

IN THE MATTER OF AN EXPEDITED ARBITRATION

BETWEEN

VALE CANADA LIMITED

(the “Company”)

and

UNITED STEELWORKERS, LOCAL 6500

(the “Union”)

**GRIEVANCES: 15-63-61-012, 21-62-23-006, 21-61-32-071, 21-38-07-003,
21-75-34-004, 21-75-46-100, 21-75-25-105**

GRIEVANCE COMMISSIONER: John Stout

APPEARANCES:

For Vale:

Jacob Raskevicius
Kirsteen Gaasbeek
Jessica Lemster
Tasha Dube
Meagan Lawrence

For the Union:

Kevin Boyd
Dan Bertrand
Chris Fraser
Gonga Valentim

HEARINGS HELD BY VIDEOCONFERENCE ON JUNE 27, 2023

AWARD

INTRODUCTION

[1] I have been appointed by the parties to hear and resolve a number of grievances pursuant to the Grievance Commissioner process provided for under Article 8 of their Collective Agreement.

[2] The Grievance Commissioner process provides an expeditious means for the effective disposition of grievances, in a summary manner. The Rules governing Grievance Commissioner proceedings are found at Schedule B of the Collective Agreement. In accordance with Article 8.03 the decisions found in this award are only applicable to the case in question and shall not constitute a precedent nor be used by either party as a precedent in future cases. The parties have requested brief written reasons, which are set out below.

GRIEVANCE OF PELLAND #15-63-23-012

[3] In this grievance, the Grievor claims that the Company violated the Collective Agreement by denying him an overtime opportunity on the night of August 18, 2018. The Company denies the grievance claiming that the Grievor was unavailable for the overtime opportunity.

[4] The Company was unable to locate the applicable overtime records. However, there is no dispute that the Grievor was not canvassed for the August 8, 2018 night shift overtime. The Grievor was canvassed for day shifts that same weekend, but declined indicating that he was going to his camp. Students worked on the weekend, including the night shift in question.

[5] After carefully considering the parties' submissions, I am allowing the grievance. The Grievor ought to have been canvassed for the night shift. One cannot assume that just because he refused day shifts, he would also refuse night shifts. The canvass ought to have been more specific about the shifts in question.

Therefore, the grievance is allowed and the Grievor is to be paid 12 hours at 1.5 his rate of pay at the time of the overtime that was not properly canvassed.

GRIEVANCE OF BOURRE #21-62-23-006

[6] In this grievance the Grievor claims that the Company violated article 13.13. of the Collective Agreement by scheduling junior employees to work overtime on November 11, 2012 (Remembrance Day). The Company has denied the Grievance, indicating that the junior employees were trainees working their regularly scheduled shift. According to the Company no violation of the Collective Agreement or the Overtime Policy occurred in this situation.

[7] After carefully considering the parties' submissions, I am dismissing the grievance. The Overtime Policy clearly states that seniority must be considered when offering overtime opportunities on a holiday. However, "this does not mean that a junior employee working a scheduled shift (including overtime built into a regular shift schedule) on a recognized holiday will be displaced by a senior employee who was not scheduled to work." The junior employees were working their scheduled shift and the Company was under no obligation to displace them for the Grievor.

[8] I appreciate the Union's concern about junior employees, who are training but do not hold "shift positions", working on a holiday when senior employees are not. I would have thought that training would not need to be scheduled on a holiday and those employees ought to be given the day off. However, the Collective Agreement does not address this issue specifically and I find that the Company acted in good faith. That being said, in the interest of good labour relations, the parties ought to discuss this issue and attempt to find a reasonable resolution to address similar situations in the future. Therefore the grievance is dismissed.

GRIEVANCE OF LEGACE #21-66-32-071

[9] In this grievance the Grievor alleges that he was unjustly disciplined for an incident that occurred on February 14, 2023. The Company issued the Grievor a Step 2 Corrective Action on February 27, 2023, alleging that the Grievor acted in an unsafe manner by operating a locomotive at a higher speed than the posted maximum of 5 mph. The Grievor does not deny that he operated at a higher rate of speed between 5mph and 10mph. However, the Grievor points out that he was able to stop the locomotive in time to avoid a near miss with a truck that did not fully stop at a posted stop sign at the rail crossing.

[10] After carefully considering the parties' submissions, I am dismissing the grievance. The importance of operating safely in a mine cannot be overstated. I commend the Grievor for being able to stop his locomotive in time to avoid an accident. However, that does not detract from the fact that he was operating the locomotive at a rate of speed higher than permitted. Management does not have to await an accident to initiate corrective discipline. I understand that no attempt was made to cover up the incident. Any attempt to cover up or not report the incident would be cause for more severe discipline. The discipline imposed caused no loss of pay. The discipline fell within a reasonable response to the safety infraction, and I am not exercising my jurisdiction to reduce the penalty in these circumstances. Therefore, the grievance is dismissed.

GRIEVANCE OF JEWERS #21-38-07-003

[11] In this grievance the Grievor alleges that the Company violated the Return to Work (RTW) protocol that was agreed upon in the Memorandum of Settlement (MOS) resolving the 2021 strike. The Company denies violating the RTW MOS indicating that the Grievor returned to his production work at the same time as his crew on August 23, 2021, which was within the time frame stipulated in the RTW MOS. The Company points out that the junior employees who worked did not have vacation entitlement available and the work in question was planned prior to the strike.

[12] After carefully considering the parties' submissions I am allowing the grievance. This is a unique situation and one where the RTW MOS clearly gave priority to senior employees and provided for temporary work and temporary shift schedules to accommodate these unique circumstances. The Grievor was aware of this work and requested that he be provided with the work. The Grievor had no vacation entitlement left and he had a right to return to work under the RTW MOS before the junior employees. Therefore, given the unique circumstances and the RTW MOS language, I am allowing the grievance. The Grievor is to be compensated for lost wages, incentive, and any other compensation he would have received but for the breach of the Collective Agreement.

GRIEVANCE OF ARSENAULT #21-75-34-004

[13] In this grievance the Grievor claims that the Company violated the Collective Agreement by not paying him for one week of vacation he took in 2022. The Company denies the grievance indicating that the Grievor was paid properly and in accordance with the Collective Agreement.

[14] Article 15.01 provides that the Grievor is to receive two weeks' vacation. He is also entitled to receive one additional week of special vacation pursuant to article 16.01. There appears to be a miscommunication whereby the Grievor was advised and he believed he was entitled to more vacation than that provided for under the Collective Agreement. This resulted in the Grievor taking an additional week of time off, but without pay.

[15] It would appear in this case that a miscommunication occurred resulting in the Grievor taking an additional week of vacation he was not otherwise entitled to take in 2022. In my view the equitable manner to resolve the grievance is to pay the Grievor one week of his 2023 vacation for the time he took off in 2022. The one week will be deducted from the Grievor's 2023 entitlement. Therefore, the grievance is allowed to the extent that he will be paid for the week off in 2022 (the

amount of one week's pay from his 2023 entitlement) and charged for that week against his 2023 entitlement (2023 entitlement to be reduced by one week).

GRIEVANCE OF FERA #21-75-46-100

[16] In this grievance the Grievor claims that the Company violated the Collective Agreement by unjustly giving him a Step 3 Corrective Action on November 7, 2022. The Company denies violating the Collective Agreement, indicating that the discipline was just and reasonable in all the circumstances.

[17] There is no dispute that the Grievor and another employee were tasked with loading a truck on October 31, 2022. The load was four bags short. The Grievor signed off on the loading check list. The Grievor had a previous Step 2 Corrective Action on his record for an unrelated safety incident.

[18] After carefully considering the parties' submissions, I am partially allowing the grievance. The Grievor's misconduct was negligent but without any malice. But for the previous discipline, I would have thought a lesser penalty would be appropriate. In all the circumstances, including the previous discipline on record, I am partially allowing the grievance and exercising my jurisdiction to reduce the penalty to a Step 2 Corrective Action effective November 7, 2022. However, no back pay will be paid to the Grievor.

GRIEVANCE OF GORMAN #21-75-46-105

[19] In this grievance the Grievor claims that the Company violated the Collective Agreement by issuing her a Step 2 Corrective Action on March 21, 2023. The Company denies violating the Collective Agreement, indicating that the discipline was just and reasonable.

[20] There is no dispute that an incident occurred on March 9, 2021. A joint investigation found that the Grievor was disrespectful towards a supervisor by indicating to another employee that the supervisor "doesn't know anything." The

Grievor did not apologize for her comment, and she does not believe that she did anything wrong.

[21] After carefully considering the parties' submissions, I am dismissing the grievance. I appreciate that this was a single event, and some people are prone to inappropriate outbursts during stressful situations. The problem in this case is that the Grievor fails to appreciate that her conduct was unacceptable, disrespectful and undermined the supervisor. The Grievor has failed to apologize and does not appear to understand that she ought to have treated the supervisor with more respect. If the Grievor had an issue with the supervisor then that issue ought to have been discussed in private as opposed to undermining the supervisor with another employee. The Grievor's failure to understand that her conduct was inappropriate is aggravating and in my view supports the Company's position. Therefore, the grievance is dismissed.

CONCLUSION

[22] The Company is ordered to make any payments owing under this award as soon as possible.

[23] I remain seized to address any issues fairly raised by the grievances and not addressed in this award, including implementation of any orders provided in this award.

Dated at Toronto, Ontario this 28th day of June 2023.

A handwritten signature in dark ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

John Stout- Grievance Commissioner