

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANADIAN PACIFIC KANSAS CITY RAILWAY COMPANY

(the “Company” or the “Employer”)

AND:

UNIFOR, LOCAL 101-R

(the “Union”)

(Grievance Numbers:

SHP 752 – W-63-2019/CAN-CP-UNIFOR-2020-00012006 – Shawn White;
SHP 753 – W-192-2020/CAN-CP-UNIFOR-2020-00017413 – Shawn White;
SHP 754 – W-191-2020 0/CAN-CP-UNIFOR-2020-00017414 – Shawn White;
and SHP 755 – W-175-2020/CAN-CP-UNIFOR-2020-00016813 – Shawn White)

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Simone Scott
for the Employer

Joel Kennedy
for the Union

HEARING:

April 14, 2026
Richmond, BC

DECISION:

July 9, 2026

The parties agreed I was properly constituted as an arbitrator under the terms and provisions of the Collective Agreement with the requisite jurisdiction to hear and determine the matters in dispute.

At issue are four disciplinary grievances issued to Mr. Shawn White, the grievor.

The parties appeared before me on April 14, 2026, at Richmond, British Columbia and presented evidence and submissions regarding all four grievances.

BACKGROUND

The Union is the certified bargaining agent for approximately 1,250 shopcraft employees working at its mechanical facilities across Canada.

The grievor commenced his employment with the Company on January 5, 2005.

The grievor at the material time of the grievances was employed as a trades Helper at the Company's Weston Shops located in Winnipeg, Manitoba. The evidence is that he spent most of his career working in the Wheel Shop as a forklift operator.

SHP 752 – W-63-2019/CAN-CP-UNIFOR-2020-00012006 15 Demerits for Absenteeism

The Employer requested the grievor attend an investigation into his attendance at work on various dates.

The notes of the formal investigation procedure at questions 10 to 25 reveal the following:

Q10. Please provide an explanation for your Absenteeism of 8 hours on August 19, 2019.

A10. Stressed out/sick mental issues and anxiety it is all one thing.

Q11. Did you provide Documentation to support this claim?

A11. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q12. Please provide an explanation for your absenteeism of 8 hours on September 19, 2019.

A12. Stressed out/sick mental issues an anxiety it is all one thing.

Q13. Did you provide Documentation to support this claim?

A13. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q14. Please provide an explanation for your absenteeism of 8 hours on September 20, 2019.

A14. Stressed out/sick mental issues and anxiety it is all one thing.

Q15. Did you provide Documentation to support this claim?

A15. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q16. Please provide an explanation for your absenteeism of 8 hours on September 30, 2019.

A16. Stressed out/sick mental issues and anxiety it is all one thing.

Q17. Did you provide Documentation to support this claim?

A17. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q18. Please provide an explanation for your absenteeism of 8 hours on October 11, 2019.

A18. Stressed out/sick mental issues and anxiety it is all one thing.

Q19. Did you provide Documentation to support this claim?

A19. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q20. Please provide an explanation for your absenteeism of 8 hours on October 21, 2019.

A20. Stressed out/sick mental issues and anxiety it is all one thing.

Q21. Did you provide Documentation to support this claim?

A21. No.

Union Objects: based on *Canada Labour Code* section 239, did the company request in writing within 15 days after his return to work for a note from the doctor.

Q22. Please provide an explanation for your absenteeism of 2.5 hours on October 23, 2019.

A22. Left the house late.

Q23. Are you aware CP has an Employee Family Assistance Program that is open to all Employees for assistance and is confidential.

A23. Not really know, I have only seen pamphlets years ago.

Q24. Have you ever asked your Manager or Local Union about Personal services provided to employees through EFAP?

A24. No I have not, but it does not mean I am not seeking help, I was unaware of this service but am seeking help through my personal doctor, the company is going against what my doctor said to take days off when needed, I have bad days.

Q25. Have you provided CP with documents to support these personal issues?

A25. Yes a FAF form and future doctor's note for my next statement stating the same thing.

Following the investigatory meeting, on December 9, 2019, the grievor was issued discipline of 15 demerit points in connection with his absenteeism from work for the period of August, September and October 2019.

The letter of discipline reads as follows:

Following the fair and impartial investigation conducted November 25, 2019, you are hereby advised that you have been issued fifteen (15) demerits for the following reason(s):

Violation of the Attendance Management Policy for Mechanical Employees, specifically:

- Your absenteeism from the work place between August 1 and October 31, 2019 totaling 44.25 hours.

POSITIONS OF THE PARTIES

Both parties in arguing their respective cases relied on the principles enunciated in *Wm. Scott and Co. Ltd. and Canadian Food & Allied Workers Union, Local P-162*, [1977] 1 Can.L.R.B.R. ("*William Scott*"), which requires arbitrators to pose and answer the following three questions:

First, does the grievor's conduct give rise to some form of discipline?

Second, if the answer is "yes", was the discipline issued excessive, having regard to all of the circumstances surrounding the situation.

Third, if the answer to question 2 is "yes", then what measure of discipline should be substituted as just and reasonable?

The Employer asserts it has met the first test in *William Scott, supra*, pointing to the patterns of the grievor's absenteeism. It emphasizes these absences were immediately preceding or following his rest days which were Saturdays and Sundays, including October 11, 2019 which led into the Thanksgiving long weekend.

In support of its position, the Employer underlines the fact that the grievor at no time offered any medical documentation to support his illness, notwithstanding his claim that he was attending visits with his doctor due to his medical condition.

The Employer points to the necessity and importance of regular attendance and at work, citing Brown and Beatty, *Canadian Labour Arbitration*, 5th Edition § 7:16 as follows:

Punctuality and regular attendance are essential attributes of all employment relationships. Employees who are unable or unwilling to report for work on time and as scheduled risk being disciplined by their employers.

The Employer also asserts at paragraph 18 of its brief the following:

It should be noted that during his statement, the Grievor references providing the Company with a Functional Abilities Form (FAF) and claims that the Company is "going against what his doctor said" (Q&A 23 & 24). This is not accurate. The Company records disclose that the Grievor was temporarily off work from August 30, 2019 to September 3, 2019, and was cleared to return to his role **"fit full"** on September 4, 2019. Had his treating physician advised the Company he needed additional or prolonged days off or a gradual return to work, the restrictions would have been indicated on his FAF. A plain read of the FAF, demonstrates no such restrictions.

(emphasis in original)

In further support of its position, the Employer relies on the finding of Arbitrator Picher in CROA 2845 wherein the learned Arbitrator stated:

It was plainly incumbent upon the employee to obtain proper medical certificates, and to bring those to the attention of the Company during the course of the disciplinary investigation into his recurring absenteeism.

In sum, the Employer asserts it has established grounds for discipline and the discipline imposed was, in all of the circumstances, within the range of reasonability and the grievance should accordingly be dismissed.

For its part, the Union asserts the Employer has failed to establish clear and convincing evidence and any culpability on the part of the grievor in this case – specifically, that his absenteeism resulted from misconduct or otherwise – constituted deviant behaviour.

In short, the Union argues the grievor made the Company aware of his medical conditions and that the Company failed to request supporting documentation. In other words, the Employer failed to follow up to determine if there were underlying causes for the grievor's absenteeism after being made aware of the grievor's medical condition during the investigation referred to above.

In that regard, the Union relies on the findings of Arbitrator Picher in SHP 569, where he quoted an earlier decision:

In CROA 2245 the Arbitrator commented as follows:

The Canadian law of arbitration has long recognized that an employer is entitled to treat absenteeism and lateness in either a disciplinary or non-disciplinary fashion. If it is of the view that an employee's absenteeism is occasioned by his or her failure to act responsibly in matters which are within the employee's control, a disciplinary response may be appropriate....

...

...The Corporation has a legitimate interest in recording an employee's attendance record and, even if it chooses to treat it as non-culpable, of ensuring that the employee is aware of his or her record in that regard. That approach serves the proper business purpose of the Corporation in ensuring, insofar as possible, that the fundamental obligations of an individual's contract of employment will be fulfilled while, on the other hand, protecting the interests of the employee, who might otherwise be left unaware of the jeopardy which recurring innocent absenteeism and lateness might occasion for his or her ongoing employment relationship.

In further support of its position, the Union points to the undisputed fact the grievor did comply with Rule 16.1 of the Collective Agreement which states:

RULE 16 ABSENCE FROM WORK

16.1 In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause must, if possible, advise the Supervisor prior to the commencement of his/her shift. Should an employee be required to leave work prior to the end of his/her shift, permission shall not be unreasonably denied.

In addition to complying with Rule 16.1, the Union asserts the grievor did advise his Employer he was under a doctor's care in an attempt to treat his "ongoing mental health issues".

For the above reasons, the Union asserts the discipline should be set aside.

DECISION SHP 752

The first issue to be determined in this case is whether the grievor suffered from an illness that would justify his absences.

When the evidence is considered as a whole, I find the grievor unfortunately did suffer from medical conditions and while it may be true, the grievor perhaps should have made better attempts to establish his medical circumstances. There was enough available information provided to the Employer to give rise to a duty to enquire about the grievor's medical condition. It did not do so.

Following the findings in SHP 569 and others, I find the failure of the Employer to enquire into the grievor's medical condition provides a sufficient basis to set aside the discipline. It will be recalled that the grievor was clear at the investigation that he was suffering from a medical condition, yet no request was made by the Employer for the grievor to provide further medical or any confirmation from his doctor. Further, I find he followed the provisions of Rule 16.1.

In the result, the grievance is granted. I order the 15 demerit points be removed from the grievor's record.

It is so awarded.

**SHP 753 – W-192-2020/CAN-CP-UNIFOR-2020-00017413
15 DEMERITS – VIOLATION OF SMOKING POLICY**

This case concerns a grievance filed by the Union alleging the discipline meted out to Mr. Shawn White, the grievor, on July 22, 2020 was excessive.

BACKGROUND

The grievor's background is set out in SHP752 above, so it is unnecessary to repeat it here.

The discipline arises from the admitted fact that the grievor was smoking in a non-designated smoke area while not on a designated break. He was issued discipline of 15 demerit points for this infraction under the Company's hybrid discipline system.

POSITIONS OF THE PARTIES

The position of the Company is that it relied on the grievor's previous discipline record as well as its well-known and published "No-Smoking Policy 1600" which states that:

Smoking is prohibited on Company property unless management has designated an outdoor smoking area. Managers may only designate an outdoor smoking area that is not otherwise restricted for safety reasons.

In the submission of the Employer, the smoking policy was reinforced to employees in a memo dated December 11, 2017 as follows:

In accordance with the policy **SMOKING IS ONLY PERMITTED IN THE DESIGNATED SMOKING AREAS** that have been identified and appropriately marked across the property.

(emphasis included in the original text)

The Company states that it categorized the grievor's conduct as a "non-major offense" and, in issuing the discipline, took into consideration the grievor's formal discipline record which it argues, consisted of a formal reprimand and 15 active demerit points on record, both for attendance violations. Hence it was justified in issuing the 15 demerit discipline.

For its part, the Union concedes the Employer has established cause for discipline, but argues the penalty was excessive in all the circumstances.

Specifically, the Union alleges the penalty imposed was punitive as opposed to being corrective in nature. As well, it asserts the Employer unreasonably exercised its management rights to discipline given the minor nature of the offense, coupled with the grievor's candour, lengthy service and virtually unblemished disciplinary record.

The Union asserts the foregoing mitigating factors made the grievor a perfect candidate for corrective coaching rather than the discipline issued.

DECISION SHP 753

Both parties relied on the three-part test in *William Scott, supra*, in this matter, as well as the following two cases of discipline – SHP 764 and SHP 765, which require arbitration boards in assessing discipline cases to apply the three-part test set out earlier in this award.

As noted, the grievor acknowledged he was smoking in a non-smoking area while not on a break. In the result, the answer to the first question is in the affirmative. That leaves the second and third questions to be determined.

All things considered, I find it was not unreasonable for the Employer to issue the grievor 15 demerits for this infraction. The grievor knew or ought to have known that he was only permitted to smoke during designated breaks. Despite that knowledge, he knowingly breached the Employer's policy. In the circumstances, I find the quantum of discipline appropriate and deny the grievance.

It is so awarded.

SHP 754 – W-191-2020 0/CAN-CP-UNIFOR-2020-00017414
20 Demerits – Failure to attend investigation

This case concerns a grievance filed by the Union on behalf of Mr. Shawn White, the grievor.

It falls on the heels of the grievance matters dealt with in the previous case (SHP 753). In short, the grievor was scheduled for an investigation meeting resulting from the smoking breach set out in the previous case above.

The investigation was scheduled for June 29, 2020. On the date scheduled, the grievor phoned the Company and stated, “I’ll be staying home today I’m sick”.

As the Employer stated at paragraph 11 of its submission:

The Grievor’s decision to absent himself from the workplace while subject to a properly scheduled investigation was concerning and warranting of further questioning. As such, in addition to rescheduling his smoking investigation, the Grievor was also notified of a second investigation for his attendance and failure to appear.

The grievor attended the second investigation on July 2, 2020.

It is clearly evident from the notes of the investigation, which were tendered as evidence, that the grievor made clear his reasons for not attending the previous investigation as follows:

My nerves were shot, the investigations were bothering me, and the atmosphere in the wheel shop, being picked on doesn’t allow me to sleep right, and I have documented information stating my current health condition.

Again, at paragraph 19 of the Employer's submission, the investigation record reveals the following and point No. 24:

24. Is there anything else that you would like to add for this statement?
- A. Yes, my anxieties are becoming overwhelming. I am not sleeping right, eating right, and Todd and Rui are big parts of my anxieties and health issues. It's to the point that when I see Todd's truck in the parking lot that I feel sick to my stomach. I do not like the man. I think that he is creating an environment of hate, rather than one of family, solidarity and trust. I'm at the point where he is creating problems that make us all nervous that compromises the safety for the job that we are doing.

In the end, the Employer made the decision to issue discipline determining that the grievor's failure to attend the initial investigation meeting on June 29 was culpable and warranting of a disciplinary response.

The position of the Employer is that:

1. His short service, work history, and his past disciplinary record established culpability sufficient to mete out discipline.
2. The causal connection between the alleged actions of the grievor's manager and his decision not to attend the investigation have not been established and is simply not credible.
3. The grievor provided no documentation supporting his absence as being anything other than retaliatory, therefore, having issued 15 demerits for the smoking incident, the issuance of 20 demerit points in these circumstances was justified.
4. If the grievor had concerns regarding his relationship with management, he had legitimate venues through which to address his concerns (including filing a complaint with the Company Employee Relations Department), rather than absenting himself from the investigation.

The Employer also submitted:

38. In the alternative, if we accept that the Grievor did have anxiety which prevented him from attending the first scheduled investigation, why wouldn't he have raised this medical issue at some point prior to the investigation that he actually attended.
39. He did not cite it as a reason for his absence when booking off and only referenced it during the investigation held on July 2, 2020. This was a full seven days after the initial Notice of Investigation was provided.

Finally, in support of its position, the Company relies on CROA 720 (Weatherill) and CROA 1666 (Picher). In the latter award, Arbitrator Picher stated the following:

The smooth functioning of the investigative procedures contemplated under the collective agreement is essential to the orderly processing of discipline with the Company's operations. If properly pursued it also benefits the employees who are the subject of the investigation, since the prompt and full disclosure of all facts and allegations will normally be important to the preparation of their own case. An orderly investigation procedure is, moreover, important to the grievance and arbitration process, which culminates in the reliance of this Office, in substantial part, on the record of those proceedings. The frustration of the investigation process, whether by inadvertence, indifference or design, must therefore be viewed seriously. For these reasons the Arbitrator finds that the imposition of 20 demerits was within the appropriate range of disciplinary response, and the grievance must be dismissed.

The Union takes a much different view of the factual background and circumstances of this case.

First, the Union says the Company knew, or ought to have known, the grievor suffered an illness and takes issue with the fact that it made no

attempt whatsoever to confirm his illness, such as requesting documentation to support his illness.

Further, the Union asserts the Company has failed to meet its onus to establish culpability on the grievor's part with convincing evidence – specifically, the Union asserts that the Employer has failed to prove that the grievor's absenteeism resulted from misconduct or deviant behaviour.

In sum, the Union argues there was sufficient evidence provided at the investigation to establish illness as the grievor's reasons for not attending the scheduled investigation and if the Company was in any doubt, it had a duty to both enquire and, if deemed necessary, require the grievor to provide medical confirmation of his medical condition. It failed to do so.

The Union relies on SHP 569, a case it says has similar facts, wherein Arbitrator Picher found:

Different, but equally significant, concerns arise with respect to the three day absence registered by the grievor on February 6 through 8, 2002 when he related to his employer that he was suffering from the flu. If the Company had concerns about the truth of the grievor's assertion concerning his fitness to work, particularly in light of his prior disciplinary record, it was open to it to then demand that he produce a medical certificate to substantiate his three day absence.

Further, the Union relies on CROA 5054 (Arbitrator Cheryl Yingst-Bartel):

While the Company argued that it would have been reasonable for the Grievor to seek medical treatment for his sinus infection, it did not seek or request any medical information or validation of the Grievor's sickness when he called in sick. Not having sought that information at a point in time where it could have been provided, it cannot rely on its absence at this late date to establish culpability. The Grievor does not have to demonstrate he was sick. The

Company must demonstrate he was not, to demonstrate his absence was culpable.

Further, the Union asserts the grievor complied with the provisions of Rule 16.1.

For these reasons the Union requests the grievance be upheld and the assessment of 20 demerits be set aside and removed from the grievor's record and personal file.

DECISION SHP 754

As in the previous case, the test to be applied is that enunciated in *William Scott, supra*.

In the present case, my initial focus is on the first question – was there cause for discipline?

There is no doubt in the present case that the grievor advised the Company on the date of his scheduled investigation meeting of his illness and that he was therefore unable to attend the meeting.

As well, the notes of the investigation meeting make it clear the nature of the grievor's medical and mental condition and anxiety.

Second, the grievor, in accordance with Rule 16.1, phoned the Employer to advise he was sick and unable to attend the initial investigation.

Third, the grievor did attend the second rescheduled investigation meeting wherein he reiterated his medical concerns.

The question then becomes with the information the grievor provided at the investigation, did the Company have a duty to enquire about the grievor's medical condition?

In my view, it did. At that point in the investigation, if the Employer had any doubt, it had every right to seek further medical information from the grievor (see SHP 569 and CROA 5054 above).

It is not disputed the grievor followed the provisions of Rule 16.1 of the Collective Agreement.

For these reasons I find there was no violation of the Collective Agreement and the grievance succeeds.

I order the 20 demerit points be removed from the grievor's record.

It is so ordered.

SHP 755 – W-175-2020/CAN-CP-UNIFOR-2020-00016813
Dismissal

This grievance is the fourth in a series of cases concerning Mr. Shawn White, the grievor.

As is apparent from reading the previous three cases, the grievor was subjected to three previous disciplinary sanctions just prior to being dismissed from his employment on July 22, 2020 for the following reasons:

Following the fair and impartial investigation conducted July 6, 2020, you are hereby advised that you have been DISMISSED from company service for the following reason(s):

Your conduct unbecoming a CP employee as displayed through your inappropriate comment and actions June 25, 2020, at the Wheel Shop Safe Start towards Supervisor Robert Schirle.

Notwithstanding that the above-mentioned incident warranted dismissal in and of itself, based on your previous discipline history; this incident also constitutes a culminating incident which warrants dismissal.

All of which constituted a violation of the following:

1. Violation of the Company Policy CP Code of Business Ethics – Section 9 – Respectful Workplace
2. Violation of HR 1300 – Discrimination and harassment in the workplace – Specifically Harassment – unwelcomed comments.

The Company takes the position that the conduct of the grievor giving rise to his dismissal invoked the doctrine of culminating incident.

The Union strenuously objects to the Company's reliance on the doctrine of culminating incident and argues the grievor's previous disciplinary record ought not to have been considered in the assessment of discipline.

As I have dealt with the previous disciplinary matters in the three previous decisions above, I do not believe it is necessary to dispose of the parties' arguments on whether or not there were grounds to rely on the doctrine of culminating incident which, stated simply, means that an employer can rely on a grievor's past conduct in formulating its decision to assess future discipline.

I say that because this case needs to be decided on its own unique facts and circumstances in order to make a determination (applying the principles of *William Scott, supra*) as to whether first, if there were grounds for discipline and whether or not the discipline assessed was appropriate in all the circumstances.

I now turn to the facts of this case.

The grievor has been employed with the Employer since January 5, 2005. In that time, he has worked as a Production Worker and operated a forklift, transporting freight car wheel sets and components to and from various locations both within and outside the shop.

At the time of the grievor's dismissal, his previous discipline consisted of a letter of caution, dated September 19, 2019 regarding time keeping, as well as the discipline set out in the three previous case above in this award (15 demerit points – December 9, 2019 for absenteeism; 15 demerit points for a smoking violation – June 17, 2020; and 20 demerit points for missing work on the date of the investigation for the smoking incident – which I have ordered removed from the grievor's record in the decision above).

It is of note that three of the previous disciplines were all meted out on July 22, 2020.

The incident giving rise to the grievor's dismissal arose on June 25, 2020 at a shop floor briefing conducted by his supervisor, Mr. Robert Schirle, who advised the crew that the Company was cancelling its longstanding practice of morning work breaks.

It is apparent from the notes of the investigation into this matter which was tendered as evidence, that upon hearing of the morning break cancellation, the crew were quite upset over the dismantling of the morning break and the impact it had on working conditions.

As well, it is apparent that the grievor was vocal in his response to the news, as were other employees. I make that finding after reviewing the evidence contained in the investigation minutes.

Notwithstanding the Company's focus on the grievor, it is not evident to me that any other employee was sanctioned in any manner, yet the investigation notes indicate there were a lot of concerns expressed by crew members over the deletion of the morning break.

However, it is clear that at one point in the meeting, the grievor did make the comment directed at his supervisor – "You guys don't do anything for us any way...". There is a factual dispute over whether the grievor uttered the words "fuck off" during his comments.

POSITIONS OF THE PARTIES

The position of the Company was summarized at paragraphs 77-80 as follows:

77. The Company maintains that culpability was established after a fair and impartial investigation. The Company has established that the Grievor did in fact loudly interrupt Mr. Schirle during the morning job briefing and tell him to "fuck off". The Grievor's actions were in violation of the Company's Harassment and Discrimination Policy as well as the Company's Code of Business conduct.
78. Throughout his statement the Grievor responded in ways that reinforced his disdain and dislike of local management, while taking no accountability for his actions. Accordingly, the Grievor's actions prior to and during the statement, coupled with his discipline history and recent string of violations left the Company unable to reconcile his continued and ongoing employment.
79. In addition to his failure to take any accountability for the incident, the Grievor also failed to demonstrate any remorse or apologize for his actions. When considering the

aforementioned factors, the Company maintains the Grievor was appropriately dismissed as well as dismissed for a culminating incident.

80. While the Company maintains that dismissal was appropriate in all the circumstances, in the event the Arbitrator disagrees, the Company respectfully submits the Doctrine of Laches applies as a result of the Union's inaction.

In sum, the Employer urges me to uphold the dismissal.

The Union argues the grievor's actions in this matter resulted from a pent up frustration developed as a result of his belief he was being picked on and harassed by his supervisor, which is buttressed by the fact that he received three rapid fire disciplinary sanctions in such a short period of time prior to his dismissal, which were handed to him all at once on July 22, 2020 – the date of dismissal.

In further support of the grievor's belief he was being bullied by his supervisor, the Union points to the notes of the investigation at question and answer #55 as follows:

Q55: Is there anything else that you would like to add for this statement?

A55: I feel that Todd is totally attacking me and the consensus in the shop is that he is a bully. He is toxic and making the workplace unsafe. I cannot do my work safely with him around. The morale in the shop is at an all-time low and a lot of it has to do with the way he and Rui are both running this operation. People were much happier here when Pat was around. People actually wanted to work here, as opposed to today's current environment. I am concerned about this uncomfortable work environment because people are being sent home for the smallest infractions and does not allow us [to] focus on our jobs properly. I haven't never been treated as unfairly as I have by other people [as] I have with Todd. He should not be in the position that he is.

The Union submits the grievor's comments at the shop floor briefing amounted to nothing more than an isolated and spontaneous emotional reaction triggered by the cancellation of the morning break time, and was further festered due to the turmoil he was experiencing at work, along with the inherent pressures of the Covid pandemic.

The Union summarized its position in its written submission as follows:

[72] As the evidence shows, the Grievor's conduct did not violate any of the Company policies alleged to have been breached. Notably, Supervisor Rob S[c]hirle confirms this in his own memorandum, in which he makes no allegation that the Grievor assaulted him - verbally or physically – nor that he felt frightened, intimidated, humiliated, or offended by [it] any time on June 25 or thereafter.

The Union urges me to find there were no grounds for discipline in all of the circumstances of this case and to set the discharge aside and issue an order making the grievor whole for all losses as a result of his dismissal or, in the alternative, an order the arbitrator deems appropriate.

DECISION SHP 755

As stated above, this case falls to be decided under the principles of *William Scott, supra*.

With respect to the first question in *William Scott, supra*, I find the grievor's conduct in stating "You guys don't do anything for us anyway...", and his utterance of "fuck off" – which I find on a balance of probabilities he likely did say – was an affront to his supervisor and properly attracts discipline.

With respect to the second and third questions of *William Scott, supra*, it is the second question that requires an arbitration board to conduct a

searching review of all the surrounding facts and circumstances giving rise to dismissal.

I am not satisfied the grievor's comments rise to the level of harassment or intimidation but are appropriately described as an emotional outburst over the cancellation of the longstanding morning break.

The grievor is a long-term employee. His work history points to a discipline record for absenteeism and smoking in a non-smoking area.

The evidence established the grievor was unfortunately suffering from health issues which, on the evidence, I am satisfied contributed to his behaviour at the material time.

The evidence also established he was feeling considerable pressure at work due to his relationship and perception of his supervisor that is buttressed by his response during the discipline interview at question and answer #55 (set out above) where he saw fit to let it all out about how he felt treated at work.

Considering all of the circumstances, I have concluded dismissal was an excessive response to the grievor's actions at the shop floor crew meeting and a more corrective form of discipline is appropriate.

In coming to my conclusion, I have considered the fact his supervisor at the material time is no longer with the Company.

In the result, I have substituted the dismissal with a five (5) day suspension and order immediate reinstatement of the grievor back into his employment.

With respect to the issue of remedy, I refer that matter back to the parties and remain seized to resolve that matter at the request of either party.

Further, I direct the grievor to seek medical help to assist him with his medical issues in the event those issues continue to affect his employment.

Dated at the City of Vancouver in the Province of British Columbia this 9th day July, 2026.



Vincent L. Ready