

Conifer Arbitration Report

AR No. 01/25

RE: WEST FRASER MILLS (100 MILE OPERATION) AND UNITED STEELWORKERS, LOCAL 2017

Re: Shane Wilkie - Lock Out Violation Termination

Attached is a recent arbitration decision for your reference.

In brief, the grievor, Shane Wilkie, was terminated from his position as an oiler, as the result of violating the employer's Lock-Out Procedure Program & Policy (the "Lock-Out Policy").

The grievor was a long-term and experienced employee. He had been employed at the operation since June 2005. On the day in question (May 13, 2024), while attempting to clear a blockage in an oil catchment drainage pipe in the oiler room, the grievor "hopped over the edge" (his words during testimony) into an area where a moving conveyor belt return was located in order to access the blockage from the other end of the drainage pipe. The "Lock-Out Policy" applied to work on operational conveyor belts at the mill and includes procedures that are to be followed when performing work on energized equipment. At the same time, the Employer's Maintenance Planner happened to be walking through the Mill basement to take oil readings. He saw the grievor over the moving conveyor. An investigation ensued.

During the investigation the grievor was agitated and minimized the event, failed to apologize and called the investigation over the top. The grievor was subsequently terminated for cause on May 28, 2024. At the time of his termination and at the hearing no historical discipline was presented to support progressive discipline due to a discipline sunset clause contained in the collective agreement.

During the hearing the grievor testified that he did not think what he was contemplating was particularly unsafe. He explained in evidence, that he "took a shortcut". The grievor testified that "in my mind it was low risk" and "I thought I could do the job safely". While the grievor eventually acknowledged accountability for the lockout violation, it was only during the hearing that he apologized.

There is no dispute between the parties that the grievor's actions were in violation of the "Lock-Out Policy". The Employer's position was that it had just cause for discipline and termination was appropriate in all the circumstances of the case, and the Union's position was that while the employer had cause for discipline, termination was excessive in the circumstances of the case.

In the arbitrators analysis, in assessing whether termination was excessive in the circumstances of the case, the critical determination was "whether the employee, if reinstated, will work in a safe manner." The arbitrator concluded that while the grievor's breach of the "Lock-Out Policy" was a substantial workplace offence, it was significantly exacerbated by the circumstances in which it occurred. Namely, the fact that employee

deliberately choice to breach the "Lock-Out Policy" after personally assessing dangers in the conveyor as minimal; displayed the general attitude that the violation wasn't especially dangerous and was only an issue because he got caught; and, that the grievor only apologized for the violation during the hearing. Further, the arbitrator stated the following:

I accept, however, that even serious employment offences do not automatically provide cause for discharge (Wm. Scott). But, in examining the Grievor's subsequent conduct, including his testimony, I am unable to conclude that the Grievor is likely to work in a safe manner if reinstated.

I find that the Grievor's belated apology does not allay my concerns about his ability to work in a safe manner. Rather than convey the Grievor's genuine remorse at his misconduct and an acceptance of responsibility, the Grievor's apology at the hearing appeared self-serving and was tied to his belief that that he should not lose his job over this particular infraction. In other words, I find the Grievor's apology at the hearing was, as Arbitrator Foley described, an after-the-fact attempt to save his job, rather than a genuine expression of remorse and contrition.

This award highlights that an employer can move to terminate a longer service employee for a one-time serious offence, even without progressive discipline, if the right circumstances are involved. Specifically, that the degree to which an employee accepts responsibility for a safety violation and apologizes with a commitment to not have the behavior repeated is instrumental in a discipline arbitration.

Failure of the employee to do so could lead to an increasing prospect of resulting discipline being maintained by the arbitrator.

The full award is attached for your review.



Cam Meroniuk
Manager - Employment Relations

CM
Attachment(s)
5 August 2025