in attempting a maneuver for which he had no training and was potentially very risky. In all of the circumstances relating to the derailment and in considering the two previous safety incidents, there was just cause for discipline.

32. The Union submits that the demotion was excessive discipline in the circumstances. Alternatively, if it was a non-culpable demotion, the *Edith Cavell* factors were not satisfied. Given that I find this was a disciplinary demotion, I will not deal further with the *Edith Cavell* submissions. The analysis turns to the principles established by the *Wm. Scott* decision.
(*Wm. Scott & Co.* [1977] 1CLRBR 1)

33. The Union submits that there was no progressive discipline following the two suspensions and the Grievor was given a false sense of security by warnings made meaningless by their repetition. If the demotion was disciplinary, the Sunset clause in the Collective Agreement (Article XVI s. 11) does not allow for the consideration of the two earlier suspensions and the Grievor did not receive any discipline for the fire hydrant or the "five high" incident. The company had no policy on stacking five high at the time. Thus, the demotion relates to the derailment and fire hydrant incident only and is excessive. The Union submits that although the Employer did not rely on the fact that the Grievor hit a pedestrian at the hearing, it did so for the purpose of the demotion. Thus the Employer is attempting to manipulate the process. Dealing with the last point first, I am not satisfied that the evidence discloses that the Employer relied on the pedestrian incident for the purpose of the demotion. Certainly they knew about it, but it was also known at the time of the demotion that it was not the Grievor's fault.

34. I have reviewed all of the cases relied on by the parties, but find most compelling these words of Arbitrator Hickling in *OI Canada* (supra) at par. 169:

> "Where the issue is the competence or the ability to perform the job, the scope of the review is not limited to incidents that have resulted in punitive action. The assessment is not rooted in the employer's power to punish. Further, where the overriding consideration is safety, it is not

> confined to the question whether the employer (sic) can pass a test on theory, or a practical test that is limited in duration and is not conducted under normal operating conditions. A person who fails the test would lose his operating privileges, but passing such test does not guarantee that the driver is capable of operating to standards reasonably expected by the employer. One also has to bear in mind that competence does not require perfection. As noted earlier, the employer's confidence in an employee's abilities to work safely may be sapped by recurrent deficiencies. It may be destroyed by a single act of a serious nature....Bearing in mind the seriousness of the incident, the recurrent nature of the grievor's inattentiveness to his surroundings, his recurrent failures to travel with forks at a safe height, his lack of judgement, the potential for serious injury to himself and or other workers, it was not unreasonable, in my judgement, for the employer to conclude that it could no longer take the risk of leaving him in the posting of LTO. It had lost trust in his ability to operate the vehicle consistently in a manner that complied with the company policy on safe lift truck operation and the driver's statutory obligations."

35. I do not accept the Union's position that the lack of progressive discipline is determinative when considering the discipline imposed. After a serious safety incident, I find that the Employer made a determination based on its treatment of other employees with safety infractions or poor performance issues, that a 2 year demotion would provide the Grievor with time to absorb the seriousness of the safety issue and to hopefully correct his attitude in the future. In the words of Arbitrator Hickling in *OI Canada* (supra), progressive discipline "does not require that the employer start in every case on the bottom rung of the disciplinary ladder and work its way up to the top by equally graduated steps. The starting point may depend on the seriousness of the incident. It may even warrant instant dismissal without any preliminaries. (par. 56) And later, Arbitrator Hickling said "Withdrawal of driving privileges may not have been the only course of action open to the employer, but it was an appropriate one".

36. In referring to the *OI Canada* decision in *Olymel v. United Food and Commercial workers Union Canada, Local 175* (Chuong Grievance), [2009] OLAA No. 279, Arbitrator McNamee found, in dealing with similar circumstances, that the real issue is not what form the demotion is found to be, disciplinary or non- disciplinary, but whether the Grievor should be reinstated as a forklift driver. Here the demotion is not necessarily permanent. The Grievor may be reinstated once the 2 years is up provided he qualifies under the Collective Agreement and the Employer is satisfied upon an assessment of him that he will be able to operate safely. I have considered the seriousness of all of the three safety incidents occurring within a 13 month period and the Employer's experience with successfully rehabilitating other employees with time limited demotions. Although, the particular circumstances of those cases are not probative here, they are some indication of the value of a time limited demotion. In all of the circumstances I do not find that the discipline was excessive.

For the above reasons, the grievance is dismissed.

Karen F. Nordlinger, Q.C.
Arbitrator