

**IN THE MATTER OF An Arbitration Between**  
**Northwood Pulp and Timber Limited (the "Employer"), and**  
**Communication, Energy and Paperworkers Union, Local 603 (the "Union")**

Award no. A-332/96

British Columbia Collective Agreement Arbitration

Heard: (Prince George, B.C.) August 22, 1996.

Award: August 28, 1996.

**(Roy Fujikawa Grievance)**

**Arbitrator:** S. Lanyon

**Counsel:** Gary Catherwood, for the Employer.  
John Hodgson, for the Union.

**AWARD**

**NATURE OF PROCEEDING**

The Union grieves the discipline given on two different occasions to Roy Fujikawa. The Union admits that there was grounds for discipline on each occasion but states that the discipline imposed was excessive; it states that the grievor has been treated differently than other members of the bargaining unit for similar offenses.

**FACTS**

There is little factual dispute over the actual incidences giving rise to the discipline. The Company called three witnesses: Mike Redding, James Gordon and Richard Williams; the Union called two witnesses: Roy Fujikawa and Terry Brad.

I have considered the evidence of all the witnesses, the weight to be given to such evidence and determined issues of credibility. As a result I have made the following findings of fact.

**INTRODUCTION**

I have broken the factual descriptions into two areas. The first I have termed the February incident and the second the April incident.

## **FEBRUARY INCIDENT**

When equipment is to be shut down, for instance for repairs, it is "locked out". This lock-out procedure requires two individuals to follow a specific written procedure that sets out each step of the lock-out. It is termed a lock-out because equipment at each station of the lock-out is physically locked with a lock and key. Indeed, each station is actually locked out twice. Two individuals are required to lock-out a piece of equipment and each has their own separate locks and keys. These individuals follow a specific procedure which is set out as a check list, and accompanying diagrams; at the end of the procedure the keys to these locks are kept under their own personal lock. The general procedure was set out in a booklet entitled "Lock-out, March 1995" (Exhibit 7).

The purpose of the detailed lock-out procedure is to ensure both accuracy and safety. Errors in this procedure can be costly both in terms of equipment, production and the safety of employees in the workplace.

Once a decision has been made to put a piece of equipment back into operation there is of course the delocking procedure - the removing of the locks and the activation of the equipment. It is in the execution of this delocking procedure that the first instance of discipline of Roy Fujikawa arises.

The Company imposed a two day suspension on Roy Fujikawa because they allege that he was seriously negligent in the exercise of the delocking procedure of #1 and #2 Brown Washers on the night shift of February 6-7, 1996. The shifts at the mill are on a four day on, four day off rotation; the first two days are twelve hour day shifts from 8:00 a.m. to 8:00 p.m.; the next two days are twelve hour shifts beginning 8:00 p.m. to 8:00 a.m. Mr. Fujikawa was on the last day of his rotation.

Roy Fujikawa has been employed with the Company for over thirty years. He is amongst the most senior and most competent of Company employees. He is at the top of the wage scale as well as the top of the line of progression. His occupation is a Pulping Group Operator. His duties include controlling the pulping group operations, compiling a daily operating log, overseeing the pulp and liquor testing, assisting other operators in the operation of the pulping group, directing troubleshooting, inspecting all operating equipment under his jurisdiction at least once per shift, coordinating the pulping group operation for maintenance shut down and assisting in lockouts, and coordinating the training of personnel in the area. Finally, he promotes and maintains good safety habits for all personnel beneath him.

On February 6 and 7, 1996 Roy Fujikawa and Cam McMurray were required to delock #1 and #2 Brown Washers. The purpose of these machines is to wash the pulp, which at this point is brown in colour; this is prior to bleaching. The procedure is set out in a checklist entitled Lock-out Board Procedure, #1 and #2 Brown Washers; in this case there are 39 locks required. The locks include a wire rope not unlike a bicycle lock. In carrying out this procedure Fujikawa and McMurray neglected to delock three stations: #27, the Temporary mill water feed valve to #2 washer T.S.P. gland water and flush system; #24 and #25, #2 washer doctor board shower valve, both east side and west side; and the high pressure wire cleaning shower valve.

The failure to close the first valve (#27) was the cause of the substantial damage. This valve supplied water to the thick stock pump which pumps the pulp from the Brown Washers through to the bleaching plants. The opening of the valve allows the water to act first as a coolant; second, it acts as a lubricant to the packing contained inside the pump; and finally, it provides positive pressure to the processed pulp so that it does not flow back through the pump. The effect of not supplying water to the pump, was, to use Fujikawa's own words, on the morning of the incident, to cause the pump to "burn up" - it overheated and

kicked out. The result was that the pump had to be replaced at a cost of \$70,000.00; there was also ten hours of down time, which amounted to approximately \$250,000.00 in lost production.

The second set of valves that were not delocked were #24 and #25 on #2 washers - the doctor board shower valves, both east and west side. The purpose of these valves is to supply water to lift the sheets of pulp off the drums. Liquor used in the process also flows through the wire. There was no damage to this machine, although, had the pump not kicked out and stopped the entire process, there was potential damage that could have been done to the wire, causing additional downtime.

The third valve that had not been delocked was the high pressure wire cleaning shower. The opening of this valve provides water to clean the wire screen after the sheet of pulp has been lifted off the wire. This valve was not listed on the lock-out procedure guidelines. Finally, no one has any knowledge of the whereabouts of the lock-out sheet that was required to be filled out.

The lock-out procedure took place between 10:30 p.m. and 1:00 a.m. During the lock-out procedure McMurray was ill. He stated, in later discussions with supervisors, that Fujikawa had to "hold his hand" throughout the lock-out procedure and that Roy had "to walk him through it." He eventually went home at 3:00 a.m. that morning; he stated to his supervisor that he was ill, that he was on medication and that he was making mistakes. He was known to the supervisor to have chronic back problems, and to have attended a pain clinic in Vancouver. The supervisor had in fact dealt with WCB and McMurray in the past. There was never any question in the supervisors mind, or anyone elses, of the bona fides of Mr. McMurray's illness.

Just prior to the end of the shift the pump began to burn up. There was a meeting at the end of the shift between Fujikawa and a supervisor and it was stated to him that at the beginning of his new rotation there would be a meeting concerning the "wilful damage" to the pump. Prior to leaving, Fujikawa stated to the supervisor that if they "wanted to make an example of me, I don't care".

On the morning of February 12, 1996 a meeting took place between Mike Redding, Roy Woodly, Peter Goodall, Ken McMurray and Roy Fujikawa. McMurray apparently did most of the talking. He stated that he had felt ill, had essentially relied upon Fujikawa during the delocking procedure, and that there had been no deliberate or wilful damage done to any property. He summed things up by saying that "a fuck up was a fuck up". He was perceived to have accepted fault and was remorseful. Fujikawa, on the other hand, said very little, offered no explanation and acknowledged no fault. McMurray received a written warning; Fujikawa received a two day suspension.

## **APRIL INCIDENT**

At approximately 7:05 a.m. on April 19, 1996 a supervisor, James Gordon, spoke to Fujikawa and requested that he work an additional four hours overtime because they were short two individuals on the upcoming shift (Article 4 Section 4(a) - Tour Workers, provides the Company with the ability to require an individual to remain at a post for an extra four hours if their replacement has not reported for their regular shift.)

Fujikawa objected to staying the additional four hours, stating that a Chester Sullivan had recently been given the option of either working overtime or going home. He stated that he wanted the same option. At 7:15 a.m. there was a second call between Terry Brand, the Shop Steward, and James Gordon, in which Brand restated Fujikawa's objection at being required to stay at work for the additional four hours; he also

restated that Chester Sullivan had been given the "option". Gordon stated, in reply, that it was standard practice to keep an employee for the additional four hours when there was an insufficient number of employees to fill the upcoming shift.

At 7:35 a.m. there was a third call in which Brand informed Gordon that Fujikawa was sick, that he had left for home, and that he would be checking in at the First Aide Station. The security report (Exhibit 9) states that Fujikawa "went home sick"; and, "hadn't slept that well in the last few days". Brand had stated that he had advised Fujikawa to claim sick and to report to First Aide. He, himself, had been suspended in September 1995 for having left work without permission and thought that this had resulted from the fact that he had not reported to First Aide prior to going home.

At the beginning of his new rotation on April 24, 1996 a meeting took place between Fujikawa, Brand, Gordon and Redding. Fujikawa was not forthcoming in explaining his illness despite numerous inquiries. At the conclusion of this meeting, the supervisors, along with more senior management, had a separate meeting for approximately one hour. The result was a four day suspension imposed on Mr. Fujikawa.

## **ISSUE**

The issues to be addressed in cases of discipline and discharge are set out in *Re William Scott & Sons Co. Ltd.* [1977] 1 Can.L.R.B.R. 1. The first is whether there has been "just and reasonable cause for some kind of discipline by the Employer?" This question is not an issue in this matter. The Union agrees that the Company had grounds for discipline in each case.

It is, therefore, the second and third questions in *Wm. Scott*, supra, which must be addressed: was the discipline imposed "excessive in all the circumstances", and if so, "what alternative measure should be substituted as just and equitable?"

The Union states that the grievor has been dealt with unfairly and discriminatorily because the discipline imposed on Fujikawa in both instances was greater than that imposed upon his fellow employees for similar incidences. McMurray in the February incident received a verbal warning as opposed to a two day suspension; and in regard to the April incident, the Union introduced copies of discipline forms, in which the penalties for leaving the work place without permission varied from a verbal warning to a one day suspension. As a result the Union argues that the grievor ought to receive a verbal warning for the February incident, and a written warning for the April incident.

The Company states that the full six days of suspension is not excessive because the February incident was an example of gross negligence and the imposition of the April discipline was a matter of both insubordination and progressive discipline.

## **ANALYSIS and DECISION**

I have considered all the arguments of the parties and their respective authorities placed before me. I will summarize those arguments in the course of my reasons.

## FEBRUARY INCIDENT

The Company's essential point with regard to the February incident is the gross negligence of Fujikawa in the exercise of his delocking out of #1 and #2 Brown Washers. The procedure for delocking #1 and #2 Brown Washers is laid out explicitly in the Lock-out Board Procedure (Exhibit 5). Further, the general rules regarding a Lock-out set in the Lock-out March 1995 publication, (Exhibit 7). Moreover, the specific check off list and diagrams for #1 and #2 Brown Washers does not require any discretion or judgment to be exercised by an employee but simply requires the rote application of the guidelines. The damage was significant: \$70,000.00 for a new pump, and \$250,000.00 in lost production.

Finally, the grievor, unlike McMurray, showed no remorse and accepted no responsibility. The Company relies upon the following *authorities* *The British Columbia Sugar Refining Company Limited -and- Retail Wholesale Union, Local 517*, (unreported) (Bird) May 3, 1995, *Re Slater Steel Industries Ltd., Burlington Steel Division and United Steelworkers, Local 4752*, 8 L.A.C. (2d) 135, *Re Wardair Canada Inc. and Canadian Airline Flight Attendants' Association*, 19 L.A.C. (3d) 99, and *Pope & Talbot Ltd. -and- I.W.A.-Canada, Local 1-423*, (unreported) (Chertkow) August 25, 1993.

The Union states that the Company is discriminating against Mr. Fujikawa. McMurray was only given a verbal warning. It states that both men were responsible for the delocking procedure and they should, therefore, receive the same discipline. Second, the Union states that the Company did not adequately prove the extent of damages. Third, the grievor was not completely without remorse. Fourth, the delocking procedure is not as straight forward as the lock-out procedure. Finally, the grievor is not as familiar with this piece of equipment as he is with others. The union relies upon *Re: Walker Van Vloten Nurseries -and-IWA-Canada, Local 1-367*, 1990 15 LAC (4th) 437.

It is my conclusion that the discipline imposed by the Company for the February incident was not excessive; indeed it was fair and reasonable.

The task of locking out and delocking equipment and machinery in the pulp mill is a serious and important duty. This is recognized in Exhibit 7, Lock-out, March 1995 booklet which was developed for the protection of employees by a "Joint/Union/Management Lock-out Committee". These procedures were approved by the Health and Safety Committee of Northwood Pulp and conform with WCB Regulations. As the introduction to Exhibit 7 states:

Serious injury or death may result if the lock-out procedures are not followed in every detail. It is everyone's responsibility to understand and observe these procedures at ALL TIMES.

The specific lock-out and delocking procedure for #1 and #2 Brown Washers are set out in a step by step manner. However, the grievor states that it was difficult to see the particular line which flowed from valve 27 to the thick stock pump - notwithstanding that it is described in the lock-out procedure and that photographs introduced into evidence (Exhibit 4) clearly set out the valve and the line. Not to have delocked valve 27 and opened the valve was clear negligence and caused serious damage. The grievor in his testimony continued to rationalize his conduct, did not acknowledge his fault, nor did he seem remorseful.

Fujikawa is not in the same situation as McMurray. McMurray went home ill on the day of the incident. He stated that his performance was affected by the illness; that illness was bona fide. He has acknowledged his fault and was said to be remorseful.

In my view it is commonsense to make a distinction between an employee who has been ill, has stated

that their illness has affected their performance, they are apologetic and remorseful, and an individual who was neither ill nor apologetic or remorseful.

I uphold, therefore, the two day suspension.

## **APRIL INCIDENT**

In summary, the Company argues that the four day suspension imposed upon the grievor is not excessive for the following reasons: first, there is no validity to the grievors claim of sickness; second, the grievor was clearly insubordinate; and third, the increased penalty is justifiable under the heading of progressive discipline. It relies upon the following authorities, *Pacific Brewers Distributers Ltd. -and- Brewery Workers Union Local 300*, (unreported) (Ready) October 1, 1985, *Vancouver General Hospital -and- Hospital Employees' Union*, (unreported) (Kelleher) December 23, 1985, *Reichhold Limited -and- Energy and Chemical Workers' Union, Local 601*, (unreported) (McPhillips) April 29, 1992, *Pacific Pallet Ltd. -and- International Woodworkers of America Local No. 1-367*, (unreported) (Bird) July 2, 1986, and *Tackama Forest Products Limited -and- IWA-Canada, Local 1-424*, (unreported) (Brokenshire) June 8, 1995.

The most significant issue, argues the Union, is that between the years 1983 and 1996 the penalty imposed by the Employer for leaving work without permission, varies from a verbal warning as the minimum penalty, to a one day suspension as the maximum penalty. This was set out in Exhibits 10, 11, and 12. The second issue is that the grievor was overtired, has problems sleeping, and is currently under a doctor's care and medication for sleep disorders. The Union relies on the following authorities: *Re: Cominco -and- United Steelworkers, Local 480*, 1975 10 LAC (2d) 17; *Re: Powell River General Hospital -and- British Columbia Nurses Union*, 1995 46 LAC (4th) 177.

This issue is more difficult. However, I have concluded that the Company's discipline in this case was excessive. Therefore, I reduce the discipline from a four day suspension to a one day suspension. I do so for the following reasons.

The Union introduced in Exhibits 10, 11, and 12 a total of 31 discipline forms between 1983 and 1996. In only two out of the 31 cases was a one day suspension imposed; the remainder are verbal and written warnings. One was the previous incident referred to, where Terry Brand, (Exhibit 12), received a one day suspension for leaving the work place without permission. And in the second, (Exhibit 11), an individual was given a one day suspension when they not only left work early but claimed for the hours for which they had not worked. All other individuals received less discipline for having left the workplace without permission during their regular shifts, (including a second instance where an individual claimed for the period of time that they had been absent). Also, there was one incident where fourteen people had left the mill without permission, at the same time; all received a written warning.

There will, of course, be extenuating circumstances in each of the 31 cases. However, none were put before me. All I have are the discipline forms. I assume that the individuals who had received the lesser discipline, had clear employment records. I also assume that the more severe punishments were reserved for persons other than those who had a clear record; the maximum penalty in such cases is a one day suspension.

I have, therefore, chosen to substitute the original four day suspension with a one day suspension for the following reasons: first, because of Mr. Fujikawa's insubordination; second, because it represents the

maximum penalty under the Company's own policy; and third because it serves the policy of progressive discipline.

Finally, the offence is not in any way as serious as the original offence.

Several concluding remarks. First, the reduction of the total penalty from six to three days is not a matter of "splitting the difference". The entire penalty on the first offence is upheld. It is not only not excessive, it is just and reasonable. The second is reduced in accordance with the Company's own policy of discipline. It is not the role of an arbitrator to simply pick a number somewhere between the two positions of the parties. That the parties can do themselves. The discipline must be clearly excessive. I find that to be the case even within the terms of the Company's own policy in regard to the April incident.

Second, Mr. Fujikawa is a Company employee of thirty years. He is at the top of the wage scale and at the top end of the line of progression. He is by all description a competent employee. But for the February and April incident he has an unblemished record.

On the stand Mr. Fujikawa made clear his feelings that he feels he has been dealt with discriminatorily and unfairly. He is disappointed and unhappy about the changes in Company policy in regard to Pulping Group operators. And at a personal level he feels he has been unjustly disciplined.

There is much to be gained in restoring the previously good relationship between Mr. Fujikawa and the Company. Discipline can have some corrective effect. However, there are often advantages to dealing with issues outside the disciplinary procedure. This was recognized by the Company in its statement that the disciplinary process is an unhappy one for all concerned. That is, of course, the experience of most labour relations practitioners.

Therefore, it may be of some benefit for discussions to take place outside the disciplinary process. Although I have not accepted Mr. Fujikawa's explanation for having left work without permission, I have no hesitation in believing that he genuinely has problems with sleeping and that this does affect him at work. He had stated that he was embarrassed to raise this issue. I am sure that the Company would be quite amenable to receiving any and all information from Mr. Fujikawa in regard to his sleep disorder; and that this information may well assist the Company and Mr. Fujikawa in their future relationship. There may, of course, be other issues of mutual concern to both parties.

## **CONCLUSION**

The February incident grievance is dismissed. The Company's imposition of two days is upheld.

The grievance in regard to the April incident is partially allowed. The Company's discipline of four days is reduced to a one day suspension. Mr. Fujikawa is to be reimbursed for the other three days.

This Board remains seized of any matters that pertain to the implementation of this Award.

It is so awarded.