

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

**CARGILL LIMITED
(DUNLOP DRIVE)
("the Company")**

-and-

**UNITED FOOD & COMMERCIAL WORKERS CANADA
LOCAL 175
("The Union")**

**AND IN THE MATTER OF THE
GRIEVANCE OF BRANDEN NOWAK**

Arbitrator: **Randy L. Levinson**

For the Company:	Daniel Leone	-Counsel
	Chris Riecker	-Employee Experience & Employee Relations Market Leader
	Leslie Knarr	-Employee Relations Senior Specialist
For the Union:	Silvia Neagu	-Counsel
	Sam Caetano	-Union Representative
	Navidad Talbot	-Chairperson
	Branden Nowak	-Grievor

Hearing on October 28, 2020

Introduction

1. The grievance concerns, in part, what I will neutrally characterize at this stage as an “interaction” between Branden Nowak, a Skid Off Operator and the General Manager on June 12, 2019 (“June 12”). There is a factual dispute about what occurred.
2. Briefly and not exhaustively, the Union’s allegations include violations by the Company of the ***Occupational Health & Safety Act***, R.S.O. 1990, c. H.19, the collective agreement and its Harassment Policy. The Company denies these allegations.
3. This interim award addresses a dispute about the scope of production the Company is seeking.

The stated backdrop for the present dispute

4. I will briefly set out what I understand from counsel to have occurred following the “interaction” on June 12. The matter was investigated. The Company and the Union have statements from Mr. Nowak and other employees. The Company sent Mr. Nowak home with pay.
5. On June 14, 2019, Mr. Nowak returned to work. He received a summary of the results of the investigation. The Company did not discipline Mr. Nowak.
6. On or about July 2, 2019, Mr. Nowak went off work, which I understand, in part, related to stress. Later, I understand he made a claim for short-term disability in connection with the “interaction” on June 12. Manulife rejected Mr. Nowak’s claim.

The dispute about production

7. The Union has agreed to produce what Mr. Nowak has in his possession, namely the application form that he and his physician filled out and submitted to Manulife for short-term disability.

8. The Company is seeking further production for the period between June 12 and August 2019. The Company is seeking Mr. Nowak's medical file with his physician and Mr. Nowak's file with Manulife regarding his short-term disability claim in connection with the events of June 12.

The arguments

9. I will briefly summarize the basic thrust of the parties' arguments. The Company argues the productions it is seeking are arguably relevant, as they will contain descriptions by Mr. Nowak about what occurred on June 12 to his physician, to Manulife and will also indicate any treatment he obtained in connection with the incident. The Manulife application and file may have correspondence between Mr. Nowak and Manulife about the incident that is not on the application form for short-term disability. This is arguably relevant not because Mr. Nowak suffered any medical harm from the incident. Rather, it is arguably relevant because of any conversation Mr. Nowak had with his physician about the incident on June 12, as it would provide another account to consider together with the account Mr. Nowak gave at the investigation.

10. The Union argues what the Company is seeking is not arguably relevant to this proceeding, given that it is not alleging Mr. Nowak sustained any medical harm as a

result of the incident and is not seeking damages for any disability or injury he sustained or for any time lost following the June 12 incident. The grievance focuses on the actions of the General Manager on June 12, the Company's actions investigating the incident and steps to protect Mr. Nowak. There is sufficient information to determine the issues. In that regard, the Company and the Union took notes during the investigation, which is the best evidence. The Company's request for production is a fishing expedition. Alternatively, any production ordered should only relate to the June 12 workplace incident.

The decision

11. At this stage in the proceeding, the standard to be applied is arguable relevance.

12. Having considered the information provided and the parties' submissions, I am satisfied the Company's production request relating to what Mr. Nowak conveyed to his physician and to Manulife about what occurred on June 12 is arguably relevant to the parties' dispute.

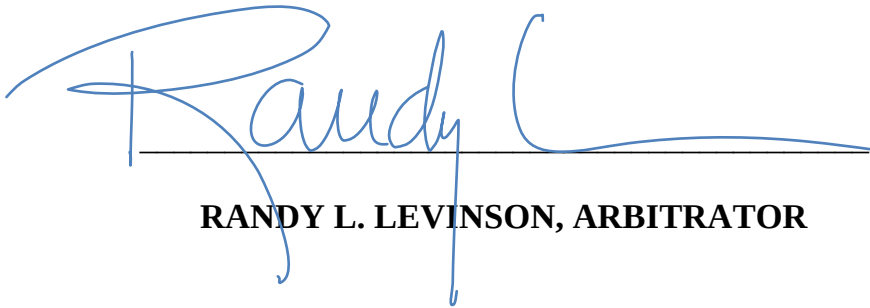
13. As I understand it, there appears to be a clear nexus between the information the Company has requested and the parties' positions at the hearing. In that regard, the parties' dispute includes the "interaction" between Mr. Nowak and the General Manager on June 12 and what actions the Company took or did not take after that. Moreover, it appears what the Union has agreed to produce does not represent the entirety of what Mr. Nowak conveyed about the "interaction" on June 12.

14. Conversely, at this stage, I am not satisfied the Company's production request is arguably relevant as it relates to any treatment Mr. Nowak may have obtained

in connection with the “interaction”. In that regard, I understand the Union is not alleging Mr. Nowak sustained any medical harm as a result of the “interaction” and is not seeking damages for any alleged disability or injury Mr. Nowak sustained or for any time lost following the “interaction” on June 12.

15. I remit to the parties the mechanics of production and conditions to be applied to the productions. The parties may contact me to issue a consent order or if any issue arises between them.

DATED at Ancaster, this 9th day of November, 2020.



RANDY L. LEVINSON, ARBITRATOR