IN THE MATTER OF AN ARBITRATION

BETWEEN

LIBBEY CANADA INC.
- the Employer

and

ALUMINUM, BRICK AND GLASS WORKERS INTERNATIONAL UNION (AFL-CIO-CLC) AND ITS LOCAL 235-G
- the Union

AND IN THE MATTER of a grievance of Garth Cantin

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Barry R. Card	- Counsel
David F. Brown	- Plant Manager
David M. Kucharski	- Human Resources Manager
John Salisbury	- Human Resources Supervisor

On behalf of the Union:

Richard A. Blair	- Counsel
Roger T. Beer	- International Representative
Gary Watson	- President, Local 235-G
Rob McGee	- Vice President, Local 235-G
Etienne Tack	- Second Vice President, Local 235-G
Garth Cantin	- Grievor

Hearings held in Wallaceburg, Ontario on April 25 and May 11, 1995.

AWARD

I. INTRODUCTION

In this grievance Garth Cantin (the grievor) seeks reinstatement in his employment. The Employer terminated the grievor's employment by letter dated October 31, 1994, following his absence on October 19, 1994. At the start of the hearings, the Employer raised an objection to my jurisdiction to hear and determine this grievance. In an award dated May 1, 1995, I concluded that "subject to any further submissions as to the nature of my appointment" I had jurisdiction. I raised this issue at the start of the hearing on May 11 and there were no further submissions. This award thus deals only with the merits of the grievor's termination.

II. FACTUAL BACKGROUND

While there was some disagreement as to the facts, in my view the basic situation is clear.

The grievor was first employed by Libbey St. Clair, the predecessor to the Employer, Libbey Canada Inc., in 1989. It appears that his record of attendance has been viewed by the Employer as unsatisfactory for some time. I was provided with detailed information on the grievor's absences only for the period in 1994 prior to his termination. The evidence relating to the earlier period was much less detailed.

On September 3,1993 the grievor was disciplined for leaving work without permission and without a reasonable explanation. At that time, the Employer first took the position that the grievor had voluntarily terminated his employment. The grievor asked for "one last chance". The Employer agreed to one last chance and the grievor was continued in employment with the substitution of a five day suspension. He was, however, in the September 3, 1993 letter

of suspension advised that "you have accumulated a totally unacceptable number of casual absences from work". Further he was advised that his employment was subject to various conditions, the third of which was:

> 3. From this point in time forward, your casual absence from work will be less than the plant average absentee level for all employees. Failure to meet this condition will constitute your voluntary termination of employment from Libbey Canada Inc.

While there was disagreement as to the effect of this condition, there was no disagreement that from September 3, 1993 onward the grievor had been clearly advised that the Employer was dissatisfied with his attendance record. Although the evidence indicated the grievor's casual absence record was well above the plant average (about three times the average), the Employer did not rely on this condition as itself justifying the termination. It seems clear however that the letter, and the discussions which led to it, affected the Employer's actions over the following fourteen months.

On March 1, 1994 the grievor was advised by letter that the Employer was concerned about his absences on February 27 and 28. In the March 1 letter, the grievor was also reminded of the terms of the September 3, 1993 suspension letter.

The grievor was counselled again on August 13, 1994, by his supervisor about his absence. The supervisor's note prepared for the file indicates that the grievor was advised that "for quite a period of time his absenteeism was pretty good, now he is starting to slip again." The supervisor did not testify and his note to file was admitted only as evidence that there was counselling, and not for the truth of the contents.

On October 19, 1994 the grievor did not attend work. He called in to report his absence prior to the start of his afternoon shift, as is required. He advised the Employer that he had an ear ache, something from which the grievor suffers on a frequent basis.

The Employer was short staffed for the grievor's shift on October 19. Thus John Salisbury, the Human Resources Supervisor, called the grievor's apartment a few minutes after the grievor had called in sick intending to inquire whether the grievor might be able to come to work. Mr. Salisbury spoke to Jessie Cantin, the grievor's spouse, who had just returned to their apartment. When Mrs. Cantin had left the apartment around noon she had expected that the grievor would be going to work. When she answered the phone Mrs. Cantin thought the grievor had left for work and advised Mr. Salisbury to that effect. Mr. Salisbury told her that the grievor had called in sick and also indicated that he wished to speak to the grievor to see if he would reconsider his decision not to report for work. Mr. Salisbury asked whether there was another place where the grievor could be contacted and requested that Mrs. Cantin have the grievor call Mr. Salisbury if she heard from the grievor.

Mrs. Cantin had returned briefly to her apartment to pick up laundry to take to her parents' home to wash. Her father was waiting for her in his car near the front door. After the call from Mr. Salisbury, Mrs. Cantin saw that the grievor was asleep in the bedroom, the door to which was usually kept closed and which had been closed when she entered the apartment. Mrs. Cantin testified that she decided not to wake the grievor as he had not had much sleep the previous night and because she felt that he was able to tell when he was sick. She returned to her father's car and then to her parents' home.

The grievor awakened around 7:00 p.m. and called his wife at her parents' home. She told him then that Mr. Salisbury had called and wanted him to return the call. The grievor did not call Mr. Salisbury that day or the next. He went to work on October 20 prior to the start of his shift at 4:00 p.m. and was asked to see Mr. Salisbury. Mr. Salisbury had tried to contact the grievor earlier during the day of October 20 but had not been able to do so. He had asked the watchman to send the grievor to see him prior to the shift. At their meeting Mr. Salisbury advised the grievor he was being suspended indefinitely pending termination.

Mr. Salisbury indicated the reason was due to the grievor's continuing attendance problems.

The Employer considered the situation over the next few days and on October 31 advised the grievor of "the company's decision to terminate your employment, effective immediately." The October 31 letter notes the grievor's poor attendance record and then indicates that "Your absence from work on October 19, 1994 on the pretext of illness is viewed against this background as cause for immediate dismissal..."

III. POSITIONS OF THE PARTIES

The Employer submitted that the grievor was absent on October 19 and that the Employer was not in a position to know the reasons. The Employer, however, submitted that it was reasonable to conclude that the absence was within the grievor's control. The Employer placed considerable reliance on the failure of the grievor to return the phone call as requested by Mr. Salisbury on October 19. The Employer noted that the grievor knew the Employer had been given incorrect information by Mrs. Cantin, that he had a poor record of attendance and yet he made no attempt to correct the misinformation on either October 19 or 20.

In addition, David M. Kucharski, the Human Resources Manager, testified about the grievor's pattern of absences. The plant runs on a continuous rotating shift basis with day, afternoon and midnight shifts. Employees work roughly equal numbers of each shift. Mr. Kucharski reviewed the grievor's record of absences and concluded there was a tendency for the grievor to miss the first and second shift on midnights and also a less pronounced tendency to miss afternoon shifts. Mr. Kucharski was of the view that there was evidence of a cavalier and abusive pattern of attendance.

The Employer submitted that if the absence on October 19 was within the grievor's control,

it was culpable and deserving of discipline. The Employer thus submitted that if culpable and deserving of discipline, it could serve as a culminating incident. Then, as the grievor had a previous record relating to attendance problems, the culminating incident would permit the review of the grievor's entire record and on that basis the Employer submitted the termination of the grievor's employment was justified.

In the alternative, the Employer submitted that if I conclude that the October 19 absence was not culpable, or not deserving of discipline, nevertheless I should review the grievor's record of absences and the warnings and counselling the grievor had received. The Employer asked that I conclude that the grievor's record disclosed excessive absences, that the situation was not likely to change, and that there is no reason to believe the grievor would be able to work regularly in the future. The Employer submitted that the grievor's record would also justify a termination of the grievor's employment, even if the October 19 absence was innocent.

The Union submitted that this was not a case of a culpable absence. The Union argued the grievor was legitimately sick on October 19, 1994, and that before I can review the record I need to find a culminating incident which itself justifies discipline. As for the grievor not calling Mr. Salisbury back, the Union asks why should the grievor do so? The grievor knew that the reason Mr. Salisbury had given to Mrs. Cantin for asking the grievor to call was to determine if he would reconsider his decision not to report for work on October 19, for a shift which started at 4:00 o'clock in the afternoon. If Mr. Salisbury had given some other reason for requesting that the grievor call, then the Union says the failure to call may be important, but in these circumstances the failure to call after being told of the request at about 7:00 p.m. was quite understandable. As for the pattern of absences, the Union submitted that there was too little evidence to warrant my drawing the conclusion which Mr. Kucharski had done.

As for the alternative grounds of innocent absenteeism, the Union argued the Employer had to show the treatment of the grievor was in accord with the Employer policy, that the policy was reasonable, did not contravene the collective agreement and was applied consistently. The Union argued that it failed on a number of these grounds. First, the Union said it is not reasonable to fire a worker for a legitimate illness of the nature here. Secondly, the Union noted that the Employer said there were 16 other employees with worse attendance records and they have not been suspended, let alone discharged. Thus the Union said the policy is not being applied consistently, or alternatively that the treatment of the grievor was not in accord with the Employer policy.

I will deal first with the issue of culpable absence and then with the issue of innocent, or non-culpable, absence.

IV. CULPABLE ABSENCE

The first issue is whether the October 19, 1994 absence was one which on its own would justify discipline under the just cause standard in Article 7.16 of the Agreement. This is an issue which is largely determined by the facts.

While I am sympathetic to the Employer's concerns about the grievor's attendance, which I view as poor, I am only able to deal with this on the evidence before me. While there was evidence which would suggest the grievor was not sick, that evidence was all indirect. The direct evidence was that he was sick, but it came from the grievor and Mrs. Cantin who have an obvious interest in the outcome. It is thus necessary to assess the evidence with care.

Earlier, I sketched the situation as it unfolded on October 19. The evidence of the grievor and Mrs. Cantin was to the effect that the grievor had been suffering from an ear ache and

had not slept well after his shift on October 18. I understand that ear aches, like many other illnesses, produce various degrees of pain and suffering. It is not always clear how sick a person should be before he or she can reasonably decide to stay away from work. The evidence makes it clear that the grievor has suffered from ear aches for most of his life, that he had missed other days for this reason, and that he had been treated by a number of physicians.

The evidence of the grievor and Mrs. Cantin was quite consistent. The grievor's father-in-law, Arthur Formosa, also testified. His evidence was not directly on the issue of illness, but his evidence was consistent with that of the grievor and Mrs. Cantin. He testified that he had driven his daughter, Mrs. Cantin, to her apartment to pick up laundry. He provided the details of what Mrs. Cantin told him on her return with respect to the telephone call from Mr. Salisbury, details which were entirely consistent with the evidence of Mrs. Cantin. In addition, Mr. Salisbury testified that when he spoke to Mrs. Cantin he believed the information she gave him. Mr. Salisbury said that Mrs. Cantin answered quickly, that there was no hesitation in her voice and that when he indicated it was work calling she seemed surprised, but told him the grievor was not at home.

The Employer relied on the grievor's failure to return the call and on the pattern of the grievor's absences. I deal with each more fully later in this decision but at this point I will simply note that while I can understand the Employer's suspicions about the grievor's absence, suspicions which flow from that evidence, I do not think the evidence on these points is strong enough to overcome the evidence of the grievor, Mrs. Cantin and Mr. Formosa, evidence which was credible and consistent with respect to the events of October 19.

The evidence indicates that the grievor was sick with an ear ache, and that he stayed home

due to his ear ache. I thus conclude that the grievor was absent from work on October 19 due to his illness or sickness.

As a result of this conclusion, I do not think that the grievor's absence on October 19 was cause for discipline under a just cause standard. The letter of termination of employment refers to his absence "on the pretext of illness". I do not agree. I find that the illness was legitimate, that the absence was due to that illness, and thus the illness was not a pretext.

While the Employer relied heavily on the grievor's failure to call Mr. Salisbury, in the letter of termination it was not relied on as an independent basis for discipline or for the termination, and I do not think it can be used as a culminating incident. In any event, I do not find the failure to call back in this situation to be blameworthy. The grievor was asked to call because the Employer hoped he might change his mind and come to work. By the time the grievor received the message at about 7:00 p.m. the shift was well under way. In addition, Mr. Salisbury was known to leave work at 4:30 or 5:00 o'clock so that he would no longer have been at the plant to receive a call from the grievor that evening. A call on the following day would be of no assistance to Mr. Salisbury in staffing the October 19 shift. Finally, Mrs. Cantin indicated that at some earlier time Mr. Salisbury had phoned her at her parents' home and inquired whether she and the grievor were still married. This upset Mrs. Cantin and she indicated she did not care to talk to Mr. Salisbury, or even to look at him at the hearing. I think these feelings may have affected her willingness to be of assistance to Mr. Salisbury by waking her husband to have him return the call.

Thus what the grievor did on October 19, in my view, was not culpable or blameworthy and does not justify discipline. There is thus no culminating incident warranting discipline which would justify my reviewing the grievor's earlier disciplinary record to determine whether, in the circumstances, termination was the appropriate form of discipline.

V. INNOCENT ABSENTEEISM

As noted above, while the letter of termination suggests that the Employer treated the case as one of a culpable absence, the Employer submitted in the alternative that the grievor's record of absences in this situation justified a termination even if the October 19 absence was innocent. There is no doubt that the Employer had advised the grievor of its concern about his attendance, and had done so several times. In addition, there is no doubt the grievor was disciplined in September, 1993 for leaving work. In essence, the Employer asserted that the grievor's record of attendance has been so poor that he has shown himself to be unable to live up to his end of the employment bargain. The Employer submitted further that there is no likelihood of regular attendance in the future, regular attendance of the nature that this Employer has established as its required standard.

The Employer provided detailed evidence of the grievor's attendance record in 1994, prior to his termination. I was not provided with any details as to his attendance record for the period prior to 1994. Apart from time off for vacation, for holidays, and for a Workers' Compensation claim, each of which the Employer regarded as justified, the Employer indicated there were 15 instances of casual absence.

If the Employer is to succeed on the grounds of innocent absenteeism it will have to do so largely on the basis of the evidence of the first 10 months of 1994. I appreciate that Libbey Canada Inc. took over from the prior employer, Libbey St. Clair, in the summer of 1993 after Libbey St. Clair went bankrupt and thus that the Employer may not have available to it comparable detailed records for previous years. Nevertheless, I can only assess the Employer's submission on the basis of the evidence before me and that evidence is largely related to 1994. Thus I propose to carefully review the 15 absences in 1994 and the reasons for them. I refer to them by number, but not in chronological order.

The first four of those 15 absences, January 21, June 28, September 29, and October 9, were noted as "late". In each instance the grievor is noted as having missed 0.25 hours of work. The grievor testified that if a worker punches in even a minute or two late he or she is regarded as late and docked one quarter hour. The grievor indicated that was his situation in these four instances. There was no evidence to the contrary and I conclude he was a few minutes late in punching in at the start of his shifts.

On a fifth occasion, February 23, the grievor missed 5.25 hours and the reason noted was "personal". The grievor testified that he had come to work from his residence in Chatham, some 20 kilometres away, and that there was an ice storm. He testified that he asked to leave early because of the dangerous road conditions and was granted permission by the Employer to do so.

On a sixth occasion, September 30, the record showed that the grievor missed 7.50 hours in his eight hour shift. The grievor testified that he came to work and that he was bothered by his ear(s). He said he asked for permission to leave and was given permission by the Employer to do so.

These first six instances do not, in my view, advance the Employer position very far. In the last two instances (five and six) I conclude that the Employer gave the grievor permission to leave. As the grievor was thus absent with the express permission of the Employer, I do not think the Employer should now be able to argue that the absences were abusive, or that they indicate that the grievor was not living up to his end of the employment bargain. The four instances of lateness seem to be an unusually high number, but I have no easy way to compare the grievor to other workers. I accept that each instance amounted to only a few minutes, and I had no evidence that these absences created a particular difficulty in operating the plant.

The seventh and eighth absences involved the grievor missing two days in February - the 27th and 28th. The Employer record indicated the grievor was sick. The grievor testified that, in early 1994, while he was at work, a piece of glass had entered a finger on his left hand and broken off in his finger. He indicated he later had difficulty with the use of his hand and that it ultimately resulted in surgery, and his Workers' Compensation absence, in April and May. The grievor testified that he was bothered by the hand in late February and that as a result of not being able to make a fist or properly grip things he had missed two days of work - February 27 and 28 - and thus that his absences flowed from his work related injury.

On March 1, 1994 the Employer wrote to the grievor noting the absence and reminding the grievor of its concerns about his absences. In argument, the Employer submitted that if the grievor had been absent for reason of a workplace injury he should have, and would have, advised the Employer to that effect. He did not do so. Thus the Employer suggested that I should not accept the grievor's testimony about this absence.

I do not draw the conclusion the Employer suggested I should. The Employer had previously expressed concern about all the grievor's absences, regardless of the reason for the absence. After having heard the grievor testify, I do not think any adverse inference can be drawn from the fact that the grievor did not advise the Employer that the February 27 and 28 absences were the result of his workplace injury. I do not believe the grievor is very experienced in employment matters, and I accept his evidence that the absence was caused by the same injury which resulted in the Workers' Compensation claim. Apart from the grievor's inexperience in employment matters, I would note that throughout this period the Employer did not itself make much of an attempt to inquire of the reasons for the grievor's absences.

As a result of my conclusion about the reason for the February 27 and 28 absences I do not think those absences advance the Employer position. I do not think these two absences due to workplace injuries should be relied upon to demonstrate excessive absences. Mr. Kucharski testified that he regarded casual absences as single or sporadic days, not associated with Workers' Compensation or weekly indemnity. I note that the Employer excluded the time which the grievor was off work due to his Workers' Compensation claim from the Employer list of casual absences submitted to justify termination on the grounds of innocent absenteeism.

On a ninth occasion the grievor was absent on June 27 and was noted as sick. A tenth absence occurred on June 30 when the grievor is noted as having missed 6.75 hours of a usual 8 hour shift. I did not hear any explanation for this but it would appear that he may have worked part of the shift and then left with permission due to his ear problems, as he did on September 30 (see the sixth absence, above).

The other absences (#11 through #15) and the reason noted were as follows:

February 2	Sick
August 6	Sick
August 7	Sick
September 4	Sick
October 19	Sick

I make no finding as to whether the grievor was sick on these days, simply that the Employer records indicate that sickness was the reason given. In each instance the grievor missed the full shift. The grievor testified that in each case the reason was his ongoing difficulty with his ear aches. In total it seems the grievor was sick, in the usual sense, for all or part of eight shifts (including leaving once with permission), was late four times, left early once due to the ice storm and was absent on two days by reason of his work injury to his hand. As noted above, I conclude that his leaving early on February 23 due to the ice storm was with

permission and on September 30 was also with permission due to illness.

The Employer submitted there was a pattern to the absences and that the pattern indicated a cavalier and abusive approach. I set out below, using the numbering I used above, the fifteen incidents of absence relied on by the Employer.

Number	Date	Shift	Day of Shift	Reason
1.	21 Jan.	Midnight	3	Late
2.	28 June	Midnight	2	Late
3.	29 Sept.	Afternoon	2	Late
4.	9 Oct.	Midnight	5	Late
5.	23 Feb.	Afternoon	4	Left early due to ice storm
6.	30 Sept.	Afternoon	3	Left early due to illness
7.	27 Feb.	Midnight	1	Absent due to workplace injury
8.	28 Feb.	Midnight	2	Absent due to workplace injury
9.	27 June	Midnight	1	Sick
10.	30 June	Midnight	4	Sick
11.	2 Feb.	Afternoon	3	Sick
12.	6 Aug.	Midnight	1	Sick
13.	7 Aug.	Midnight	2	Sick
14.	4 Sept.	Day	4	Sick
15.	19 Oct.	Afternoon	2	Sick

As noted, Mr. Kucharski concluded the absences indicated a pattern which was evidence of a cavalier and abusive attitude. He made his assessment on the basis of all fifteen absences. I am, as I indicated, most concerned about numbers 9 through 15. Of those seven, four are on midnight, two afternoon and one on day shift. Two are day 1, two are day 2, one is day 3, and two are day four (of a five day cycle). A clear pattern is not obvious to me.

If I also look at the "lates" (they are numbers 1 through 4) there are three more midnights and one afternoon. The grievor seems to have attended more regularly on the day shift. Looking at all 15 absences, I can see how Mr. Kucharski concluded there was a pattern. The evidence suggesting a pattern is much weaker if one excludes numbers 5 through 8, and very hard to

detect if one is only looking at numbers 9 through 15. Such pattern as there is, however, does suggest, as Mr. Kucharski concluded, a tendency to be absent on midnights and on shifts early in the cycle. The pattern is not strong however. Nor is the conclusion clear that the pattern is evidence of a cavalier or abusive attitude. I note firstly that the Employer's review which led it to this conclusion was done well after the decision to terminate the grievor's employment, at a time well after its decision had already been made. Secondly, I think it also reasonable to conclude that there are other possible explanations. For example, I think it is difficult for a person to move to midnight shifts. I had no evidence of the plant wide absence rate, but I would think it possible that there are more absences on the midnight shift. While it may be a situation of a cavalier or abusive attitude, there are other possible reasons which are also consistent with the available data. Thus while I am not able to conclude that the grievor has a cavalier or abusive attitude, this possibility is a matter to be kept in mind in assessing the record of the grievor.

The evidence was the grievor missed seven days and was late on four additional occasions, without permission. While this is a large number of absences in less than ten months, the evidence leads me to an initial impression that the absences are not so excessive as to obviously qualify as grounds to terminate the grievor's employment. As I understand it, the grievor is a machine operator in the forming department. I was not provided with details of his job or the specific impact of his absences. There was no evidence suggesting that his absences are particularly disruptive of the operations. My understanding is that the department is large and that there are a number of workers in positions similar to the grievor's.

There are other standards or approaches available in assessing the grievor's absences, and I propose to test my initial impression about the level of absence using some of them.

One approach is to make a comparison within the plant. The Employer evidence was that in 1994 the grievor was ranked #17 in the plant for casual absences. In other words, by the Employer's evidence, there were 16 other employees in a work force at that time of some 450 employees who had worse records in 1994. None of those 16 other employees were suspended or dismissed in 1994. The record of those employees was not reviewed with any precision before me, and thus I do not know whether, for example, any of the other employees missed time with permission due to an ice storm or due to an illness, or whether any of them lost time due to a work related injury, as I have concluded the grievor did. Drawing reasonable comparisons is thus very difficult. Similarly it makes it difficult for me to determine just what the Employer has adopted as its required standard for attendance. On a more careful comparison with other workers, it may be that the grievor's record would appear better than the Employer's evidence suggests, but it might also appear worse. At a minimum it reinforces my initial impression that the grievor's absences are not so excessive as to indicate he was not living up to his end of the employment bargain, as others with apparently worse records have been maintained in employment.

Both the Employer and the Union provided me with an arbitration case detailing an approach to cases of innocent absenteeism. The Employer relied on *Re Canada Post Corp. and Canadian Union of Postal Workers (Lazzano)* (1991), 18 L. A. C. (4th) 207 (Jolliffe) and the Union relied on *Re Emery Worldwide (C. F. Co.) and Syndicat des Travailleurs de l'Energie et de la Chimie, Section Locale 156* (1992), 31 L. A. C. (4th) 341 (Frumkin). Both are of assistance in dealing with this case and, in particular, in assessing the level of absence in this case.

The first case, *Canada Post*, dealt with the situation under the specific provisions of that collective agreement on release for incapacity. The required standard expressed in that case is one of extreme absenteeism and a simultaneous finding that the record is not likely to

improve. Having reviewed the grievor's record with care and having heard the grievor's testimony, I do not find his absence record to be extreme. The Employer evidence is that the grievor's record is better than that of 16 of his colleagues. If the absence due to the work related injury and the two departures with permission due to illness and the ice storm are excluded, the grievor's record of absences would be improved, and might be better than additional numbers of his fellow workers. I am unable to make this determination on the evidence before me, but in my opinion this is not a case where the grievor's record of absence is extreme.

The second case, *Emery Worldwide,* is also helpful. In that case the suggested approach is one of asking first whether the record is one which indicates the employee is not capable of regular attendance at work. The arbitrator then asks whether the employee was simply not in a position to meet his fundamental obligations under his contract of employment. Applying that approach to the case before me, I believe that the grievor's record in not one which demonstrates he is incapable of regular attendance at work. Nor do I conclude he is unable to meet the fundamental obligations under his contract of employment.

Both cases suggest that if the absences are sufficiently extensive an arbitrator should look at the prognosis for future attendance. I do not think the grievor's absences are so extensive as to necessitate my examining the future prospects.

I return to the basic issue of the termination. I am unable in these circumstances to conclude that the decision to terminate the grievor can be justified as a reasonable response to the level of absence demonstrated. Moreover, I am not persuaded that the approach the Employer took here is consistent with the treatment afforded to other employees. While I agree that the grievor's record of absence has been high, I do not think the record has been excessive or extreme in the sense needed to justify termination.

VI. CONCLUSION

For the reasons given above, I conclude that the Employer did not have grounds to justify the decision to terminate the grievor's employment. It follows then that he should be reinstated in his employment forthwith, and I so direct.

Both the Union and the Employer asked me to remain seised if I ordered reinstatement. I will do so. In particular the Employer asked for the opportunity, if I were to direct reinstatement, to make submissions on conditions which should be imposed on the grievor, and on the issue of back pay. While I will remain seised, I am hopeful that the parties can agree on the details of the reinstatement. If they are not able to do so, I will reconvene the hearing at the request of either party, or the parties may agree to deal with the issues by means of written submissions.

I am thus directing the reinstatement of the grievor, forthwith, and, as requested, I remain seised of the matter.

Dated in London, Ontario, this _____ day of May, 1995.

_____

Howard Snow, Arbitrator