

IN THE MATTER OF A MEDIATION/ARBITRATION
BETWEEN

HYDRO ONE INC.

(“Hydro One”)

and

POWER WORKERS’ UNION

(the “PWU”)

GRIEVANCE HO-T-4954

CHIEF ARBITRATOR: John Stout

APPEARANCES:

For Hydro One:

Joseph Cohen-Lyons, Norton Rose LLP

For the PWU:

Kate Shao, Paliare Roland LLP

Don Eady, Paliare Roland LLP

William Webb, Paliare Roland LLP

HEARING HELD IN TORONTO, ONTARIO ON APRIL 22, 2026

AWARD

[1] This matter concerns a grievance (**HO-T-4954**) filed on January 15, 2026 by the PWU alleging that Hydro One terminated the Grievor's employment without just cause.

[2] The Grievor was terminated on that same day for a serious safety incident that occurred in July 2020 and for concealing his manipulation of the accident scene from Hydro One for over five years.

[3] The matter proceeded to mediation before me on April 22, 2026. The parties filed detailed and comprehensive briefs outlining their facts and their legal arguments.

[4] During mediation, it was agreed that the relevant essential facts in this matter were not in dispute, although both parties view the facts through somewhat different lenses. The only issue in dispute is the appropriate disciplinary response and whether I ought to exercise my jurisdiction to vary the penalty of termination.

[5] After carefully reviewing the evidence submitted by the parties, and for reasons elaborated upon as follows, I find that the employment relationship has not been irreparably harmed and the Grievor ought to be reinstated, with terms and a significant penalty.

[6] The events giving rise to the termination were very serious. On July 6, 2020, the Grievor was working as a Regional Maintainer Forestry (RMF) on a crew with a UTS-2 and a young female apprentice. While working a tree-felling operation, the Grievor and his crew felled a rotten tree, which fell in an unintended direction coming perilously close to the apprentice. The crew then manipulated the scene by adding a second rope and moving an ATV to double the distance from the hazard area to make the situation look less serious and they also filed a false

report and misrepresented what occurred during the investigation of the incident. However, it should be noted that the Grievor did acknowledge at the time not fully adhering to safety requirements and creating a safety risk for which he was given a one day suspension. That being said, had Hydro One known what really happened and the concealment efforts, then I have no doubt the Grievor would have been terminated, and he likely may not have been reinstated at arbitration.

[7] Hydro One only became aware of the situation when the apprentice involved in the July 2020 incident filed a harassment complaint in October 2024.

[8] While the Grievor had been previously employed in the Hiring Hall since 2012; at the time of the July 2020 incident, the Grievor had only been full-time for seven months. Moreover, it was the UTS-2 who had supervisory responsibilities and ought to have made sure the work was performed safely and the accident accurately reported. The apprentice was the least culpable being a vulnerable young woman who ought not have been placed in such a difficult position, particularly given the power imbalance.

[9] Overall, the misconduct is very serious, involving not just a major safety infraction but also dishonesty. However, it is well accepted that not every dishonest act is worthy of termination, see *Ontario Power Generation Inc. and PWU (OPG-NWS-365)*, February 22, 2001 (Devins), and *Stelco (Hilton Works) v. USWA* (1994), 40 L.A.C. (4th) 229 (Tacon).

[10] The determination of an appropriate disciplinary response is a contextual analysis based on proportionality, essentially does the penalty fit the crime having regard to the aggravating and mitigating facts before the arbitrator. The contextual analysis requires an assessment of the specific facts and determining whether the employee's dishonesty gave rise to a breakdown in the employment relationship, by violating an essential condition of employment or acting in a fundamentally inconsistent manner with respect to the employee's obligations to the employer, see *McKinley v. B.C. Tel*, 2001 SCC 38.

[11] One of the most frequently cited awards addressing the criteria for assessing the penalty in cases of dishonesty is the award of Professor Harry Arthurs in *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees, supra*. Professor Arthurs identified the following factors, which might be considered in mitigating a penalty at page 230 of his award:

- a. *bona fide* confusion or mistake by the grievor as to whether he was entitled to do the act complained of;
- b. the grievor's inability, due to drunkenness or emotional problems, to appreciate the wrongfulness of his act;
- c. the impulsive or non-premeditated nature of the act;
- d. the relatively trivial nature of the harm done;
- e. the frank acknowledgement of his misconduct by the grievor;
- f. the existence of a sympathetic, personal motive for dishonesty, such as family need, rather than hardened criminality;
- g. the past record of the grievor;
- h. the grievor's future prospects for likely good behaviour; and
- i. the economic impact of discharge in view of the grievor's age, personal circumstances, etc.

[12] In this matter, the Grievor has several mitigating factors that are in his favour, which I outline below:

- The misconduct was not premeditated and appears to be an isolated incident that occurred early in his career.
- The Grievor has not engaged in any similar misconduct since the time of the July 2020 incident
- Since the incident the Grievor has mentored other female apprentices who have thrived under his guidance.
- The Grievor had been stepped up and awarded a permanent instructor position.

- The Grievor admitted to the July 2020 misconduct during the investigation of the October 2024 complaint.
- The Grievor acknowledged his misconduct and accepted responsibility during his Disciplinary Interview.
- I accept that the Grievor understands the gravity of his misconduct and will likely never reoffend.

[13] Therefore, I find that the employment relationship is not irreparably damaged and can be salvaged and therefore the Grievor ought to be reinstated.

[14] After carefully considering the evidence and submissions of the parties, I am allowing the grievance and I order that the Grievor be reinstated based on the following terms:

- The Grievor shall be reinstated to an RMF position as soon as possible and retroactively back to the date of termination, without loss of service or seniority.
- The letter of termination shall be removed from his file and replaced with a five (5) day suspension, which shall be deemed to have been served.
- Hydro One shall pay the Grievor lost wages from the date of termination to the date of reinstatement, less five (5) days' pay on account of the suspension. Such payment to be made within 30 days.
- The Grievor shall be ineligible to apply for an Instructor - Forestry position for 18 months from the date of termination.

[15] The Grievor must understand that Hydro One has made it clear that if he commits any other serious safety infraction then his employment will be terminated. He is being given one last opportunity to prove that he can work safely. If the Grievor were to commit a serious safety infraction, then he will receive little sympathy from the Chief Arbitrator. Safety is the number one priority at Hydro One.

[16] I remain seized to address any issue fairly raised by the grievance and not addressed in this award, as well as with respect to implementation of my award.

Dated at Toronto, Ontario this 1st day of May, 2026.

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

John Stout-Chief Arbitrator