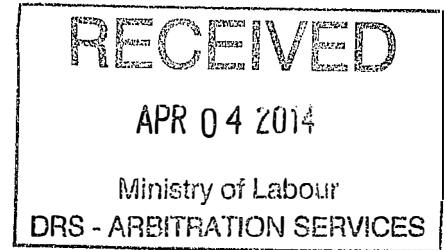


# 819926  
10330-RR-13



In the Matter of an Arbitration

BETWEEN

National Steel Car

("The Employer")

And

United Steelworkers , Local 7135

("The Union")

Grievance of David Michael Chivers

Arbitrator: Barry B. Fisher

Counsel for National Steel Car: Jane Gooding

Paralegal for USW: David Rakovitch

Hearings held in Hamilton, Ontario on March 28, 2014

**FINAL AWARD**

In my Interim Award of November 2013, I indicated that I was unable to determine if the Grievor suffered any economic loss as a result of the Employer failing to properly assess his accommodation needs in 2011 as I did not have sufficient evidence from the Grievor's doctor as to whether or not he could lift up to 5 kilograms with both of his arms.

The parties agreed that the best way to remedy this situation was to reopen the evidence and hear from the doctor.

On March 28, 2014 the hearing reconvened for hearing the evidence of Dr. Grzeslo.

The parties agreed that I should ask questions first.

Dr. Grzeslo had been the Grievors' GP for 36 years. He filled out the WSIB FAFs which were referred to in my Interim Award. He confirmed that he did two FAFs each time as the Grievor had two separate WSIB claims.

He acknowledged the apparent contradiction in some of the FAFs and explained this by way of saying that when he was analyzing the arm issue, he would give his opinion as to whether using that arm in a lifting function had limitations and when he was analyzing the back function he would comment on whether the back affected his lifting ability.

I asked him whether if he had been asked to comment in 2011 as to whether he could certify, as he later did in 2012, that the Grievor could lift up to 5 kg. His answer was "No".

On cross examination by the Union the doctor was asked to review the Grievor's job description as a Bench Welder. He was then asked if, in his medical opinion, the Grievor could have performed the tasks of a Bench Welder in May of 2011. Dr. Grzeslo said "No".

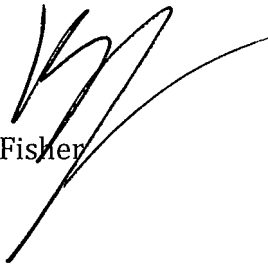
It is clear therefore that the Grievor suffered no economic loss as a result of the Employers' failure to properly assess his accommodation needs in 2011 because if they had sought the doctor's clarification in 2011 (as they did in 2012) the answer would have been that the Grievor was not capable of lifting 5 kg with his right arm. I have already determined that the ability to lift up to 5 kg with both arms was a bona fide occupational requirement of this job.

The Union did not seek any other remedy other than the declaration already set out in my Interim Award that the Employer breached their duty to accommodate the Grievor in 2011.

The grievance is allowed.

Dated at Toronto this 1<sup>st</sup> day of April 2014

Barry Fisher

A handwritten signature in black ink, consisting of a stylized 'B' followed by a long, sweeping horizontal stroke that extends to the right.