

10556 - RR-14

#835914

IN THE MATTER OF AN ARBITRATION

BETWEEN

Accurcast Inc.

(the "Employer")

and

Unifor Local 1941

(the "Union")

Grievance of Etienne Rossignol

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Mike Byrne, National Representative
Bob Ashton, Local 1941 President
Jerome Brown, Chairperson

For the Employer

Mark Geiger, Counsel
Jodi Solomon, Articling Student
Stan Marchalewicz, Operations Manager
Mark O'Neil, Supervisor

A hearing was held in London on December 10, 2014

Rel H 27894

AWARD

1. The Union grieves a 5-day suspension of Mr. Hearn and also the decision of the Employer that he should receive a lifetime ban from driving a forklift.
2. After receiving the representations of the parties and reviewing photographs and the documentary record, it was agreed that I had been provided with sufficient information to render a final decision without the necessity of hearing formal oral evidence.
3. Mr. Hearn has significant seniority and has been a forklift operator for more than 20 years. On June 27, 2014 his forklift came into contact with and cracked a gas line. The accident resulted in the release of gas that could have caused a catastrophic explosion. Fortunately, it was summer time and the exhaust fans were working at capacity. The accident was not noticed immediately. No one suggests that there was any intentional act. Production downtime and equipment repairs resulted.
4. The Employer submits that the Grievor was exceptionally careless and that the accident followed a series of safety infractions relating to his forklift operation. It relies upon arbitral authorities that it says permit it to make reference to these infractions notwithstanding the sunset clause in the collective agreement. See: *Olympel* (2009), 185 L.A.C. (4th) 51; *OI Canada Corporation* (2006), 85 C.L.A.S. 86 (Hickling). It says that it does not rely upon these infractions for purposes of sustaining the discipline involved.
5. The Union submits that the sunset clause prohibits reference to the earlier infractions and states that the discipline letter clearly incorporates them notwithstanding the Employer submission to the contrary. It says that the gas line was improperly located.

6. There is no question that the gas line accident was extraordinarily serious and that the Employer was not only entitled but obligated to treat it so. Whether or not there were changes made post-accident to prevent the re-occurrence of such an accident, as the Union stresses, the fact remains that the Grievor and others had been operating forklifts in this area for at least 5 months prior to the accident. There is no question that the Grievor was negligent.

7. I am troubled however about the Employer's decision to impose a lifetime ban on the Grievor concerning forklift operation. That decision, at current rates, will cost him approximately \$1.50 per hour given the difference between his forklift rate and his demoted position. The Grievor deserves a final chance in my opinion.

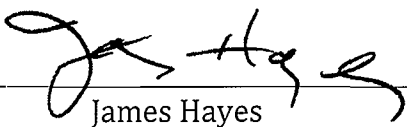
8. Accordingly, I make the following orders that I believe to be appropriate in the circumstances of this particular case. They are not intended to be precedent setting. I make no determination as to the Employer's submission concerning the sunset clause and earlier safety infractions:

- a. The 5-day suspension is sustained;
- b. The final two sentences of the July 17, 2014 Notice of Suspension are to be removed: "You are now banned for lifetime from driving a forklift at Accurast. Any further incident of any kind will result in discipline up to and including termination.";
- c. No earlier than one year from the date of his suspension, the Grievor may apply for forklift retraining, by an Employer instructor, as if he were a new driver, at his own expense (It is understood that such training costs amount to approximately \$150.00);
- d. If the Grievor completes the retraining in a satisfactory manner, the Employer will reinstate him forthwith as a forklift driver;
- e. Any return by the Grievor to a forklift position shall be understood to be in the nature of a 'last chance' opportunity. Any future forklift safety infraction of any significance will constitute cause for his permanent removal from the position. The parties are agreed that I should remain seized to review any such situation, should it occur in

the future. I will remain seized for such a purpose for three years beyond July 17, 2014.

9. I remain seized concerning any disputes concerning the application or interpretation of this Award.

Dated at Toronto, Ontario this ^{12th}~~11th~~ day of December, 2014.


James Hayes