

The Arbitration hearing convened at the Hotel North in Happy Valley-Goose Bay, Newfoundland and Labrador on July 6, 2009, continued on July 7, 2009, and concluded on July 28, 2009. At the commencement of the hearing, the parties agreed as follows:

1. That the Arbitrator was acceptable to the parties and had jurisdiction to deal with the dispute.
2. That the Arbitrator would take written notes and in the event of conflict, these notes would prevail.
3. That the grievance procedure had been properly followed or any requirements therein were waived.
4. That the Arbitrator would remain seized of the matter for a period of sixty (60) days following the date of the Award in the event that any interpretation of the Award or its effect was necessary.
5. That witnesses would be excluded from the hearing.
6. That all parties likely to be affected by the outcome of the arbitration had received adequate notice.
7. That the Collective Agreement and statutory time limits for the making of the Award would be waived.

THE EXHIBITS

The following exhibits were entered by consent:

- C1 The Collective Agreement
- C2 Grievance Form – April 25, 2008
- C2A Correspondence – Learning/O’Brien – June 23, 2009
- C3 Sexual Harassment Policy
- C4 Disability Certificate, Health Labrador Corporation

- C5 Investigator's Report re Harassment Complaint
- C6 Counselling Services Reports
- C7 Workplace Agreement – March 16, 2009
- BC1 Boyce Campbell Interview – May 1, 2008
- WN1 Correspondence – Durno/Nippard – May 28, 2008
- WN2 Correspondence – Nippard/Saunders – June 24, 2008
- WN3 Correspondence – Nippard/Mitchell – November 7, 2008
- AD1 Correspondence – Durno/Nippard – June 26, 2008
- AD2 Correspondence – Bramwell/Durno – November 26, 2008
- AD3 Correspondence – Durno/Bramwell – November 27, 2008

NATURE OF THE GRIEVANCE

This grievance alleges as follows:

On April 23, 2008, there was a violation of Art. 4.01 and other related articles of the Collective Agreement when a sexually explicit story was told in the Town garage break room about Carmel Mitchell.

We request the reinstatement of any and all benefits lost by Ms. Carmel Mitchell, including the return of any sick leave used to Ms. Mitchell's sick leave bank since the incident of April 23, 2008.

The Employer denies any violation of the Collective Agreement in the circumstances alleged.

THE EVIDENCE

Jimmy Saunders testified that on morning of April 23, 2008, he reported to work as usual in a room at the Employer's municipal depot (hereinafter the "break room"). There that morning, also reporting to work, were Wallace Nippard, Andy Eddy, Sheldon Normore, Lorne Broomfield, Jack Campbell, Scott Lyall, Jim Wiseman, and Clayton McLean. The break room has tables and an area in the far end of the building is for smokers.

The witness testified that Mr. Nippard and Mr. Eddy normally “have the floor” in the break room. Prior to work there are various conversations, including discussions about hockey and the seal hunt. That morning, around 8:00 a.m., Mr. Nippard relayed a conversation about the Grievor. He told a similar story on other occasions. The story seemed to be told whenever there were snowfalls or on paydays. Mr. Nippard would introduce the story by saying he was blaming the situation on the Grievor and Joey Broomfield and “it was Joey Broomfield’s fault sucking and licking her titties”. Joey Broomfield had had a relationship with the Grievor when the two were younger.

On this occasion, Mr. Nippard went to the front of the table and began to talk about the Grievor’s husband, who had accidentally shot himself. The witness testified that Mr. Nippard normally got excited when he told the story and used a gesture, insinuating Mr. Mitchell’s attempt to shoot himself.

The witness testified that the story was connected to snowfalls because the Grievor had made a request for snow clearing on the sidewalks entering the Town building in which she was employed. The story was also connected to paydays, as the Grievor completed the payroll every second Thursday. The only person the witness ever heard tell the story in the break room was Mr. Nippard. The witness could not recall when he first heard the story. He had overlooked it in the past but he reported it this time, as he thought this was wrong and was not setting any example.

The witness had worked at the Town since 1987. During his employment, he held three different positions, one as a heavy equipment operator, another as a firefighter and a third as a foreman part-time. He had been dismissed from his employment with the Town on October 10, 2008.

Under cross-examination, the witness stated that Mr. Nippard did not tell the story every snowfall or every payday. If he had a problem getting cheques or if there was a problem clearing the sidewalk, he might relate it.

Jimmy Saunders testified that there were nine people there the morning of April 23, 2008. Mr. Nippard had an expression, “It’s always Joey Broomfield’s fault”. So that if the Montreal Canadians lost, “It was Joey Broomfield’s fault” That morning Mr. Nippard had said exactly, “It’s Joey Broomfield’s fault he

used to be f***** Carm and sucking and licking those big titties.” The Grievor’s husband heard about the relationship and was not having it and accidentally shot himself in the rib area. Mr. Nippard questioned how that could be done accidentally.

The witness had heard Mr. Nippard relate the story in the past but never reported it. This time the witness said it was wrong and it needed to be stopped. The witness said the story was offensive. The witness had admitted that he too had repeated a story. The witness had asked Joey Broomfield about the relationship with the Grievor. On occasion Mr. Nippard encouraged him to repeat what he heard from Joey Broomfield.

The witness said on April 23, 2008, the story said then was the straw that broke the camel’s back. The witness commented on Mr. Nippard’s behaviour, which he said was getting worse. His primary concern was that the Grievor was getting maligned and Mr. Nippard had been doing it for years. He believed that most employees had heard the story at least one time or another in the break room. The witness never reported Mr. Nippard to the Town Manager. However, the witness reported what was said to the Grievor.

The witness went to see the Grievor the next day, April 24, 2008. When he went there the Grievor appeared to be distraught about something. The witness encouraged her to hear the story and he told her. He said it was a nasty story and 99% of what was said he related. The witness mentioned “licking and sucking”, the word “dick” did not come up. His only objective in telling the Grievor was to give her a chance to do something about it. He thought the story was inappropriate. He told the Grievor that the story had been told more than one time. He testified that he had heard the story at least twelve (12) times. The witness also came clean himself and apologized to her for his involvement in telling a story about her. The Grievor did not ask that he be removed from his position with the Employer.

The witness also testified that after these events he had a conversation with Mr. Nippard at the landfill site where he was working. He said Mr. Nippard pointed at him and climbed up the side of his bulldozer and asked “what that f***** truck was doing over there”. This was an employer truck which the witness was driving. The witness testified that both he and the Grievor had been threatened by Mr. Nippard. Following that incident, the witness went to the police and told the police that Mr. Nippard had threatened to kill him. He did not call the police immediately. He did not return to work that afternoon at the landfill site for which he received a five (5) day suspension. The witness believed that people should be

protected, because Mr. Nippard was aggressive. Mr. Nippard pursued him and wrote him a letter and called his house. He looked for protection from Mr. Nippard. He and Mr. Nippard were offered a polygraph test but the witness refused. The witness did not know of any charges that were laid. Subsequently, on October 10, 2008, the witness was terminated from his employment because the RCMP said his complaint was a false complaint. A grievance has been filed in reference to that termination.

The witness admitted that he had issues with Mr. Nippard and was disciplined for failing to follow directives. He believed that Mr. Nippard was a racist and the witness had filed human rights complaints because Mr. Nippard had harassed him re LIA land claims. He testified that Mr. Nippard was a control freak.

The witness had run for the Union Executive in the past and wanted a better working environment. In his experience, things were smoother at the workplace when Mr. Nippard was away.

Gloria Michelin, a psychiatric nurse and counsellor, testified that she has a degree in nursing. She had been in nursing for more than twenty (20) years). The Grievor was her client. The witness first counselled the Grievor on June 9, 2008. At the time, the Grievor was off work on sick leave due to the stress of the events at the workplace. The witness said that the Grievor believed the April 23, 2008, incident had not being taken seriously by her employer. The Grievor wanted no contact with the man at issue, Mr. Nippard. The witness said that the impact for the Grievor was anxiety, panic, feeling insecure, loss of self-esteem, and the effect had been rather traumatic for her.

Over the course of the counselling appointments the Grievor had made progress and was doing much better in coping. The witness testified that there were no other stressors in the Grievor's life at the time. The Grievor's need for professional help was all related to her employment. The witness described the Grievor as a kind, considerate person.

Under cross-examination, the witness stated that she had a professional degree in nursing from Memorial University, having graduated in 1977, but that she was not a registered psychologist. She had no qualifications to diagnose illness and does not do so. Her clientele included those in their adolescence and beyond. There was no referral in this instance. The Grievor sought her own appointment.

The witness testified that the Grievor suffered from anxiety. The Grievor's doctor had prescribed medications to deal with anxiety. The Grievor had related to her the story as to how the Grievor's husband had shot himself when they were considerably younger after the Grievor had gone out with another man. The Grievor also believed that no action was taken to address her issues at the workplace after April 23, 2008, and she was upset with the Employer. The witness said that the Grievor felt that she could not participate in work activities because she did not want to be in the presence of Mr. Nippard. The Grievor relayed an incident to the witness whereby sometime after April 23, 2008, before the Grievor changed her office at work, she had looked up and Mr. Nippard was looking through a crack in the door. A September 2008 date was mentioned.

The Grievor did not feel like going out for lunch with the others at work. Although the Employer offered a mediator, the Grievor felt that a mediator was not useful in reference to her issues. The witness testified that the Grievor felt insecure at home and these events out of the workplace played on her mind considerably.

The Grievor testified that she worked for this Employer for 31 years in various positions. Currently, the Grievor works in payroll. The Grievor testified that prior to the events of April 23, 2008, there were some issues with Mr. Nippard. One issue pertained to the Grievor's involvement in granting time off with pay for a unionized employee. The e-mails referencing same are found in Schedule "C" of Consent 5. A further issue was when the Grievor requested that the pathway be cleared of snow in the early morning to allow access to her place of employment. The Grievor had had surgery and there were mobility issues. Mr. Nippard informed the Grievor that this would be taken care of. However, that was not always the case. The Grievor testified that Mr. Nippard appeared unhappy with her snow clearing request.

On April 24, 2008, Jimmy Saunders came into her office and relayed to her a story regarding her and Joey Broomfield, which Jimmy Saunders said had been told by Mr. Nippard. The words "tits and dick" were ringing in her ears. Then she heard Jimmy Saunders say that Mr. Nippard said her husband had gotten mad, and then she heard the gun story. She said, "Oh, my God, I have to call my husband". She also called her sister. Her sister told her to meet her at the house. Jimmy did not want his name disclosed and said, "Do you mind not saying who it is?". Jimmy named the people who were in the break room that morning on April 23, 2008. The Grievor's husband was out of town. When her husband arrived at home she was crying.

The Grievor testified that her husband called Al Durno, the Town Clerk, that afternoon and also Stan Oliver, the Deputy Mayor, who invited them to his home. Mr. Oliver wanted to know who told them. The Grievor did not divulge Mr. Saunders' name. The next day she went back to work but felt scared. She described herself as not a sexual person, but rather a wife, mother and grandmother, and all of a sudden the whole dynamic of that relationship had changed.

Town Manager Al Durno came into her office and said that he had spoken to Mr. Nippard and he may have said a few things but not that stuff. Al Durno promised to look into it. She felt that Mr. Durno never really did and she was disappointed in the result.

The Grievor was nineteen when she started work with the Employer. After April 24, 2008, she found that her job had become a nightmare and the whole dynamic had changed. Her husband was calling to see how she was doing every day but he was the one with the more stressful job and she should have been calling him. The entire home dynamic changed. She experienced pain and thought she was having a heart attack. Now she takes medication, is exercising and is eating right. Something happened thirty (30) years ago and that information got all over the town and everything changed.

Following her meeting on April 24, 2008, with Jimmy Saunders, the Grievor wrote a letter to the Town Manager. The April 28, 2008, letter stated:

On Wednesday, April 23,²⁴ 2008 Wally Nippard, Superintendent of Road Transport made degrading sexual comments regarding myself, and a former Town Employee. Wally Nippard also told his version of story regarding my Husband. This was said in front of other Town Employees.

I am requesting that you as Town Manager, Leo Abbass, Mayor and Town Council as a whole have a complete investigation into this matter immediately.

You, as Town Manager have allowed one of your Managers to defame my character, which is a form of intimidation and I am to be provided a safe and healthy workplace under the Health & Safety Regulations.

Your reply is requested within two (2) days.

The letter was copied to the Mayor, Councillors and various office managers.

On April 25, 2008, the grievance was filed. Subsequently, the Grievor was told that Mr. Nippard would be staying away from the Town Office where she worked and that he would be working out of the Depot. Mr. Nippard came back to the Town office one day and she saw him.

On May 26, 2008, the Grievor left work and went on sick leave. All the Grievor was looking for was a letter of apology. This came six (6) months later. She did not understand why Mr. Nippard was getting into a matter that happened thirty years ago. Now she sees a counsellor and had to go on sick leave. The counsellor was excellent.

The Grievor finds that she cannot be in Mr. Nippard's presence. She does not go to employee functions because Mr. Nippard may be there. She is not afraid of Mr. Nippard but feels that he is looking at her sexually because she is well-endowed. Mr. Nippard is always at the Town Office. The Grievor finds that she cannot be in his presence. Since returning to work at the Town Office she does not take a break for smoking and she works lunchtime. The incident has taken its toll.

The Grievor testified that she was embarrassed that her children and her husband had to hear something that happened thirty (30) years ago and that they were so exposed because Mr. Nippard told this story. When Jimmy Saunders told her what had happened she believed him. She had no reason not to. She did not ask Jimmy Saunders why he was giving her this information. She did not think that Jimmy Saunders had told her that the story was told on paydays or snow days.

In addition to her job in accounting, the Grievor was also the secretary of the Local Union and has been in that capacity for in excess of twenty years. Mr. Nippard had been President of the Union over the years. There was a problem when Mr. Nippard was appointed to management as a Supervisor. The Union did not like it but she had nothing to do with that.

The Grievor never provided the Investigator's report to Jimmy Saunders although he had requested it. She did not feel that it was her place to do so.

The Grievor admitted that she had a relationship thirty years ago with Joey Broomfield. However, today no one would have known of their relationship. She recalled the shooting incident which occurred in June of 1978 but she wondered why it would make a difference thirty (30) years later and why it was being brought up. She was not so much angry as devastated that this was raised and that people knew that her husband tried to kill himself.

On April 24, 2008, her husband had called Jimmy Saunders. She filed a grievance on April 25, 2008, and subsequently an investigation commenced. She knew what Jimmy Saunders had told her. When the Grievor received the Investigator's Report in June 2008 she felt that the matter had been swept under the rug.

The Grievor felt vulnerable when Mr. Nippard was around her. The Grievor experienced some fear at home when she was by herself and in the dark. But the Grievor did not believe her life was threatened by Mr. Nippard.

The Grievor knew that the Employer had written a letter on May 27, 2008, asking Mr. Nippard to stay away from the Town offices and to work out of the Town depot.

The Grievor testified that her physician was Dr. Fitzgerald. After she went on sick leave, Dr. Fitzgerald could find nothing specific following testing. She had anxiety attacks while she was on sick leave. Her anxiety attacks may have been related to her stomach pain. The Grievor developed coping strategies with the counsellor Gloria Michelin. When asked whether she took sick leave because she thought the Investigator's Report was not in her favour, she responded that she took sick leave because she did not want to see Mr. Nippard or be reminded of him. She wanted no contact with him. Now at work, payroll issues go through the Town Manager and not Mr. Nippard. In reference to her sick leave days, reference was made to Consent 4.

The Grievor came back to work in September 2008 after her doctor cleared her to return. Also her sick leave had run out and she needed a cheque. If she wanted disability she would have to qualify. She stated that Mr. Nippard had written some apology referencing the hurt to their families. Also, Jimmy

Saunders had apologized for the story he told re “f***** some sense into her”. She made no complaint against Mr. Saunders.

Boyce “Jack” Campbell testified that he has been an employee for about twenty-seven (27) years, working in various capacities, including recreation and water and sewer. Every morning he reports for work in the break room in the Town Garage. He was there April 23, 2008, and the persons there were Wally Nippard, Lorne Broomfield, Clayton McLean, Jimmy Saunders, Scott Lyall, Jim Wiseman, Andy Eddy, and Sheldon Normore. He testified that Wally Nippard and Sheldon Normore were there every morning.

The witness testified that on the morning of April 23, 2008, he heard a conversation in part and he heard laughing and he heard Carm’s name and Joey Broomfield’s name. A short while after he heard Mr. Mitchell’s name and he heard “Joe” and “Carm”. He heard someone saying they used to be boyfriend and girlfriend years ago and a gun was mentioned and a “shot”. Mr. Nippard put his arms up and took them down as if demonstrating. The witness took the gesture to mean that the gun fell down and went off or whatever.

The witness testified that in the break room in the morning there was plenty of conversation. If someone was off sick Mr. Nippard initiated a conversation, running that person down. There have been sexual conversations. Women were talked about in a sexual manner every now and then. Mr. Nippard would have been in the break room on these occasions. On April 23, 2008, he did not hear the beginning of the conversation.

Under cross-examination, the witness testified that he never heard sexually explicit comments from Mr. Nippard on the morning of April 23. The discussion was among Mr. Nippard, Clayton McLean and Lorne Broomfield. Mr. Nippard was seated when he was talking. It was not uncommon to tell stories. He had no problems with Mr. Nippard, not then or not now.

On re-direct Mr. Campbell testified that Mr. Nippard was not his supervisor and he had no interaction with him. He only saw Mr. Nippard at coffee time and in the mornings. In reference to the gun, the issue was did it fall down and go off or had Mr. Mitchell shot himself.

Keith Pye testified that he has been an employee of approximately six (6) years and currently works in the Water Treatment Plant. He usually attends the break room gathering each morning but he was 10-15 minutes late on April 23 and came in at 8:15 a.m. Previously the witness had heard the story re Joey Broomfield and Ms. Mitchell. He had heard a story in the break room close to four years ago. Then Mr. Nippard had told the story concerning the Grievor and Joey Broomfield in their younger days. It was a graphic story and you could imagine whatever was said. As the story went, the Grievor's husband heard of the relationship and then had subsequently attempted to take his life and it was self-inflicted as the story goes. There were references in the story to the Grievor's breasts and nipples, how firm they were and the expression "velvet lined pussy" was used. He had heard it all in the past.

The witness views the Grievor as a co-worker. It is a sad story to have to hear. Something about it sticks in his head. After he heard any such story he tended to look at someone in a different light. He prefers to think of it as all b.s.

The break room is full of men. Conversations in the break room are wide in spectrum and can go from hockey to "how smelly farts are". There are occasionally stories about sex. A number participate in the conversations. Occasionally there are stories about female co-workers.

The witness recalled that Jimmy Saunders had also told a story before about the Grievor which was not word for word as he had heard previously but the content was the same. When Mr. Nippard talks in the break room that talk can be of a derogatory nature about a co-worker not present in the break room. The witness testified that he does not deal with Mr. Nippard at a work level, as Sheldon Normore is his supervisor. He has no social relationship with Mr. Nippard. Mr. Nippard and Sheldon Normore are members of management in the break room.

Under cross-examination Mr. Pye testified that he made no complaint to management regarding the stories that were told in the break room. He has been Vice-President of the Union for four years and he handles grievances. This grievance could very well have his signature at the bottom. There were consultations with Donna Ryan, the Union Representative, regarding a violation of Article 4.01. Donna Ryan offered that the case could be considered sexual harassment. It was agreed in conversations with

Donna Ryan that the story was inappropriate and a sexual reference should be placed on the grievance. Ms. Ryan suggested disciplinary action against Mr. Nippard.

The witness recalled at the time that the Grievor was very upset. He did not tell the Grievor that he had heard the story previously because of this upset.

The witness agreed he had some difficulties with Mr. Nippard. On one occasion, the witness was refused the use of a shop vac and there was “a little conversation” about it. Next morning there was no problem. All went back to work and that was it.

The witness testified that since the incident, people are more mindful of what they are saying in the break room. Nevertheless, it is difficult to look at someone without thinking about what you heard. He definitely wishes that he had not heard this story. He sometimes thinks “what if it was my mother they were talking about”.

The Union called no further witnesses.

Sheldon Normore testified that he is a superintendent and works in Water and Sewer. He has worked in that capacity since October 2003. Basically, he is management and supervises staff who work in the Town’s infrastructure. His office is located in the Town Depot in which the break room is located. Each morning employees gather in the break room prior to being dispatched for their daily tasks. Many arrived starting at 7:30 in the morning.

The witness knew both the Grievor and Mr. Nippard and was present in the break room on April 23, 2008. Those there were Wally Nippard, Boyce Campbell, Lorne Broomfield, Jimmy Saunders, Jim Wiseman, Scott Lyall, and Andy Eddy. He had no recollection where everyone was seated but there were a few tables of employees. He recalled that there was basically regular chat that morning. Mr. Nippard told a story about Carm dating someone – Joey Broomfield – there were bits of laughter going on and the regular language, however, no sexual language. He had heard “ramblings” of the story before.

On cross-examination he could not remember from whom he had heard the “ramblings” previously but he had heard about Mr. Mitchell shooting himself before. He had no idea how Mr. Mitchell shot himself. It did not mean anything to him and he did not read anything more into it.

The witness testified that the regular chat included talk of hunting, hockey games and the like. There were never sexual stories told. Maybe if a nice looking woman was walking down the road, someone might comment and say “she got a great bod”, maybe something like that. There was no conversation about the women with whom they work, certainly nothing sexual. Hockey and hunting are the major topics. Most mornings he went to his office, had a coffee, checked his e-mail, and then sat around with the group. He never heard a sexual story about the Grievor. He considered Mr. Nippard a friend. The witness testified that from what he gathered people had heard the story before. Most long time residents would have heard it.

Clayton McLean testified that he was a road maintenance foreman and in the Union. He had been in that job for two years and prior to that for twenty-one (21) years was a heavy equipment operator. He worked out of the Town Garage, the Depot, and Mr. Nippard was his supervisor. There was no after work association with Mr. Nippard. The witness knew the Grievor and has known her for twenty-one (21) years.

The witness was in the break room on April 23, 2008. He heard a story that morning. Mr. Nippard talked of the hunting accident. He was not sure as to the details, and it was the first time he ever heard the story. He never knew that before. Mr. Mitchell got shot when he fell over and the gun went off. At the time, the Grievor was either going out with or going with Joey. He did not remember how the story came up but there was no sexual language. The witness was at one end of the table and Mr. Nippard at the other.

Under cross-examination, the witness stated what he heard. He testified that he had gotten the story mixed up as he thought it was Mr. Mitchell’s brother who was involved, but he did not say that to the investigator. He said he never heard the story before. He said the conversation in the break room in the morning is usually hockey or hunting or whatever. There was the odd comment about women walking

down the road but not about employees. He had heard jokes but nothing sexual about Town employees. They always talked about everyone, saying “this fellow does not do the job right”. That type of thing.

Lorne Broomfield testified that he has worked in Water and Sewer for six years. He has been working for this employer for nineteen (19) years. The position is a unionized position. He worked out of the Town Depot and his supervisor was Sheldon Normore. Mr. Nippard was the boss in the garage. He was not a friend and the two have no outside association. He has known the Grievor throughout his time with the town. If he needed something he would call her.

The witness was in the break room on April 23, 2008. The story he heard was about a gun mishap in the vehicle when Mr. Mitchell was going hunting. Mr. Nippard told the story. He heard the story when he went over to the sink in the break room. Mr. Nippard was talking to Scott Lyall, Boyce Campbell and Clayton McLean. Later he heard Joey Broomfield’s name and that he had dated the Grievor. Joey Broomfield was his brother. He is called “Bubba”. Subsequently, he discussed this with a co-worker because he had not known that his brother had dated the Grievor. He stated that Mr. Nippard said nothing sexual that morning.

Under cross-examination the witness testified that the April 23, 2008 break room talk was about hockey and sealing or something. He did not pay attention to what happened in the break room that early. He recalled being with the investigator but he can’t recall what he said to the investigator. He testified that he “can’t recall what he did last week”.

The witness said that the level of respect in the break room depended upon who was there in the mornings. He did not stick around after he had gotten a coffee. He had no respect for Mr. Nippard and they have had run-ins. When his grandmother died he tried to get paid time off and Mr. Nippard refused. The Union President told him to go and the Union would take care of it. His supervisor now was Mr. Sheldon Normore.

The witness testified that on April 23, 2008, Mr. Nippard was not at his table and he did not actually hear his brother’s name until later on that day when he spoke about it to another worker. At the time of the

incident which is the subject of the story, the witness would have been fourteen or fifteen and maybe not even living with his brother.

Scott Lyall testified that he has been working in the Water and Sewer Department since 1999 and prior to that in the Recreation Department. He has also worked as a labourer. He has twenty-three (23) years with this Employer. He was unionized and Sheldon Normore was his supervisor. He knew Mr. Nippard. When Sheldon Normore was not available, he went to see Mr. Nippard if something came up. He has had work related differences with Mr. Nippard. He has been a shop steward with the Union.

Mr. Lyall was in the break room on April 23, 2008. According to his best recollection, he was sitting with Boyce Campbell to his right and Jim Wiseman to his left and next to Jim there was Clayton McLean, Jimmy Saunders, Mr. Nippard, Andy Eddy, Lorne Broomfield, and Sheldon Normore.

The witness testified that this was the third time that he had heard the story. He had never heard it in any detail. That morning, one fellow there had a laugh. He was not paying attention and it was a long time ago. They were talking hockey. Mr. Nippard brought up the story. Mr. Nippard mentioned a gun shot and the witness believed he mentioned Joey and the Grievor. There were some questions about someone else having a hunting accident. There was talk about the gun sliding off the seat of Mr. Mitchell's truck. That was the first time he heard about the gun to his recollection. He did not hear anything sexually explicit. Subsequently, he had discussions with Jimmy Saunders about it. He told Jimmy Saunders he never heard anything sexual that morning.

Under cross-examination, the witness testified that Lorne Broomfield had burst out laughing that morning and that got his attention. Every time he heard the story Mr. Nippard had told it. The story did not concern him. Basically, he was having his own conversation. He guessed Mr. Nippard possibly had a problem with the Grievor and that was why he brought up the story. He never heard anything of the content, just that Joey Broomfield and the Grievor were together. He would not be surprised if Mr. Nippard would tell a sexual story generally and that he possibly would tell it in the break room.

On re-direct, Mr. Lyall stated that it was the third time that he had heard the story - that the Grievor and Joey Broomfield had gotten together. Jimmy Saunders stopped him a couple of weeks after April 23 but he told Jimmy he never heard any sexual comments. He was not at the same table as Mr. Nippard. One

day after April 23, 2008, Lorne Broomfield had asked the witness if he had a call from Mr. Mitchell. Lorne Broomfield had such a call and he told Mr. Mitchell that he had heard his name and about the gun shot.

Wallace Nippard testified that he was Superintendent of Works with the Employer, a management position. Prior to this he was a mechanic and a foreman for twenty-five (25) years in unionized positions. He worked out of the Town Depot. He had been a Union President for a number of years and a negotiator. He was on the Union Negotiating Committee from 1978 – 2003. Now he was management. As Superintendent of Works he oversaw daily operations including maintenance, road repair, ice control, and snow removal. He supervised approximately sixteen people. Seventy percent of his work was in the Depot and thirty percent out of the Town office. When he worked in the Town office, it was with accounting and accounts payable. He was on various committees and attended committee meetings. In the mornings he met with the Town Manager for briefings and information.

The witness knew the Grievor and was familiar with her work in Accounts Payable. Prior to April 23, 2008, he had contact with Accounts Payable, because every second Thursday was pay time. Normally, he passed in his time sheets to the Grievor and if there was a problem he called. If employees request annual leave or travel time there were various approvals required. Prior to April 23, 2008, he described his working relationship with the Grievor as normal and professional. They spoke with each other without hard feelings either way. While on the Union Executive when he was President and the Grievor was Secretary, the two had different opinions but seemed to work these out.

The Grievor had made several complaints about clearing snow from the sidewalk into the building but he thought the problem had been addressed. The Grievor shovelled her own path from the truck to the Town office on one occasion when there was only 2-3 inches of snow. Subsequently, she had complained to the Occupational Health and Safety Committee about snow clearing. So he commenced saying, “Boys get Carm’s snow cleared this morning”. He tried to stop mentioning “Carm’s snow” but occasionally it slipped out.

In reference to the e-mail exchange from March 2008 as found in Consent 5, the witness explained that Mr. Pye had applied for time off to travel to the coast, which required approval. The Grievor had filled out the form for Mr. Pye and requested a signature. That form was normally completed by the supervisor

who approved leave. There had been discussions re sick leave and time off and family leave. The witness had expressed concern about the way the procedure had unfolded and the appropriate avenue for approvals.

In reference to the incident of April 23, 2008, the witness had read the grievance alleging a violation of Article 4.01. He knew the grievance was based on harassment and a sexual story. The witness testified that on the morning of April 23, 2008, there were a number of topics discussed in the break room, including the seal hunt and a story about someone who accidentally shot himself. That was when the witness mentioned the hunting accident years ago. The witness mentioned the Grievor's husband. He had said that the Grievor was not married at the time. Someone asked how the accident happened and he said that Mr. Mitchell was on his way to a hunting trip when the gun fell and he accidentally shot himself. He said the Grievor was dating Joey Broomfield when Mr. Mitchell had the gun accident. There was absolutely no sexual language used. He didn't recall throwing his arms into the air. He had told the story before in previous years.

The witness testified that it was absolutely untrue that he used an expression "It's Joey Broomfield's fault". Neither did he mention "sucking and licking" or "big titties". He made no sexual comments. The accusation that he had made such comments was absolutely false. The witness and Joey Broomfield were in fact good friends and he would not speak such language about his friend's relationship. He denied making any mention of "tits, breasts, velvet-lined pussy", and stated that this was absolutely false. There were no sexual remarks. The first number of years after the hunting accident the topic had come up a lot but most of the people had moved on. It may have been the subject of break room conversation now and then when Joey Broomfield had been working there.

The witness testified that present in the break room on April 23, 2008, were Jimmy Saunders, Clayton McLean, Jim Wiseman, Jack Campbell, Scott Lyall, Lorne Broomfield, Andy Eddy, and Sheldon Normore. That was to the best of his recollection. After the grievance had been filed he received a call from Al Durno, the Town Manager. He told Mr. Durno that he did not recall the Grievor's name being mentioned in the break room. He went to Mr. Durno's office and briefly explained the situation. He was told that the Grievor alleged sexual remarks were made and said "Joey was sucking on the Grievor's tits and she's sucking on his dick". He told Mr. Durno that these comments were absolutely not true.

Mr. Durno told him that there would be a meeting with the Grievor and the witness to get this straight. The witness testified that he was dumb-founded to say the least. Later the witness was told that the Grievor would not attend any such meeting. When the witness went back to the garage he asked those there if anyone recalled him mentioning the Grievor's name. Some said that they did not recall but Scott Lyall recalled talk on April 23, 2008, regarding Mr. Mitchell's gun and Joey Broomfield and the Grievor's relationship.

The witness said he did not figure first who had told the Grievor. Mr. Durno had told the witness that the Grievor would not say who had come to her. By April 25, the following day, he figured in his own mind who this was because he narrowed it down. He thought a certain employee may have been upset with him, that person being Mr. Saunders. Subsequently, he discussed the matter with Mr. Saunders at the landfill site where Mr. Saunders was working on Saturday. He said to him "Jimmy all hell has broken. Someone told a story about Carm from the break room." Jimmy Saunders said "I don't have to talk to you about this stuff".

The witness denied ever threatening Jimmy Saunders' life. He went to the Town Dump on a Saturday morning. That was not out of the ordinary. Two Town vehicles were at the landfill site. He told Jimmy Saunders that he could not have two Town vehicles at the landfill site and gave him instructions.

Jimmy Saunders told the witness he should not speak to him but rather to his foreman. An exchange followed. He invited Jimmy Saunders to see the Town Manager, Mr. Durno. Later that day he received a call from the RCMP saying that Jimmy Saunders had sworn in a statement that the witness threatened to kill him and the Grievor. The RCMP came to his home and the witness was taken to the Police station where he signed a statement. Later he took a lie detector test. The results said that the witness was "telling the truth".

The witness wrote a letter to Jimmy Saunders on his computer. That April 29, 2008, letter reads:

Re: Allegations

Good morning Mr. Saunders

Serious allegations has (sic) being made against me by Ms. Carmel Mitchell based on the information you reported to her regarding what I said about her on Wednesday April 23, 2008 in the coffee room at the town garage.

I have being (sic) accused of saying, “years ago Carmel started dating Joey and he was sucking on her tits and she was sucking on his cock and Wally Mitchell found out about it, that’s when he accidentally shot himself“.

I don’t recall saying any such thing on Wednesday morning or ever. If you though (sic) you heard me say that you should be man enough to come to my office behind closed doors and tell me so. If that is not what you heard or reported to Carmel, you should tell me that also.

The only thing I can recall being said of a sexual matter regarding Carmel’s and Joey’s dating is the story you have told on several occasions, prior to Wednesday morning, that many employees remember you telling, is the one where the punch line is “Jimmy, she’s so ignorant, I couldn’t even fuck any manners into her“.

I don’t know if Carmel is aware of that story but I sure it will come up during the investigation that will be done by a law firm from St. John’s.

I await your reply.

The witness stated he gave Jimmy Saunders the letter. The witness testified that maybe he ought not to have written the letter.

After the grievance was filed, he had one contact with the Grievor, about a week or so after April 23, 2008. After May 17, 2008, the Grievor’s duties were restricted. Council made a decision, instructing him to stay away from the Town office until things were cleared up. He disagreed with that decision, as he had done nothing wrong and viewed it as a partial suspension. Subsequently, he received correspondence from the Town Manager on May 28, 2008, which stated:

Re: Remarks at the Town Depot

This matter has placed the Town in the difficult position of trying to balance the interests of all of the parties involved in this matter. We want to keep everyone working and at the same time avoid any further conflict. We think it would be better to keep the parties separated for the short term until this matter can be investigated and dealt with. We understand how emotional a time this is for you. You have our assurance that the decisions made by the Town have not been made because of any predeterminations of guilt against you or any of the parties. We simply want to keep the peace in the best fashion that we can in the circumstances.

Because of this, we think it best that you work out of your office at the Town depot for the time being. Please stay away from the Town office until you have further instructions from the Town. We understand that you may disagree with this decision, but it is with the best of intentions that it is made.

We trust that you will respect our decision in this regard.

The correspondence was signed by Mr. Durno, the Town Manager.

In late May / early June the witness received a summary of the Investigator's Report. The witness felt that was the end of everything but to conclude the matter he wrote a letter on June 24, 2008, to Jimmy Saunders:

On April 29, 2008, I wrote you a letter regarding the alleged sexual harassment charge against me by Ms Carmel Mitchell. The only intent of the letter was to try to reveal (sic) the truth, nothing more.

In the investigation into this matter, conducted by Mr. Steve Penney a lawyer with Stewart McKelvey, Mr. Penny concluded that my actions in writing you the letter while the matter was under investigation, was (sic) inappropriate, for that I apologize.

Subsequently, there was talk of mediation to which he agreed. The Workplace Agreement was the result. The purpose of the workplace agreement was to limit contact and to give the Grievor some time to lapse between the incident and a return to her regular duties in the workplace. The Workplace Agreement was in effect for four months. The Workplace Agreement dated March 16, 2009, stated:

We, the undersigned, agree to the following:

- 1) To conduct ourselves in a professional manner at all times.**
- 2) To interact in a polite and courteous manner when required by our work duties.**
- 3) If we meet in a hallway or other work site in passing, we agree not to communicate with each other.**
- 4) We agree to complete work activities by e-mail as much as possible and to minimize contact as much as possible, recognizing that there may be some unavoidable instances where phone contact must be done in order to do work properly.**
- 5) During the time Ms. Mitchell is working in a back office, Mr. Nippard will make every effort to submit time sheets without any face to face contact with Ms. Mitchell.**

- 6) **This agreement will be in effect for a 4 month period, to be extended upon the agreement of both parties.**
- 7) **Copy to Al Durno and Dawn Learning.**

This agreement was signed by Mr. Nippard, the Grievor and Mayor Leo Abbass.

On expiry of the Workplace Agreement the witness sent e-mails explaining that the Workplace Agreement was expired so everyone should go back to regular duties. He had not talked to the Grievor on the telephone since April 23. He copied her with e-mails and nothing more.

In discussions with the Town Manager, Mr. Durno, the Union requested a letter. The result was Mr. Nippard's letter of apology dated November 7, 2008, which stated in part:

Mrs. Mitchell

You and I have been co-workers for thirty plus years. I believe we have always been honest with each other.

On April 23, 2008, in the coffee room at the Town Depot, I took part in a conversation concerning an incident in your past involving you. I realize and understand that you hearing about that conversation would be very painful and hurtful to you. My taking part in such a conversation was very insensitive on my part and I apologize for doing so.

The contents of that conversation as told to you by Mr. Jim Saunders was (sic) exaggerated. I can assure you and I will swear before you and God that in the conversation in the coffee room on April 23, 2008 or at any time I did not make any sexual degrading remarks about you, or your husband. Also, on May 17, 2008 nor at any time did I say I was going to kill you or Mr. Saunders.

This incident has been very stressful on both of us and both our families. I would like to put this matter behind us. I suggest that in the best interest of all concerned and an effort to move forward, we meet with the Union and our Employer and try to work together to put this incident behind us.

Again, taking part in that conversation on April 23, 2008 involving you was very insensitive on my part and I apologize for doing so and assure you that I will never take part in such a conversation again.

The letter was signed by Wallace Nippard, Superintendent of Works R/T, Town of Happy Valley-Goose Bay. The letter was copied to the Town Manager, the National Representative for CUPE and the mediator. The witness testified that he could not apologize for sexual comments which he did not make. The story he had told was not said to be hurtful.

Under cross-examination, the witness stated that he is on various committees, including the Municipal Services Committee. He normally came to work at 7:30 a.m. He admitted that referring to the snow in front of the Town offices as “Carm’s snow” was not professional. He had refrained from using the term but sometimes it slipped out. The only complaint about the snow had come from the Grievor. He testified that other employees have experienced the same snow over the years but the Grievor had been the only one to complain. In reference to the various e-mails pertaining to time sheets, his point had been that if changes were to be made he would have liked to see these beforehand.

In reference to the April 23, 2008, story, he stated that he did not insinuate the gun incident was not an accident. He did not leave the impression it was attempted suicide. He had been friends with Joey Broomfield, although he had not seen him in two years. If he knew the April 23, 2008, conversation was to be repeated to the Grievor he would not have said it. After the incident he attended a workshop which dealt with the Employer’s harassment policy. He had been named in the policy as someone to be approached if an employee had a complaint.

Now, after all of this, he still goes to the break room in the mornings, but not so much. He avoids the scene as such. He realized that his comments were hurtful to the Grievor. He testified that he did not see the Grievor during mediation. He requested that but was denied the same. He admitted that he had told sexual jokes in the past. He admitted to whistling at women and making comments but not about employees. He stated that he routinely went to the dump on Saturday mornings as part of his job. The morning he went to see Jimmy Saunders he had a call. There was a problem with one of the sweepers. He went to the dump after he went to the Depot.

Al Durno testified that he has worked with the Town for thirty-one (31) years, with twenty-eight (28) as Town Manager. He reported to Council and carried out policies created by Council. He worked out of the Town office on Hamilton River Road. Other employees worked at that office, including the Grievor,

with whom he has a good working relationship. He also has a good working relationship with Mr. Nippard. Mr. Nippard was President of the Union and Mechanical Foreman before joining management. They had differences when he was President of the Union. His relationship with Mr. Nippard was related to work. They were not social friends.

The Town's sexual harassment policy had been in place at least since 2005 and maybe before that. There was no previous complaint under the policy and certainly no grievance under the policy.

On April 25, 2008, he became aware of this grievance. The Grievor and her husband had informed him of the alleged comments coming from Mr. Nippard. He was told that Mr. Nippard had made sexual remarks the day before. He found out later that the comments were actually made on April 23, 2008. The Grievor told him during their meeting that Mr. Nippard made comments about what had happened in the past. The terms "sucking on tits" and "sucking on dick" were used.

He called Mr. Nippard and asked what was going on. Mr. Nippard said that he had no recollection of making sexual comments. Mr. Nippard called back later and said that he made no sexual remarks. He stated that he did relate a story about the past but nothing sexual.

The witness reported the matter to Council the same day. The Deputy Mayor was already aware of the situation because he received a call from the Grievor's husband. At the time, Mr. Nippard requested a meeting but the Grievor was too upset with him and wanted nothing to do with any such meeting.

On April 28, 2008, Mr. Durno received a letter from the Grievor which stated in part:

On Wednesday April 24,²³ 2008 Wally Nippard, Superintendent of Road Transport, made degrading sexual comments regarding myself and a former Town employee. Wally Nippard also told his version of a story regarding my husband. This was said in front of other Town employees.

I am requesting that you as Town Manager and Leo Abbass, Mayor, and Town Council as a whole have a complete investigation into this matter immediately.

You as Town Manager have allowed one of your Managers to defame my character which is a form of intimidation and I am to be provided a safe and healthy workplace under the Health & Safety Regulations.

Your reply is requested within two (2) days.

The letter was copied to CUPE's National Representative, the Mayor and Councillors and Union Representatives.

The witness received instructions from Council to commence an investigation. He wanted a complete investigation and contacted Steve Penney, a lawyer in St. John's, who was available May 1 and 2, 2008, to conduct the same. Steve Penney did interviews with all those involved in the break room. The witness sat in on the interview with Mr. Nippard. Donna Ryan, the National CUPE President sat in on some interviews.

The letter to Mr. Nippard requesting him to stay away from the office was prepared in consultation with the Employer's law firm. Mr. Nippard had been told to stay away from the Town office and he stayed away for a day. When he got the letter he stayed away as instructed.

The Investigator's Report came out June 16, 2008, and a second letter was sent to Mr. Nippard on June 26, 2008, from the Town which stated in part:

Further to Council's request that you refrain from coming to the Town Office during the investigation of events surrounding a grievance, I am pleased that you respected their request.

Now that the investigation is complete and relates that your actions do not warrant any disciplinary action, Council is rescinding their request that you refrain from coming to the Town Office.

Council will meet with you as soon as possible to discuss your concerns from your e-mail of June 26, 2008. Council also thanks you for your cooperation.

A copy of the Investigator's Report was provided to the Grievor. No in depth discussions followed after that time. The Grievor was on sick leave when the investigator's report was completed.

Following the Investigator's Report, there were discussions regarding mediation. The witness talked with local people regarding mediators and made calls to the Province to come up with a suitable mediator.

The conclusion in the Investigator's Report was that there was insufficient evidence to make findings.

Mediation was needed in any case as the Grievor was unsatisfied with the results of the investigator's report. A mediator was chosen and the mediation resulted in the Grievor's office being moved. The witness was familiar with the Workplace Agreement. He testified that the situation still needs time. The witness testified that the steps as required under the Town's harassment policy were carried out.

After April 23, 2008, there were employee harassment courses offered by the Employer. This happened in late August 2008. On November 26, 2008, he received correspondence from CUPE offering mandatory sensitivity training to all employees. That training occurred in June 2009. It is his understanding that about eighty percent of the staff attended and it lasted three hours. He stated that there are forty-five (45) employees that work with the Town.

Under cross-examination, the witness stated that Mr. Nippard called him back following his initial telephone call to Mr. Nippard on April 24, 2008. Mr. Nippard was upset and wanted to know who gave the information. The witness did not have that information. The Grievor had not told the witness who the informant was. He stated that the Grievor was too upset to meet with Mr. Nippard. He believes she was still at work at that time.

Council found out about the incident in the meeting on April 26, 2008, and by May 1, 2008, the investigation had commenced. Some elected people had been contacted by the Grievor and her husband prior to the meeting of Council on April 26, 2008. He took his direction from Council through the Mayor. The witness did not discuss the sexual harassment policy prior to his April 26, 2008, meeting with Council.

Everyone has access to the sexual harassment policy. The policy came into effect in 2005. He is unsure from where it came but it was probably copied and pasted from somewhere. He was uncertain how the policy was posted but the policy is in the safety manual and all managers have that. He assumed it would be available if an employee asked. It would also be available through a Union representative. The witness testified that he had dealt with no other grievance of this nature.

The issue for the witness was to find out what had happened. On April 24, 2008, he got a call from the Grievor's husband. He expressed his concern. The Grievor's husband stated graphic details. The Grievor's husband was upset and angry and wanted something done. The April 25, 2008, meeting lasted 15-20 minutes. On April 25, 2008, he also contacted Mr. Nippard. The witness informed the Deputy Mayor.

After the witness first spoke with Mr. Nippard on April 25, Mr. Nippard called him back. Then Mr. Nippard related the incident about the accident and the gun. He said the hunting accident was discussed but no sexual content and nothing pornographic.

There were no further witnesses.

POSITION OF THE PARTIES

The Union

The subject of the grievance relates to an incident in the Town garage on April 23, 2008, wherein comments unrelated to work and of a personal and sexual nature were made concerning the Grievor. It is the Union's contention that the Employer was responsible for these comments and that the Employer knew or ought to have known the level of conversation in the break room. In the result, the Grievor suffered significantly through gossip and sexually related statements. The Grievor was required to go on sick leave. The Union is now requesting reinstatement of these sick leave benefits.

The Grievor was hurt as a result of the conversation in the break room. The evidence is that everyone who was asked heard "something" concerning the Grievor's previous relationship with the brother of

another employee. Jimmy Saunders says that what he heard was more significant. His evidence is that laughter erupted as the Employer Supervisor, Mr. Nippard, told a humiliating story concerning the Grievor.

The Investigator's report is evidence. Also, Jimmy Saunders testified as to what he heard. Something was said which caused an eruption of laughter. The Investigator indicated that people drew their own conclusions. By his own testimony, Mr. Nippard was given to tell sex stories and there may have been comments about female members of the community walking down the street near the break room. Mr. Nippard has been working there about thirty (30) years. Mr. Nippard says that he did not like the Grievor's request to have snow removed in the early morning. He showed no sensitivity around her mobility issue. It appears that Mr. Nippard had issues with the Grievor concerning payroll and the timing of payroll.

Look to the evidence of Gloria Michelin, the Grievor's counsellor, who testified as to the effects this break room conduct had on the Grievor.

The Employer had a sexual harassment policy which came into effect in 2005 but it appears that no one knew who wrote it or where it came from. There was no training. The potential for sexual harassment prior to the incident was ignored. It is imperative pursuant to the *Health and Safety Act* that employees have a healthy workplace.

The level of conversation in the break room, in which two managers were present, was lacking. Even if the Town Manager was unaware, this does not absolve the responsibility of the Employer. The Managers were there representing the Employer.

The Union made reference to a number of cases in support of its submission, including: Manitoba and M.G.E.A. (1993) 32 L.A.C. (4th) 190 (Freedman); Prestressed Systems Inc. and L.I.U.N.A., Loc. 625 (2005) 143 L.A.C. (4th) 340 (Snow); Toronto Transit Commission and A.T.U. Re: Stina (2004) 132 L.A.C. (4th) 225 (Shime).

Mr. Nippard's comments were vexatious. The result was mental suffering to the Grievor. The comments were of a sexual nature. The Employer ignored its harassment policy and provided no training to its staff regarding the same. The Grievor should not suffer financially because of what transpired here. It is the Union's position that this grievance should be upheld and the Grievor's sick leave restored.

The Employer

The allegation is that on April 23, 2008, there were sexually explicit comments made about the Grievor in the break room. There would have to be a factual finding as to what occurred. Thus, it is necessary to find if what occurred could be considered tantamount to sexual harassment and a breach of Article 4.01 of the Collective Agreement. Already an investigator's report was completed. One employee heard a sexual comment. Other employees heard no such comments. There was no admission that such comments were made.

Sexual harassment is not admitted in these circumstances. There was no physical assault or threat made directly to the Grievor. In fact, the evidence suggests that the comments alleged were not made at all. There were no sexually specific comments. All of this has to be proven before there can be any remedy.

The jurisdiction of an arbitrator is limited to the interpretation of the Collective Agreement. The arbitrator's role is to deal with the grievance based on the April 23, 2008, incident. This is not a group or policy grievance. The facts of the day prevail. The Employer followed its policy, conducted an investigation and acted appropriately. In the result, there is no liability on the Employer.

The evidence does not support the allegation. The allegation was a story of a sexually explicit nature. That was the nature of the grievance. Even if that is the conclusion, the matter does not end because the sexual harassment is comprised of comments not made directly to the Grievor. What would be the appropriate remedy in such circumstances?

Evidence was heard from seven of nine individuals present in the break room in the morning – two individuals did not testify. These two witnesses, if they had evidence to support the Grievor's position, could have been called as witnesses but neither was.

There is conflicting evidence in any case and issues which pertain to credibility. One witness, Mr. Keith Pye, was not in the break room that morning but does say something regarding a previous time, which is offered as similar fact evidence. In assessing such evidence, care must be taken. Does the probative value of such evidence outweigh the prejudice to the Employer and to Mr. Nippard?

Mr. Nippard is alleged to have told an inappropriate story. His evidence is that the discussion pertained to a hunting accident. He had mentioned the Grievor's husband's hunting accident, which occurred some years ago. Mr. Nippard testified that someone asked concerning whether or not the Grievor was married at the time and he replied that she was dating Joey Broomfield. He related these events of the hunting accident but vehemently denied using sexual language on this or any other occasion. It is the submission of the Employer that his evidence was clear, concise and reasonable. Mr. Nippard made admissions regarding a sexual story in the past, but he says nothing occurred on April 23, 2008. He withstood cross-examination on that point.

There is certainly no lack of motive as to why Mr. Saunders provided the story to the Grievor. Mr. Saunders had not been satisfied with Mr. Nippard's management style. The Local Union was not happy with Mr. Nippard's management style.

Then there is the evidence of Boyce "Jack" Campbell who did not hear the beginning of the conversation but did hear about the accident. His testimony was consistent with Mr. Nippard's. Only Mr. Saunders heard about sex. Mr. Campbell said someone laughed but Mr. Campbell did not say what the man was laughing at or when exactly it occurred. The sequence of events as relayed by his evidence appears to indicate that the laughing had occurred unrelated to the story of the relationship. Mr. Campbell did not confirm Mr. Saunders' evidence.

Mr. Pye was not there April 23, 2008, and his evidence therefore should be afforded little weight. He did testify of a similar story in the past but offered that could have been four years ago. There was no complaint made and no investigation at the time. To suggest that his evidence could be used to suggest that Mr. Nippard told the story on April 23rd would be unduly prejudicial to Mr. Nippard. Mr. Pye did testify that was the only time he heard the story and he was in the break room every morning. Also, it is

important to review Mr. Saunders' evidence. He did not tell the Grievor the story was a regular occurrence. If so that would be on the grievance form.

Mr. Normore was present in the break room but had no recollection of hearing any story concerning the relationship between the Grievor and Mr. Broomfield. That witness heard nothing sexually explicit that morning. His evidence is consistent with that of Mr. Nippard. He heard Mr. Nippard telling a story regarding Joey Broomfield and he heard hunting elements of the story but nothing sexual that day.

Lorne Broomfield was there. He had heard of the accident but was unable to say when he had heard of the relationship. He was unsure as to which morning and he did not hear anything sexually explicit that morning. He admitted that he was not a big fan of Mr. Nippard's and he had no respect for the man.

Scott Lyall testified that he heard someone laugh. This got his attention and he recounts the story heard. The story was about Mr. Mitchell having a hunting accident and Ms. Mitchell and Joey Broomfield having a relationship. Mr. Lyall also indicated that this was the second or third time he heard these events related.

This type of allegation requires clear, cogent evidence of what was said. Does Mr. Saunders' evidence hold up? He says word for word what was said. His evidence may appear clear but maybe it is too clear. He stated that the same story is told all the time on every time it snows and every payday. His evidence as to what was said should be examined. His evidence is not consistent with other testimony.

Mr. Saunders says that the story was told often but yet it was only Mr. Pye who testified that he heard the story before. The others did not. Therefore, how could that be the case? Mr. Saunders' evidence suggests some sort of conspiracy as he testified "this happened regularly". That evidence was not confirmed by other witnesses. Mr. Saunders admits he had difficulties with Mr. Nippard's management style.

The Grievor said that she did not feel threatened by Mr. Nippard. There is no evidence of significant contact between Mr. Nippard and Ms. Mitchell to justify harassment. There is no evidence that the Grievor was working in a work environment which was intimidating.

Further, there was no direct medical evidence presented. The only evidence came from the Grievor's counsellor, whose qualifications were limited. There is no jurisdiction for an arbitrator to order sick leave reinstatement in these circumstances.

The Employer made reference to a number of cases in support of its position, including: Newfoundland (Treasury Board) v. N.A.P.E. (1993) 36 L.A.C. (4th) 236 (Browne) and Hooper v. Canadian Corps of Commissionaires (2006) CarswellNL 388.

It is the submission of the Employer that the grievance should be denied.

CONSIDERATIONS AND REASONS FOR THE DECISION

The grievance alleges sexual harassment in violation of Article 4.01 of the Collective Agreement. Article 4.01 states:

4.01 Employer Shall Not Discriminate

- (a) The employer agrees that there shall be no discrimination, interference, restriction, or coercion exercised or practiced 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 prohibitive grounds listed in 4:01(a).

Other relevant Articles include Article 12:04 which states:

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.

Brown and Beatty in Canadian Labour Arbitration, discuss sexual harassment at 7:3432:

Sexual harassment is considered an especially invidious form of assault because it is aimed at the most intimate and vulnerable parts of a person, and its victims are almost always women. It is deemed to be, and is prohibited as, a form of sex discrimination by statute. As a result employers have a legal obligation to do whatever they reasonably can to ensure that none of their personnel poisons the working environment in such a way. If an employer is found to have failed in its responsibility to create a healthy and harassment-free workplace, it may be required to discipline and/or transfer the harasser, and may be liable in damages as well.

Sexual harassment has been defined to include a wide range of misconduct, from coercive and physically threatening behaviour to innocent but inappropriate verbal remarks. Overt sexual advances, touching, peeping, viewing and/or distributing pornographic material in the workplace, as well as lewd, demeaning and other unwelcome comments are all considered to be forms of sexual harassment for which serious disciplinary sanctions may be imposed. However, a single incident of offensive conduct that is sexual in nature may not constitute an act of harassment if it is relatively trivial and innocent in intent.

The more aggressive and offensive the behaviour, the more severe the sanction is likely to be. Employees who harass others persistently over a period of time and/or show little remorse or willingness to take responsibility for their conduct are almost certain to lose their jobs. By contrast, employees who have no prior history of such misconduct, who did not intend to upset anyone and/or who offer a sincere apology, showing that they are unlikely to offend again, are generally thought to merit less severe sanctions. For milder, less aggressive acts of harassment, a failure to warn or to tell the employee to stop may be considered a mitigating factor as well.

Because the accusation is so serious, clear and cogent evidence is required to prove an allegation of sexual harassment. If it can be shown that the grievor had good reason to believe his behaviour was not unwelcome, he may be exonerated of all wrongdoing.

In this instance, the Employer adopted a Sexual Harassment Policy in 2005 (“Harassment Policy”). That Harassment Policy states in part:

The Town of Happy Valley-Goose Bay in cooperation with our employees is committed to a healthy, harassment-free work environment for all our employees. To this extent, the Town of Happy Valley-Goose Bay has developed a company wide policy intended to prevent harassment of its employees and to deal quickly and effectively with any incident that might occur.

What is Harassment?

Harassment is any unwelcome physical, visual or verbal conduct. It is against the law. Harassment may include verbal or practical jokes, insults, threats, personal comments or innuendo. It may take the form of posters, pictures or graffiti. It may involve touching, stroking, pinching or any unwelcome physical contact. Any behaviour that insults or intimidates is harassment if a reasonable person should have known that the behaviour was unwelcome.

The Newfoundland Human Rights Code protects everyone within provincial jurisdiction from harassment and other forms of discrimination on the basis of race, religion, sex (including pregnancy and sexual orientation), marital status, physical disability, mental disability, political opinion, color or ethnic, national or social origin and age (in employment only, between the ages of nineteen and sixty-five).

The Town of Happy Valley-Goose Bay will not tolerate harassment on the basis of any of those protected grounds.

Although the Employer adopted the Harassment Policy in 2005, the Employer held no seminars to promote the Harassment Policy within the workplace prior to this grievance.

The Employer's policy references the Province's Human Rights Code R.S.N.L. 1990 , c. H-14 (the "Act"). That Code defines "harass" as follows:

2(g) **"harass" means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;**

Section 12 of the Act states:

Harassment in establishment prohibited

12. A person in an establishment shall not harass another person in the establishment because of the race, religion, religious creed, sex, sexual orientation, marital status, family status, age, physical disability, mental disability, political opinion, colour or ethnic, national or social origin of that person.

Section 2(e) of the Act states:

"establishment" means a place of business or the place where an undertaking or part of an undertaking is carried on.

Section 9 of the Act prohibits discrimination in employment.

In summary, Article 4.01 of the Collective Agreement and the Province's Human Rights Code prohibit sexual discrimination in the workplace.

The standard of proof is referenced in *Brown and Beatty* at 3:2500, as follows:

The standard of proof specifies the degree of probability that must be established by the evidence, before the party who bears the burden or onus of proof is entitled to succeed. The two standards of proof most commonly utilized are the civil standard of “balance of probabilities” and the criminal standard of “beyond a reasonable doubt”. In most grievance arbitrations, however, arbitrators apply the civil standard of proof, as described in the following terms:

It must carry a reasonable degree of probability, but not so high as required in a criminal case. If the evidence is such that the tribunal can say: “we think it more probable than not”, the burden is discharged, but, if the probabilities are equal, it is not.

Although at one time there was a suggestion that in discharge cases the higher criminal standard ought to apply, this view is no longer generally accepted. Nevertheless, some arbitrators in certain discharge cases have applied a more stringent standard than “on the balance of probabilities”, or have stated that while the civil standard may apply, it will be applied in a more exacting way.

I am satisfied, based on arbitral jurisprudence, that the civil standard applies in this case. The Union has the burden to prove that, on a balance of probabilities, the Collective Agreement has been breached.

In this instance, the sexual harassment allegation stems from an April 23, 2008, sexually explicit story about the Grievor attributed to the Employer’s Superintendent Mr. Nippard. The evidence of Jimmy Saunders was that that the story told by Mr. Nippard provided graphic sexual details pertaining to the Grievor’s person and her relationship with a former employee, Joey Broomfield. The story related to events which occurred some thirty years ago. Mr. Nippard maintains that the story he told pertained to a hunting accident in which the Grievor’s husband shot himself at a time during which the Grievor was going out with Joey Broomfield. Many of those present in the break room on April 23, 2008, testified. What was said that morning, based on the evidence from these witnesses, must be assessed.

In assessing the evidence of witnesses generally, the comments of MacDowell in *United Food and Commercial Workers v. Jacmorr Manufacturing Limited* [1986] O.L.R.B. 1709, are instructive:

It suffices to say that in assessing the witnesses' evidence we have taken into account their demeanour when giving testimony, their performance under cross-examination, the clarity, consistency and

apparent quality of the recollections, the reasonableness of their version of the facts in light of contradictory evidence, their apparent ability to be objective and resist the influence of self-interest, speculation, personal opinion, or self justification when giving their evidence, and what seems most probable in all the circumstances.

Brown and Beatty at 3:5100 write:

An arbitrator has complete discretion in evaluating each piece of evidence that has been adduced and in drawing inferences therefrom, subject to the single limitation that there must be some evidence to support a finding of fact. The arbitrator must evaluate the evidence in his best judgment, and put such weight to that evidence as he deems fit. As stated by one arbitrator:

... evidence is not to be considered upon a quantitative basis but rather upon a qualitative basis. In other words, it has to be sifted, tested and scrutinized with the utmost care and after an anxious consideration of the total testimony the tribunal must make up its mind as to what parts to accept and what parts to reject.

And at 3:5110:

One of the most important aspects of deciding the sufficiency and weight of evidence is assessing the credibility of witnesses. ...

The credibility of interested witnesses particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial Judge ought to go further and say that evidence of the witness he believes in accordance with the preponderance of the probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial Judge with divine insight into the hearts and minds of the witnesses. And a Court of Appeal must be satisfied that the trial Judge's find of credibility is based not on one element only to the exclusion of others but is based on all elements by which it can be tested in the particular case.

In this instance, the Grievor did not hear directly the story attributed to Mr. Nippard. That information was provided to the Grievor by Jimmy Saunders. Jimmy Saunders' evidence was that on the morning of April 23, 2008, in the break room, Mr. Nippard relayed a story about the Grievor's relationship with Joey Broomfield some thirty (30) years ago. The story told by Mr. Nippard, according to Jimmy Saunders, was replete with sexual language and this was not the first time such a story was told. The Grievor's husband had a hunting accident around the same time that he found out about the Grievor's relationship. Mr. Mitchell survived. How that shooting occurred had been the subject of some conjecture by Mr. Nippard, according to the evidence of Jimmy Saunders. Mr. Nippard does not deny telling the story but his evidence was that the focus of the story was the hunting accident and no sexual remarks were made.

Boyce "Jack" Campbell was in the break room that April 23, 2008, morning and testified that he heard the story in part, heard laughter and heard the Grievor's name and Joey Broomfield's name mentioned. Someone said they used to be boyfriend and girlfriend years ago. A gun was mentioned and a shot. He testified that Mr. Nippard moved his arms up and down, making a gesture as if the gun fell down. Mr. Campbell's evidence was that he never heard any sexually explicit comments from Mr. Nippard on the morning of April 23. He did state that in the break room there had been sexual conversations in the past.

Keith Pye testified that he arrived late in the break room on the morning of April 23, 2008, and did not hear the conversation. However, Mr. Pye testified that close to four years ago Mr. Nippard had told a story, in the break room, concerning the Grievor and Joey Broomfield in their younger days. The witness described it as a graphic story in which sexual language was used. The Grievor's husband heard of the relationship and there was discussion as to whether or not his subsequent gun injury was self-inflicted.

Sheldon Normore testified that he was in the break room that morning and that Mr. Nippard told a story about the Grievor dating Joey Broomfield. There was laughter. He stated that there was no sexual language. He had heard "ramblings" of the story before about Mr. Mitchell being shot. He stated that there were never sexual stories told in the break room. However, if a woman was walking down the road someone might pass a comment.

Clayton McLean testified that he was in the break room on the morning of April 23, 2008, and he heard Mr. Nippard talking about the hunting accident. He was uncertain as to the details. It was the first time this witness heard the story. He heard that Mr. Mitchell had been shot when his gun went off. He heard that the Grievor was going with Joey Broomfield at the time. There was no sexual language. He thought later that he may in fact have gotten the story mixed up, that maybe it was Mr. Mitchell's brother who was involved and not Mr. Mitchell himself. He stated that there was the odd comment among employees, in the break room in the morning, if women were seen walking down the road.

Lorne Broomfield testified that he was in the break room on morning of April 23, 2008, and the story he heard was about a gun mishap in a vehicle when Mr. Mitchell was going hunting. Mr. Nippard was telling the story. Later the witness heard Joey Broomfield's name. Joey Broomfield was his brother. He heard nothing sexual that morning. He also testified that he could not recall what he did last week. Given that admission, I prefer not to ground any findings based solely on the evidence of Lorne Broomfield.

Scott Lyall testified that he was in the break room on the morning of April 23, 2008. His evidence was that Mr. Nippard brought up the story and mentioned a gun shot and Joey Broomfield and the Grievor. Then there was talk of the Grievor's husband's hunting accident in his truck. He did not hear anything sexual. Jimmy Saunders had asked Mr. Lyall subsequently if he had heard anything sexual that morning. He told Jimmy Saunders that he did not. The witness testified that it was Lorne Broomfield who had burst out laughing that morning. This was the third time the witness heard the story. Each time Mr. Nippard had told it. He never heard anything of the content, just that Joey Broomfield and the Grievor were together.

To summarize the testimony of the witnesses who were in the break room the morning of April 23, 2008,* Boyce (Jack) Campbell, Sheldon Normore, Clayton McLean, Lorne Broomfield, and Scott Lyall all testified that Mr. Nippard brought up the story that morning concerning the Grievor's husband and the hunting accident some thirty (30) years ago. The Grievor's relationship at the time with Joey Broomfield was a part of that story. The above-referenced witnesses testified that there was no sexual language contained in Mr. Nippard's story of April 23, 2008, but most heard the laughter.

* The evidence of Mr. Nippard and Jimmy Saunders will be discussed later.

Evidence, however, cannot be assessed solely upon a quantitative basis. The quality of the evidence must also be considered. In this instance, I am puzzled as to why the Grievor's name and the Grievor's relationship with Joey Broomfield would need to be mentioned in the context of describing Mr. Mitchell's hunting accident. There was no explanation given for the eruption of laughter as the story was told. I find these deficiencies in the evidence troubling.

And then there is the evidence of Mr. Nippard. On April 29, 2008, Mr. Nippard wrote a letter to Jimmy Saunders from his computer, which stated in part:

The only thing I can recall being said of a sexual matter regarding Carmel's and Joey's dating is the story you have told on several occasions, prior to Wednesday morning, that many employees remember you telling, is the one where the punch line is "Jimmy, she's so ignorant, I couldn't even fuck any manners into her".

Jimmy Saunders admitted to telling such stories in the break room. From Mr. Nippard's letter it would appear that the relationship between the Grievor and Joey Broomfield was the subject of some derision among employees. According to Mr. Nippard's letter, that story was told on "several" occasions by Jimmy Saunders prior to April 23, 2008. According to Mr. Nippard's letter, many employees remembered Mr. Saunders telling that story. There was no evidence that Mr. Nippard intervened to curtail such a story from being told. Further, there is the evidence that the Grievor's request to have snow removed from the sidewalk on a timely basis was treated with some derision by Mr. Nippard. There were references to "Carm's snow".

Mr. Nippard's evidence was that he never made sexual remarks concerning the Grievor or Joey Broomfield. However, Keith Pye testified that close to four years ago he heard Mr. Nippard describe a graphic story and sexual language concerning the Grievor and Joey Broomfield in their younger days. Keith Pye testified with confidence. He withstood the scrutiny of cross examination. I observed this witness and carefully examined his evidence. I found Keith Pye to be a credible witness. I am satisfied, based on the evidence of Keith Pye, that Mr. Nippard had described a graphic story, using sexual language, concerning the Grievor and Joey Broomfield in their younger days, some four years ago. I

accept the evidence of Keith Pye. In so doing, I reject the evidence of Mr. Nippard that he never made sexual remarks concerning the Grievor and Joey Broomfield was self-serving.

And then there is the evidence of Jimmy Saunders. Jimmy Saunders did not handle this matter very well. By meeting directly with the Grievor and telling her the story, he showed a profound lack of judgment. He could have embraced the Employer's Sexual Harassment Policy and sought assistance therein. He could have spoken directly to Mr. Durno, the Town Manager, to channel his report and seek a remedy in that manner. By going to the Grievor directly, Jimmy Saunders precluded these reasonable options. Further, he may very well have caused the Grievor and her family unnecessary grief by taking such a direct approach.

It has been suggested that in choosing to tell the story directly to the Grievor, Jimmy Saunders was not without motive. Certainly, the evidence revealed animosity between Jimmy Saunders and Mr. Nippard. For these reasons, it has been suggested that Jimmy Saunders' evidence is not reliable. However, I listened intently to the evidence of Jimmy Saunders, observed his demeanour and examined his evidence carefully. His recollection of what transpired on April 23, 2008, was clear and cogent and withstood the scrutiny of cross examination. Furthermore, after examining all of the evidence, I found Jimmy Saunders' evidence, as it related to the story told by Mr. Nippard in the break room on April 23, 2008, to be the reasonable version of what transpired.

In coming to this conclusion, I found that the evidence of Jimmy Saunders provides a probable explanation as to why there was laughter in the break room that April 23, 2008, morning when Mr. Nippard was telling the story. It also provides a probable explanation as to why Mr. Nippard made references to both the Grievor and Joey Broomfield in telling about Mr. Mitchell's hunting mishap. I find Jimmy Saunders' version as to what transpired in the break room on the morning of April 23, 2008, to be probable in all of the circumstances. I accept Jimmy Saunders' evidence as to what transpired that morning. Consequently, I find that Mr. Nippard's story told in the break room on the morning of April 23, 2008, did include sexually explicit language in describing the relationship of the Grievor and Joey Broomfield. The specifics of that language are contained in the evidence of Jimmy Saunders and need not be repeated here. In preferring the evidence of Jimmy Saunders over the testimony of Mr. Nippard as to

what transpired on April 23, 2008, I note that Mr. Nippard's evidence that he never said anything sexual about the Grievor and Joey Broomfield was contradicted by the evidence of Keith Pye, which I have also accepted. Further, after examining all of his evidence, I note the troubling contents of the letter Mr. Nippard wrote to Jimmy Saunders on April 29, 2008, as referenced above and Mr. Nippard's general derision of the Grievor, as is evident from his attitude in fulfilling a simple snow clearing request. In short, I do not find Mr. Nippard's version of the events on the morning of April 23, 2008, to be credible.

If the evidence was that April 23, 2008, was the first time the story was told by Mr. Nippard, it would not constitute harassment. But that is not the case. Keith Pye had heard the story about four years previously. Jimmy Saunders' evidence was that he may have heard the story at least twelve times. The evidence is that Scott Lyall testified that this was the third time he had heard the story, but never in any detail.

There was no evidence that such sexually explicit stories stemming from the Grievor's personal life were told about any other employees. The Grievor was singled out. The Grievor was made out to be a laughing-stock in the break room from time to time. Nearly all who testified had heard some part of the Grievor's personal history through the use of this story. From the Grievor's perspective, this was abusive and unwelcome.

In the result the Grievor's good reputation in the workplace was besmirched. The fact that the Grievor had matured into the wife, mother and grandmother she had become made no difference in the break room, where aspects of the Grievor's personal life of some thirty years ago became a prevailing story. I find that this inappropriate conduct does constitute discrimination and sexual harassment and therefore is a breach of Article 4.01 of the Collective Agreement. Ultimately, the Employer was responsible for allowing such an atmosphere to prevail in the workplace. It is all the more troubling that an Employer superintendent was the focus of so much evidence in reference to all of these events. Certainly, the Employer's objectives to create a healthy and harassment free work environment, as expressed in the Employer's Harassment Policy, were undermined.

There remains the remedy. The Grievor went on sick leave on or about May 26, 2008, and returned to work on or about September 22, 2008, after her sick leave had expired. Throughout this period the Grievor presented medical certificates from her physician indicating that the Grievor was off work for medical reasons. These medical certificates were not challenged by her employer. The evidence of Gloria Michelin, a psychiatric nurse who was the Grievor's counsellor, was that the Grievor was off work on sick leave due to what transpired in the break room on April 23, 2008. The Grievor's evidence was that she suffered from stress and anxiety in the result. She no longer was able to mingle with co-workers at functions in the workplace. The Grievor's everyday existence changed after she became aware of the events of April 23, 2008.

The Grievor is requesting that her sick leave be replenished for the period she was on sick leave from on or about May 26, 2008, to when she returned to work on or about September 22, 2008. The Employer offered no independent medical assessment to counter the evidence of Gloria Michelin or that of the Grievor herself in this regard. Based on the evidence, I am satisfied that the Grievor took sick leave due to the stresses in her life which were a direct result of what transpired in the break room on and before April 23, 2008.

The Employer was responsible for ensuring that there was no discrimination in the workplace. The Employer was responsible for ensuring that its harassment policy was followed. The Grievor has lost days in her sick leave bank because of discrimination in the workplace, in violation of Article 4.01 of the Collective Agreement. In these circumstances, the remedy sought is both appropriate and just and equitable and I so order.

Having rendered this decision, I hope the following comments may also assist the parties. It is time now for everyone involved in this episode to move on. Mr. Durno, the Town Manager, acted in an exemplary manner in attempting to deal with this most difficult situation. He caused an investigation to be undertaken in a timely manner. He facilitated mediation. He ensured that all employees were provided an opportunity for seminars on issues pertaining to sexual harassment and sensitivity in the workplace. All involved therefore have had an opportunity to learn from this episode. There is no need for any further recrimination. The workplace will become a healthier and more productive environment in the result.

DECISION

In conclusion, having carefully considered the relevant Articles of the Collective Agreement, all of the evidence and arbitral jurisprudence as it relates to this matter, I find that the grievance is allowed and the Grievor's sick leave bank is to be restored to the level it was prior to April 23, 2008, without any loss as a result of the sick leave taken after April 23, 2008, and I so order.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 30th day of September, 2009.

Dennis M. Browne, Q.C. – Arbitrator/Mediator