

FINDINGS AND DECISION
IN A DISPUTE
between

THE TOWN OF HAPPY VALLEY-GOOSE BAY
("the Employer")
and

THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 2109
("the Union")

Grievor: Mr. John Chiasson

APPEARANCES:

For the Union:

Presenter: Ms. Donna Ryan, CUPE Representative
Advisor: Mr. Donny Webber, President Local 2109
Witnesses: Dr. Dennis Rashleigh, under subpoena
Ms. Gloria Michelin, Mental Health Counsellor (under subpoena)
Mr. Jack Chiasson
Mr. Theodore Chiasson
Mr. Charles Chiasson
Mr. Rick Burry, Heavy Equipment Operator
Mr. Andy Eddy, Heavy Equipment Operator
Mr. Keith Pie, Vice President Local 2109
Mr. Clayton Maclean, Foreman
Mr. Donny Webber, President Local 2109

For the Employer:

Presenter: Ms. Twilla Reid
Advisor: Mr. Al Durno, Town Manager
Witnesses: Mr. Wallace Nippard, Superintendent of Works
Mr. Al Durno, Town Manager
Mr. Cliff Sampson, Community Constable

Arbitrator: Mr. John Scott

The grievance reads: "Mr. Chaisson (*sic*) was discriminated against as per Article 4.01 and the Employer breached other articles of the Collective Agreement.

Requested remedy reads: "That Mr Chaisson (*sic*) be reinstated with full benefits & seniority immediately"

The grievance was heard in Happy Valley-Goose Bay, on June 10-11, 2008.

THE PARTIES AGREED THAT:

- the Arbitrator was properly appointed and had authority to hear the case;
- the Arbitrator's notes of the evidence and argument as recorded in the final award will prevail in the event of conflict;
- parties likely to be affected by the outcome of the hearing have received notice and been informed of their right to appear and/or be represented;
- all matters pertaining to the grievance procedure were either properly observed or are waived;
- all witnesses were excluded until all their testimony had been heard;
- issues of quantum, if any, would be considered separately and if the parties do not reach agreement within sixty (60) calendar days they will be referred to the Arbitrator for resolution;
- the Arbitrator will remain seised of the matter for period of sixty (60) calendar days after its publication should issues of interpretation of the Award arise.

ARTICLES OF THE COLLECTIVE AGREEMENT CONSIDERED

ARTICLE 1, PREAMBLE

1.01 **WHEREAS** it is the desire of both parties to this Agreement.

1. To maintain and improve the harmonious relations and settled conditions of employment between the Employer and the Union.
2. To recognize the mutual value of joint discussions in all matters pertaining to working conditions, employment, services, etc.
3. To encourage efficiency in operation.
4. To promote the morale, well-being and security of all the employees in the bargaining unit of the Union.
5. To reserve to the parties signatory hereto, the respective rights and privileges of each of them.

ARTICLE 2, MANAGEMENT RIGHTS

2.01 **Management Rights**

The Union recognizes and agrees that the Employer has the right to operate and manage its assets and business and direct the working forces subject to the terms of this agreement. The Employer shall not exercise its rights in an arbitrary or discriminatory manner.

ARTICLE 4, NO DISCRIMINATION

4.01 **Employer Shall Not Discriminate**

- a) The employer agrees that there shall be no discrimination, interference, restriction, or coercion exercised or practised with respect to any employee in the matter of hiring, wage rates, training, up-grading, promotion, transfer, layoff, recall, discipline, classification, discharge or otherwise by reason of age, race, creed, colour, national origin, political or religious affiliation, gender or marital status, sexual orientation, place of residence, nor by reason of his membership or activity in the Union, nor any other reason.
- b) Discrimination means differential treatment of groups or individuals resulting from a distinction, preference, restriction or exclusion that is based on one of the prohibited grounds listed in 4:01(a).

ARTICLE 8, CORRESPONDENCE

8.01 Correspondence

All correspondence between the parties, arising out of this agreement or another thereto, shall pass to and from the Town Manager or another person designated by Council and the Secretary of the Union (*sic*)

ARTICLE 10, RESOLUTIONS AND REPORTS OF THE COUNCIL

10.01 Employer Shall Notify Union

The Employer agrees that any reports or recommendations made to the Council dealing with conditions of employment and which affect employees within the bargaining unit, shall be communicated to the Union in time to afford the Union a reasonable opportunity to consider them and, if deemed necessary, of speaking to them when they are dealt with by the Council.

ARTICLE 11, GRIEVANCE PROCEDURE

11.06 Settling of Grievance

An earnest effort shall be made to settle grievances fairly and promptly in the following manner:

Step 1 The aggrieved employee(s) shall within ten (10) calendar days after becoming aware of the occurrence of the grievance, submit his/her grievance to the Shop Steward or in his/her absence another Shop Steward may process the grievance.

Step 2 If the Steward considers the grievance to be justified, the employee concerned together with his/her Shop Steward, may within seven (7) calendar days following receipt of the grievance submit his/her grievance in writing to the employees (*sic*) supervisor.

Step 3 Failing satisfactory settlement within five (5) working days after the dispute was submitted under Step 2, the Steward will submit to the Town Manager a written statement of the particulars of the grievance and the redress sought. The Town Manager shall render his decision within five (5) working days after receipt of such notice.

Step 4 Failing a satisfactory settlement being reached in Step 3, the Union may refer the dispute to arbitration.

11.14 Technical Objections to Grievances

No Grievance shall be defeated or denied by a technical objection occasioned by clerical, typographical or similar error or by an inadvertent omission of a step in the grievance procedure. An arbitrator shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance, and to extend time limits, in order to determine the real matter in dispute and to render a decision which it (*sic*) deems just and equitable.

ARTICLE 12, ARBITRATION

12.04 Decision of Arbitrator

The decision of the arbitrator shall be final, binding and enforceable on all parties. The arbitrator shall not have the power to change this Agreement or to alter, modify or amend any of its provisions, however, he shall have the power to otherwise dispose of the grievance by an arrangement which he deems just and equitable and which is within acceptable arbitral jurisprudence.

ARTICLE 13, DISCHARGE, SUSPENSION AND DISCIPLINE

13.03 Burden of Proof

In cases of discharge and discipline, the burden of proof of just cause shall rest with the Employer. Evidence shall be limited to the grounds stated in the discharge and discipline notice to the employee. In cases of discharge and discipline, both parties agree to an exchange of all evidence pertaining to the case prior to the arbitration hearing.

13.04 Unjust Suspension or Discharge

An employee who has been suspended or discharged shall be immediately reinstated in his former position without loss of seniority should the suspension or discharge be overturned upon completion of the grievance procedure.

He shall be compensated for all time lost in an amount equal to his normal earnings during the pay period next preceding such discharge or suspension, or by any other arrangement as to compensation which is just and equitable in the opinion of the parties or in the opinion of a Board of Arbitration, if the matter is referred to such a Board. Any monies earned by an employee during a period of suspension or discharge shall be deducted from any award made under this article.

13.05 Warnings

Whenever the Employer or its designate deems it necessary to censure an employee, in a manner indicating that dismissal may follow any further infraction or may follow if such employee fails to bring his/her work up to a required standard by a given date, the Employer shall provide such censure in writing within ten (10) days of the verbal censure, giving particulars of such censure, and shall in the same time frame provide a copy of the written censure to the union.

13.07 Adverse Report

If the Employer wishes to make an expression of dissatisfaction concerning an employee's work a part of his/her record, the Employer shall notify the employee, with a copy to the Union, within ten (10) working days of the occurrence. This notice shall include particulars of the work performance which led to such dissatisfaction. This article shall be applicable to any complaint or accusation which may be detrimental to any employee's advancement or standing with the Employer, whether or not it relates to his work. The employee's written reply to such complaint, accusation or expression of dissatisfaction shall become part of his record. The record of an employee shall be removed from his personnel file and destroyed after the expiration of twelve (12) months providing there is no recurrence of a similar incident during that time, in which case it shall be removed and destroyed twelve months after the recurrence. Employees and their representatives shall have the right to view their personnel file at any time.

ARTICLE 14, SENIORITY

14.04 Loss of Seniority

An employee shall not lose seniority rights if he is absent from work because of sickness, accident or leave of absence approved by the Employer.

An employee shall lose his seniority in the event:

- 1) He is discharged for just cause and is not reinstated.
- 2) He resigns in writing and does not withdraw within three (3) working days.
- 3) He is absent from work without sufficient cause or without notifying the Employer, unless such notice was not reasonably possible.
- 4) He fails to return to work within seven (7) days following a layoff and after being notified by registered mail to do so, unless through sickness or other just cause. It shall be the responsibility of the employee to keep the Employer informed of his current address. An employee recalled for casual work or employment of less than one (1) months duration at a time when he is employed elsewhere shall not lose his recall rights for refusal to return to work.
- 5) He is laid off for a period longer than twelve (12) months.

ARTICLE 21, SICK LEAVE PROVISION

21.01 Sick Leave Defined

Sick leave means the period of time an employee is absent from work with full pay by virtue of being sick or disabled, exposed to a contagious disease where a doctor certified this exposure will have a detrimental effect on other employees, or under examination or treatment of a physician or because of an accident for which compensation is not payable under the Worker's Compensation Act.

21.02 (a) Annual Paid Sick Leave

Eighteen (18) days sick leave per year shall be earned by an employee at the rate of one and one-half (1½) days for every month an employee is employed for which he received at least ten (10) days pay.

21.02 (b) Unused Sick Leave

When an Employee retires or their position becomes redundant, the Employer agrees to reimburse the Employee twenty (20) percent of the balance of the employees sick leave benefit. Employees who experienced a bona-fide illness or were hospitalized, treated for serious illness, serious accident and/or long term illness will have his/her sick leave reinstated into his/her account for the purpose of calculating this benefit.

21.03 Accumulation of Sick Leave

The unused portion of an employee's sick leave shall accrue for his future benefits, to a maximum of one hundred and eighty-five (185) days.

21.04 Illness in the Family

Where no one other than the employee can provide for the needs during the illness of an immediate member of his/her family (as defined in Article 22.04) an employee may apply to his/her supervisor to use a maximum of ten (10) accumulated sick leave days per year for illness for this purpose.

Proof of illness for family member as in 21.06.

21.06 Proof of Illness

An employee will be entitled to take three (3) consecutive days up to six (6) days cumulative in the Calendar year (excluding 21.04, hospitalization or under a Doctor's direct patient care for an ongoing illness) without being required to provide a doctor's note unless specifically requested by the Town Manager or his designate. Any sick leave used in excess of six (6) days cumulative in the Calendar Year or three (3) days consecutive shall require a doctor's note to be provided immediately upon return to work to qualify for sick leave benefits. Any sick leave which is supported by medical certification shall not form any part of the six (6) days normally exempt from certification on an annual basis.

21.09 Insurance, L.T.D., etc.

In the event of an employee being off work due to an accident or illness the employee must use his or her accumulated sick leave prior to using the Insurance either for Weekly Indemnity or Long Term Disability.

22.04 Paid Bereavement Leave

An employee may be granted up to three (3) regular scheduled consecutive working days leave without loss of pay and benefits in the case of death or serious illness to a parent, wife, husband, common-law spouse, brother, sister, child, grandchild, mother-in-law, father-in-law, grandparent, step-parent, step-child, brother-in-law and sister-in-law. Where a burial occurs outside the area, such leave shall also include reasonable travelling time, total not to exceed five (5) days.

22.05 Pallbearer's Leave

One-half (2) (*sic*) day leave shall be granted without loss of salary or wages to attend a funeral as a pallbearer.

22.08 Service Credit & Insurance

- (a) Periods of Maternity/Parental/Adoption leave up to fifty-two (52) weeks shall count for service purposes, annual leave and sick leave.
- (b) Employees on Maternity/Parental/Adoption leave will have the option of continuing to pay their portion of the group insurance plan premiums to a maximum of fifty-two (52) weeks. Where the employee opts to continue to pay premiums, the Employer will also pay its share of the premiums.

22.09 Sick Leave

An employee may be awarded sick leave for illness that is a result of, or may be associated with pregnancy prior to the scheduled commencement date of maternity leave or birth of the child, whichever comes first.

22.11 General Leave

- (a) An employee may request leave of absence for good and sufficient cause without pay and without loss of seniority. Such request shall be in writing. Approval may be granted at the discretion of the Employer. During the period of such leave the employee shall continue to accrue seniority. Such leave shall not be unreasonably withheld.
- (b) An employee may request leave of absence without pay to work elsewhere. Such request shall be in writing. Approval may be granted at the discretion of the Employer. An employee must have a minimum of seven (7) years service in order to qualify for such leave. During the period of such leave, the employee shall not accrue seniority.

21.08 Notification of Absence

The employee is responsible to see that his or her immediate supervisor or the Town Manager or the Town Manager's Secretary is advised on the first day of any absence including illness. This advise (*sic*) must be received as soon as possible but not later than one hour after the beginning of the first missed shift.

ITEMS TAKEN INTO EVIDENCE:

- Consent #1 Grievance Form, November 14, 2006
- " #2 Collective Agreement made July 1, 2006
- WN #1 Grievor's attendance record January 1 - April 30, 2006
- " #2 Doctor's note, August 28, 2006
- " #3 Letter: Mr. Nippard to Grievor, Jan. 12, 2005, with handwritten notations
- " #4 Memo of meeting: January 12, 2005
- " #5 Letter: Mr. Nippard to Grievor, April 27, 2006
- " #6 Letter: Mr. Chiasson to Town of Happy Valley, Mayor & Councillors, Mar. 29, 2006
- " #7 Council Minutes, March 28, 2006
- " #8 Doctor's April 27, 2006 note, with notation on reverse
- AD #1 Doctor's note, May 16, 2006
- " #2 Doctor's note, June 15, 2006
- " #3 Letter: Mr. Durno to Grievor, October 5, 2006
- " #4 Letter: Mr. Durno to Grievor, October 26, 2006
- " #5 Letter of Termination, October 31, 2006
- " #6 "Response to Allegations", April 24, 2006
- JC #1 Letter: *Co-Operators Insurance Co.* to Grievor, June 7, 2006
- " #2 Doctor's note, February 9, 2006
- " #3 Grievor's Record of employment, January 3, 2007
- " #4 Grievor's (unsigned) copy of AD #5
- DW #1 Letter: Mr. Durno to Ms. Mitchell, February 19, 2008

AD#5/JC#4 reads as follows:

"LETTER OF DISMISSAL

October 31, 2006

PERSONAL SERVICE

Mr. John Chiasson

P.O. Box 604, Station B

Happy Valley-Goose Bay, NL

AOP 1EO

Dear Mr. Chiasson: **Re: Termination of Employment**

We have determined to terminate your employment with the Town Council of Happy Valley Goose Bay (the Town").

The decision to terminate your employment was based on your failure to provide sufficient notice and explanation of your absence from work beyond September 30, 2006. This constitutes a flagrant breach of article 21.08 of the Collective Agreement between the Town and the Canadian Union of Public Employees, Local 2019 (the "Collective Agreement"). You have refused all attempts by the Town to contact you on this issue. This situation demonstrates your complete lack of regard for work with the Town, and your careless disregard for your continued employment with the Town.

The following examples from your work history with the Town provide a further demonstration of your poor attitude regarding your employment with the Town:

- you have displayed rude and disrespectful behaviour to your supervisor and other workers
- you have acted so as to unjustifiably bring the operations of the Town and officials of the Town into question by bringing unfounded allegations against Town employees
- while off on sick leave you were observed in activity contrary to the medical evidence supporting your absence, without proper or complete explanation

The decision to terminate your employment with the Town is also a reflection of your disciplinary record while employed by the Town, including the following specific examples:

- On January 12, 2005, you received a verbal warning and written warning for storming out of a staff meeting on January 10, 2005
- On April 27, 2006, you received a written warning from the Town for breaching article 21.08 of the Collective Agreement for your failure to report your absence to work on April 27, 2006 in accordance with the terms of the Collective Agreement
- On October 5, 2006, you received a letter from the Town indicating you had lost your seniority due to your refusal to provide notice of your absence beyond September 30, 2006, in reliance on article 14.04(3) of the Collective Agreement

In light of the foregoing, and in preparation of final documentation, including your Record of Employment, we discovered that you owe the Town \$472.74 for the employee portion of group insurance premiums. We require immediate payment of this amount.

Sincerely,

AJF Durno

Manager, Town of Happy Valley Goose Bay

OPENING STATEMENTS

FOR THE UNION, Ms. Ryan described the grievance as arising out of the termination of Mr. John Chiasson, a former employee of Happy Valley-Goose Bay Town Council, where he had worked for 5 years as a conscientious employee with very little sick time, and with a minor infraction on his file.

In the Union's view, the evidence will show that the Grievor was discriminated against. He was suffering from depression, a major component of which related to his Supervisor at the Town of Happy Valley-Goose Bay. Although some of the evidence is disputed, the Union will establish that the Grievor was treated unfairly, and that the discipline accorded was excessive.

FOR THE EMPLOYER, Ms. Reid observed that the Grievor had provided the Employer with several doctor's indicating he was on leave for medical reasons for approximately one month which expired on September 30, 2006. However, the Grievor did not then make himself available for work despite the contractual requirement that he must notify his Employer of any situation that prevented his doing so.

The Employer is seriously compromised in circumstances where employees do not return to work at the expiry of the time frame specified in medical documentation. In this case, the Grievor did not contact the Employer to say he would not be returning.

The evidence will show that the Employer sent the Grievor a letter clearly explaining that he was required to attend work, and indicating that he would be terminated if he did not do so. But the Grievor did nothing to contact the Employer. The Town then delivered a second letter to the Grievor inviting him to come to a meeting, but he did not attend. In the absence of any explanation for this behaviour, the Grievor was terminated.

The Employer lead evidence to establish just cause for the termination.

EVIDENCE

THE FIRST EMPLOYER WITNESS, was Mr. Wallace Nippard, Supervisor of Works for the Town of Happy Valley-Goose Bay. Mr. Nippard has responsibility for road maintenance and related activities with the town, including supervision of Maintenance Department Operators in completing snow clearing, sanding, paving and similar work. Mr. Nippard confirmed that as Supervisor...

Yes, I have a working Foreman under me who is part of the Union; so I meet with him and plan the day and go from there. There are fifteen or sixteen employees now... (The Grievor) was a HEO (heavy equipment operator). I supervised him.

Mr. Nippard identified as WN #1, the Grievor's time sheet for January 1 to April 30, 2006 and explained the various abbreviations and notations used. Asked why it shows nothing beyond May 1, Mr. Nippard said: "John Chiasson was terminated." He added the Grievor "had lost twenty days through sick leave since January."

Asked if he knew of the Grievor's whereabouts during May, June and July of 2006, and whether there were any sick notes, Mr. Nippard said: "He did not have any contact with us... No, none that I recall." Asked whether the Grievor was off sick during May, June and July, Mr. Nippard answered: "Yes. He did have sick notes for that period ... up to September." Asked rules governing sick notes, and whether notes should have been submitted to him as Supervisor, Mr. Nippard said:

Yes. I just...I found his sick notes on my desk when I returned... and passed them to the Town Manager and on to the Payroll Clerk.

Mr. Nippard also identified WN #2, a sick note for the Grievor dated August 28, 2006. The sick note reads, "Off work for medical reasons August 28/2006 to September 30/2006." Asked what had happened after September 30, Mr. Nippard said: "I met with the Town Manager and explained the note only covered him to September 30th and ..." Mr. Nippard said there were no further notes provided by the Grievor and also denied there had been any further discussion with Mr. Chiasson after the 30th of September. Mr. Nippard was aware the Grievor was terminated:

My understanding was that all our attempts to contact him... He did not contact us, so we had no choice. We gave him ample time and notification to do so.

Asked how the Grievor's actions affected the workplace, Mr. Nippard said:

The town has a limited number of employees, so all are essential. If we are missing an employee whom we don't know if or when he is returning, we can't plan. And if we only have six and are down to five it affects our work plans.

Asked if he is aware of any previous issues with the Grievor work history, Mr. Nippard said: "There is a letter of warning (WN #3) I gave John Chiasson on January 12, 2005." He also identified WN #4, a note to file concerning a meeting held on January 12, 2005, about a "meeting to give Mr. John Chiasson...a verbal and written warning..." Mr. Nippard described the incident as

... relating to Mr. Chiasson storming out of a staff meeting and at first refusing to come to my office when I asked him to, and then leaving my office before finishing our discussion. There was a verbal warning as well as this letter.

Mr. Nippard acknowledged some handwritten additions to WN #3 which were added:

... after a meeting with Mr. Webber, Mr. Durno and myself... There was a disciplinary meeting on January 12th where the Grievor was given WN #3 in the presence of Mr. Durno and Mr. Scott Lyle, the Union representative. WN #4 are notes of that January 12th meeting. At that meeting we read out the letter and John Chiasson did all the talking after that...

Mr. Nippard also described an incident that occurred on April 27, 2006, WN #5, when Mr. Chiasson, in violation of the Collective Agreement Article 21.08, called his Foreman to report in sick and requesting that he be marked "off in lieu". When informed that such calls should be made to the Supervisor, Mr. Chiasson requested the Foreman "mark him off as a day without pay." Mr. Nippard's April 27 letter to Mr. Chiasson (WN #5) informs him:

"You will not receive pay for today, April 27, 2006 as per your request. Furthermore, any future incident of this nature will result in **a suspension.**" (original emphasis)

Mr. Nippard explained that

The Collective Agreement makes it clear the Supervisor has the authority to approve leave, and the request for leave must be made to the Supervisor.... The Collective Agreement requires the Supervisor be contacted. The Foreman does not have the authority to approve leave under Article 21.08.

Mr. Nippard confirmed that the same provision existed in the previous Collective Agreement, and also that there had been a memo (as attached to WN #5) issued on January 15, 2004 to all Town employees informing them that where notification of absence from work is concerned:

"Employees are to contact their immediate Supervisor. All Supervisors have been equipped with cell phones and are available at all times. Notification of absence will be accepted by the Town Manager or the Town Manager's secretary in the absence of your immediate Supervisor."

Mr. Nippard testified that "All employees of the Town should have been aware, and it was put in with their pay."

Mr. Nippard had seen the Grievor's Termination Letter (AD #5) and is familiar with it. When asked to explain its contents and, in particular, its reference to the Grievor's having "displayed rude and disrespectful behaviour to your Supervisor and other workers" Mr. Nippard said:

The warning letter on January 12th (WN #3) is part of that, and also the meeting about that matter (WN #4). And we had a couple of incidents before that when I gave instructions and he felt he did not need to obey. I also felt it disrespectful not to call the Supervisor to report. That was disrespectful.

Mr. Nippard also explained the Termination Letter's reference to the Grievor's having "acted so as to unjustifiably bring the operations of the town and officials of the town into question by bringing unfounded allegations against town employees." The Grievor,

... had attended a Council meeting and made allegations against two co-workers and me as Supervisor.

Mr. Nippard identified WN #6 a copy of a March 29, 2006 letter he understands ...

John Chiasson provided to the Town Mayor and Councillors Town of Happy Valley-Goose Bay. It was given to me, as I recall, by Mr. Durno.

Mr. Nippard confirmed he had been ...

asked by Mr. Durno to investigate and report on what the evidence came up with because Mr. Durno had been told by council to investigate the matter.

WN #6 reads, in part, as follows:

"...Mayor and Councilors
Happy Valley Goose Bay Labrador...
March 29, 2006

To Whom It May Concern:

I would like to bring the following to your attention; but before I start I want to let you know that I don't blame our maintenance personal for any of the following:

- To like putting in radiator for 2 people 14-16 man-hours overtime, no snow, no equipment in garage all week.
- Oct 29 or Nov 5 overtime put head gasket in the Hyundai loader nothing in garage all week.
- Jan 1 had 3 equipment operators come in 4 hours double time and a half to sand roads when the roads could have been sanded the day before because we had our snow clearing done by 1:00 o'clock the roads could have been sanded then.
- Worked on a blower one Saturday 16 man hour's overtime when there was hardly any equipment in garage all week.
- Put radio in new equipment 6 man hours overtime equipment never left garage for two or three days after.
- Check how much overtime our mechanic people compared to other years.
- Pickup used for personal use like shopping, going checking on cabin on mud lake road every Saturday.
- Check all purchase orders for parts and equipment like welding, helmets, mechanic gloves parts for vehicles, oil etc.

This is how much I have seen and how much more has been going on?

Sincerely...

John Chiasson"

Mr. Nippard addressed each of the 8 issues raised by Mr. Chiasson in WN #6.

The first allegation is that overtime documents had been falsified. I asked a local garage to give me an estimate on the radiator, and they came back with an estimate. I think it was sixteen hours. It was more than what it took our people to put it in. John Chiasson would not provide with any quotes, but he said he had three... I was okay with the quote for the task and the time they put in. I figured this overtime was very reasonable, yes. As regards his saying 'no snow', John Chiasson was plowing snow on November 9th.

On the allegation that overtime was paid for installing a gasket in a Hyundai loader and there was nothing in the garage all week between October 29th and November 5th... It was a very busy week, and wasn't as suggested that the Mechanics and the Foreman did nothing all week... This shows disrespect not only for the four Mechanics and the Foreman, but also for the Supervisor, too. I did a review of the work week for that period. I was satisfied as a Supervisor that there was a good week's work, and that the overtime was justified for the loader.

About sanding the roads on overtime, again it's calling into question the decision of the Supervisor. Overtime is my decision, based on guidelines from Mr. Durno and Council. Mr. Chiasson claimed the roads had been finished by 1:00 p.m. but he, himself, did not finish until 4:30, and he got 12 ½ hours overtime. One would assume Mr. Chiasson finished at 1:00 p.m., but the record shows he was ... up to 4:30. The record shows that three people with Mr. Chiasson worked to 4:00 o'clock, and he worked to 4:30. In any case, you sand roads when they are slippery. You do not want to sand them twice, even though it's New Year's Day; so I sent out a regular sand crew.

Asked whether he was satisfied that the roads needed sanding, Mr. Nippard said, "Definitely."

Addressing the fourth allegation about unnecessary overtime on "a blower" Mr. Nippard said:

This is calling into question the Supervisor's decision. I checked the records. I was satisfied they had a productive week's work and that overtime was warranted. The comment about six hours overtime to install a radio also questions Supervisor's decision. When I took the job, all our radios were installed by outside contractors. I called for quotes when this needed doing. I decided our own people could do it on overtime and it would be cheaper than doing it by an outside contractor; so I decided to go with our Union people as much cheaper.

Asked whether, in his view, there was any basis therefore for the Grievor's allegation in this matter, Mr. Nippard answered, "Definitely not."

Mr. Chiasson suggested a check on increased Mechanics' overtime compared to other years. It implies I'm giving the Mechanics extra overtime. The Mechanics' Foreman had about 85 hours where Mr. Chiasson had about 220 hours overtime. Overtime is worked when it's warranted. Often I'll discuss it with Mr. Durno. Not always, but normally, it is approved by both of us, and we're given that authority by Council... The overtime worked by mechanics that year was justified and warranted.

I don't go shopping. I do check my cabin on Mud Lake Road and it's most of the time in the Town vehicle. I checked that. With the price of gas at 95¢ a litre it was costing the town approximately \$1.98 per trip. It was discussed with Council and neither Council nor the Town told me to stop. That particular allegation, I think... We're on the roads all day and night and no overtime. I think the Council was willing to absorb that \$1.98.

The last one alleges I stole a welding helmet from my employer and mechanic gloves, or I was involved in a scheme. I was told this was the allegation by members of the Council.....some scheme like if someone wanted a starter for a personal truck, to take a starter out of a Town truck and then get a purchase order for a new starter for the truck. I was supposed to have approved this, and the new starter would go on the Town truck and pass on the removed starter. As far as the helmet is concerned, that was mine. Before October 2003, I was a Mechanic Foreman for the last 25 years. The Town bought some new helmets, and when I went to Supervisor I had to remove my tool box and the helmet went with it. It was my personal equipment.

Asked what he had done to investigate this matter, Mr. Nippard said:

I checked on the gloves and the helmet. There were three pairs purchased in 28 years, and it's personal equipment in my tool box. I checked with Mr. Durno and Council. I indicated I would return them if they wanted them. They agreed it was personal.

Asked whether he felt that he was able to do this investigation, Mr. Nippard answered:

I asked the Manager and Mr. Abbas, the Mayor, to check with John Chiasson to give me ideas for what to look for in the purchase orders. We never did receive anything. As for any oil, I'm satisfied that whatever is bought is used for town purposes. I found no incidents where anything like that happened.

Asked whether the police had been informed of the allegations Mr. Nippard answered:

Yes, the police did investigate and found no evidence to proceed and no charges were laid, to my knowledge.

Mr. Nippard was asked to comment on the Termination Letter's reference to the Grievor's having been observed, while "off on sick leave ... in an activity contrary to the medical evidence supporting your absence without proper or complete explanation." He said:

Personally I observed Mr. Chiasson working at the new bridge site doing concrete work. I visited the bridge site while *Chiasson Construction* was there pouring cement, and he was there with a hard hat and working the same as the three or four people pouring cement... *Chiasson Construction* is owned by the Grievor's family. They are brothers and brothers-in-law. That was in late spring or early summer of 2006. He was off on sick leave with a medical note. There were several times – five or six times – around then that I saw him using a back hoe as a heavy equipment operator, I think. It was a Chiasson back hoe at the time. I couldn't swear that it was. That was in the

summer or the fall of the same time that he was off on sick leave...

Asked whether he could work with the Grievor if he were to be returned to work, Mr. Nippard paused and said:

I could have... I think I've done all I could prior to this for Mr. Chiasson over the last year before September. He showed a lot of disrespect and false allegations, not only against me but fellow workers and I think that it is very difficult for me and my Operators, some of his fellow workers, to put it all in the past and go on working as a normal relationship.

ON CROSS EXAMINATION, Mr. Nippard testified he had been the Grievor's Supervisor from October 2003 until September 2006, and described the Grievor as ...

an average employee for the period from 2003 until 2005... Maybe an above average employee. Maybe until about late spring or early summer of 2005.

Asked what could have changed things, Mr. Nippard answered, "Mr. Chiasson started questioning his job assignments and the equipment that he was put on." Mr. Nippard said this had not happened before so far as he is aware.

Job assignment is the Foreman's job... On a typical day, the Supervisor and Foreman meet and discuss what needs to be done on the day, and whatever changes are needed from time to time. Then he assigns people to their machines and their job sites. But keep in mind, he is unionized, so in most cases he's on a job site himself, once he has done the assignments... The foreman assigns the work for the day after discussion with his Supervisor.... Yes, those assignments can be changed, but normally employees follow what the Foreman tells them to do.

Asked what the Foreman's purpose is, Mr. Nippard answered:

I guess we need a person at times to go between the Supervisor and the workers.

Asked whether, and why, he had confronted the Grievor on Campbell Road, Mr. Nippard said:

Yes, (someone) came to me and said he was doing a driveway on Maple Street and needed a culvert put in, and I explained we were busy... I told him we'd put Mr. Chiasson on the backhoe that day. Water and Sewer had called and said they had a water break from the evening before, and John Chiasson was to start next morning. Normal policy is to put culverts in front of properties, but the Water and Sewer Foreman said they were waiting for a backhoe. I went to Campbell Street. found him doing the culvert, and told him to go to deal with the break. He objected to that instruction.

Asked what language he had used, Mr. Nippard answered, "Normal interactive language." Asked whether curse words had been used, Mr. Nippard said:

Not to my knowledge. When he said that he would finish the ditching I instructed him otherwise.

Asked whether the Foreman had, in fact, instructed the Grievor to go to Campbell Street that morning, Mr. Nippard said:

Yes he did. Normally he could have done the ditching. We were trying to accommodate a tax payer, when the water break occurred. I left the site, and John then went, as I instructed him, to Grand Street without finishing the ditching, as I instructed him...

Mr. Nippard confirmed that the Town has a policy on harassment. Asked whether he had seen Mr. Chiasson on the day of his son's funeral, Mr. Nippard said:

I don't recall. I guess I was doing traffic control. I do it for most of the funerals. but I don't recall that day.

Asked whether he is a firefighter, Mr. Nippard answered:

It is hard to say. Since 1978 I've been attending fires. I have a beeper. I am told to respond as needed with the equipment. When I came to work all the guys responded to fires. I still respond to fires.

Asked whether he is aware of the Grievor's personal tragedies and losses over the years, Mr. Nippard answered: "Very much so, yes." Asked whether he is aware that the Grievor suffers from depression, Mr. Nippard answered:

I was never told he had depression... I was never told that he suffered from, or was treated for, depression, no.

Mr. Nippard was asked why, in his direct testimony, he appeared to understand Mr. Chiasson was accusing members of the maintenance team for issues that he was raising in WN #6 which opens with the statement that "... I don't blame our maintenance personnel for any of the following." Mr. Nippard answered:

He was saying, they are taking longer than necessary to do a job; so I'm assuming that he is referring to Mechanics and the Mechanics have a Foreman. They did the job... Yes, the Supervisor confirms overtime.

Mr. Nippard also confirmed that equipment like helmets and gloves are regarded as private use items, and that, "from time to time the town will replace a mechanic's tools, if it is reasonable, something you wear that somebody else does not want to wear." Asked about the policy governing firepersons in this respect, Mr. Nippard said:

I don't know. It's a rule in the Maintenance Department since October 2003. Three pairs were purchased up to the point of the Grievor's allegations ... I don't know if this is in the policy manual. In this case, the Employer was informed and told it would be returned if they wanted it.

Mr. Nippard confirmed that the Town had not been aware of the issue prior to the Grievor's allegations. Asked whether the town had been aware of the Mud Lake trips prior to the allegations, Mr. Nippard answered: "To my knowledge, yes." Mr. Nippard also confirmed that most of the information for the report came from his records.

I had a quote on the radios prior to that. I did not have any quote on the radiator installation.

Asked whether it is normal practice in the Town of Happy Valley-Goose Bay to have people investigate themselves, Mr. Nippard said:

I was not investigating myself. I was responding to allegations of my Department. I did a confidential report for Council and the RCMP and the Municipal Officer. ... I can't say (whether it is normal practice). I did what I was asked...

Mr. Nippard confirmed he had observed the Grievor at the Bridge site,

One or more times while he was off on sick leave with a note... I don't think that he was still getting pay. He had exhausted all sick leave.

Again asked about the day of the Grievor's son's funeral, Mr. Nippard said: "I can't recall speaking to him on the day of the funeral."

Mr. Nippard confirmed that the Council minutes for March 28, 2006 (WN #7) refer, at item 1b, to the Grievor's expression of concerns (WN #6).

Mr. Nippard identified WN #8 as a April 27/06 medical note for the Grievor that reads: "Off work for medical reasons April 27/2006 to May 27/2006." On the reverse of WN #8 is handwritten:

"Found on my desk April 27/06, 3:50 p.m. (initialled "WN") up to and including April 19/06, 1 ½ days (again initialled "WN")

Mr. Nippard acknowledged that the April 27 letter of reprimand had been issued in respect of the Grievor's failure to report to his Supervisor, but that WN #8 demonstrates that the Grievor did, in fact, provide the required notice to the Supervisor in the form of the medical note.

Referred to the April 27th letter to the Grievor concerning his calling in sick to the Foreman (WN #5) Mr. Nippard said he understands the rule is still in effect. Asked whether employees observe this rule, Mr. Nippard said: "Employees in the Road Maintenance Department do; I don't know about

others." Asked what would happen to other employees who failed to notify their Supervisors in such circumstances, Mr. Nippard answered:

I'm telling you that if a Foreman tells me they have been called by an employee, I'll tell them to tell the employee to call me.

Asked whether he would agree that the January 15, 2004 Memo (attached to WN #5) conflicts with Article 21.08 of the Collective Agreement since "the Town Manager or the Town Manager's Secretary" could be contacted by the Foreman, Mr. Nippard answered: "That's not our policy." Mr. Nippard acknowledged there had been a meeting with Mr. Matthews, for the Union, that led to the changes reflected in the handwritten notes. Asked why he had not rewritten the letter, Mr. Nippard answered: "It was redone in the presence of the Union representative."

When it was pointed out that Article 13.07 requires an employee's record to be cleared after twelve months, Mr. Nippard answered:

That is Article 13.07. This was done under Article 13.05, not Article 13.07. Under Article 13.05 it does not come out of your file.

Asked whether this means, in his view, that the WN #3 is on the Grievor's record for ever and a day, Mr. Nippard answered, "That's my understanding."

Asked whether, therefore, he has chosen to use a warning to terminate the Grievor, Mr. Nippard answered: "I'm not saying that; just that Al Durno considered these facts."

ON REDIRECT EXAMINATION, Mr. Nippard confirmed no grievance had been filed in response to WN #5. "No, I'm not aware of any grievance on it or on the memo attached."

THE SECOND EMPLOYER WITNESS was Mr. Alan Durno, Happy Valley-Goose Bay Town Manager for the last 27 years. As the person responsible for human resources he is familiar with the Grievor and with the grievance.

I respond to Council for all aspects of the Town business and I decide on any actual warnings or writeups. I'm ultimately responsible for it.

Mr. Durno knew the Grievor's was off work in 2006...

particularly from May 1st onward. He supplied sick notes and was off until the end of September... WN #2 was the last sick note I got. It covered the period from August 28th until September 30, 2006.

Mr. Durno also identified AD #1 and AD #2 as two further doctor's notes covering the periods from May 16th to June 16th and from June 16th to September 1st.

We had no sick notes after we received WD #2. Mr. Nippard said Mr. Chiasson was not at work, and I asked the President of the Union. We did not get a sick note, and I wrote him a letter, dated October 5th, delivered to him (AD #3) by Mr. Sampson.

AD #3 reads, in part, as follows:

....October 5, 2006 ...

Dear John,

The last Doctors note that we received from you excused you from your Heavy Equipment Operator duties with the Town Council of the Town of Happy Valley-Goose Bay to September 29, 2006.

You were expected to return to work on 8:00 am Monday, October 2, 2006 however, you did not show up.

Under Article 14:04 (3) "Loss of Seniority" of the Canadian Union of Public Employees Local 2019 Union Agreement it states:

"An employee shall lose his seniority in the event he is absent, from work without sufficient cause or without notifying the employer, unless such notice was not possible".

As you did not return to work or notify your employer, you are advised that your seniority has been lost and if you do not return to work by 8:00 am Tuesday, October 10, 2006, your employment with The Town Council of the Town of Happy Valley - Goose Bay will be terminated...

Yours truly,

A.J.F. Durno
Town Manager...

So far as Mr. Durno knows the Grievor contacted no one between October 5th and his termination on October 31st.

I spoke to Mr. Webber, the President of the Local Union, and asked him if he knew whether the Grievor was coming back or, in fact, knew anything. I knew nothing of his situation... On October 25th or 26th I sent him another letter (AD #4) asking him to come to and meet at the town office on October 26th and to bring his Union representative.

AD #4 reads, in part, as follows

"Dear John,

RE: Discipline

You are requested to meet with me and your CUPE Union representative on Tuesday, October 31, 2006 at 10:00 am at the Town Office. ..."

Mr. Durno said the purpose of the meeting was "to see what he was doing and what we could do." Asked what he knew during the period between October 5th and October 26th, Mr. Durno said:

That he was not at work and had not responded to our October 5th letter. On October 26th Don Webber said that he was coming in, but he would not be coming because Mr. Nippard was there.

Asked whether Mr. Chiasson had contacted anyone from the Town, Mr. Durno said:

He had not been in touch with me or any Supervisor that I know. We wanted to know what he was doing and where he was doing it. We had an operation to run. We have only so many people to do the job ... and other employees... how do you deal with other employees?...

The October 26th letter was delivered at my instruction by the Community Constable, Mr. Sampson. He delivered both AD #3 and AD #4, and we copied the Secretary of the Union... At 10:00 a.m. Donny Webber came in, and said that Mr. Chiasson was there but he wasn't coming in because Mr. Nippard was there. He was his Supervisor, and he was required to be there... He didn't show up and didn't call. We heard nothing from him... I talked to the legal people, and the termination letter (AD #5) was made up and delivered to John Chiasson by the Constable.

Mr. Durno agreed that the copy of AD #5 in evidence is not signed.

The original was signed, to the best of my knowledge, and hand delivered to the Grievor by the Community Constable at my direction. The decision was based on the Grievor's failure to return to work. The rest of the letter deals with examples of past behaviour.

Asked if any other employees have been absent in this way in his experience, Mr. Durno said:

Not to my knowledge. This is the only time that this came up... The decision would have been the same. We have essential services to provide and we had no notion of whether he was to return. It was done in order to run an efficient operation.

Mr. Durno testified he is aware of WN #3 and confirmed that it is cited in the Termination Letter's (AD #5) reference to events "On January 12, 2005".

Mr. Durno testified that he is also familiar with the circumstances of issues arising from the April 27th reprimand for failure to report his absence which is also raised in the same paragraph section of the Termination Letter.

Mr. Durno also acknowledged that the Termination Letter also notes of the Grievor's rude behaviour cited in WN #4 and the "unfounded allegations" referenced in the Grievor's WN #6 letter to Council. Mr. Durno confirmed that the Termination Letter's reference to activities the Grievor undertook "while off on sick leave" arose from his having been observed:

....working around town on equipment similar to the town's equipment. Personally I saw him on Hamlyn Road – I assume it was with *Chiasson Construction* – operating a backhoe, working to fix a water line break. That was sometime in the summer of 2006 during the period covered by his sick note.

Asked whether he had any concerns about Mr. Chiasson's working for the Town again, Mr.

Durno answered:

It would be difficult. A trust has been broken. There is definitely a lack of respect for his Employer.... and his not returning to work.... It would be difficult.

ON CROSS EXAMINATION Mr. Durno confirmed that, in his view, Mr. Chiasson

....was a good employee, to the best of my knowledge, up until we had some difficulties. One time we had a fuss over what equipment he wanted. He wanted a bulldozer... but up to then he was always available, and always at work. I had no complaints... It might have been an excavator. I don't know why he wanted it. At the time, John said he had experience and ability. The Manager said...

Asked whether the Grievor had ever spoken with him about problems with his Supervisor, Mr. Nippard, Mr. Durno said: "At the time we had the meeting, we had some discussion." Asked whether other employees had problems, as well, Mr. Durno answered: "There were grievances, and they were dropped, and nothing was challenged." Asked whether Mr. Durno had been aware of the Grievor's family problems, Mr. Durno said:

Yes, I knew he had a lot of hard luck with friends and family, including the death of a nephew and of his own son by suicide while in hospital.

Mr. Durno said "No, I didn't" know that the Grievor suffered from depression. Asked whether the Grievor had ever spoken to him about that fact, Mr. Durno answered:

I questioned, and he said there was no need to know. I did not know that he was treated for depression, but was aware that the Grievor tried to stay working.

Asked who was involved in the decision to terminate the Grievor, Mr. Durno said:

Ultimately, the decision was mine. The information was given to me, and I conferred with our legal advisor. Ultimately it was my decision. We had to make a decision because winter was coming on... The letter (AD #5) was drawn up by legal people.

Informed that the Grievor had not received a signed copy, Mr. Durno said: "OK. That was an error."

Asked whether he recalls receiving a call from the Grievor concerning the October 5th letter to say that his doctor was out of town, Mr. Durno said, "I don't recall that."

Asked why Mr. Nippard was required at the October 26th meeting, especially when the letter specifically used the wording "... to meet with me and your CUPE Representative...", Mr. Durno said:

I felt it was proper for him to be there. When the Union President asked about Mr. Nippard's presence, I said he had to stay there.

Asked to whether the issue of retaining helmets is in the policy manual, Mr. Durno said:

I don't expect John to wear somebody else's helmet. Council had no difficulty with Mr. Nippard and the helmet.

ON REDIRECT EXAMINATION Mr. Durno confirmed that:

Summer and Winter maintenance put different requirements on the Employer. The most critical time is the Winter, so Winter planning is more challenging.

Mr. Durno did not recall contact between himself and the Grievor as reported in the Grievor's cross examination. "If he had called, I would have said, 'Get your butt in here...'"

Mr. Durno also confirmed that he had asked Mr. Nippard to prepare the April 24, 2006 "*Response to Allegations...*" (AD#6).

THE THIRD EMPLOYER WITNESS was the Community Constable, Mr. Clifford Sampson. Mr. Sampson has been in this position for approximately ten years, and testified he is ...

a Peace Officer with the RCMP and I provide services to the municipality together with some *Criminal Code* work and am responsible for the *Highway Act*.

Mr. Sampson confirmed he is familiar with AD #3, AD #4, and AD #5.

We served them to Mr. Chiasson in person at the garage, which I believe belongs to the *Chiasson Construction Company*. He was on top of an excavator, and came down to take it. I had knowledge that he was working at the location on the day it was served. To the best of my knowledge it was on October 5, 2006... There was a brief ten or fifteen minute conversation, and a little discussion of the (AD #3) letter. He read it as well... I've known Mr. Chiasson for 25 years, and there was no confusion who I was talking to. I advised him to call the Town Manager, and he said he would. It was read through briefly... just parts of the letter were read out, to the best of my recollection...

Mr. Sampson testified that he delivered AD #4 to Mr. Chiasson's residence.

I sat on the porch of his residence, and we chatted for five or ten minutes. I think I told him he should give the Town Manager a call... I can only go by the date on the letter, and I think it was October 26th. Mr. Durno told me he wanted it delivered that day... I delivered AD #5 at the Chiasson garage on the Canadian side. He was standing up just by the garage door, and his nephew was there. I passed him the letter and he read out some of it. I told him he should call the Town Manager, and we had some discussion

over these things: general conversation, about ten or fifteen minutes. We talked about several things other than the letter. It came up two or three times to give Mr. Durno a call, and he said he would.

ON CROSS EXAMINATION Mr. Sampson confirmed that he reads all the documents he delivers since he can only swear about the documents that he delivers if he knows what he delivered.

Mr. Durno gave me the three letters; yes all the documents I deliver for the Town Manager come from Mr. Durno or Mrs. Sheppard.

Asked whether he had noticed any difference in Mr. Chiasson, Mr. Sampson said:

I just dropped by his work place where the man was working and we had the same conversation that we've had for many years.

Asked whether he was aware that Mr. Chiasson was sick, Mr. Sampson answered, "No, I did not know he was sick."

ON REDIRECT EXAMINATION Mr. Sampson was asked whether he felt that Mr. Chiasson was understanding the contents of the letters, Mr. Sampson answered: "There's no question in my mind that he did understand the letters."

Mr. Sampson also confirmed that Mr. Chiasson replied "that he would be in touch with Mr. Durno. Mr. Sampson testified that Mr. Chiasson had asked him: "I'll be terminated if I don't do so?" And that he had answered, "Yes. Call Mr. Durno."

THE FIRST UNION WITNESS was Mr. Keith Pye who has been in charge of the water treatment plant for six years. Mr. Pye testified that he has called in sick to his Foreman, and called Mr. Nippard "only if I could not get" (the Foreman). He also testified: "There is nothing on my file" on this matter.

Mr. Pye also confirmed that he had been provided with safety and personal equipment and cannot recall people taking their personal equipment when they left. He "can recall one Operator," but Mr. Pye said that he is

"not aware of whether he took his personal equipment, but his gloves are still there and his mask has been reused."

Mr. Pye is aware of the difficulties Mr. Chiasson has faced in his personal life. Asked whether he is aware that Mr. Chiasson was off sick because of depression, Mr. Pye said: "I knew he was off sick. I only speculated it was depression."

Mr. Pye confirmed he had worked with Mr. John Chiasson and found him ...

a good worker who gave a 100%, and would help you if you needed it. He would grab

a shovel and help out.

ON CROSS EXAMINATION Mr. Pye testified that his normal Supervisor is Mr. Sheldon Normore, not Mr. Nippard. Mr. Pye also testified that he does not know what happens in the case of Heavy Equipment Operators: "not as far as work assignments is concerned, no."

Mr. Pye also testified that he was not aware that Mr. Chiasson was diagnosed with depression.

Asked whether he was aware that Mr. Chiasson had been working with Chiasson Construction, Mr. Pye answered, "Not that I was aware of, no."

THE SECOND UNION WITNESS was Ms. Gloria Michelin, a Mental Health Counsellor at Happy Valley-Goose Bay hospital since 1985. The Grievor had been

... referred to the team by Dr. Rashley and had attended counselling... We connected well. He was very receptive, talking about his issues. He was going through a rough time with many losses.

Asked whether it helps to stay active when suffering an illness like this, Ms. Michelin said:

We encourage people to get out when they're sick, to get out and socialize. Men do not find it as easy to come to counselling. Men come as long as they feel they need to.

On Cross Examination Ms. Michelin was asked if she knew the Grievor was working at *Chiasson Construction* while submitting medical notes to the Town. She said: "I knew he was on leave from the Town, yes. I didn't know that..." Asked if she sees anything wrong in doing so, she answered:

I don't know. I think work was very stressful for him, and I assume that working with his brothers was less stressful.

Asked whether she's aware that the work he was doing with *Chiasson Construction* was the same as the work he was doing with the town, Ms. Michelin said: "I know they are a construction company, but I've never been on a site where they are working."

Asked whether she had ever told him that on medical advice he should not go back to work for the Town, Ms. Michelin answered: "No I don't recall saying that."

There was no redirect examination.

THE THIRD UNION WITNESS was Mr. Clayton MacLean, Road Maintenance Foreman who for the Town. He testified that "Quite a few, all together, phone in sick, but I always tell them to call the Supervisor."

Asked whether he ever passes the message along to the Supervisor, Mr. Maclean answered: "Yes, I can pass it on, but I never had authority to mark it down."

ON CROSS EXAMINATION Mr. MacLean confirmed it is correct to call the Supervisor. "Everybody at the garage knows that. I didn't have the authority to take the call."

Mr. Maclean also confirmed that Mr. Nippard is the Road Maintenance Supervisor.

THE FOURTH UNION WITNESS was Ms. Anne Marie Chiasson who testified that, on the day of her nephew's funeral she observed Mr. Nippard directing traffic as they were leaving the church.

We stopped the van and spoke to him, and John said that he might need some leave, and Wally said to 'take as much time as you need.'

ON CROSS EXAMINATION Ms Chiasson was asked whether she interpreted this to mean, "within reason," Ms. Chiasson answered, "I'd assume nothing."

Asked whether she is aware the Grievor actually had more bereavement leave than he was entitled to, and that he had provided medical notes up until September 30th, Ms. Chiasson answered, "No." Asked whether she was aware that a month had passed after the notes expired, Ms. Chiasson again answered, "No." Asked whether she thinks that "take as much time as you need" means that kind of time, Ms. Chiasson answered:

I'd think someone would come to me. I work in HR, and he would take it up with his Supervisor. I did know the circumstances.

There was no redirect examination.

THE FIFTH UNION WITNESS was Mr. Andy Eddy, a Heavy Equipment Operator with the Town. Mr. Eddy testified he has worked with the Grievor as a fellow employee.

Asked whether he had ever observed the Grievor to be disrespectful to anyone, Mr. Eddy answered, "No." Asked about the Grievor's mood at work, Mr. Eddy said: "John is a happy man. No matter what, John puts a smile on his face."

Asked whether he had observed a difference in the Grievor's behaviour when he had suffered so many losses, Mr. Eddy said, "Oh yes." Asked whether he was aware the Grievor was depressed, Mr. Eddy said: "If he wasn't I don't know how. He had every right to be depressed." Asked whether it is stressful for the Grievor at the garage and whether there were any factors at the garage that caused the Grievor distress, Mr. Eddy said: "Yes. One only...Mr. Nippard."

Asked whether all employees were treated the same as the Grievor was treated or whether he

was singled out, Mr. Eddy answered:

No, he was not singled out; but when John and Wally argued, that's where the stress would come from....When John and Wally got into it, everybody would get up and leave.

Asked whether he would have any problems working with Mr. Chiasson if he were to return to work, Mr. Eddy said: "None whatsoever. I can only speak for myself. I would have no problem."

ON CROSS EXAMINATION Mr. Eddy was asked whether he was aware that the Grievor suffered from a clinical depression, Mr. Eddy answered: No I didn't... Now that you tell me, I don't doubt it."

Asked whether he was aware that the Grievor's sick notes had expired in September 2006, and that he had been issued two letters requiring him to return, Mr. Eddy answered:

It's not my place to judge... John is not working with the Town now. Considering all that he was going through in his life, I don't think that that's fair, no. But I have no knowledge of the facts.

Asked to review WN #6, Mr. Eddy said: "I have heard some of this before." Asked whether, in his view, it matters whether the allegations made are true or not, Mr. Eddy answered:

If he was stressed out I'd presume he could do things. I'd take a lot into consideration knowing what he had been through.

Asked if he knows what the conflicts between the Grievor and Mr. Nippard were about, Mr. Eddy answered, "No."

There was no redirect examination.

THE SIXTH UNION WITNESS was Mr. Charles Chiasson, a brother of the Grievor's. He testified that he had attended the funeral of the Grievor's son, and that:

John had, asked me to stop along side Wally so he could get out. John looked at him and said he's having a hard time and might need some time, and he said, as long as he wants.

ON CROSS EXAMINATION Mr. Chiasson confirmed attending the funeral, but did not want to make any assumptions as to what Mr. Nippard might have meant by "as long as he wants."

Asked whether he was aware that the Grievor was working for *Chiasson Construction*, Mr. Chiasson said, "Yes, I would say he was working there. Yes."

THE SEVENTH UNION WITNESS was Mr. Theodore Chiasson, another of the Grievor's brothers. He, too, had attended the funeral and described how Mr. Nippard had been

... holding back the traffic so as we could get out... John asked to take some time off, and he was told to 'take all the time you need.'

He was not sure whether the Grievor had spoken to Mr. Nippard through the window or through the open door.

ON CROSS EXAMINATION Mr. Chiasson testified that the whole family had been affected by the problems that John and others faced. Asked whether "all the time you need" might mean six months, Mr. Chiasson said:

I don't know what it takes. This is the second time, not the first time. I really can't comment on that...

Mr. Chiasson confirmed that he works with *Chiasson Construction*, and that the Grievor "stayed tight with the family. He stayed tight to us."

THE EIGHTH UNION WITNESS was Mr. Jack Chiasson, the Grievor's brother who had earlier lost his own son. He testified:

In the summer months – May and June of 2006 – there were days that I would call John to come over and help me... and we were having hard times.

Mr. Chiasson was asked whether John was paid, and answered, "No."

Asked why he wanted John around, Mr. Chiasson answered:

When he lost his young fellow... when I lost my child, I knew and he came and helped and we went through it... it helped ease the pain.

ON CROSS EXAMINATION Mr. Chiasson confirmed that he too worked with *Chiasson Construction*, and that the Grievor had not been paid. Asked whether the Grievor had applied for employment insurance, Mr. Chiasson indicated that he did not know, but confirmed the Grievor's Record of Employment indicating periods during which he had been paid for work with *Chiasson Construction*, and said: "When he was working with me that time he was not getting paid..."

There was no redirect examination.

THE NINTH UNION WITNESS was Dr. Rashleigh who identified himself as ..

The Grievor's physician consistently from September 2004 but periodically from as early as December of 2003 or even July of 2003. His first record as a patient was October 2002, at which time another doctor had been treating him for depression for which he was administered Prozac 40 mg... He was on 40 mg in October 2005 which was increased to 60 mg in December 2005. That remained the dosage until quite recently. In June of 2008 the dosage was reduced to 40 mg. a day.

Dr. Rashleigh reviewed the symptoms of depression and testified that...

Heredity plays some genetic role in the disease as would stress from the death of a member of the family... Stress at work could also aggravate the condition.

Asked whether the Grievor was emotionally capable of work with the Town in October, November and December of 2006, Dr. Rashleigh said:

He came and told me that he was unable to do so. At that time it was my view that he was not ...

Asked whether he would have objected to the Grievor's working at *Chiasson Construction*, Dr. Rashleigh said: "I did not object. You try to get him back to normal life, to get him active."

Asked whether the Grievor now has clearance to return to work, Dr. Rashleigh said: "Yes. I don't know if he's got a note, but I think that he could now."

Dr. Rashleigh was told that the Grievor had received letters from the Employer in October of 2006, and was asked whether, at that time, the Grievor could have misunderstood the communication. Dr. Rashleigh answered:

A major depressive episode can impair concentration. I don't recall discussing it, but impaired thinking is classic, so it's very possible that he did not understand the letter.

Asked whether the Grievor will be required to continue on medication, Dr. Rashleigh said, "Obviously it is John's decision. I'd recommend probably for life..." Asked whether the Grievor could maintain a normal lifestyle while on medication, Dr. Rashleigh answered, "Yes."

Asked whether, in his view, the Grievor would prove a burden to the Town if he were to go back to his own job there, Dr. Rashleigh answered: "I believe he could go back to his own job."

ON CROSS EXAMINATION Dr. Rashleigh confirmed that he is a general practitioner with "just the standard training" in the area of psychiatry. The Grievor was

... referred to a psychiatrist... on August 28, 2006, but he did not see one... Most here in Happy Valley-Goose Bay are treated by family doctors... The psychiatrist only comes once a month, and I understand that we then had a gap in psychiatric service... I had a sense it would not be helpful, partly because I did not agree with how that psychiatrist had handled the Grievor while he was on medical leave. I felt there was a better and faster return to work in the work environment; once other things have been sorted out you can handle something better. I know he had a number of deaths, and that the work ... I think he has come a long way now, and can work with the work-related stress. The deaths started the problem, even though he has had some long standing stress at work.

Dr. Rashleigh confirmed that his assessment was based on the patient's report to him:

Yes, as well as objective finding including shakes, tremors, crying and distraught behaviour during interviews.

Asked whether there was a difference, in his view, between working for the Town and working for someone else, Dr. Rashleigh said: "Family members are often more understanding."

Asked when the Grievor started work with *Chiasson Construction* and whether he knew how much the Grievor was working and whether that would have been relevant to the Grievor's health, Dr. Rashleigh answered:

Sometime in August 2006. The note to the file says, 'Helping family with business.' I did not record a comment and don't remember if we discussed it... Obviously there are multiple factors in a diagnosis. Getting him active and productive is a major step in returning him to health.

Asked why the note WN #2 was so general, merely saying 'Off work for medical reasons... ', Dr. Rashleigh said:

That's my judgement based on confidentiality agreement. The vast majority of doctors feel it's between the employee and the employer if the employee is to reveal the medical reasons... I agree that the Employer would have no way of knowing that the notes were about depression.

Dr. Rashleigh met with the Grievor a number of times during September and October, 2006, including on October 11. "We did not discuss a specific letter... he told me he had decided to give up work at the Town." Dr. Rashleigh agreed that this meant there were no more medical notes. "Yes. That was the last visit until December." Asked whether, at that time, the Grievor was worse or better, Dr. Rashleigh answered:

He said he was 30% better, but still sad at the time. He did not want to work with the Town anymore. He'd applied to Voiseys, and was working somewhat with *Chiasson's*.

Asked whether he felt that the Grievor was competent to make that decision, Dr. Rashleigh said:

"I felt that he was competent to make that decision at that time."

Asked whether he felt that the Grievor was able to read and understand a letter, Dr. Rashleigh said:

It depends on the severity of the depression and the complexity of the task; in this case, the letter... I was not aware of the letter until later on, but I felt that he had thought out his options rationally.

Dr. Rashleigh was shown Mr Durno's October 5th letter to the Grievor (AD #3), and asked whether, in his view, the Grievor would have been able to understand the letter. Dr. Rashleigh said:

"My suspicion is yes; but I did not discuss this with him at the time, so it's a suspicion."

Dr. Rashleigh was told that the Grievor was urged, at the time, to phone the Town Manager, and was asked whether, in his view, the Grievor would have been able to understand that urging. Dr. Rashleigh answered "I think so, yes." Dr. Rashleigh also testified that he felt that the Grievor would have been able to understand the letter concerning the October 31st meeting (AD #4) ...

Yes; but not to be sure he would understand the consequences...

ON REDIRECT EXAMINATION Dr. Rashleigh testified that a depression can fluctuate, and that a patient "has high days and low days". He agreed that on October 11th he might well have been having a high day; whereas on other days, such as the day that when he got the letter he might have been having a low day.

With reference to AD #4, Dr. Rashleigh was told that the Grievor had met with the Union representative, Mr. Webber, and that Mr. Nippard would have been at the October 31st meeting. Asked whether that could have stopped the Grievor from attending the meeting, Dr. Rashleigh answered: "My belief is yes, because there were long standing problems with the Supervisor."

Dr. Rashleigh said that if, on October 11th, the Grievor had said he felt he still needed time off work, he would have provided the time, "Yes."

THE TENTH UNION WITNESS was Mr. Rick Burry, who is currently on disability, but was working with the Town since 1993. He has worked with and supervised Mr. Chiasson who, in his view, is a good worker. "He always did the job as I wanted it done." Mr. Burry was with the Grievor on the Campbell Road on the morning described in earlier testimony. Mr. Burry described ...

the Town truck approaching like a man on fire. Mr. Nippard just jumped out of the truck and said, 'What the fuck are you doing there?' And Mr. Chiasson answered, 'Doing what my Foreman told me to do.' He told John Chiasson to park the loader and go back to the garage, and then he told me to go to the dump with the dump truck. After he told John to park the backhoe on the side of the road, he jumped into his truck and took off... I figured he was going for me he was so mad.

Asked whether he had observed the Grievor as depressed at the time, Mr. Burry said:

He was under a bit of a strain at the time, but he never slacked off from the job. He always done his work. ...If the man spoke to me like he spoke to John I'd not have a job today. If you cross Mr. Nippard he'd hold it against you... dirty jobs or whatever. John got quite a few dirty jobs.

Asked whether some employees are treated differently in the department, Mr. Burry answered:

We call them 'the A team.' The better jobs are the ones that Mr. Nippard likes to give out: sends home every now and then with pay.

Asked whether John ever turned down a job, Mr. Burry answered:

I never, ever saw John turn down a job. If he did, it was something very important. ... I was with him when the call came about the death of his nephew as a result of a house having fallen on him.

Mr. Burry also described a problem involving the Grievor and an excavator.

They put one of the A team on the excavator. Mr. Nippard told John he had to go on next.

ON CROSS EXAMINATION, Mr. Burry was asked whether he was aware that the Grievor had been off for "as much a forty days" during January, February and March of 2006, Mr. Burry said:

"Yes he was off for a while. I can't be sure of dates... His nephew had been killed in November 2005."

Mr. Burry did not know that the Grievor had been diagnosed with and treated for clinical depression.

Asked if he felt the Grievor had been treated differently than other employees, Mr. Burry said:

The jobs he'd get... the A team got the better jobs... No John was not the only person on the B team.

Asked if the Grievor was the only person to get the bad jobs, Mr. Burry said:

On times, yes.... It's hard to say with a job. He did do what you asked him to do. I was his Foreman. It was Mr. Nippard, not the Foreman that assigned him jobs. Mr. Nippard would tell the Foreman where to put people. Mr. Nippard would assign people, and 'the A team' got the better jobs... the bad jobs were like going to the dump. I don't know how many times he was assigned to the dump, probably on the suck truck, the vacuum truck. I can't tell you the number of times he was put on that. He was on the small sweeper a lot, too and the old pieces of equipment.

Asked why the Grievor did not talk to someone about these concerns, Mr. Burry answered: "You don't do that. I've talked to Mr. Durno too." Asked what the response had been, Mr. Burry answered: "Do what you're told.' I've been in the bad book too. It's not just John."

ON REDIRECT EXAMINATION Mr. Burry said that "the A team consists" of three people and Clayton is the Supervisor. Asked what happens when you file a complaint, Mr. Burry said: "You get a dirty job on the old sweeper or to the dump or an 85 catloader." Mr. Burry also commented on there being more Operators: "We used to do all overtime, 16 or 18 hours. Now it's shift work."

THE ELEVENTH UNION WITNESS was the Grievor. Mr. Chiasson testified that he feels he was treated differently by the Employer.

Part of the problem was that, when I was Union President, we went into negotiations and two of our members were red circled. The contract was agreed by the Union and Management. It all went through, and two people were really mad with me. I don't know why. It was negotiated by Bob Matthews and Mr. Durno. Mr. Nippard – he was formerly Foreman of the Mechanics – he was very upset with this. He wrote letters to Mr. Durno, and they were delivered by Mr. Golding. Mr. Durno knew that it was Mr. Nippard, and told him to stop because Mr. Nippard was a Manager now. He could not stop, unfortunately. He kept on working with members to get them red circled. I was singled out because I was President of the Union at the time.

The Grievor testified that he suffers from ongoing depression.

I told Mr. Durno and all the councillors at the meeting, prior to the council meeting. I met with the councillors and Mr. Durno and the Manager and lady councillors. That was in one of the offices in the hall.

The Grievor also confirmed that he has seen a psychiatrist.

There was a meeting in St. John's, at the Waterford. She evaluated me and she told me I'd have to stay on medication, and that was Prozac. That was when I was working for DND. When I was supposed to see a psychiatrist again, he or she would have told me the same thing. Apparently it is a lifetime thing. I was on pills, 20 mg., for years. Then, with the tragedy and the stress at work, it went to 60 mg.

Mr. Chiasson testified he had never refused to do any job required of him and had never refused overtime.

No Mam. I did it... I was even called out from cooking Christmas dinner to do a job on Christmas day, with all my family there.

Asked to comment on the incident on Campbell Street, Mr. Chiasson said:

The Foreman told me to go and check the backhoe and do some ditching while he went for a culvert. He sent Rick Burry with the truck to take the sand for the ditches. We saw the white pickup slam on the brakes and Mr. Nippard said: 'What the fuck are you doing?'. And I answered, 'Just doing what the Foreman told me to do.' He asked me: Did I know that the Water and Sewer Department needed the backhoe, and I said, Yes, and he said: 'You park that fucking machine on the side of the road and stay there.' I couldn't understand it, so I got in the truck with Mr. Burry... to go back to the depot. Before that he got into the truck and sped off with rocks flying – at the backhoe and all. Back in the depot the Foreman, Ed Corcoran, was there. He asked me to help him. I don't know what happened between him and Wally. We headed over and put the culvert on the truck, and we went back to Campbell Street, put the culvert in and I was deployed with Water and Sewer to dig up the water break.

The Grievor confirmed that a water break takes priority...

Yes, but the conversation between the Supervisor and the Water Sewer Foreman and the Water Supervisor and our Foreman, none of it had taken place that morning. I did what I was told to do, and the Supervisor tells the Foreman what to do.

Asked whether the Supervisor had verbally attacked him, the Grievor said, "Yes Mam."

The Grievor then went on to describe seven tragedies that had befallen him and his family in recent years.

My best hunting buddy died on the operating table. They asked me to set up the pall bearers. Then, shortly after that, I had a call from my wife that there was a house fire in Rigolet. Her aunt and uncle had died in the fire. I took that very hard. They were like parents to me and my wife. I asked Mr. Durno for time to go to the funeral. We went down with the RCMP plane. I was pall bearer for my uncle. It was a very hard time.

My wife and I were up at the cabin for a rest after this, ... and I had a cell phone with me. We were asleep when it rang. I got up, and it was her brother saying that her sister had died of a heart attack in Toronto, and we had to bring her home to bury her.

Then shortly after that the house fell on my nephew and killed him. I learned it on the pager. I'm a firefighter, and I knew the house was my brother's, and he was working on it. That devastated me. I don't know how long I was off that time. I had not one problem with Mr. Durno or with Mr. Nippard. Not one bit. It was longer than usual. What was so hard was that my brother Jack saw his son being crushed.

Then in November there was another friend killed in a boating accident. His head was crushed. And again, I was pall bearer. I should not have gone to that one. My stress and depression was way above level then.

I went back to work and was coping. I felt at work my mind was not so much on what was happening, and then the major event was on January 19th. I was working a lot of hours... a great big snow fall... 120 cm. I knew my son was in the hospital, but could not go to see him because we had to keep the town going. That was the priority. We had to work our hours plus overtime. I got home at 4:00 a.m. after 12 hour stretch, and was just about asleep when the phone rang at 4:30. I did not answer it. I was tired like a zombie. Then there was a knock at the door telling my wife to call the hospital. All I could hear was a great big scream and the phone dropping to the floor. My son had suicided in the hospital, and after that it was like a blank. I only remember the day of the funeral. I think my brother Charlie did the funeral arrangements.

... I saw Mr. Nippard and spoke with him on the day of the funeral. I said: 'I need some time off.' And he said, 'You take as much time as you need. Call if you need anything from us.'

Asked whether he had, in fact, called Mr. Nippard back, the Grievor said, "Yes I did." Asked why he had called him, Mr. Chiasson said: "To verify to me that I could take time. He said, 'Just take as

much as you need.'" The Grievor then testified that he'd received a call from Donny Webber, President of the Local Union.

He told me Mr. Durno and Mr. Nippard had me awol. I was forced to get medical clearance from the doctor. I had all types of sick and annual leave. I could not return to work at that time. A lot of it was because my wife was really having a hard time. That was because this was our second son that we had lost. Our first son was killed by dogs. I found him with two dogs on top of him. My wife never saw him, but I did... so as not to see him. He was that chewed up: ... bad, bad memories!

The Grievor confirmed he had brought the required sick notes, and had stayed off work.

Asked about his condition when he was working, Mr. Chiasson said:

Poor, real poor... The Supervisor kept on at me because of the Union stuff. Stress was so high. I could not cope. He was having meetings behind my back and talking about me. There was a staff meeting to talk about work-related stuff, but they were talking about me a few times.

Asked to comment about the reference (WN #3) to his having stormed out of a meeting, he said:

Yes, I did. Wally Nippard was talking about the President of the Union, and using foul language, and I did not find that appropriate. I said, 'I am not going to sit here and let you abuse the President of the Union.

Asked whether Mr. Nippard had called the meeting to deal with work matters, Mr. Chiasson said:

Every day or second day he calls a meeting... No. I did not want him talking about the President of the Union, and I was the past President. This was not good at all.

Mr. Chiasson confirmed he had attended the Council meeting on March 29th and that WN #6 is a copy of the letter he presented. Asked what he meant by the opening comment that he did not blame certain people, Mr. Chiasson said: "I did not blame anybody but the Supervisor." Asked if he was addressing Council as an employee, the Grievor said : "No; as a taxpayer. I told them that."

Asked how things were at work at that time, Mr. Chiasson said:

I went to work the next day. It was normal. There was nothing. I had put in for a day, and that day he had called a meeting to tell... When I came back I met a co-worker who told me what was said, and I told him that I never said such a thing. Look at my letter. Some of the co-workers came and apologized to me. They had not understood what was told at the meeting...

Asked about the disagreement with Mr. Nippard about not being assigned to some equipment, the Grievor said:

There was a rented excavator. I was senior, but Wally put a junior man on the excavator. I went to him, and asked him why. He said, 'You haven't got a licence on excavators.' I said, 'Yes I do have a licence on excavators'; and he said he didn't know that; and he said next time they got an excavator they would put me on it. They never did. They hired an excavator in April, and I approached him, and he started really getting mad. He said, 'I'll put whoever I think I want on it. I'm the Supervisor.' The excavator was out in the open, and there was nothing to hit; but when they had a job to do at the Arena, where there were close quarters, I was good enough to go on it then. I think he was hoping that I would hit the building. They hired it again after that, but never put me on...

Asked if he were to be reinstated in his position he felt would be able to go back to work without problem, the Grievor answered, "Yes."

The Grievor also confirmed that, while he was on sick leave, he had spent time at *Chiasson Construction*.

My brother called me. He had lost his son in the collapse of the house. I knew at the time what he would be going through. Me and my dog, I'd go over and help him. That was my brother Jack... Yes the Doctor told me to get out of the house, and do what I needed, and Gloria, the consultant, said the same.

The Grievor was reminded that both Mr. Nippard and the Constable Sampson had testified they saw him at work at a *Chiasson Construction* work site, pouring cement. The Grievor responded:

Yes, and I didn't have a hard hat and there was no vest. I was just there with my dog, not working and not paid at the time. I was there because my brother asked.

Asked whether he had gone to work with the family business, the Grievor answered:

Yes, late in June. I was on disability insurance, and I was told by letter (JC #1) that I'd not be getting any more money from that insurance 'benefits beyond June 15, 2006.'

Asked why he did not return to work at the Town at that time, the Grievor answered:

I didn't go back to Town because of the stress level there with Wally Nippard. I worked from June to December that year, and then I went on UI. I'm currently working with the family business... Yes, I am still on medication for depression; down to 40 mg. now.

Asked why he did not just quit the Town, and work with the family, the Grievor said:

I thought about it – and may have said it – but it was a real good job. There's time off for the family and the grand kids. But with the construction business, it is seven days a week all though the summer.

Asked whether he recalls receiving the letter from Mr. Durno dated October 5th (AW #3), he said "I'm not sure, but I think I did." Asked whether he had opened it or whether the person who delivered it, opened and read it to him, the Grievor said:

No, Mam. No, Mam. It was hand delivered in an envelope, and I did not open it with him present, so far as I remember.

The Grievor cannot remember whether he called the office in at that point. The Grievor said he remembered receiving the second October letter from Mr. Durno (AD #4).

Yes. I called Donny Webber because, when I got home and read it, it said it was about 'discipline' ... Mr. Durno says that I am requested, 'to meet with me... on Tuesday, October 31, 2006 at 10:00 a.m. in the town office.'

Asked whether he had attended the October 31 meeting the Grievor said:

No, I did not. I went there with Donny Webber, but did not go in. I told Donny Webber that I would not attend if Mr. Nippard was there because he's a bad person...

The Grievor also confirmed he had received the Termination Letter (AD #5) and testified:

This one... I did read that with Mr. Sampson. I remember that because, as a termination letter..."

Asked whether he had called the Union, the Grievor said:

No, because the Union never got a copy of this letter. A grievance did get placed finally, because the Union got a copy.... AD #5 is a copy, and it is not signed; and the original that I received also was not signed. I showed it to the President of the Union, I showed him a copy of AD #5 and he said: 'What? Something's wrong with this.'

Asked to comment on the discipline (WN #5) for having called the Foreman to report he would not be at work, and whether he had ever called his Foreman previously in these circumstances, the Grievor answered: "Yes, Mam; and I never had a problem."

Asked whether employees are allowed to put their vehicles in the garage to work on them, the Grievor said, "Yes, Mam; it is a policy." Asked if he had any difficulties with this policy, he said:

Yes. I asked whether I could bring the truck in to install the transmission, and he said, 'No frigging way. Not in the garage.' So I had to tow the truck home to do it... There were other vehicles in there, oh yes... Other employees were allowed to do it, and it was a policy of the Town.

The Grievor also testified that he had a problem with a fuel pump, and had asked ...

Mr. Nippard and the Supervisor who runs the depot on the north side, if I could put the truck in for an injection pump. And a while after I was asked by Wally Nippard to take the truck out of there, and the day I took my truck out of the garage Wally Nippard put his car for the month.

The Grievor testified that he continues as a volunteer firefighter and with Search and Rescue. He was awarded the "Canadian 125" medal for his work with Relay for Life and the Canadian Rangers.

ON CROSS EXAMINATION the Grievor was asked whether, prior to his meeting with Council members, he had told anyone of his depression, or that he was under medication, or that it was long term. He answered:

I told the mayor and Mr. Kelly and Mr. Durno that I had been suffering from depression. ... I just told them I was suffering from depression... I went to them with my allegations. I was trying to bring this to Labour Management, but I could not get a meeting. I asked the Deputy Mayor a number of times, and Mr. Webber; and according to the Union there were supposed to be regular meetings with minutes to be passed. This was why I went to Council. I could not get the Labour Management Committee meeting. ... (WN #6) is a summary of my concerns over workplace issues.... I did bring them up as a tax payer.

When it was noted that, as a tax payer, he did not have a role in labour management issues, he said:

I took it to the next step. I wanted to bring them up at labour management. It was proven to work with Council when I was Mayor and Deputy Mayor and Councillor. So yes, I was covered.

The Grievor also confirmed he'd seen a psychiatrist when he was working with DND prior to starting work with the Town in 2003. He had not informed the town about the depression at the time of his hiring, and had not requested any accommodation or asked his doctor to explain his condition in sick notes. " I did not think I had to." Asked whether he had informed the Union, the Grievor answered:

No, I was President. How can I tell myself? I gave up being President of the Union in 2005/6 when I was having the difficulties... My depression did not have an impact on the work place.... I was at work. I was coping with it. .

Asked how the depression did come to affect his ability to work, and whether this came about after his son had died, the Grievor said:

I couldn't think after all my tragedies... and before. But yes, January '06 was when it really hit me... I did tell Mr. Durno and I was bringing doctor's notes.

The Grievor again confirmed that on March 29th he had mentioned his depression in a meeting.

The Grievor named several who were present including Mr. Leo Abbas and Mr. John Saunders:

And I told Mr. Durno numerous times. The first time was when I was starting to bring in the doctor's notes for the first time on depression. I went up with my brother to Churchill Falls, and when I got back I was called in to Mr. Durno's office, and he made me get a second note. Before the tragedies I was having a mild case of depression. I told him I had been suffering from depression for years.

It was pointed out that Mr. Durno had testified he did not know about the Grievor's condition.

Asked whether he thinks Mr. Durno is lying, the Grievor answered:

Yes, Mam. I do... It never affected my work until after January. When I got a call from Mr. Webber that Mr. Durno thought I was awol in February '06....

Asked whether he had spoken to Mr. Durno, the Grievor answered, "Yes I did... I called Al." The Grievor testified that from that point onward in 2006 his depression was affecting his ability to work.

Asked whether, at this time, he had told Mr. Nippard or Mr. Durno of his condition, the Grievor answered, "No." Asked whether he had spoken with the Union about his condition, the Grievor said:

Yes. They suggested that I seek medical help, and that's what the Town forced me to do. I did not feel I needed it. I had sick leave and annual leave.... Yes, the Collective Agreement requires a doctor's note must be provided after 4 days, but I was told twice by the Supervisor to take all the time that I needed... Yes, I did receive an unpaid leave of absence, and after May 1st there was no sick leave and no annual leave, I think... Yes, I was still employed with the Town while on unpaid leave of absence... I could not understand their demanding the notes. Donny said that Durno thought I was awol and Wally said that he wanted to see me in his office.

Asked why he had refused to see Mr. Nippard, the Grievor said, "He's the big problem." Asked whether he still prefers to work with the Town even though Mr. Nippard is still Supervisor, he answered, "Yes."

After February 2006 I was required to provide sick notes. February was the time I got the awol call and I went back to work. The stress... I was not able to stay there... (JC #2) is a sick note covering from January 19 to February 22, 2006.... So why was I called about awol. February 9th is the day of the note... I returned to work after February 22nd until April 28th. Yes, that's the time when I called and spoke to the Foreman. It was a bad day. What really devastated me was the call from Donny Webber about me being awol. Shouldn't I believe the President of the Union? It wasn't from Management. It was from the Union. Not a single member of Management called me.

Asked to review what communication he had with the Employer about his depression, the Grievor answered:

It was affecting me, but I was coping prior to January '06... I had to get the second doctor's note. It was affecting me then, the second doctor's note. It did not affect me until the Supervisor got on my back, and it really started getting at me. The stress levels were very high. You were working for someone, and you knew you weren't welcome. It was affecting the way to do the job at the end. I was doing it to the best of my ability, but my mental state was very poor in the late stages of April and March. I couldn't concentrate. Each time I'd go in I'd see the Supervisor, and he was putting me in a state. I just could not work under Wally. He was the main problem. I could still operate the equipment, but it was just not there. It never felt comfortable to be there.

Asked whether he had discussed this with management, the Grievor answered, "No, I did not."

Asked whether there was any change in his medication during 2006, he said, "No."

He confirmed that the Supervisor does have authority to assign work. "Generally he gives it to the working Foreman, and the decision is the Supervisor's."

The Grievor acknowledged that the Collective Agreement not require work to be assigned on the basis of seniority. "No. It's a practice since I've been there. I don't know if it is in the Collective Agreement." Asked if a grievance had been filed on work assignment, he said: "Not that I know of."

The Grievor also confirmed that he actually was assigned to the excavator, and that the Campbell Street incident "must have been in 2005." Asked about his earlier testimony that people had been talking about him during a particular meeting, the Grievor acknowledged he had not heard their comments. "No. I was not at the meeting."

The Grievor was asked to explain why, in WN #6, he had said he did not blame the mechanical people but did blame the Supervisor. He said:

The Supervisor was Wally Nippard. He was running the garage. Does it take 14 to 16 hours install a radiator? I saw too much of this, and Wally Nippard authorized it. I was trying to show that he was the one missing piece.

When it was pointed out that others must be involved, the Grievor shrugged. Asked whether his co-workers had approached him on this matter, the Grievor said:

I went to work the day after the allegations. There was a meeting while I was away, and Scott Lyle and Scott Wall approached me and said that what I had said to the Mayor was about them. They told me that he had them all swearing at me. Everybody was riled up at that meeting.

The Grievor confirmed he was off with sick notes during 2006, and that he had worked with *Chiasson Construction*... "but only from the end of June."

But when I was observed at the bridge site, it was not when I was working there but when I was helping my brother... I started work on June 30th and applied for EI.

The Grievor identified as JC #3 an ROE issued by *Chiasson Construction* showing that his first day of work was June 26, 2006 and the last day was December 23, 2006. He also confirmed that, based on the number of hours, he had the same level of pay at *Chiasson Construction* as he would have had at the Town. Asked whether he thinks that working a six or seven day schedule was stressful, he said:

Not except for not seeing the grand kids. That's stressful. That's why I want to go back to the Town. I can now do it feeling better about myself. It's less stressful working for the Town. I am starting to heal myself. In time it can be better, and I can work better at the Town now.

The Grievor's difficulties over putting his truck in the garage was "in the fall of 2004 or 2005." The Campbell Street incident was significant because...

The Supervisor was really rude to me. Most of the time I'd talk to him he'd be really rude to me, and the way he was speaking of Donny at the meeting...

Mr. Chiasson testified he had not argued with the Supervisor about the Campbell Street episode. Asked to describe what his arguments with Mr. Nippard were about, the Grievor answered:

His lying to me, mostly... After the red circle – he did not think the mechanics should be red circled – and then after that, everything... As a Union President you expect conflict with Management, but there was more conflict with Wally Nippard. It's the same with Mr. Durno too, but Wally Nippard was just one of those people you can't satisfy. That red circle must have happened in mid-2003, and it never stopped... right up to the time I left. It never stopped. It got that bad they tried to get me kicked out of the Union... (The subject) was raised frequently: almost everyday. It was ongoing. He was so persistent. He was one mad person. That's all they would talk about. It was not my decision. You asked me how often it was talked about. Too often. Maybe a hundred or two hundred times. It was too often...

Asked whether, to the best of his knowledge, he had contacted the Town prior to October 5th, the Grievor answered:

I can't remember. I remember calling Al one time. I called Al one time, and I told him that I was still off... I called Al because Al was one of the persons I had most respect for. I just told him I could not get doctor's notes. He was out of town, so it was before October 5th, and I think that it was after September 30th. I think it was on October 4th. I knew that I was going out of sick leave. I phoned. I probably should have gone to emergency.

Reminded of Mr. Durno's evidence that he had not called, the Grievor said: "I'm sure I did call Al, yes."

Asked whether he had received and understood Mr. Durno's October 5th letter (AD #3), the Grievor answered, "To a certain extent, yes." Asked whether he had reported to work or had called Mr. Durno, the Grievor said: "No... It was before the October 5th letter, because I knew that I was running out of unpaid leave." The Grievor also testified that he had not called either Mr. Durno or Mr. Nippard after that. He confirmed he had seen the doctor on October 11th, and that he had told the doctor he felt 30% better, that the symptoms were declining, and that he was thinking about going to Voisey Bay. "I was thinking on it, yes."

The Grievor confirmed he had then received Mr. Durno's October 26 letter (AD #4), but had called neither Mr. Nippard or Mr. Durno. He did not attend the meeting to which that letter referred.

No, I stayed outside... Al had no idea that I was there unless Donny told him... I told Donny that if Wally was there, I was not going in. Donny was President of the Union, and he respected that position.

Asked whether the Constable, Mr. Sampson, had suggested that he "Call Al", the Grievor said: "I can't recall, but it was possible." Asked whether he had called Mr. Durno after receiving the termination letter, the Grievor answered:

No...The termination letter, it says all of these allegations and the letter did not mean anything. It was not a signed letter.

Asked how long he had his truck in the garage before being directed to remove it, he said:

Two or three weeks. That was not under Wally; it was on the north side. It was Sheldon Normore's and they did have the time.

ON REDIRECT EXAMINATION the Grievor was asked why he had not simply quit working at the Town. The Grievor answered,

Because I wanted to go back to work with them after the healing. I really liked working there. I can time off with kids.

THE TWELFTH UNION WITNESS was Mr. Donny Webber who has been a firefighter with the Town since 1996. He had worked with the Town as an Operator in 1979, and then seasonally for a number of years until he was made permanent in 1981. He is President of the Union. He has never actually worked with the Grievor.

Asked if Mr. Durno had called him in 2006 about the Grievor being awol, Mr. Webber said: Yes. Mr. Durno said John was awol. I said: 'What! I'll call John.' I then called John, and he could not believe it. He said to call Mr. Durno, and I did and I said, 'John will be contacting you.'

Asked how long the Grievor had been absent by that point, Mr. Webber said: "It was only one day at that time as I understood it." Asked if he had ever had this experience in relation to any other employee, he answered:

Yes. Mr. Ed Corcoran, now deceased, was off for three days. Al Durno called me, and I went to find him, and he was in on the fourth day. I called because there was a disciplinary letter on the file. He was not sick.

Asked whether Mr. Corcoran had been terminated, Mr. Webber said, "No."

Asked who he is required to call if he were to be off sick, Mr. Webber answered:

I would call my co-worker, Edward Hawkins. He is the appropriate Supervisor to contact. He calls for me, and I call for him.

Asked whether Mr. Hawkins is his Supervisor, Mr. Webber said:

No. He's part time. If I'm off sick I call Anne Powers, who is the co-ordinator, and if she is not available, anyone who answers the phone gets the message to her, and from there to the Supervisor for the Arena.... So far as policies go, we get new policies. They last for a few weeks, and then back to *status quo*. That's why we didn't grieve the policy ... No one seems to comply at the Firehall or the Arena. There haven't been any letters of discipline.

Asked whether he was aware of the Grievor's depression, Mr. Webber said:

Yes. After a while, not right away. We knew he was stressed. He had to be. He'd mentioned it to me at the fire hall. He's a firefighter, too.

Mr. Webber said the Grievor had not called him when he received Mr. Durno's October 5th letter (AD #3), but did call on receiving the second (AD #4) letter.

Yes, he did call me about that. He said he'd got a letter. I had not yet seen it. He said that he would meet with me and Mr. Durno at 10 o'clock on October 31st, and we were to meet there. John was in his car, and I in mine. Mr. Nippard's truck was there, and he said, 'If Mr. Nippard is there, I'm not taking part in any meeting.' With that I went into the Town office. I had John's cell number, and Mr. Nippard was there, and I said: 'The letter says, '... me and the CUPE representative...'', and John Chiasson will not meet if Mr. Nippard stays for the meeting. Mr. Durno said that Mr. Nippard would stay, and we had a bit of a heated exchange. Mr. Nippard said, 'I'm his fucking boss, and he will meet with me.' I said, Mr. Chiasson said he would like to meet with Mr. Durno, and that he wanted to get back to work, but he felt that Mr. Nippard is the boss, and that he could not meet in that circumstance. Right there and then I asked Mr. Durno to meet with John Chiasson and myself.

Asked if he had ever met with just Mr. Durno to work something out, and if he felt he has a good working relationship with the Town, Mr. Webber said:

That's the normal procedure, 99% of the time. We meet: just us... Yes I do, personally. But since Mr. Nippard has taken over as Supervisor the relation has deteriorated. We never took any problems outside the room until Mr. Nippard became Supervisor.

Asked whether, in his view, they were trying to help John get his job back, Mr. Webber answered:

No. After I left Al's office I called John and said, 'Wally stays'. And John said he's not going to the meeting.

Asked whether the Grievor was upset, Mr. Webber answered:

Very upset, because he wanted to get back to work. 99% of the time if you meet with Mr. Durno it was resolved.

Asked what happened when the Grievor received the termination letter (AD #5 / JC #4), he said:

I called Bob Matthews, and we filed a grievance. Before this, the Union was not involved, because he went to the Town as a taxpayer, not as a Union member.

Mr. Webber also testified that the Union usually gets the original of a termination letter, "but on this occasion the Union did not." Asked whether the red circling issue is still a problem, Mr. Webber said:

Yes. Mr. Nippard still does not agree with it. I've had to go to Mr. Durno and say, 'This is a Management person, and he is riling up the Union members here.' Mr. Nippard was told to stop; and, since then, it has been pretty good until recently we got a letter ...

Asked whether, in his view, the membership would be upset if Mr. Chiasson were to return to work, Mr. Webber answered: "I never got a complaint."

ON CROSS EXAMINATION Mr. Webber was asked whether he is aware, at any time since 1971 or since he became permanent in 1981, of any other employee who was away from the workplace for a month. Mr. Webber answered: "No, not that I know of." He confirmed he had become Union President "three or four years ago now."

Asked about the call from Mr. Durno about the Grievor being awol, Mr. Webber said: It was my understanding that it was only a day... I not aware of the Grievor's absences in February of 2006. He did not say how long the Grievor was away. With Mr. Corcoran it was a few days. He was intoxicated for a few days. That was the only other situation.

Asked why Mr. Durno had contacted him, Mr. Webber said:

Normally with something like this Mr. Durno calls me. I've been President of the Union off and on for 25 years.

Asked whether, in his view, Mr. Durno was concerned about Mr. Chiasson, Mr. Webber answered: "I think they were concerned that day, yes. I don't know if I would say 'concerned.'" Asked whether it was possible that the call had been made out of concern for the Grievor, Mr. Webber paused and then said:

... Mr. Durno treats everyone alike. He helps people. I can't say anything bad other than that he is not the Supervisor anymore. I did not know why Mr. Chiasson was off during the summer.

Asked whether it was possible that rules for reporting sick are different for Firefighters as compared with Maintenance employees , Mr. Webber said:

There is a different Supervisor at the Fire Hall, and there are differences. In the garage they have to call a Supervisor, but some people do and some people don't.

Asked whether, at the October 31st meeting, he had informed Mr. Durno that the Grievor had a severe depression, Mr. Webber answered: "No, I could not. It is not my place to tell them. That would

be confidential." Mr. Webber testified he had known the fact at that time. Asked if he had encouraged the Grievor to get help, at that time, Mr. Webber answered: "No he was seeing a doctor, so we assumed that he was being taken care of..."

Mr. Webber confirmed that CUPE was not involved until the Grievor's termination, but that he had gotten copies of AD #3 and AD #4.

Yes, from the time he went to the Council meeting up to the time he started getting letters, CUPE got those letters (AD #3 and AD #4), yes. We were waiting for him to come to us. We did not want to get involved. He went as a taxpayer, and we were told by the Union rep not to get involved. The Union did not grieve AD #3. Mr. Chiasson called me on or after the 26th.

Asked whether they had discussed his medical situation, Mr. Webber answered, "No."

ON REDIRECT EXAMINATION Mr. Webber confirmed he was aware of Mr. Corcoran's letter of reprimand and the Grievor's termination.

EMPLOYER ARGUMENT

FOR THE EMPLOYER, Ms. Reid pointed out that the evidence provided by Employer witnesses, particularly Mr. Durno and Mr. Nippard, clearly demonstrates that the Grievor was on extended leave of absence, "due to medical reasons", up to September 30, 2006. The evidence also clearly shows that the Grievor was aware that the extended leave of absence had expired at the end of September, and that he had an obligation to inform the Employer if he was to be absent. The Employer received no notice from the Grievor after September 30, 2006.

In the Employer's view, the Grievor's evidence is not credible. He first testified that he did not call the Employer, then he testified that he did call, but didn't know precisely when; and finally he testified it was on or about October 4th that he called Mr. Durno. There is no reason for Mr. Durno to misrepresent the situation. If the Grievor had contacted him and explained that his doctor was out of town, that would have been straight forward. The Grievor did see his doctor on October 11, and said that he was 30% better and that the symptoms were improving.

The Town made several attempts to contact the Grievor. The October 5th letter was hand delivered, but for some reason the Grievor dismissed the contents of the letter. The Grievor did not deny receiving or comprehending the letter. Despite all this, he did nothing. He had lost his seniority, and yet the matter was not grieved. He also lost the opportunity to meet with the Employer in order to

maintain his job. The Grievor confirmed he received the notes, but he did nothing in respect of Mr. Durno, Mr. Nippard or the Union, itself. Then the October 26th letter arrived, very explicitly setting up a meeting for October 31st. Even at this late date, almost a month past the 30th of September, and after he had seen his doctor, no doctor's note was provided.

The Town of Happy Valley-Goose Bay is not a callous Employer. This has happened because the Grievor clearly did not want the job any more. Voisey Bay was on his mind. That fact, in itself, determines the matter. The Grievor simply did not want the job.

Finally, the Employer acted on October 31st, a month after September 30th. The termination letter details the grounds on which the Grievor was let go, referencing his rude and disrespectful behaviour, and his actions in respect of the Town, and his sick leave.

The documentation clearly shows that he was employed as a Heavy Equipment Operator from June forward at 66 hours a week 6 days a week, earning the same as he would have earned at the Town.

There is previous discipline. But even disregarding all that, thirty days had elapsed. He was gone, as far as Mr. Durno was concerned, as he made clear in his testimony.

Ms. Reid then reviewed a number of case drawn from the jurisprudence, as follows: *J. (M.) v. Companion, Newfoundland Court of Appeal, Cameron J.A., Roberts J.A. and Mercer J. (ex officio), July 9, 2002; Capital Health Authority (Royal Alexandra) and United Nurses of Alberta, Local 33 Mary Anne Schram Grievor, 87 C.L.A.S. 134, Alta. G.A.A. 2006-064, Alberta, A. Ponak (Chair), N. Bownes (Union Nominee), P. Cunliffe (Employer Nominee), Award: October 11, 2006; Dexter Halliday v. Michelin North America (Canada) Ltd.: Gilles Deveau, Chair, Nova Scotia, June 2006; Re United Carr, Division of TRW Canada Ltd. And United Automobile Workers, Local 397, W. B. Rayner. (Ontario) November 30, 1981; Re Canadian Freightways Ltd. and Teamsters Union, Local 31, 59 L.A.C. (4th) 246, British Columbia, McConchie, 1996; Canada Post Corp. and C.U.P.W. (Venossa – 626-88-03228) 15, L.A.C (4th) 418, B.L.Adell, June 1990; Re Canadian Regional Airlines Ltd. and Canadian Union of Public Employees, 72 L.A.C. (4th), 167, P.A. Smith, April 1998; Re J.S. Jones Timber Ltd. and L.W.A.-Canada, Local 1-3567, 86 L.A.C. (4th) 105, British Columbia, H.A. Hope, Q.C., Dec. 1999; re Ball Packaging Products Canada Inc. and United Food & Commercial Workers' Union, Local 175, 8 L.A.C. (4th) 315, Ontario, J.T. Clement, Q.C., Nov 30, 1989; the Supreme Court of Newfoundland and Labrador, Court of Appeal Between: Human Rights Commission Appellant v. Health Care Corporation*

First of St. John's Respondent and: Carol Evans, Second Respondent, Coram: Cameron, Welsh, JJ.A. and Russell, J. (Ex Officio), March 6, 2003; *Law v. Canada (Minister of Employment & Immigration), Nancy Law, Appellant v. Minister of Human Resources Development, Respondent, Supreme Court of Canada*, Lamer C.J.C., L'Heureux-Dube, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache, Binnie JJ., March 25, 1999; *Quebec (Commission des droits de la personne & des droits de la jeunesse) c. Montreal (Ville) City of Montreal and Communauté Urbaine de Montreal, Appellants v. Commission Respondent and Rejeanne Mercier*, May 3, 2000; *B.C.G.E.U. v. British Columbia (Public Service Employee Relations Commission) B.C. Government and Service Employees' Union and Public Service Employee Relations Commission*, BC Court of Appeal, Rowles, Hall, Levine JJ.A., March 7, 2005

In the Employer's view, it should be noted that some of these cases deal with whether or not the Employer has received an apology or some indication or remorse on the Grievor's part. This must play into the considerations of the Arbitrator, since a similar situation obtains here. There is an issue of trust that needs to be addressed. The Employer must be able to trust the employee.

There is clearly no discrimination in the instant situation. The prohibited grounds do not arise. The Employer did not know of the Grievor's depression, and thus could not address the question of disability.

There are allegations that the Grievor was treated differently from others, which is set out as prohibited under Article 4.01 of the Collective Agreement. But the fact is that no employee, according to all the testimony, has been away for a month without notifying the Employer or providing some explanation. The issue of discrimination in the Human Rights Law similarly has no legs in this case, as the jurisprudence makes clear as the Supreme Court decision in Carol Evans' case makes clear.

The fact is the Town did not know that the employee had a clinical depression. But that is not to say that the Grievor had a disability. Even the Grievor was not claiming that. The main point of the Grievor's concern is his issues with Mr. Nippard. But the Union did not bring this to the Town.

FOR THE UNION, Ms. Ryan argued that the Grievor clearly has had a lot of tragedies in his life and particularly through the period from January 2005 to January 2006. It is established in the evidence that he suffers from depression. It is also clear that the problems with his Supervisor, Mr. Nippard, were long lasting and relevant. The Grievor managed his stress and worked with it until his son died. That was the proverbial straw that broke the camel's back.

The Grievor felt then that he could no longer go on. He phoned Mr. Nippard, who said to take the time needed, but then found himself declared awol and that forced him back to work for March and April of 2006. But he could not stay beyond that point.

The evidence from Mr. Nippard, himself, is that the Grievor had been an above average employee from 2003 to 2005. The Grievor did not look for an accommodation arising from his illness. He simply went on with his work.

It is also clear that there are times when the Grievor remembers things, and there are times when he forgets. The facts about the October 5th letter come and go in his own memory. He had indicated to Dr. Rashleigh that his symptoms had improved approximately 30%, but that did not mean that he could forego medication, and at a high dosage of 60 mg. Sometimes the Grievor's thoughts are flighty. He was considering going to Voisey Bay, or working with the family business. Dr. Rashleigh's evidence, however, shows that the Grievor was rehabilitative.

The Grievor did not burden the Town with this. He took a job with his own family and took a cut of \$4.61 an hour. (If you do the mathematics, that is what the ROE shows he earned if compared with the Collective Agreement schedule. He did not go to work with the family until two weeks after the insurance had ended.

Dr. Rashleigh also said that if John had needed a note in October he would have given it, but circumstances took a different turn. The fact remains that he has now got his clearance, and can return to work. John went through a remarkably rough time with a smile on his face.

It is also clear that some of the issues the Termination Letter raises did not constitute matters on which termination could be grounded; particularly his reporting in sick to someone other than his Supervisor. At the Arena, as the evidence shows, the reporting is different; and it is also different in other groups of the Town's workforce.

The Grievor's stress at work did not prevent him doing good work and taking on overtime. But stress did pose a risk. He was provided with three hand-delivered letters. Some of the details in this matter are questionable. John does not remember the October 5th letter in the same way Mr. Sampson recalls it being delivered, nor does he recall the suggestion that he call Mr. Durno.

There is no doubt that John Chiasson did try to contact the Employer. When Mr. Durno asked him to come to meet with himself and the Union representative, Mr. Nippard was not referred to. But

when Mr. Webber went into the office he found Mr. Nippard there. If the Town wanted the Grievor back at work, asking Mr. Nippard to come back a little later is not too much to ask in an attempt to see whether problems could be resolved.

There is no evidence that there would be a problem between the Grievor and other members of the workforce if he were to return. The Union feels strongly that the problems the Grievor had should be taken into account, and that he should be reinstated in his position.

The Union then provided a number of cases drawn from jurisprudence, as follows: *Bakery, Confectionery, Tobacco Workers and Grain Millers International Union Local 252 and Lucerne Foods Ltd., A Division of Canada Safeway Limited* Grievor, Joginder Dhadha 157 L.A.C. (4th) 353, 88 C.L.A.S. 228, Alberta, D.G. Tettensor (Arbitrator) November 14, 2006; *Newfoundland and Labrador Association of Public and Private Employees and Vista School District*, Grievor: Max Carpenter, Arbitration, J.C. Oakley, Chairperson; P. Ivany; G. Williams, September 2004.

IN REBUTTAL ARGUMENT FOR THE EMPLOYER, Ms. Reid addressed the issue of Mr. Nippard's encouraging the Grievor to "take as much time" as he needed. The Employer does not doubt that this comment was made, but it certainly must be seen in the context of the medical certification provided. Thirty days is a long time.

The Grievor appears not to be able to remember details of receiving the October 5th letter, but did confirm that he got it and that he read it. The Constable clearly did read the letter, and did speak to the Grievor about it.

The Grievor did not have the right to dictate who was or was not to be at the meeting on the 31st. This was an opportunity for the Grievor to explain his actions, and he was not in a position to dictate who was to attend the meeting.

It is true that Mr. Eddy indicated that, in his view, there would be no problem if Mr. Chiasson were to return to work, but he was also unaware of the reasons for the termination.

Ms. Reid also invited the Arbitrator to note that the Union's cases do not deal with the central issue of his failure to notify the Employer.

In the Employer's view, the grievance should be denied.

CONSIDERATIONS

At Issue Between the Parties is the termination of the Grievor.

The Employer led evidence and argument in support of its position that the termination was for just cause under the Collective Agreement in view of the Grievor's failure, over a period of 30 days prior to the dismissal, and despite the Employer's repeated efforts to contact him, either to report for work or to provide medical documentation to justify additional leave. The Employer denies discrimination, since its action was taken to ensure efficient operation of the workforce and the prohibited grounds set out in Article 4.01 do not apply in the instant matter. The Grievor's disciplinary and employment records support the Employer's action, in the Employer's view.

The Union led evidence and argument in support of its position that the termination was unjustified both as discriminatory and as an excessive response to the Grievor's actions, given his long-standing medical condition, aggravated both by the stress he was exposed to in the workplace and by the series of personal tragedies he had suffered during the year or so prior to his termination. The Union contends also that the Employer was barred from relying on certain elements of the Grievor's record of discipline and of his employment history.

Powers of the Arbitrator: I note that the Collective Agreement provides, at Article 12.04, that:

The decision of the arbitrator shall be final, binding and enforceable on all parties. The arbitrator shall not have the power to change this Agreement or to alter, modify or amend any of its provisions, however, he shall have the power to otherwise dispose of the grievance by an arrangement which he deems just and equitable and which is within acceptable arbitral jurisprudence.

Burden of Proof: I note that the Collective Agreement provides at Article 3.03 that:

In cases of discharge and discipline, the burden of proof of just cause shall rest with the Employer. Evidence shall be limited to the grounds stated in the discharge and discipline notice to the employee. In cases of discharge and discipline, both parties agree to an exchange of all evidence pertaining to the case prior to the arbitration hearing.

At the outset of the hearing the Employer argued that it is for the Union to establish *prima facie* the discrimination claimed in the grievance form (Consent #1), and that the onus should only then shift to the Employer to establish just cause for this disciplinary action.

Having examined the wording of the grievance and the remedy requested, and considered the pertinent Articles of the Collective Agreement (3.03, 4.01, and 2.01) as reviewed further below, I

directed that the Employer lead in evidence and argument to establish just cause in this disciplinary matter, and that the Union carry the onus to establish discrimination under the terms of the Agreement.

I MUST DETERMINE whether the Grievor's conduct has given the Employer just cause to impose discipline, and, if so, whether the termination was an appropriate response in light of the facts in evidence, or whether some other discipline should be substituted.

THE TERMINATION LETTER:

Grounds for Termination:

Article 3.03 requires, in part, that: "Evidence shall be limited to the grounds stated in the discharge and discipline notice to the employee." The grounds set out in AD #5/JC #4 include:

- ◇ the Grievor's "failure to provide sufficient notice and explanation of your absence from work beyond September 30, 2006" (citing Article 21.08);
- ◇ the Grievor's having "refused all attempts by the Town to contact you on this issue.";
- ◇ the Grievor's demonstrating "complete lack of regard for work with the Town, and ... careless disregard for ... continued employment with the Town."

The letter then cites the following "examples" drawn from the Grievor's work history with the Town to "further" demonstrate the Grievor's "poor attitude regarding your employment with the Town":

- ◇ the Grievor's having "displayed rude and disrespectful behaviour to your supervisor and other workers";
- ◇ the Grievor's having "acted so as to unjustifiably bring the operations of the Town and officials of the Town into question by bringing unfounded allegations against Town employees";
- ◇ the Grievor's having been observed "while off on sick leave ... in activity contrary to the medical evidence supporting your absence, without proper or complete explanation."

Failure to provide Notification of Absence?

The Employer argued and led evidence to show that its termination decision was taken in order to ensure efficient operation of the workforce since it needed to secure the workforce needed to provide maintenance services required by the Town. At the time of the termination the Grievor had been absent for several weeks without medically documented sick leave, and had not responded to the Employer's notification and attempts to clarify his status. The Employer concluded that termination was its only option to enable it to meet its workforce requirements.

The Employer provided convincing evidence that it had not received from the Grievor "notice and explanation of his absence from work beyond September 30, 2006." I note that the Grievor did

claim to have telephoned Mr. Durno, but was unable to recall precisely when that call might have been made. Mr. Durno testified that he could not remember such a call. I conclude that, on the balance of probabilities, the Employer has established that the Grievor did not "provide sufficient notice and explanation of your absence from work beyond September 30, 2006."

The Employer argued that the Grievor had therefore failed to abide by the "Notification of Absence" provision in Article 21.08, which reads:

The employee is responsible to see that his or her immediate supervisor or the Town Manager or the Town Manager's Secretary is advised on the first day of any absence including illness. This advise (*sic*) must be received as soon as possible but not later than one hour after the beginning of the first missed shift.

I note that this Article unambiguously places the responsibility on the employee to report "any absence including illness", and the Parties have gone on to emphasise their agreement over the urgency of this reporting by specifying very precisely that it be done "... as soon as possible but not later than one hour after the beginning of the first missed shift." I also note evidence that persuasively shows the importance of the Employer's being able to have available a workforce to maintain the services of the Town. I find this confirmed in the wording of Article 21.08.

I conclude that the Employer has established just cause for discipline on the basis of the first of its grounds as set out in AD #5, the Grievor's "failure to provide sufficient notice and explanation of your absence from work beyond September 30, 2006" as required under Article 21.08.

Refusal of the Town's contacts?

The Employer also alleges that the Grievor "refused all attempts by the Town to contact you on this issue." I find the Employer's evidence on this point less persuasive.

I note unchallenged evidence that the Community Constable, Mr. Sampson hand-delivered both Mr. Durno's October letters (AD #s 3 & 4) to the Grievor personally. I also accept the evidence that he urged the Grievor to call Mr. Durno. The Termination Letter describes the Grievor as having "refused" the Town's attempts to contact him. In light of the evidence and argument provided, I understand the phrase "refused... contact" to refer to the Grievor's lack of compliance with the instructions contained in Mr. Durno's letters and in the advice offered by Mr. Sampson.

Evidence of the Grievor's situation and actions and some of the actual written content raise questions about the accuracy of characterizing the Grievor's behaviour as a refusal.

I note that Mr. Durno's October 5, 2006 letter (AD #3) clearly sets out what response it requires of the Grievor and the consequences of a failure to comply with that requirement, when it says:

... As you did not return to work or notify your employer, you are advised that your seniority has been lost and if you do not return to work by 8:00 am Tuesday, October 10, 2006, your employment with The Town Council of the Town of Happy Valley - Goose Bay will be terminated...

I also note that, as mentioned above, the Grievor's recollection of having made some telephone contact with Mr. Durno at about this time is vague in itself, and not corroborated by Mr. Durno's evidence. I find that, on the balance of probability, the Grievor did not respond to this letter. It is also clear that he did not "return to work by 8:00 am Tuesday, October 10."

I note that Mr. Durno's October 26, 2006 letter (AD #4) also makes it very clear what the Employer requires the Grievor to do. The subject is clearly stated as "Discipline", and the letter says:

"... You are requested to meet with me and your CUPE Union representative on Tuesday, October 31, 2006 at 10:00 am at the Town Office."

It is common ground between the Parties that the Grievor did not attend that meeting.

In determining whether the Termination Letter's description of the Grievor's behaviour as a refusal is accurate, I must review these facts in the light of other facts in evidence.

I note Dr. Rashleigh's reservation, at the close of cross examination, to the effect that, while he felt it likely the Grievor would have been able to understand the letters and Mr. Sampson's urging him to call Mr. Durno, he felt some unease about the "extent that he would understand the consequences ..."

I note also that Mr. Durno's October 26, 2006 letter (AD #4) reads, in part, "You are requested to meet with me and your CUPE Union representative on ..." The unchallenged evidence is that the Grievor did actually go to the Town Office parking lot on the morning of the meeting, but chose not to go in when he discovered that Mr. Nippard, his Supervisor, was present. The Union Representative explored with the Town Manager whether the meeting should proceed without Mr. Nippard, but Mr. Durno indicated that the Supervisor would remain. I offer no view of that administrative decision.

Rather, I have taken note of this issue because it raises a question concerning the Termination Letter's description of the Grievor as having "refused all (the Town's) attempts ... to contact you on this issue." The evidence shows that the Supervisor appeared as a fourth participant in a meeting that had been formally described to the Grievor in AD #4 as scheduled to take place "with me and your CUPE

Union representative". The Grievor did go to the site of the meeting, but refused to attend the meeting in view of the changed participants. In my view, it is imprecise to describe the Grievor's refusal to attend what the evidence shows was a significantly different meeting from the one he had been instructed to attend simply as his having "refused" one of the Town's "attempts to contact" him.

Poor Attitude?

The third ground cited for the termination in AD #5/JC #4 is that the Grievor demonstrated "complete lack of regard for work with the Town, and ... careless disregard for ... continued employment with the Town." The letter goes on to cite three specific matters that, in its view, "further" demonstrate the Grievor's "poor attitude regarding your employment with the Town", viz.: 1) that he had "displayed rude and disrespectful behaviour to (his) supervisor and other workers"; and 2) had "acted so as to unjustifiably bring the operations of the Town and officials of the Town into question by bringing unfounded allegations against Town employees", and 3) had been observed "while off on sick leave ... in activity contrary to the medical evidence supporting your absence, without proper or complete explanation." Evidence was led in respect of each of these matters insofar as they informed the Employer's decision to terminate the Grievor, in part because of "poor attitude".

On Mr. Nippard's testimony, the charge of "rude and disrespectful behaviour" had to do with the ... warning letter on January 12th (WN #3) ... and also the meeting about that matter (WN #4). And we had a couple of incidents before that when I gave instructions and he felt he did not need to obey. I also felt it disrespectful not to call the Supervisor to report. That was disrespectful.

The evidence shows that the events to which WN #s 2 & 3 relate occurred on January 10th and 12th of 2005, approximately 21 months prior to the October 31, 2006 termination. I note that Article 13.05 "Warnings" reads:

Whenever the Employer or its designate deems it necessary to censure an employee, in a manner indicating that dismissal may follow any further infraction or may follow if such employee fails to bring his/her work up to a required standard by a given date, the Employer shall provide such censure in writing within ten (10) days of the verbal censure, giving particulars of such censure, and shall in the same time frame provide a copy of the written censure to the union.

I also note that Article 13.07, "Adverse Report", reads:

If the Employer wishes to make an expression of dissatisfaction concerning an employee's work a part of his/her record, the Employer shall notify the employee, with a copy

to the Union, within ten (10) working days of the occurrence. This notice shall include particulars of the work performance which led to such dissatisfaction. This article shall be applicable to any complaint or accusation which may be detrimental to any employee's advancement or standing with the Employer, whether or not it relates to his work. The employee's written reply to such complaint, accusation or expression of dissatisfaction shall become part of his record. The record of an employee shall be removed from his personnel file and destroyed after the expiration of twelve (12) months providing there is no recurrence of a similar incident during that time, in which case it shall be removed and destroyed twelve months after the recurrence. Employees and their representatives shall have the right to view their personnel file at any time.

WN #3 has handwritten notation showing that "dismissal" is struck out and replaced by the phrase "future disciplinary action". The impact of this change is that WN #3 does not fall under Article 13.05 "Warnings" since, in its emended form, the "censure" is no longer framed "in a manner indicating that dismissal may follow..." Thus WN #3 (and its accompanying WN #4) fall under Article 13.07, "Adverse Report", and hence were required to have been "removed from his personnel file and destroyed after the expiration of twelve (12) months providing there is no recurrence of a similar incident during that time..." No evidence was presented that established "recurrence of a similar incident during that" 12 month period. Therefore, the charge of "rude and disrespectful behaviour" associated with WN #3 (and its accompanying WN #4) were required to have been "removed and destroyed", and were thus rendered unavailable to the Employer as one of the grounds for termination.

I note, also, that Mr. Nippard referred to a "couple of incidents before that when I gave instructions and he felt he did not need to obey." Evidence suggests that these "other incidents" have to do with the Grievor's concern over not having been assigned to a piece of heavy equipment. Mr. Nippard's reference to these "other incidents" as having occurred "before" the January 2005 (WN #3 & 4) incident indicate that any dissatisfaction the Employer may have expressed would also have had to be "removed and destroyed" under Article 13.07, and were also, therefore, unavailable to the Employer as one of the grounds for the discipline.

Finally, Mr. Nippard also explained the Termination Letter as referencing the April 27, 2006 event documented in WN #5, Mr. Nippard's disciplinary letter to the Grievor for failing to have called his "immediate supervisor to report ... absence." Mr. Nippard testified that this was an instance of "rude and disrespectful behaviour" on which the Letter of Termination is, in part, based. "I also felt it disrespectful not to call the Supervisor to report. That was disrespectful." I also note that, a few lines

later, the Letter specifically asserts that the Grievor's April 27th action breached "article 21.08 of the Collective Agreement for your failure to report your absence to work on April 27, 2006 in accordance with the terms of the Collective Agreement." I have reviewed WN #5 and find nothing in that letter that indicates a concern with "rude and disrespectful behaviour" at the actual time of the incident. I am unable, therefore, to recognise its redefinition as "rude and disrespectful behaviour" within the Letter of Termination. (I will address this same WN #5 issue below in the context of considering the specific examples drawn from the Grievor's disciplinary record that are cited in the Termination Letter.)

Bringing unfounded allegations against Town & employees?

The Termination Letter asserts that the Grievor "acted so as to unjustifiably bring the operations of the Town and officials of the Town into question by bringing unfounded allegations against Town employees". The evidence shows that this aspect of the Employer's grounds for dismissal relates to the Grievor's having appeared as a taxpayer – not as an Employee of the Town – at a meeting of Council at the end of March, 2006, and delivered a letter (WN #6) that, on the Grievor's own evidence, levelled a number of allegations against Mr. Nippard. I have also reviewed AD #6, the April 24, 2006 "*Response to Allegations made by Mr. John Chiasson March 28, 2006 Prepared by Wallace Nippard, Superintendent of Works, R.T.*"

I note that the Termination Letter asserts that the Grievor's allegations were "unfounded" and that their effect had been "to unjustifiably bring the operations of the Town and officials of the Town into question." But the evidence provided at this hearing did not establish either that the allegations were "unfounded" or that their effect had been "to unjustifiably bring the operations of the Town and officials of the Town into question." As its title indicates, AD #6 is a "Response to Allegations made by Mr. John Chiasson...". I note that the Council Minutes for March 28, 2006 (WN #7) conclude with the following comment:

Mayor Abbass advised Mr. Chiasson to get the information he has to Council and it will be investigated and if proven true, appropriate action will be taken.

The Mayor speaks of an "investigation". I note that Mr. Nippard also testified that Mr. Durno had asked him "to investigate and report on what the evidence came up with because Mr. Durno had been told by council to investigate the matter."

There was no evidence provided to show that the Employer had itself conducted a complete investigation that might have evaluated the two sets of claims made. Given that Mr. Nippard was the primary, if not the sole, target of the allegations, it is strange that his response should simply stand as the Employer's position without further evaluation and adjudication by the Employer. Asked whether it is the Employer's practice in Happy Valley-Goose Bay to have people investigate themselves, Mr. Nippard denied he was...

investigating myself. I was responding to allegations of my Department. I did a confidential report for Council and the RCMP and the Municipal Officer... I can't say (whether it is normal practice). I did what I was asked...

As Arbitrator seized of the instant grievance I have competence, evidence, authority, or powers under the Collective Agreement to make an adjudication as to whether the WN #6 "Response" shows that the Grievor's allegations were "unfounded" or that, in making them, the Grievor "unjustifiably" brought "the operations of the Town and officials of the Town into question." I do have, and must exercise, powers under the Collective Agreement to determine whether, at the time of the termination, the Employer had secured adequate grounds to conclude, as it did in the Letter, that the Grievor had "acted so as to unjustifiably bring the operations of the Town and officials of the Town into question by bringing unfounded allegations against Town employees."

I have no evidence to show that the Employer had actually competed the investigation that might have provided adequate grounds for it to assert that the Grievor's allegations were "unfounded" or that, in making them, the Grievor "unjustifiably" brought "the operations of the Town and officials of the Town into question."

Engaging in Activity Contrary to Supporting Medical Evidence?

The documented evidence (JC #3) shows the Grievor began work with *Chiasson Construction* on June 26, 2006, eleven days after expiry of insurance benefits. Both Mr. Durno and Mr. Nippard testified to seeing him on *Chiasson Construction* work sites prior to that date. The Grievor confirmed being on *Chiasson Construction* work sites prior to that date as company for his brother. His brother testified that he was, himself, suffering after the tragic loss of his own son, and had sometimes asked the Grievor to provide support by accompanying him.

This raises a question about the appropriateness of the Grievor's employment from June while still on leave from the Town and covered by a Doctor's note, though no longer receiving paid sick leave.

There is no doubt that the Employer is owed the information it needs in order to discharge its responsibilities under the Management Rights article of the Collective Agreement. Even though the Grievor was not receiving sick leave pay or insurance support after June 15, 2006, it remains true that he made himself unavailable to the Employer by virtue of the extended sick leave covered by Doctor's notes he submitted. The Employer has to organise the workforce, and needs to know who is available to do the work, especially when circumstances change its documented perception of the facts.

I find, on the balance of probabilities, that since the particular occasions on which the Grievor was observed at the work sites occurred prior to June 26th when the Grievor's actual employment with *Chiasson Construction* began, the Employer was not justified in concluding from those observations that his "activity" was, in fact, "contrary to the medical evidence supporting your absence, without proper or complete explanation."

The Termination Letter's review of the Grievor's disciplinary record:

AD #5 also describes the decision to terminate the Grievor as "a reflection of your disciplinary record" and cites a number of "specific examples":

- ◇ On January 12, 2005, you received a verbal warning and written warning for storming out of a staff meeting on January 10, 2005;
- ◇ On April 27, 2006, you received a written warning from the Town for breaching article 21.08 of the Collective Agreement for your failure to report your absence to work" that day "in accordance with the terms of the Collective Agreement";
- ◇ On October 5, 2006, you received a letter from the Town indicating you had lost your seniority due to your refusal to provide notice of your absence beyond September 30, 2006" (citing Article 14.04(3))

January 12, 2005 verbal & written warnings:

The January 12, 2005 verbal and written warnings originally contained reference to dismissal as covered under Article 13.05 and thus, in the Employer's view, were not required to be removed from the Grievor's file and destroyed as they would have been had they fallen into the category of "adverse report" covered by Article 13.07.

However, the rewording deleted reference to dismissal, with the effect that the content of the verbal and written warnings no longer brought them under Article 13.05. As noted above, this aspect of the matter was not available to the Employer in deciding to discipline the Grievor.

April 27, 2006, written warning for failure to report absence:

The record shows that the April 27, 2006 written warning was issued, and thus forms a part of the Grievor's record available for consideration in relation to discipline.

October 5, 2006 letter concerning lost seniority and return to work:

I have been seised of a grievance dated November 14, 2006 that complains of discrimination under Article 4.01. I have not been seised of a grievance on the October 5, 2006 letter (AD #3) citing Article 14:04(3). The Parties presented argument and evidence in respect of the October 31, 2006 termination. The record shows the letter (AD #3) was issued. Thus, it is part of the Grievor's record available for consideration in relation to discipline.

The Absence of Signature and Lack of Copy to Union:

I note unchallenged evidence that the Termination Letter delivered to the Grievor was not signed, and that a copy was not sent to the Union. The Letter does not, on its face, reference a copy to be sent to the Union. Mr. Durno testified that the lack of a signature was an "error".

I do not dismiss these facts as irrelevant to my considerations. I note that Article 11.14, "Technical Objections to Grievances," provides that:

No Grievance shall be defeated or denied by a technical objection occasioned by clerical, typographical or similar error or by an inadvertent omission of a step in the grievance procedure. An arbitrator shall have the power to allow all necessary amendments to the grievance and the power to waive formal procedural irregularities in the processing of a grievance, and to extend time limits, in order to determine the real matter in dispute and to render a decision which it (*sic*) deems just and equitable.

I find nothing in this provision that contemplates an arbitrator's treating an unsigned termination – one not communicated to the Union – as a "clerical, typographical or similar error". Without signature, a document normally lacks fully credible authority. In a matter as serious as a termination, such lack of credible authority is an important consideration.

In this regard, I also note that, at various points and in various ways, the Collective Agreement treats seriously issues of joint communication between the Parties on matters affecting employees and working conditions, particularly at Articles 1.01(2), 8.01, and 10.01. I note Mr. Webber's unchallenged testimony that the Employer usually copies the Union on such matters.

Therefore, both the lack of a signature and the fact it was not copied to the Union diminish its credibility as a document on which the Employer can rely in seeking to have its discipline sustained.

DISCRIMINATION AND THE GRIEVOR'S MEDICAL CONDITION:

I must now consider what bearing, if any, the Grievor's medical condition may have had on the Employer's decision to terminate, and in particular whether there is any discrimination involved, since the grievance might be read to claim that "Mr. Chaisson (*sic*) was discriminated against" based on that medical condition. The grievance claims that the Grievor "was discriminated against as per Article 4.01 and the Employer breached other articles of the Collective Agreement." I note that Article 4.01

"Employer Shall Not Discriminate" provides that:

a) The employer agrees that there shall be no discrimination, interference, restriction, or coercion exercised or practised with respect to any employee in the matter of hiring, wage rates, training, up-grading, promotion, transfer, layoff, recall, discipline, classification, discharge or otherwise by reason of age, race, creed, colour, national origin, political or religious affiliation, gender or marital status, sexual orientation, place of residence, nor by reason of his membership or activity in the Union, nor any other reason.

b) Discrimination means differential treatment of groups or individuals resulting from a distinction, preference, restriction or exclusion that is based on one of the prohibited grounds listed in 4:01(a).

The Employer claimed it had not been informed of the Grievor's medical condition, and that the termination was free of discrimination since the decision was taken for legitimate business reasons to ensure the efficient operation of the workforce and was not based on any of the grounds specified as prohibited in Article 4.01(a). I note that Article 4.01(a) is somewhat unusual in the wording there used to specify the grounds on which "discrimination" is prohibited. The list of prohibited includes "... nor any other reason" as its final phrase, and the Article immediately goes on to provide at 4.01(a) that: "Discrimination means differential treatment of groups or individuals resulting from a distinction, preference, restriction or exclusion that is based on one of the prohibited grounds listed in 4:01(a)"

This appears to extend the prohibition against discrimination so that it bars all "differential treatment of groups or individuals" for "any ... reason". Nonetheless, I recognise that seniority, for example, is clearly recognised elsewhere in the Agreement (Article 14) as an accepted reason for what is obviously "differential treatment of groups or individuals". Despite the unusual generality of Article 4.01(a), "discrimination" on the basis of seniority is clearly one example of an "other reason" that is not prohibited as one sort of "differential treatment of groups or individuals" in this Agreement.

"Discrimination" also refers more generally to violation of the principle that "similar cases must receive similar treatment... a universal precept of fairness and justice that has always been recognized in arbitration law" (Brown and Beatty *Canadian Labour Arbitration* (4th ed.) at para 7:4414). In this context I note that Article 2.01 "Management Rights" provides that:

The Union recognizes and agrees that the Employer has the right to operate and manage its assets and business and direct the working forces subject to the terms of this agreement. The Employer shall not exercise its rights in an arbitrary or discriminatory manner.

As the evidence and argument made clear, the grievance's reference was to discrimination of the latter, more general, sort as represented, for instance, in Mr. Webber's testimony that he was aware of Mr. Corcoran having received a letter of reprimand while the Grievor was terminated for what might be regarded as comparable matters. I also note the Grievor's unanswered testimony that at least some of what he found stressful was a result of administrative actions that related to his former activities in Union leadership, a specific ground referenced in the context of discrimination in Article 4.01(a).

Thus, I do not interpret the claim that the Grievor was "discriminated against" to be a reference exclusively limited to his medical condition or to a liability the Employer might face in failing to make an accommodation for a medical condition of which, on Mr. Durno's testimony, it had not been made aware, and for which, on the Grievor's testimony, no request had been made.

I am aware that in the period from the end of September 2006 up to termination, the Grievor was actively considering, if not actually planning, to seek employment with Voisey Bay. I am also aware that Dr. Rashleigh suggested that, while the Grievor would likely have understood the October 5th and later letters, his grasp of consequences could have been reduced to the ongoing illness. I also note that the Doctor said he would have issued a further medical note had the circumstances not changed. I am persuaded, on the basis of the testimony taken together, that the Grievor's capacity to make career decisions was at least somewhat diminished and his unresponsive behaviour toward the Employer's communications was, in some measure, due to the illness. The evidence is clear and persuasive that, at all times relevant to the issues under consideration, the Grievor suffered from a diagnosed Depression, and was prescribed elevated levels of medication during and after the series of tragedies that beset his family and himself.

I also note that the Grievor testified he had informed Mr. Durno of his depression on several occasions *before*, but *not* after, February 2006. I also note, as mentioned above, that Mr. Durno, and

others, testified they were not told of the Grievor's condition. I do not find the apparent conflict on this point surprising, nor do I find that it raises a credibility issue. As testimony provided by some witnesses in the instant matter shows, "depression" and "depressed" are lay terms often used to refer to moods, attitudes, or feelings that can easily be confused with a condition, such as in the Grievor's case, that requires medication or other professional treatment. I note that the Grievor testified he had not instructed his Doctor to explain his medical condition in the notes submitted to the Employer.

The evidence indicates that his Employer, and possibly some of the Grievor's fellow employees, experienced unfortunate effects that may have resulted from his medical condition. It also suggests that some administrative actions may have compounded that condition and its effects. I note that Mr. Durno is concerned about what he described as the Grievor's "lack of respect for his Employer", and that he testified "It would be difficult" if the Grievor were to return to his work with the Town.

The Grievor's Understanding of the Situation:

I am, further, aware that the Grievor has not displayed regret for the disruption the Employer has faced as a result of his actions. I am not convinced that the Grievor has as yet fully recognised that the Collective Agreement governing his employment with the Town contractually requires him to respect its terms fully, and to provide Management with information and cooperation it is due in respect of policies and procedures recognised under the Collective Agreement that the Union and the Town have agreed and/or accepted. However, having very carefully reviewed the evidence and argument presented I am persuaded, on the balance of probabilities, that the employer / employee relationship has not been fatally ruptured.

The Jurisprudence:

I note with approval the jurisprudence represented, for instance, in *Re United Carr, Division of TRW Canada Ltd. And United Automobile Workers, Local 397*, W. B. Rayner. (Ontario) November 30, 1981; *Re Canadian Freightways Ltd. and Teamsters Union, Local 31*, 59 L.A.C. (4th) 246, British Columbia, McConchie, 1996; *Canada Post Corp. and C.U.P.W. (Venossa – 626-88-03228)* 15, L.A.C (4th) 418, B. L. Adell, June 1990 and *Re Canadian Regional Airlines Ltd. and Canadian Union of Public Employees*, 72 L.A.C. (4th), 167, P.A. Smith, April 1998. I find however that the facts of the instant matter as set out in the evidence and argument are to be distinguished in important particulars from the facts of those cases, and more closely resemble the matters as disposed of, for instance, in

Bakery, Confectionery, Tobacco Workers and Grain Millers International Union Local 252 and Lucerne Foods Ltd., A Division of Canada Safeway Limited Grievor, Joginder Dhadda 157 L.A.C. (4th) 353, D. G. Tettensor, November, 2006.

CONCLUSIONS: I conclude that, as noted above, the Employer has shown just cause for discipline on the basis of the first of its grounds as set out in AD #5, (the Grievor's "failure to provide sufficient notice and explanation of your absence from work beyond September 30, 2006" as required under Article 21.08), and was entitled to include disciplinary matters relating to the April 27, 2006, written warning for failure to report absence and to the October 5, 2006 letter concerning lost seniority in its determination of discipline.

QUANTUM OF DISCIPLINE: I note that Article 13:04 "Unjust Suspension or Discharge" limits a board of arbitration in the event that a discharge is "overturned upon completion of the grievance procedure." Since I have found that Employer has shown just cause for discipline on the basis of the first of its ground set out in AD #5, I now turn to ask if the discipline imposed was appropriate.

In view of the concerns with the other grounds set out in AD #5 and with several matters on which the Employer relied in coming to its decision to terminate as set out above, and also in view of the diminished credibility of Termination Letter itself as noted above, I find that termination is excessive as a response to the Grievor's behaviour.

DECISION

Therefore, in light, of the above Considerations I find that:

The Grievance is sustained in part. The termination is replaced with a suspension covering the period from October 31, 2006 until October 17, 2008. The Grievor is reinstated in his position.

Respectfully submitted as the decision of the Arbitrator.

John A. Scott, PhD.
Arbitrator

October 17, 2008

**SUPPLEMENTARY CLARIFICATION
OF MY OCTOBER 17, 2008 DECISION**

IN A DISPUTE

between

THE TOWN OF HAPPY VALLEY-GOOSE BAY

("the Employer")

and

THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 2109

("the Union")

This clarification of whether the Grievor "during the period of suspension from October 31, 2006 until October 17, 2008... accumulated seniority" is issued at the joint request of the Parties to the dispute.

Background:

This Supplementary Clarification is continuous with the Initial Clarification I issued on December 2, 2008. It is provided following receipt of the Parties' responses to my request for additional information on "how the seniority system works at this workplace" made at the close of the initial Clarification (p. 6). The Union (December 16, 2008 and January 19, 2009) and the Employer (on January 15, 2009) have provided the requested information and I thank them for it.

The question is whether the Grievor accumulated seniority during the period of suspension (October 31, 2006 until October 17, 2008) that I ordered in my October 17, 2008 Award to replace the termination imposed on October 31, 2006. The Union joins the Employer in requesting I issue this clarification. The clarification follows.

The Union informs me that: a) In this workplace:

"Seniority is calculated by adding the number of days worked for each individual member of the bargaining unit. Bargaining unit members who work year round are credited with 260 days of work. Bargaining unit members who do not work year round are credited with the actual number of days of work during the calendar year. As of 2005 John Chaisson (*sic*) was working year round and was credited with 260 days of work for seniority purposes. ... Had Mr. Chaisson (*sic*) worked for the period... between October 31, 2006 and October 17, 2008, he would have been credited with 43 days for the remainder of 2006 and 260 days for the entirety of 2007."

The Union also informs me:

b) that if Mr. Chaisson (*sic*) is not credited with seniority for the period in question two bargaining unit members (whose names and accumulated seniority are provided) will pass Mr. Chaisson (*sic*);

and

c) that it is not possible to determine "the Employer's practice around seniority during periods of suspension" since "there has not been any practice."

The Union's position is that "The question is what result you intended as a substituted penalty."

The Employer's information, provided in its January 15 letter, does not dispute the information provided by the Union as summarised above.

The Employer's position is that "The Issue is whether during the approximately two year suspension, Mr. Chaisson (*sic*) accumulated seniority." In arguing that the Grievor is not entitled under the Collective Agreement to have the period of suspension credited for seniority, the Employer points out that Article 14.01 reads:

"Seniority is defined as the number of days worked, including Annual Leave, Travel Time, and Sick Leave and shall include service with the Employer prior to the certification or recognition of the Union. Seniority shall be used in determining preference or priority for promotion, transfer, demotion, layoffs, permanent reduction of the workforce, and recall as set out in other provisions of this agreement. Seniority shall operate on a bargaining-unit-wide basis."

The Employer concludes that:

"Put simply, the two years of suspension served by the Grievor do not constitute 'days worked'. Nor does the two years of suspension qualify as Annual Leave, Travel Time or Sick Leave. There is no ambiguity..."

Under the Collective Agreement, employees accumulate seniority for "days worked", namely days they are physically working. There are certain specific exceptions to this requirement, which are enumerated in Article 14.01, namely Annual Leave, Travel Time and Sick Leave. Suspension, a period of time when an employee is not working, is not included in any of these exceptions.

Moreover, a suspension is not analogous to any of the stated exceptions to the "days worked" requirement, all of which are consensual situations (for example when an employee is on approved annual leave, travelling for work purposes or when he or she is sick)...."

CONSIDERATIONS

While I accept that, in the absence of any available evidence of workplace practice, "The question is what result (I) intended as a substituted penalty", I am also aware that the question invites reflection on provisions of the Collective Agreement. In this regard I am aware that Article 14.04 (1) reads:

Loss of Seniority

An employee shall not lose seniority rights if he is absent from work because of sickness, accident or leave of absence approved by the Employer.

An employee shall lose his seniority in the event:

- 1) He is discharged for just cause and is not reinstated.
- 2) He resigns in writing and does not withdraw within three (3) working days.
- 3) He is absent from work without sufficient cause or without notifying the Employer, unless such notice was not reasonably possible.
- 4) He fails to return to work within seven (7) days following a layoff and after being notified by registered mail to do so, unless through sickness or other just cause. It shall be the responsibility of the employee to keep the Employer informed of his current address. An employee recalled for casual work or employment of less than one (1) months duration at a time when he is employed elsewhere shall not lose his recall rights for refusal to return to work.
- 5) He is laid off for a period longer than twelve (12) months.

The Article is specific with regard both to when an employee shall, and shall not, lose seniority.

Suspension is not among the exceptions, listed in the first part of Article 14.04, to the "number of days worked" definition of seniority. (The Union confirms that "Seniority is calculated by adding the number of days worked for each individual member ...")

I further note that, while the list of events, set out later in Article 14.04, in which an employee "shall lose his seniority" does not specifically include suspension, some of the events there specified are analogous to suspension. I conclude that the result I intended as the substituted penalty in my October 17, 2008 Award also conforms to the requirements of both Article 14.01 and Article 14.04.

The result I intended is that the Grievor not accumulate seniority during the suspension period from October 31, 2006 to October 17, 2008.

This Supplementary Clarification is respectfully provided by the Arbitrator.

John A. Scott, Ph.D.
Arbitrator

January 22, 2009