

823178 10435-RR-13

IN THE MATTER OF AN ARBITRATION

BETWEEN

BENTELER AUTOMOTIVE CANADA
CORPORATION
BRAMPTON PLANT

(THE EMPLOYER)

AND

UNIFOR AND ITS LOCAL 1285

(THE UNION)

AND

IN THE MATTER OF THE GRIEVANCE OF
AMANDA STRACHAN - # 13 - 030

ARBITRATOR: K. ALLAN HINNEGAN

APPEARANCES:

FOR the EMPLOYER:

JEFFREY D. A. MURRAY & ILIA CHLIAPNILOV

FOR the UNION:

MIKE REUTER & GERRY HARVEY

HEARING HELD at TORONTO, ONTARIO, on DECEMBER 19, 2013

RECEIVED

JAN 28 2014

Ministry of Labour
DRS - ARBITRATION SERVICES

Ref # 4853

AWARD

This grievance, dated July 10, 2013, alleges that the termination of the Grievor's employment on July 4, 2013, was without just cause and, therefore, a violation of Article 2 - Management Rights -- of the collective agreement.

The termination was as a result of what the Employer deemed to be a culminating incident under its progressive discipline steps as outlined in its Employee Handbook & Work Rules as follows;

" Progressive Discipline Steps:

- . First Offence: Counselling
- . Second Offence: Written Warning
- . Third Offence: One (1) day Unpaid Suspension
- . Fourth Offence: Three (3) day Unpaid Suspension
- . Fifth Offence: Ten (10) day Unpaid Suspension
- . Sixth Offence: Termination of Employment "

On June 20, 2013, the Grievor reached the fifth step of progressive discipline upon receiving a " 10 day suspension . . . and final opportunity to change behaviour " notice for an " unauthorized absence from the work station and deliberate restriction of throughput " on June 14, 2013. The fourth step three day suspension was skipped by the Employer in the circumstances. That was not grieved; but, rather, by agreement of the parties at the discipline meeting on June 20th, the ten day unpaid suspension was adjusted to three days served with the ten day suspension remaining on her disciplinary record. It was also agreed that no grievance would be filed.

According to Tae Yoon, Manufacturing Manager, who led the meeting for the Employer, he filled in the blanks on the disciplinary action form with respect to the suspension details

at the meeting on June 20th as follows;

"SUSPENSION '3' # of Days: To Begin on: 'June 27/13' Return to Work: 'July 2/13'

He said further that he also wrote the following on the form at that meeting;

" 10 day suspension on file, 3 days served as above
No grievance . "

It was suggested by the Union at the hearing that those handwritten additions were not put on the notice by Mr. Yoon at the meeting, but, rather, at some later time. However, I accept his evidence in that regard. Firstly, endorsing on the disciplinary notice the detail of the served suspension start and return dates and the agreement reached by the parties with respect to the adjustment of the penalty would be the normal and expected procedure in the circumstances here. Secondly, there were three Union representatives at that meeting and the Plant Chair, along with the Grievor, signed off on the disciplinary action form. Put simply, I cannot conceive of three Union representatives allowing the Grievor to sign off on what would then have essentially been a blank disciplinary notice and then signing off on it themselves.

I am also satisfied on the evidence that Mr. Yoon stated clearly at that meeting that the three days served would start on June 27th with the return to work date being July 2nd.

It was not suggested by the Grievor or the Union at the hearing that anyone in management ever indicated in any way that the return date had been changed. However, the Grievor did not report for work on July 2nd or call in to report that she would not be in.

As a result, she was terminated on July 4th on the application of progressive discipline, the culminating incident being her 'no call, no show' on July 2nd.

The thrust of the Grievor's defence offered at the hearing was that there was some confusion on her part with respect to her return to work date. However, the problem with that defence is the facts.

It was suggested that her confusion was due to a cancelled overtime shift on Saturday, June 29th, and an added overtime shift on Monday, July 1st, the Canada Day holiday. At the hearing, the Grievor acknowledged that she became aware of both through a cell phone conversation with an alternate union steward on June 27th, the first day of her unpaid suspension. June 29th no longer being the third day of her suspension, she said that she then assumed that her third day would be Tuesday, July 2nd, and her return to work would be Wednesday, July 3rd. In that regard, she said that, notwithstanding that the alternate steward had told her on June 27th that Monday, July 1st would be the third day of her suspension and that she would be sent home if she reported that day, she decided otherwise. She said that she assumed that her return date was July 3rd, not July 2nd, because she had heard around the plant previously that a paid holiday could not be counted as a suspension day. However, inexplicably, she did not check that with anyone from management or the Union.

In any event, after all was said and done, the Grievor herself removed any remaining doubt concerning her claim of confusion regarding her return date. When asked the question directly at the hearing, she candidly admitted that, when she left the meeting on June 20th, she was aware that her return date was July 2nd. As indicated earlier, there was no suggestion that anyone, management or union, told her otherwise through the relevant

period. For reasons unknown, she chose not to report on July 2nd or call in to explain why. That was clearly culpable behaviour on her part sufficient to constitute a culminating incident in the application of progressive discipline.

In the face of those facts, the Union was limited to requesting that I exercise my arbitral discretion and reduce the penalty to something less than termination in the circumstances.

However, an arbitrator's discretion to review and possibly modify a penalty levied by an employer does not mean management by arbitrators. Whether the arbitrator might have done something different than the manager in the circumstances is not the test. Rather, an arbitrator's scope of review of a sanction imposed by management is to determine whether it is just and reasonable in the circumstances. In other words, even if the penalty imposed was not the one the arbitrator would have chosen, the question is, can it still be said to fall within the range of reasonable responses to the situation? In other words, can it be said that the Employer ignored some relevant consideration, proceeded on some misunderstanding, acted from some illicit motive, or otherwise affronted the arbitrator's sense of what is just? See generally, Brown & Beatty, Canadian Labour Arbitration para. 7:4000 & 7:4100; Levi Strauss Canada (1980), 26 LAC (2d) 91 (Arthurs); Weyerhaeuser Company Ltd. and United Steelworkers Local 1-207, (2007) 159 L.A.C. (4th) 56 (Power).

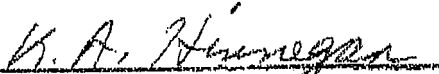
Here, management applied and followed its progressive discipline process to its conclusion.

As was noted in Weyerhaeuser, supra, the question is whether that was inappropriate, i.e., unjust and unreasonable. In the circumstances here, there is no basis for concluding that it

was, and, therefore, no basis for my interfering with the sanction imposed by management.

In the result, the grievance must be denied.

Dated; January 21, 2014


K. A. Hinnegan - Arbitrator