

IN THE MATTER OF A LABOUR ARBITRATION

BETWEEN:

CARGILL LIMITED

(the “Employer”)

-and-

**UNITED FOOD AND COMMERCIAL WORKERS CANADA,
LOCALS 175 & 633**

(the “Union”)

Grievance of Ysmael Ocampo

Before: Rishi Bandhu, Arbitrator

Appearances

For the Union: Ambar Reyes, Counsel
Fred Teeple, Union Representative
Johana Ramirez, Paralegal
Natalie Pommells, Paralegal
Al Couture, Chief Steward
Ysmael Ocampo, Grievor

For the Employer: Dan Leone, Counsel
Oscar Aguillar, Operations Manager
Tracy Moran, SR HR Business Partner

Hearing held by Zoom on May 13, 2026

Award issued on May 21, 2026

AWARD

1. This decision addresses whether the grievor, Ysmael Ocampo (the “Grievor”), engaged in misconduct that the parties agreed would give rise to the penalty of discharge, in accordance with the terms of a last chance agreement. There is no dispute over my jurisdiction to hear the grievance.
2. The parties agreed that I would determine the grievance on an informal basis in accordance with section 50(1) of the *Labour Relations Act, 1995*. Pursuant to that agreement, I met with each party separately to hear their versions of the events, consider any relevant documents and hear any submissions they wished to make.
3. For the following reasons, I find that the Grievor did engage in misconduct, as alleged. Pursuant to the parties’ express agreement, I do not have the jurisdiction to alter the penalty of discharge.

Background

4. The Employer operates a poultry processing facility in London Ontario. The plant processes approximately 120,000 chickens per day, from slaughter to packaging. Given the volume and speed of processing that is required at the plant, gaps in any of the production lines can create delay and other disruptions during processing. Such gaps may result from unexpected worker absences or departures from the production line.
5. The Grievor was employed by the Employer from October 2005 to July 18, 2025 when his employment was terminated. The Grievor worked on the “further processing” line at the plant.
6. At the time of discharge, the Grievor’s disciplinary record reflected two disciplinary suspensions. On February 5, 2024, the Grievor received a three-day suspension for twice leaving his workstation to take unauthorized breaks. On January 30, 2025, the Grievor received a five-day suspension for incorrectly recording product information.
7. A further disciplinary incident arose on February 12, 2025 when the Grievor left his work station without authorization. Given the prior discipline on record, the next step in the disciplinary process was dismissal. Instead, the Employer, the Grievor and the Union entered into a Final Notice and Last Chance Agreement (the “LCA”) on February 18, 2025. The salient parts of the LCA are as follows:
 - a. It provided final notice to the Grievor that his employment was in jeopardy and a last opportunity to redeem himself as an employee;
 - b. There would be zero tolerance for the Grievor’s failure to abide by the Employer’s rules and expectations within the first 24 months after the LCA was entered;
 - c. Unauthorized absences, tardiness or early departures without authorization would result in termination; and

- d. In the event of an arbitration of the Grievor's dismissal, the arbitrator would not have jurisdiction to substitute a different penalty.

Culminating Event

8. On July 18, 2025, the Employer terminated the Grievor's employment after it was observed that he was away from his workstation for an extended period on July 15, 2025.
9. The Employer affords its employees two 30-minute break periods per shift. On July 15, 2025, the Grievor was scheduled to take his second scheduled break with his co-workers at 21:20 (the "Second Break"). Prior to the start of the Second Break, a lead hand observed that the Grievor was not present at his workstation. Following a review of video surveillance, the Employer determined that the Grievor had left his workstation at 20:49 pm and returned at 21:46 pm, just prior to the scheduled end of the Second Break.
10. The Grievor was interviewed by a supervisor on July 17, 2025 in order to explain his absence from the line. The details of that interview are reflected in an "Interview Statement", which the Grievor signed. The statement indicates that the Grievor explained that he left his station to use the bathroom but then returned to work soon thereafter. He neither denied nor admitted that he was away from his station between 20:49 and 21:46. The statement also indicates that the Grievor may have started the Second Break early because the line wasn't busy. In other words, he believed he could start the break early without causing inconvenience or harm.
11. On July 18, 2025, the Employer's Operations Manager, Carlos Aguilar, met with the Grievor to provide him with a termination letter. Prior to doing so, Mr. Aguilar asked the Grievor why he took a one-hour break on July 15, 2025. The Grievor stated that he believed he did not need to be present because only two lines were running at the time. He also stated that it hadn't been a problem in the past.
12. The Employer referred me to a letter dated July 28, 2025 from the Grievor to the Employer's Senior HR Business Partner, Tracy Moran. In that letter, the Grievor acknowledges misconduct and apologizes for it. He writes, among other things, as follows:

"I acknowledge that I took an unauthorized extended break that exceeded the allowed time, without notifying my supervisor or obtaining the proper approval. I fully understand that this action violated Cargill's workplace policies and disrupted operations on the floor. I take full responsibility for my behaviour and offer my sincerest apologies to management, my team members, and the company".
13. The Union referred me to a letter dated April 22, 2026 from the Grievor's physician. The letter explains that the Grievor has a history of hypertension and work stressors had been causing him "significant anxiety and intermittent chest pain", which affected "his focus, judgment and awareness of risks". While the doctor expressly declined comment on what happened on the "day of the incident", she treated him for symptoms of anxiety and depression following his dismissal.

Decision

14. The issue before me is whether the Grievor engaged in misconduct by taking an unauthorized break and, if so, whether the LCA precludes my discretion to substitute a lesser penalty. The relevant facts necessary to make these determinations were ascertained informally through my discussions with each party, consistent with the mediation-arbitration process provided for in section 50(1) of the *Labour Relations Act*, which the parties expressly consented to.
15. The allegation of misconduct is that the Grievor took a one-hour break, instead of the 30-minute break he was entitled to, by leaving his workstation more than 30 minutes before the scheduled break was to begin.
16. The Grievor admitted that he left his workstation before the scheduled 21:20 break in order to use the bathroom but stated that he immediately returned and continued to work. He said that he then took the scheduled 21:20 break and, during it, started to feel chest pain and anxiety. As a result, he needed additional time before he felt well enough to return to work. Effectively, the Grievor denies that he started the Second Break 30 minutes too earlier. Instead, he says he extended his break to permit symptoms of chest pain and anxiety, which began during the Second Break, to dissipate. He relies on his doctor's letter of April 26, 2026 to corroborate his explanation.
17. If I accept the Grievor's explanation that he had a medical episode that necessitated a longer break, no discipline would be warranted. It is clear, however, that the Grievor did not extend his break on the back end; rather, and consistent with the Employer's information, the Grievor left his workstation before the Second Break began. Three observations lead me to that finding.
18. First, the Grievor's explanation does not reconcile with his acknowledgement of misconduct, reflected in his July 28, 2025 letter to the Employer. In that letter, the Grievor admitted that he took "an unauthorized extended break" and accepted "full responsibility" for breaking the Employer's rules. If the Grievor's reason for taking an unauthorized break related to a medical issue, it would not have been necessary for him to acknowledge misconduct. In fact, there is no mention of any medical issues in his letter.
19. Second, the Grievor did not return to his workstation after the Second Break had ended. I asked the Grievor whether he returned to his workstation from the Second Break before or after the line began to run again and he stated that it was before. This is consistent with the Employer's evidence, which I accept, that the Grievor was back at his workstation at 21:46, before the break had ended, and entirely inconsistent with his position that symptoms of chest pain and anxiety, arising during the Second Break, delayed his return to work.
20. Third, the Grievor does not dispute that during the Employer's investigation on July 17, 2025, he stated that he believed it was appropriate to leave early for his break when only two lines were running. He also does not dispute that he repeated that explanation on July 18, 2025 when he was informed of his termination.

21. Accordingly, I am satisfied, based on the Grievor's own verbal and written acknowledgements, that he left his workstation before the Second Break began and there is no medical or other justification for him doing so. The Grievor admits that he did not require additional time to use the bathroom. He says he returned to the line immediately after doing so. Moreover, the Grievor's medical note has no probative value. The Grievor acknowledged that the chest pains and anxiety that the medical note purports to describe only started *after* the second break began. It does not explain why he left his workstation without authorization, nor does the Grievor rely on the note for that purpose.
22. The totality of the circumstances indicates that the Grievor left his workstation at 20:49 pm, which is the time that the Employer observed the Grievor's vacated workstation. The only reason that would explain why he left his workstation at that time is that the Grievor believed it was appropriate to do so because only two lines were operating at the time.
23. In the result, I am satisfied that the Grievor engaged in misconduct on July 15, 2024 by starting the Second Break in advance of the scheduled start time. I note that the Grievor acknowledged that taking an extended break without prior authorization is workplace misconduct.
24. The terms of the LCA reflect an agreement between the parties that termination would be the appropriate penalty in response to "[a]ny unauthorized absences and/or lates or left early...". Further, the parties agreed that I would "*have no jurisdiction to substitute a different penalty*" in the event of such misconduct.
25. By abandoning his workstation before the Second Break, the Grievor engaged in the misconduct that he agreed would permit the Employer to terminate the employment relationship. Given the terms of the LCA, I have no jurisdiction to substitute the penalty of discharge.
26. For the foregoing reasons, the grievance is dismissed.

Dated at Oakville, Ontario, this 21st day of May 2026.

Rishi Bandhu
Sole Arbitrator