

IN THE MATTER OF AN ARBITRATION

BETWEEN

**BOMBARDIER TRANSPORTATION CANADA INC
THUNDER BAY PLANT
(hereinafter the “Employer”)**

AND

**UNIFOR LOCAL 1075
(hereinafter the “Union”)**

MIKE ARMENTI TERMINATION GRIEVANCE

ARBITRATOR: Tom Hodges

FOR THE EMPLOYER: George Gasbarrino, Director, Human Resources

FOR THE UNION: Andy Savelle, National Representative
Dominic Pasqualino, Local President
Ron Frost, Bargaining Chairperson

HEARING: April 27, 2015

AWARD: May 8, 2015

AWARD

JURISDICTION

The parties agree that I have jurisdiction in accordance with Article 12 of the collective agreement along with the expedited processes used to adjudicate this dispute.

BACKGROUND

The grievor, Mr. Mike Armenti, was hired on January 17, 2011. He was dismissed from company service on March 17, 2015 for reporting late for work. He had received a three day suspension on July 9, 2014 for having arrived late for work on five occasions, and was suspended a further three days on December 16, 2014 for a subsequent two late arrivals during the intervening period of time. The union grieved the discharge as an overly harsh disciplinary response from the employer.

EMPLOYER POSITION

The employer believed that eight instances of lateness within approximately one year, coupled with two three day suspensions for seven of those infractions, warranted dismissal from service of a relatively short service employee. The employer requested that the arbitrator uphold the termination and dismiss the grievance accordingly.

UNION POSITION

The union contended that the grievor was treated unfairly by the employer as his attendance was improving despite the single episode of modest lateness that triggered the termination. This inflexibility on the part of the employer, the union argued, was effectively forcing employees who know they were going to be late, to instead call in sick and take a day off rather than risk a severe disciplinary response. In addition, the grievor's on time performance had been improving as demonstrated in the evidence provide. The union requested that the arbitrator allow the grievance and afford the grievor the opportunity to demonstrate a continued improvement toward workplace attendance.

DECISION

In the course of collective bargaining between the parties during the summer of 2014, a Letter of Intent regarding a sunset clause that was to be attached to the employer's attendance policy was agreed upon:

When an employee has been issued discipline for excessive lateness, should that employee improve his or her performance by having exemplary attendance (improved lates, no excessive absenteeism) for six (6) months, the last occurrence of discipline issued will be removed from the employee's file.

In the spirit of this letter, the arbitrator is satisfied that termination was too severe a response under the circumstances, and that the grievor is entitled to a final opportunity to demonstrate that he can come to work on time as a productive and valued employee within the Plant. Arguably, his "lates" were improved, having wavered only once in the three month period since the most recent three month suspension. Suffice to say, however, that further improvement is required, and that any future relapse in this respect on his part may have the severe consequences. The grievance as such will be allowed, in part, and the grievor will be reinstated to his former position as soon as possible, without loss of seniority, but with time out of service to be considered as an unpaid suspension.

I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated this 8th, day of May, 2015

A handwritten signature in black ink, appearing to read "Tom Hodges". The signature is fluid and cursive, with the first name "Tom" being more prominent than the last name "Hodges".

Tom Hodges
Arbitrator