

I further find that there were sufficient mitigating factors in this case to further reduce the penalty chosen to a 1 day suspension without pay.

The Employer is directed to reimburse the grievor for all lost pay and benefits, including any relevant lost overtime or shift differential, except for a 1 day suspension without pay. I will remain seized in the event that the parties cannot agree on the issue of appropriate compensation.

Respectfully submitted as the decision of the arbitrator.

Dated at Mount Pearl, Newfoundland and Labrador, this 26th day of August, 2009.

David L. Alcock
Sole arbitrator

It would appear that he was quite willing to accept his certification despite his deficiency, and was unconcerned about correcting it afterwards until the incident of March 15th happened. In my view, it was short sighted of him to assume that there was nothing of importance in that Boiler Room practical training experience. In his case, ignorance was not bliss. His deficiency was not meaningless. It was something he had been told should be covered later, but he did nothing to make that happen. On balance, on the basis of the evidence before me, I do not agree that the Employer should bear responsibility for the grievor's lack of knowledge about pH. This gap in his training was the grievor's responsibility to correct. He simply decided it was not serious enough to seek assistance to correct it.

In my view, this type of thinking was not unlike the grievor's thinking when he dismissed the potential seriousness of the incident on March 15th as being of insufficient consequence to warrant reporting to his supervisor.

In the result, I am satisfied that the grievor's training deficiency does not mitigate in these circumstances. However, I am of the view that his long and unblemished service record constitutes a bank of good conduct sufficient to draw upon so as to reduce his 3 day suspension to a 1 day suspension without pay.

DECISION

On the basis of the evidence and the foregoing considerations, I find that the Employer did have just cause to discipline the grievor for failing to report the 10 beaume tank spill on March 15, 2008.

I further find that the seriousness of this offence was at the lower portion of the seriousness continuum for which a 2 day suspension could be considered a reasonable and appropriate starting point before consideration for mitigating and/or aggravating circumstances.

damage. Although it must still be subject to a reasonable major disciplinary response, all other considerations such as mitigating circumstances would have to factor into the final decision.

In this case, the Employer imposed a 3 shift suspension without pay for the incident, which I am convinced was too severe for an offence at the lower end of the seriousness continuum. Since Mr. Smith was a 12 hour shift worker, his penalty essentially amounted to the loss of a week's pay plus lost overtime, shift differential, etc. That would be a significant penalty to apply to even more serious infractions. All things being equal, I am satisfied that, for this type of infraction, a 2 day suspension could be considered a reasonable and appropriate starting point, before considerations for mitigating (e.g., long service, clear disciplinary record) or aggravating (e.g., an existing discipline record) factors, which potentially could reduce or increase the actual penalty chosen. I am also convinced that it would constitute a reasonable deterrent to those who would also dismiss the significance of a near miss as a reportable matter.

The evidence is that Mr. Smith has been employed since 1987 first as a tradesman and latterly as a Process Technician. He has been described as a good and valued employee who has a clear discipline record. In my view, those factors mitigate in these circumstances.

The grievor's unchallenged evidence is that his practical pH training was incomplete because a government official had signed off on his 2-3 day Boiler Room practical experience, thereby permitting him to qualify for his 4th class certificate without actually completing all of its requirements, with the assumption that he would complete that work later. I interpret the grievor's evidence that he never did that particular training later as being an excuse for his deficiency in pH matters. There is no indication that the Employer knew about this deficiency. Indeed, the Employer's position was that it was entitled to believe that the grievor had been fully trained and qualified as a 4th class Power Engineer. Therefore, I accept that the Employer could not be at fault for not scheduling post certification Boiler Room training for Mr. Smith. I have also been given no evidence that the grievor sought to have the Employer address this deficiency.

reasonable workplace rules governing minor offences. This system is both progressive and corrective.

Normally major (i.e., serious) offences can be expected to attract major penalties, the severity of which will depend on a number of circumstances. As a general premise, a progressive discipline system should not be applied to major offences. For example, there are major workplace offences serious enough to warrant discharge as the appropriate first response. If a serious offence is mandated to be treated by a progressive discipline system, discharge cannot be imposed for a first or second or third offence because the system requires the penalty prescribed by the applicable step in the progression. However, not all serious offences are of equal seriousness. In other words, there is a range of seriousness for offences from the lesser to the greater. If a particular offence is serious but not so serious as to warrant dismissal, the Employer would be free to impose another major but less severe penalty. In that way, the employee would have another chance to abide by the workplace rules. While that opportunity may be corrective in nature, it is in no way progressive.

As a matter of interpretation, I am satisfied that Articles 7.02 and 7.03 are intended to apply a progressive discipline system to minor offences. Article 7.09 clearly and unequivocally distinguishes the treatment of “serious violations or breach of Company policy or rules”. For serious offences, such as those listed in 7.09, dismissal may be the appropriate penalty. But dismissal is not necessarily the only response for all serious offences. Nowhere does 7.09 or any other language in the collective agreement specifically exclude some serious offences from the imposition of suspension without pay as an appropriate penalty. In my view, the Employer was within its rights to consider a suspension for the grievor’s offence.

On balance, I am satisfied that Mr. Smith’s offence was at the lower portion of the seriousness continuum. For example, his offence could not realistically compare with something like a deliberate or intentional act of environmental damage, or for many other incidents of actual

In Mr. Smith's case, he knew that, although a low temperature was a contributing factor to the freezing of equipment and instrumentation that day, the removal of the steam hose on the level indicator of the 10 Beume tank was the primary reason that the spill occurred. That information should have been communicated by the grievor to his supervisor immediately for it indicated a human factor that should have been investigated and assessed. In my view, removing the steam hose in that situation was akin to interfering with a piece of operating equipment installed by another employee. All factors involved in that circumstance should be evaluated.

In my view, Mr. Smith was very much aware that a potentially serious spill might have occurred in that situation. Indeed, he considered it necessary to test the 10 Beume tank fluid and to check the sump to see what might be in it. Therefore, in spite of believing that a ZERO reading indicated harmless water, his actions demonstrate that he knew the situation could have had a quite different result. In those circumstances, it was wrong for him to decide that there was nothing of significance to report to his supervisor. Since the repercussions of the incident potentially could have been quite environmentally serious, Mr. Smith's failure to report may be considered a major offence.

In the application of disciplinary systems, employers are well advised to make a determination whether an offence is minor or major because the category is one consideration in determining the appropriate level of penalty to be imposed. As a general premise, it is useful to recognize that minor offences are those which an employer is willing to live with over a period of time, say 1 year, by applying a progressive discipline system for repeated or other minor offences. The penalty typically increases at each step through verbal warnings, written warnings, and short suspensions, until the final step culminates in dismissal – not because the last offence itself was a serious infraction, but because the employee over time has demonstrated that he/she, after considerable reasonable opportunity to correct his/her conduct, has been unable to abide by

Employer was entitled to know such information so that it could consider ways of avoiding similar circumstances in future.

On the basis of the foregoing, I find that Mr. Smith's failure to report the spill, regardless of its actual consequences, was an irresponsible act for which the Employer had just cause to discipline him.

Whether the penalty imposed was just and equitable in all the circumstances

The seriousness of the offence

Once again, the offence was not the spill itself; it was the grievor's failure to report it. The question is whether his decision was a serious matter.

On balance, I am satisfied that, where safety and environmental issues are concerned, failing to report an event that features circumstances contributing to an incident that fortunately does not actually result in personal harm or environmental damage is a serious infraction because it essentially denies the Employer the opportunity to consider whether there may be ways to change relevant rules, policies or procedures to prevent more serious consequences occurring in the future. From an educational perspective, there might be a lot to learn from such incidents that possibly could prevent a serious accident or save a life or possibly prevent the suspension of operations due to a violation of environmental regulations. An employee who may find himself/herself involved in an incident that could, but does not actually cause major consequences, would be well advised not to assume that there is nothing significant to report. What is always significant in such cases is that a set of circumstances contributed to an event that potentially might have resulted in a much more serious outcome. Those circumstances deserve to be evaluated by the Employer. Failing to report effectively hides the fact that something did happen that should be considered.

his 4th class Power Engineer correspondence and practical training (which was different from Ray Barrett's who did his 4th class training at the College of the North Atlantic, where pH was fully covered). The nub of this case is whether the grievor's deficiency should be considered in determining whether the Employer had just cause to discipline him and, if so, whether it is sufficient to militate against the penalty chosen.

CONSIDERATIONS AND DECISION

Whether there was just cause to discipline

Whether one describes them as near hits, or near misses, or close calls, or some other expression of similar meaning, when an employee has been involved in a safety or environmental situation, which actually did not turn out to have serious consequences, but potentially could have resulted in a serious outcome, such employee is obliged to report it to his/her supervisor. Such an event is most definitely an incident of concern because under slightly different circumstances, the result could have been much different. The Employer is entitled to know what led to such an incident so that steps might be taken in future to avoid a recurrence. In Mr. Smith's case, he had no idea how long the tank had been overflowing and he could not determine from looking into the sump whether there was any liquid below the ice level. Those matters begged relevant explanations that could otherwise contribute to future preventive action to avoid a similar accident.

As I see it, it is quite irrelevant that Mr. Smith believed that a Zero hydrometer reading meant that only water had spilled and that water had no pH, and therefore was harmless. He clearly missed the point of the reporting requirement. Even if he had been entirely correct in his belief of how harmful water was, he was still obliged to report the incident. The fact that the incident occurred in the first place was important for the Employer to know. Indeed, the

training was not lacking in depth or understanding. Indeed, I am satisfied that he understood that any incident that could have potentially serious implications should be reported. However, there is some question about how potentially serious the grievor understood his particular spill to be.

Whether there were other factors preventing the grievor from reporting the spill

The Union raised various factors in an attempt to suggest that the grievor was prevented from reporting the spill: 1) the freezing conditions complicated a very busy shift and made it impossible to see how much fluid was in the sump 2) estimates of the distance from the “shack” to the supervisor’s office varied; 3) there was insufficient time left after he returned to the shack again at 1750 hours and wrote his log; 4) the radio channel changed when he worked on Rack 3 so that he could not receive a call from the Control Room, 5) the scaffold/chain problem was the Employer’s fault; 6) the valve on the sump was open instead of closed as it should have been – a situation caused by permitting too many keys in circulation, which has since been remedied by the Employer.

On balance, I reject the relevance of all of the foregoing. None of the above factors had anything to do with the grievor’s failure to report this incident. A quick call by radio was always an option, a telephone call could have been made from the shack on two occasions, and if those options failed, the grievor could have attempted to walk to the supervisor’s office. The fact is that he attempted none of those options because he believed it was unnecessary to do so. His evidence clearly establishes the reason that he did not report the spill was because he believed the hydrometer reading of ZERO meant that only water, not caustic, was spilled and that water itself was harmless. In other words, he did not think that the incident was serious enough to warrant reporting in the first place. Time, weather, busy conditions, radio channels, the scaffold, sump valve or keys had nothing to do with Mr. Smith not reporting the incident. His sole reason was that he believed the matter was innocuous and insignificant – all the result of a deficiency in

accepted by the Employer as an accident. The issue is squarely whether the Employer had just cause to discipline Mr. Smith in these circumstances for failing to report the spill.

The requirement for the grievor to report the spill to the Employer

The Union challenged whether the incident was serious enough to require the grievor to report it to his supervisor. After investigation by Clarence Avery, the incident was categorized as a “near hit” for a waste disposal violation and was classified under the Employer’s reporting system as Level 2. I have no reason to disagree with Mr. Avery’s assessment. As a general premise, I accept that the grievor was required to report this spill as a near miss. However, it remains to be determined whether there were any mitigating circumstances involved that would lessen the seriousness of his decision not to do so. In other words, it remains to be determined whether any mitigating factors might exist that could potentially nullify the issue of just cause to discipline in the first instance, or perhaps might be sufficient to ameliorate the severity of the penalty imposed by the Employer.

The grievor’s participation in Company training

Considerable time and effort was spent by the parties on the evidence pertaining to the grievor’s awareness of reporting requirements. The Employer’s position was that the grievor had been instructed in safety and environmental reporting during his orientation and also in mandatory and non-mandatory safety meetings, talks and other sessions. The Union cast doubt on the accuracy of the Employer’s records, challenging the grievor’s attendance at some sessions and of particular training components which the Employer insisted had been signed off by the grievor in his training booklet, which the Union claimed was an invalid document. While it appears that the Employer’s evidence on the grievor’s in-house training lacks substantiation in certain details, I am thoroughly satisfied that Mr. Smith’s Company safety and environmental

day by Mr. Smith's relief, but all the collateral evidence traced from the control room to the containment system confirmed where the spill came from. More to the point, Mr. Smith's testimony clearly establishes that the incident occurred while he was working on the 10 beaume tank and other tasks on March 15th. He readily admitted that the event happened. His explanation, however, is that the reading of ZERO he obtained with the hydrometer indicated to him that water only was spilled, and because he had never done the pH testing section of his Power Engineering course, he was unaware that water could have a high pH.

The toxicity of the spill – the seriousness of the spill

Evidence provided by the Employer establishes that the spill in question was significantly higher in pH than the grievor believed it to be. I accept the documentary and *viva voce* evidence indicating that it took 3 – 4 days of measured pumping and flushing from the Final Holding Basin to another basin to dilute the pH level sufficiently to permit discharge into the Bay. The Employer's point was that, had the grievor reported the spill immediately, the source would have been known immediately and flushing could have begun sooner or the overflow diverted. As the matter stood, there was a delay before the source was revealed to the Employer, thereby requiring greater effort and cost to reduce the pH level.

While all pH readings are sent to the government, anything over 9.5 is required to be reported. Although this particular incident came close to the maximum level, no report to government was required.

The reason for the discipline

It is abundantly clear that the Employer has not blamed the grievor for the spill itself, but rather for his failure to report it immediately to his supervisor. By all indications, the spill was

more urgent because if they did not get caustic on Rack 3, he would have gotten gas back to his area, something he would not want to happen. Once he managed to get things straightened away on Rack 3 and had explained to the technicians what had happened to their pump, he still had 20 or more pumps to check out as part of his regular work.

The grievor then went back to the “shack” where he had two more calls for pump problems. He left to fix those problems and returned about 1750 hours, at which time he sat down at the computer to write his log. At 1755 hours his relief showed up and he related to them what work had been done and what problems had been encountered on his shift, including the overflow of the 10 beaume tank. They thanked him and told him he could go home.

The next day, Sunday the 16th, his supervisor Clarence Avery asked him if he had overflowed the 10 beaume tank the day before. Mr. Smith confirmed the spill and that he had told his relief about it, but he didn't think the situation on the 15th merited mentioning to a supervisor. On Monday the 17th, Mr. Avery had an infraction report he wanted him to sign. No Union representation was present. Mr. Smith said he wanted to talk to Paul Hollett about the matter as he felt he had done nothing wrong, but Mr. Hollett was not there at the time. Mr. Avery then asked the grievor to write down what had happened. Although a somewhat unusual thing to do in such circumstances, Mr. Smith's wrote the account that is contained in PH#12.

Issues arising

The source of the spill

The Union led considerable evidence in an attempt to establish that the spill in question could have originated elsewhere in the refinery rather than from the 10 beaume tank. On balance however, the Employer's evidence is irrefutable that the 10 beaume tank overflowed on March 15th. The Employer became aware of the spill when questions were raised by the Control Technician and the supervisor was sent to investigate. The true source was indicated the next

he rigged up steam hoses on them. He managed to thaw the spent caustic line but not the fresh caustic valve – apparently maintenance was able to get that line open about 2 weeks later.

While all this was happening, Rick Benson discovered that the 50 beaume line to the Water Treatment Plant was also frozen. Unbeknownst to the grievor at that time, Mr. Benson had removed the steam hose from the level indicator on the 10 beaume tank, burned his arm and went to first aid. This caused the level indicator on the 10 beaume tank to freeze again. Therefore the Control Technician received no more readings while the tank continued to fill with water, and Mr. Smith received no call from Mr. Snow that the level had reached 12 feet. Therefore, he continued to tend to his work on Rack 3. After receiving a call from the Technicians on Rack 3 that their caustic supply was empty, he had to close another valve on the spent caustic line. To do this, he got into the compound where a 20 foot scaffold was interfering with the chain that was used to close the valve. He fixed the line-up and started the caustic pump, but had some troubles with it. He discovered that the chain got caught on the scaffolding, thereby preventing the valve from closing fully. (The scaffold had been on work order for removal a week earlier and was not removed until a week after the incident). This caused a loss of caustic to the area he wanted it to flow. As he fixed that problem, he was surprised to notice that the 10 beaume tank was overflowing, so he immediately shut the water supply off. He then used a hydrometer to test the liquid in the tank, obtaining a reading of ZERO, which meant to him that the overflow was nothing but water. He did not know how long the overflow had continued. There was only a trickle at that time. The excess water had flowed down the overflow pipe and into the accepting ditch, so he walked over to see how much was in the 4'x 4'x 6' sump, but could see nothing coming up (it was obscured by ice). At that time, he did not notice whether the valve outside the sump was closed or open. He then returned to his responsibilities on Rack 3, assisted Rick Benson briefly with closing a valve (whereupon Benson returned to First Aid with his burned arm – indeed he saw Mr. Benson for only 10 minutes or so during that shift). This work was

The Incident

The incident complained of occurred on March 15, 2008 when it was alleged that the grievor failed to report a spill from the 10 beaume caustic tank, which he had been topping off with a water hose during his shift. It is common ground that Mr. Smith was a valued employee who was particularly busy that day carrying out his outside duties to the best of his ability to keep his sections running. By all accounts, it was a particularly cold day about minus 17 degrees C, which caused the freezing of certain pieces of equipment such as pumps, valves, tank level indicators, and also caused the build-up of ice in sumps, thereby obscuring the level of effluent beneath. When the grievor attempted to test the caustic in the 10 beaume tank, he found that the sample point was too high, thereby indicating that the level of caustic was too low. The usual process would be to add water first and then pump in caustic from the 50 beaume tank. Mr. Smith discovered that the level indicator was not working (frozen), so he used a steam hose to thaw the indicator. Meanwhile he called Control Technician, Dwight Snow, in the control room asking him to watch the level on his screen until it reached the 12 foot level, at which point the grievor would add caustic. Mr. Snow advised him that he would contact him by radio on Channel 2. The grievor then watched the level rise 2 feet (approx. 30%) on the gauge), which indicated that the level was tracking normally.

At this point, the grievor got a call from the supervisor on Rack 3 who wanted to use 20 beaume caustic. At the same time, he got a call to pump 50 beaume caustic to the Water Treatment Plant. His co-worker Rick Benson took care of the latter task, while he tended to the 20 beaume tank, and also while the 10 beaume tank continued to fill with water. Mr. Smith found that the valves on the spent caustic line and the caustic line on Rack 3 were both frozen, so

employees' joint interests. In that regard, the issue of unauthorized spillage is a serious matter that is of considerable concern and one which employees would normally expect to be enforced by disciplinary sanction. I am satisfied that the grievor received and signed for his copy of the above booklet and that he recognized the extent to which the Employer stressed safety in the workplace. Although he felt that safety was stressed more than environmental issues, that the Employer did not stress the reporting of all incidents, and that the seriousness of an incident would determine whether or not he should report it, I am satisfied that he was aware that the reporting system did apply to potential environmental breaches. I am also aware that supervisor Clarence Avery provided some evidence suggesting that not all incidents are reported, the apparent point of decision depending on whether or not the incident is considered serious.

The grievor's credentials

Mr. Smith has been employed since 1988, first as a Pipefitter in maintenance, and then in 1998 he moved into the position of Process Technician. His qualification for the latter position included a certificate as 4th class Power Engineer, which he obtained by means of a one (1) year correspondence course, after which he was examined by a government official. There was a section in his course on water treatment in which the pH scale was shown and, although caustics were discussed, no specifics were mentioned. As part of that section, there was a 2-3 day period featuring Boiler Room aspects where pH measurements were taken, etc. He was assisted in his assignments and exercises by a government official. Although Mr. Smith did not do the Boiler Room part of the water treatment section, the government official said that he would sign off on that requirement for the purpose of examination and he (Smith) could complete that work later. However, he never did so, thereby leaving him with a misunderstanding between a measurement of specific gravity and a measurement of pH, which was a factor in his decision not to report the spill he was accused of on March 15, 2008.

to the *Federal Fisheries Act*, particularly to the section REGULATIONS RESPECTING DELETERIOUS SUBSTANCES IN LIQUID EFFLUENTS FROM PETROLEUM REFINERIES – SHORT TITLE: *Petroleum Refinery Liquid Effluent Regulations (C.R.C., c. 828)*, the obvious concern being the containment of hazardous substances that might prove hazardous to fish and wildlife in the waters of Placentia Bay.

The evidence is that the Employer has designed and constructed an effective containment system for its various tanks consisting of concrete compounds, dykes, ditches, sumps, pumps, catch basins and a monitoring & testing schedule to ensure that discharge into the Bay meets all accepted legislated limits. To determine pH, one would use either a digital instrument or litmus paper. The evidence is that a pH measurement of 7-14 indicates caustic. There is usually less in rain water. When necessary, acid is added to caustic and water to reduce the pH in the Final Holding Basin, for which federal law requires a range of no more than 6.0 – 9.5. Above 9.5 is not acceptable. In such a case, the Holding Basin would have to be isolated and the pH reduced before it may be released into the Bay.

Beaume is an indication of alkalinity of a caustic solution. A hydrometer measurement is used to determine the solution's specific gravity. Caustic is utilized at the refinery to clean up hydrocarbons. It is initially brought in as 50 beaume and then diluted with water and stored in 4 tanks: 50 beaume, 20 beaume, 10 beaume and spent caustic. When the level of a tank is down approximately 25%, it is usually batched up to about 80% to 90%.

General Safety Rules and Instructions for Safety, Health and Environment are incorporated into a single booklet that is given to each employee upon hiring and is explained in the orientation process. On balance, I am satisfied that the Employer's environmental protocol and controls respecting hazardous spillage is generally and widely known by operations personnel. I am further satisfied that employees are fully aware that non-compliance with the Regulations could result in the shut down of the operations, thereby jeopardizing the Employer's and the

days of his/her suspension. He/she will be further advised in the same letter that the investigation could lead to formal disciplinary action including possible suspension without pay, or discharge. A copy of this letter will be given at the same time to the President of the Union or his/her designate.

....

7.09 Serious violations or breach of Company policy or rules will be considered an offence resulting in instant suspension pending investigation, and, if proven, dismissal could be the appropriate penalty. The following offences, if demonstrated to the Union or an Arbitrator, as having been committed by an employee, dismissal is the appropriate response.

1. Removing or attempting to remove company property or treating company property as his/her own without authorization.
2. Alcohol and/or drug possession/consumption while on duty.
3. Fighting.
4. Horseplay resulting in serious injury.
5. Smoking in a non-designated smoking area.

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Delay of Award

Due to a medical condition subsequently incurred by the arbitrator, the parties agreed to the issuance of a significantly abbreviated award as the arbitrator may be able to complete by working for short periods of time. The arbitrator greatly appreciates the parties' patience in this matter.

BACKGROUND, EVIDENCE & SOME CONCLUSIONS

The Employer operates an oil refinery located at Come-By-Chance, Newfoundland, which facility lies in close proximity to the shores of Placentia Bay. The operation of the refinery is subject to a Provincial Certificate of Approval which requires the Employer to comply with terms and conditions of the *Environmental Protection Act, 2003*. Also, the operation is subject

- PH#17 Offsites Supervisor's Shift Report for C Days March 15, 2008, by G. Whelan;
Offsites Supervisor's Shift Report for B Night March 15, 2008, by Greg Veitch;
Offsites Supervisor's Shift Report for C Days March 16, 2008, by G. Whelan;
Offsites Supervisor's Shift Report for B Night March 16, 2008, by Greg Veitch;
Offsites Supervisor's Shift Report for D Days March 17, 2008, by Gerard Hefferan;
Offsites Supervisor's Shift Report for C Nights March 17, 2008, by G Whelan;
Offsites Supervisor's Shift Report for D Days March 18 2008, by Gerard Hefferan;
Offsites Supervisor's Shift Report for C Nights March 18, 2008, by G Whelan;
Offsites Supervisor's Shift Report for A Day, March 19, 2008, by Mel Clarke;
Offsites Supervisor's Shift Report for D Nights March 19, 2008, by Gerard Hefferan;
Offsites Supervisor's Shift Report for A Day March 20, 2008, by Mel Clarke;
Offsites Supervisor's Shift Report for B Day March 21, 2008, by Greg Veitch;
Offsites Supervisor's Shift Report for A Night March 21, 2008, by Mel Clarke;
Offsites Supervisor's Shift Report for B Day March 22, 2008, by Greg Veitch;
Offsites Supervisor's Shift Report for A Night March 22, 2008, by Mel Clarke;
- PH#17 North Atlantic Refining Limited Disciplinary Action March 27, 2008;
- GS#1 North Atlantic Refining Limited Full Orientation Checklist for Gary Smith

The following are the relevant collective agreement provisions:

ARTICLE 7 – DISCIPLINE & DISCHARGE PROCEDURE

- 7.01 Notice of disciplinary action, including discharge, shall be given in writing within ten (10) days of the time the Company has determined there is an infraction.
- 7.02 Disciplinary records will be retained in the employee's file for six (6) to fifteen (15) months (see Chart 7:02-A). All action will be progressive from each previous incident of a similar nature.

CHART 7.02-A

- (1) Verbal counselling 6 months
- (2) Written reprimand 12 months
- (3) Disciplinary suspension 15 months

- 7.03 Where an employee works for the total consecutive months indicated in Chart 7.02-A, with no further disciplinary measure of a similar nature imposed upon him/her, then all actions predating the last action will be deleted from his/her employment record.

....

- 7.05 In the event an employee is suspended by the Company pending investigation of his/her behaviour which could result in formal disciplinary action, such suspended employee will be advised in writing by the Company within five (5)

- agree;
- 4) that there were no other persons who would be affected by the award;
 - 5) that witnesses would be excluded on the second day of hearings;
 - 6) that the arbitrator would make every reasonable effort to complete the final award by May;
 - 7) that the audio tapes would not be considered the record of the hearing.

Appearances for the Employer

Mr. Paul Hollett, Operations Area Manager

Mr. Clarence Avery, Area A Supervisor, Team Leader

Appearances for the Union

Mr. Gary Smith, Process Technician, 4th Class Power Engineer, grievor

Mr. Ray Barrett, Process Technician, 3rd Class Power Engineer

The following evidence was admitted by consent:

- 1) collective agreement;
- 2) grievance form dated March 27, 2008.

The following evidence was submitted by witnesses:

- PH#1 (a)-(d) Pictures of caustic tank, caustic storage area, valve for sump pit;
- PH#2) Plot Plan for North Atlantic Refinery;
- PH#3) Package of Materials: Provincial Certificate of Approval for operation of petroleum refinery, May 6, 2006 plus Schedule A Regulations; Petroleum Refinery Liquid Effluent Regulations – Department of Justice Canada;
- PH#4 Orientation Booklet – North Atlantic Safety, Health, Environment General Rules and Instructions, including Crucial First Steps After an Incident;
- PH#5 Tuesday Safety Talk June 07, 2007;
- PH#6 Tuesday Safety Talk October 09, 2007;
- PH#7 Tuesday Safety Talk February 12, 2008;
- PH#8 Training Summary – Overview of training history for all employees;
- PH#9 Area A Standing Orders Revised Jan. 8th, 2008;
- PF#10 Infraction Report for Gary Smith, March 15, 2008;
- PH#11 Incident Detail Report for Incident involving Caustic Soda Spill on March 15, 2008;
- PH#12 Undated typed note by grievor explaining reason he did not advise supervisor Clarence Avery that he had overflowed the 10 Be (baume) caustic tank. Note includes list of problems encountered and the approximate times;
- PH#13 Production Area ‘A’ Shift Log for Days March 15, 2008;
- PH#14 Production Area ‘A’ Shift Log for Nights March 15, 2008;
- PH#15 Shift Team Leader Report, for Values from March 16, 2008 at 4:00 am to March 16, 2008 at 5:00 am;
- PH#16 Surface Water Rundown pH for 15/03/2008 (2 readings) and 16/03/2006 (1 reading);

In The Matter of a Dispute

between

NORTH ATLANTIC REFINING LIMITED
(hereinafter referred to as “the Employer” or “the Company”)

and

UNITED STEELWORKERS OF AMERICA, LOCAL 9316
(hereinafter referred to as “the Union”)

The Grievance

On March 27, 2008, Mr. Gary Smith, a Process Technician, filed a written grievance stating that the Employer violated Article 7 and any other pertinent articles of the collective agreement for unjustly suspending him without pay for three (3) days. The redress requested was that all discipline related to the incident be removed from the grievor’s file and he be paid for loss of pay due to the suspension.

The arbitration hearing was held at St. John’s, Newfoundland, on March 16th & 18th, 2009.

For the Union: Mr. Boyd Bussey, International Representative, *et al.*
For the Employer: Mr. Steve Penney, LL.B *et al.*
Sole Arbitrator: Mr. David Alcock

The parties agreed:

- 1) to the selection of the arbitrator;
- 2) that the arbitrator had jurisdiction to deal with the dispute;
- 3) that the arbitrator would remain seized of the matter for a period of 30 days following the date of publication of the award to deal with matters arising out of the award, including the *quantum* of compensation; if any, if the parties could not