

WEST FRASER MILLS
(100 MILE HOUSE OPERATION)
(the "Employer")

-and-

UNITED STEELWORKERS, LOCAL 1-2017
(the "Union")

SHANE WILKIE TERMINATION

ARBITRATOR:	Brett Matthews
APPEARANCES:	Donald Jordan, K.C. and Aleksandra Živković, for the Employer Sarbjit Deepak, for the Union
DATE OF HEARING:	April 7 and 8, 2025
DATE OF AWARD:	June 5, 2025

AWARD

I. INTRODUCTION

1 The Employer terminated the employment of Shane Wilkie (the “Grievor”) for a lock-out violation. The Union grieved (the “Grievance”) and the Parties referred the Grievance to me as a single arbitrator.

2 For the following reasons, I dismiss the Grievance.

BACKGROUND

3 The Employer operates a lumber mill in 100 Mile House, B.C (the “Mill”).

4 The Employer has a Lock-Out Procedure Program & Policy (the “Lock-Out Policy”) which provides, among other things, the procedures that are to be followed when performing work on energized equipment. There is no dispute that the “Lock-Out Policy” applies to work on operational conveyor belts at the Mill.

5 The Grievor is an experienced employee. He has been employed at the Mill since June 2005. At the time of his termination, the Grievor was employed as an oiler.

6 On the morning of May 13, 2024, The Grievor reported to work and was working in the oiler room in the basement of the Mill.

7 In the oiler room are a number oil barrels stacked on racks. Behind the barrels is the box chain conveyor belt return – a slow-moving conveyor belt. Below the racked oil barrels is an oil catchment tray with a drainage pipe. The drainage pipe had been blocked for months prior to May 13, 2024.

8 The Grievor was, on that May 13, 2024 morning, frustrated that the person he was relieving had left him with empty oil barrels. He took the opportunity, however, to remove the empty barrel from the rack, and attempt to clear the blockage in the drainage pipe. The Grievor removed the barrel and, using a coat hanger, tried to poke at the blockage (which he identified as a plastic bottle cap) from the near end of the drainage pipe.

9 In his testimony, the Grievor explained that when that didn’t work, he grew frustrated. He knew that he could just: “hop over the edge” (his words) – i.e. into the area where the moving conveyor belt return was – and get at the blockage from the other end of the pipe.

- 10 The Grievor testified that he knew he could have gone upstairs to call a foreman (in accordance with the Lock-Out Policy). In his words, doing so “would have taken ten minutes” and was “no big deal”. But, the Grievor testified, he did not think what he was contemplating was particularly unsafe. So, he explained in evidence, he “took a shortcut”. The Grievor testified that “in my mind it was low risk” and “I thought I could do the job safely”.
- 11 As such, the Grievor stepped through the area where the empty barrel (now removed) had been, knelt with his legs and feet on either side of the moving conveyor belt return, and with the coat hanger poked the bottle cap loose from the other end of the drainage pipe.
- 12 There is no dispute between the Parties that the Grievor’s actions were in violation of the Lock-Out Policy.
- 13 At the same time, Brian Amiss, the Employer’s Maintenance Planner happened to be walking though the Mill basement to take oil readings. Amiss saw the Grievor over the moving conveyor.
- 14 I accept the evidence of Amiss that, at this point the Grievor said to Amiss something like “you shouldn’t have seen that” and “what are you doing out of your office?”. I further accept that the Grievor said words to the effect of “can we keep this between us” or “can we pretend this never happened” and “no one has to know”. The Grievor, for his part, testified that he said something like, “come on, don’t report this. It’s just you and me standing here”. The Grievor says he was pleading with Amiss for lenience.
- 15 Amiss did not heed the Grievor’s pleas and reported the incident to Jeremy Schmid, his direct supervisor. Amiss and the Grievor went to Schmid’s office, and the three of them then went to the scene of the incident (the oiler room) where the Grievor showed Schmid what he was doing. In his testimony, the Grievor described this interaction as “more of an argument than a conversation”. In that interaction, the Grievor questioned whether “all this [was] necessary” and called the process “so juvenile”. Upon returning to Schmid’s office, Schmid called for a Union representative, Stacy Shephard, to attend the remainder of that meeting.
- 16 I accept that, in the conversation in Schmid’s office that ensued, the Grievor remained agitated. He told Amiss and Schmid that he was only over the conveyor belt for a matter of seconds and that if Amiss had not caught him, “nobody would have known the difference”. The Grievor told Amiss and Schmid that the conveyor belt was slow moving, and that he does “this kind of thing all the time” (or words to that effect). The Employer took this to mean that the Grievor was admitting he had committed other lock-out violations. I accept, however, that the Grievor was referring to other areas of his work, where a lock-out was not required, that the Grievor considered to be dangerous. In his testimony, the Grievor explained that, in his view, his job requires a lot of dangerous tasks, including being in tight spaces, crawling on his hands and knees, and working from
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heights. He says he was trying to convey to Amiss and Schmid that “if you think [straddling a moving conveyor] is sketchy, I’ll show you other aspects [of my job] that are just as sketchy”. The Grievor further testified that he was “trying to explain that this was not that dangerous guys”.

17 The Employer asked that the Grievor attend a second meeting on May 17, 2024. That meeting was attended by the Grievor, Shephard, Schmid and Richard Brandson, the Mill Manager at the time.

18 At that May 17, 2024 meeting, the Grievor indicated that he had calmed down after his last meeting. He testified that, after returning home from the May 13, 2024 meeting, he realized that he was wrong to have gotten so worked up and should have handled that day better. The Grievor explained at the meeting that he was “choked” on May 13, 2024 because he knew he was in a lock-out violation and that he was “in there for 10 seconds”. When the Grievor was pressed at the meeting to explain further why he was choked, the notes of that meeting reflect the Grievor as saying: “I was choked because I got caught, Brian never comes out of his office and I was only in there for 10 seconds”. In his testimony, the Grievor admitted that he “would have said something along those lines”. The Grievor further testified that he was “choked” because he got caught, but also because of the way he “handled things” and “everything that happened”.

19 The Grievor was then asked about whether he did “these kinds of things” regularly, to which the Grievor replied:

I do a lot of sketchy work as an oiler. Some of the procedures are a joke, there are no tie offs, I do a lot of grey things, but I’ve never been in the box chain before. A lot of safety things get swept under the rug.

20 The Grievor testified that he was referring to the various tasks he had referred to in the earlier meeting that he does as part of his job and that he considers unsafe.

21 The Grievor testified that he is “pretty sure” he said in both meetings that this will never happen again. He accepted that he didn’t give what he called an “official apology” in those meetings, explaining: “I had no idea I would get fired for doing what I did”.

22 On May 28, 2024, Brandson emailed the Grievor to advise that his employment was terminated for cause.

23 The Employer does not rely on any discipline history to support the Grievor’s termination. The Parties’ collective agreement contains a sunset clause on discipline.

24 The Union alleges, and for the purposes of this Award I accept, that the Grievor has not previously been disciplined for a safety infraction or lock-out violation.

- 25 In his testimony, the Grievor was asked if there is anything he would do differently. He answered as follows:

I would have apologized for being in a lock-out for one. I wouldn't have been so standoffish with supervisors, and obviously lock out next time. No more shortcuts

- 26 At the end of his evidence, the Grievor was asked if there was anything else he would like to say. He responded by offering an apology "for doing the lock-out" and continued "I don't think it should cost me my livelihood".

II. POSITIONS OF THE PARTIES

- 27 The Employer says it had just cause for discipline and that termination was appropriate in all the circumstances of this case. It emphasizes the seriousness of a lock-out violation in this industry and the fact that the Grievor made a conscious choice to not follow the procedure which he knew the Employer required him to follow.
- 28 The Union concedes that the Employer had cause for discipline. It says, however, that termination was an excessive response in all of the circumstances of the case. The Union points to the Grievor's almost 19 years of seniority at the Mill and his lack of any safety related discipline. The Union observes that the Employer is not relying on progressive discipline. It notes that the Grievor is 49 years old. The Union says this is not a case of dishonesty. It says that, rather, the Grievor was, at all times, honest and forthright. He has not denied that he was in a lock-out violation. The Union says the Grievor took responsibility for his actions and offered an apology at the hearing. It points to the Grievor's evidence that he told the Employer that he would not again violate the Lock-Out Policy.
- 29 The Union denies that the Grievor's actions on May 13, 2024 were willful or premeditated. It describes the Grievor's conduct as a careless lapse of judgement – a spur-of-the-moment decision that arose as a result of his frustration.

III. ANALYSIS AND DECISION

- 30 I agree with the Parties that the central question in this case is the one posed by the second *Wm. Scott & Co.*, [\[1977\] 1 CLRBR 1](#). ("*Wm. Scott*") question: was the Employer's decision to dismiss the Grievor an excessive response in all of the circumstances of the case?
- 31 I accept that the violation of safety rules and standards is a serious workplace offence (*Canadian Forest Products Ltd.*, [2022] B.C.C.A.A.A. NO. 122 (Matacheskie), para 39
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(“*Canadian Forest Products*”)) and that lock-out procedures are among the most important safety features in workplaces like the Mill (para 40). I further accept the following principles from *Imperial Tobacco Canada Ltd.*, [2001] O.L.A.A.A. No. 565 (Lynk):

1. Safety in the workplace is both a stringent statutory obligation and an important industrial relations concern that involves employers, unions and employees. Given the potential consequences, safety infractions are among the most serious of workplace offences.

2. As the industrial relations party with the pre-eminent control over the workplace, the employer has a legal obligation to provide a safe and secure workplace for its employees. Hand in hand with this obligation is the employer's authority to insist that workers perform their duties in a safe and efficient manner.

3. Workplace misconduct arising from deliberate, reckless, or negligent behaviour and which results in a potential safety threat or an actual injury is grounds for significant discipline, up to and including dismissal.

4. There does not have to be a physical injury or actual harm to establish the seriousness of the incident.

5. The mitigating circumstances that an arbitrator will consider in a safety discipline case are those accepted disciplinary elements as listed in *Steel Equipment Co. Ltd.* (1964), 14 L.A.C. 356 (Reville) and *Wm. Scott & Co. Ltd.*, [1977] 1 Can. L.R.B.R. 1 (B.C.L.R.B.). In any particular safety-related offence, the most important mitigating factors are those that will address the probabilities of the grievor repeating the same type of offence.

6. Safety rules have to build in the concept of the duty to accommodate. These rules have to ensure that, while they may be stringent and demanding, they also incorporate concepts of equality that eliminate all forms of discrimination.

32 Finally, I accept that, in assessing whether termination is an excessive response in all the circumstances in a case involving a lock-out violation: “... the critical determination is whether the employee, if reinstated, will work in a safe manner” (*Canadian Forest Products*, para 42).

33 I am satisfied that the Grievor’s breach of the Lock-Out Policy constitutes a serious workplace offence, and is significantly exacerbated by the circumstances in which it occurred.

- 34 On the evidence presented, I accept that the Grievor was frustrated on the morning of May 13, 2024. He was frustrated that he had been left empty oil barrels, and frustrated that he could not unplug the drainage pipe. These were not, however, unusual or unexpected frustrations. Rather, they were the run-of-the-Mill frustrations one might expect in any employment situation – frustrations that the Grievor would almost certainly face regularly in future if he were reinstated to employment at the Mill.
- 35 By his own evidence, in response to these frustrations, the Grievor made a deliberate choice to breach the Employer's Lock-Out Policy; he knew what the Lock-Out Policy required but chose to ignore it. Instead, the Grievor explained that he assessed the danger of entering the conveyor belt area. He personally considered the danger to be minimal. Consequently, he consciously chose to "take a shortcut" (to use his words), knowing that doing so was contrary to Employer policy.
- 36 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.
- 37 The Grievor's immediate reaction to being caught in the violation was to treat it as something trivial – a technical violation of a silly rule. He was annoyed at getting caught. The Grievor was irritated that the Employer – Amiss in particular – would not simply look the other way and let this go. Far from accepting responsibility for his actions, the Grievor attempted to diminish the seriousness of what occurred by suggesting, essentially, that the Employer's policy was overly pedantic: that standing over the conveyor was not actually very dangerous (at least, no more dangerous than other tasks he regularly performed). The sum of the Grievor's conduct on May 13, 2024 meeting suggests to me that he thought the Employer was making a mountain out of a mole hill. He thought the Employer was being "juvenile" by even investigating the incident.
- 38 I am not persuaded that the Grievor's attitude changed significantly in his May 28, 2024 meeting or in his testimony at the hearing. The Grievor continued to downplay the danger that he put himself in and continued to project his view that the Employer's response to his infraction was wildly excessive. The Grievor continued to stress that he was only over the conveyor for a matter of seconds. His primary frustration appeared to be that he got caught – particularly because the chances of being caught were, in his mind, so remote.
- 39 Even if I were to accept that the Grievor told the Employer that he would not again breach the Lock-Out Policy, I find that assertion must be assessed against the Grievor's conduct as a whole. I find an assertion to that effect (that the Grievor will not commit another lock-out violation) appears inconsistent with the Grievor's general attitude that a) the offence he committed was not especially dangerous b) that the Employer was overreacting, and c) that the only reason this is an issue is because he got caught. It also needs to be assessed against the backdrop of an employee who, knowing the requirements of the Lock-Out Policy, consciously chose to take a shortcut. In these circumstances, I am not
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satisfied an assertion that “this will not happen again” can be accepted at face value. Rather, I see no reason to conclude that, if the Grievor were offered the same choice in the future (i.e. when faced with frustration, the choice to take a shortcut in circumstances he personally considered not dangerous, knowing there is a very slim chance he will be caught), the Grievor would not again make the same choice he made on May 13, 2024 and breach Employer policy.

- 40 The Grievor offered an apology for his conduct at the hearing. He had not, prior to the hearing, apologized to the Employer. As Arbitrator Foley explained in *Surrey (City)*, [2007] B.C.C.A.A.A., No. 8:

... arbitrators are generally of the opinion that the failure of an employee to admit wrongdoing, express remorse and apologize in a clear and timely manner for the misconduct that led to the employee's dismissal invites the conclusion that the misconduct might well be repeated and the rehabilitative goals of progressive discipline are unlikely to be achieved by substitution of a lesser penalty

An immediate and candid admission of guilt and a sincere expression of remorse when an employee is confronted with evidence of serious dishonesty can be an indicator of a remorseful, apologetic and perhaps otherwise honest employee. However, when an employee is in a state of denial during the process leading to the dismissal decision and after the dismissal has taken place, arbitrators will be reluctant to accept the reliability of an employee's admission of guilt and expression of remorse when it is obviously made after the fact to save the employee's employment.

(paras 88 and 89, emphasis added)

- 41 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.
- 42 I accept that the Grievor is a long service employee, and that the Employer is not relying on past discipline. I also accept for the purpose of this Award that the Grievor has not previously been disciplined for a safety or lock-out violation.
- 43 However, on the totality of the evidence, I am satisfied that termination was not an excessive response in all of the circumstances of this case.
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IV. CONCLUSION

44 For the foregoing reasons, the Grievance is dismissed.

Brett Matthews
June 5, 2025