

that a suspension will be imposed for it, and that he may expect to be discharged for a further offence. Along with my finding above of his existing discipline record, this would advise the grievor exactly where he stands after this long line of disciplines and exactly what he must do to avoid a future occurrence. Of course, the Employer always has the right to dismiss for a single offence if it is serious enough on its own merits.

Although I have no authority to compel the Employer to adopt any particular progressive discipline system for minor offences or any corrective discipline system for major offences, I trust that the foregoing analysis of the relevant events of this case and the information I have offered on progressive discipline systems will be helpful in establishing the grievor's current disciplinary record and avoiding future difficulties in the general application of employee discipline.

Respectfully submitted as the decision of the arbitrator.

Dated at Mount Pearl, Newfoundland and Labrador, this 12th day of April, 2010.

David. L. Alcock, Sole Arbitrator

1. Letter of reprimand for the group of infractions associated with the July 16, 2009 events. The warning statement in the last paragraph is ordered to be substituted with the following revised wording:

This Letter of Reprimand will be placed on file as a matter of record as the first step in the progressive discipline system for minor offences. Any minor offence occurring next will be disciplined as a Written Warning at the second step of the progressive discipline system.

2. As the second step, the verbal warning Mr. Faulkner says he issued on October 2, 2009 for failing to advise the Employer of an aircraft delay. (*This is strictly subject to a letter describing that verbal warning as actually having been given to the grievor and recorded in his discipline file.*)

As a matter of corrective discipline for major offences:

1. The written warning for the safety infraction on December 2, 2009.
2. The letter of reprimand for the safety infraction on December 13, 2009.
3. The letter of final reprimand for the safety infraction on January 18, 2010.

Compensation

The Employer is directed to compensate the grievor for: (a) time lost on his August 9th shift, less the time it would reasonably have taken for a meeting to be held at the first opportunity on that day (since he declined to meet on July 17th, Mr. Gough should not expect to be paid for a meeting that should have taken place on his first shift after he returned from vacation); (b) if applicable for any regular shift time he may have lost on August 10th and 11th and (c) for his time involved in attending the meeting on his day off on August 20th.

I will remain seized of this matter in the event that the parties cannot agree on the amount of compensation involved.

Additional considerations

Given the Employer's persistently mild penalties for a series of safety infractions – despite its warning statements, a more severe penalty for the next similar infraction would not be justified unless and until the Employer provides the grievor with fair and sufficient warning

In the instant case, the evidence is that management made the relevant rules and policies; the grievor was aware of them; he violated them; the Employer observed him violating them; the Employer had just cause for disciplining him, and it did so. It was not a reasonable option for the Employer to ignore the grievor's violations, or to not discipline him. In light of his inclination to continue his conduct, the Employer had every justification to increase its observations. That was a perfectly logical and reasonable exercise of management authority. It was not an attempt to pick on the grievor. Simply put: if Mr. Gough had not chosen to repeatedly violate the rules and policies, the Employer would have no reason to discipline him. Essentially he held the power to cease this disciplinary process, but instead he chose to continue his violations and to blame everybody except himself for his circumstances. He has not accepted that he should be subject to discipline. In the result, he has effectively been the author of his own misfortune and now finds himself with a lengthy discipline record that jeopardizes his working future.

The only problem at this point is determining where Mr. Gough actually stands in the continuum of discipline action taken against him. The Employer's choice of consistently light penalties suggests inconsistent distinction between minor and major offences and a general misunderstanding of how progressive discipline systems work. If progressive discipline actually did apply to all the grievor's infractions, he would now be at least at the fourth step of the Employer's 5 step system and would be facing certain discharge for the next infraction. But, despite the Letter of Final Reprimand, the Employer has assured that discharge was not intended to be the next step. Effectively then, nobody knows precisely where Mr. Gough stands after all these disciplines.

Having analyzed all the evidence and information provided in these disputes, I deny the grievances and describe the grievor's existing disciplinary status this way:

As a matter of progressive discipline for minor offences:

I respectfully disagree that the evidence supports any conspiracy on the part of management to “pick on” or “get” the grievor. Each event actually did happen. None of them were contrived or fabricated by the Employer. I also reject the allegation that there were other employees who did not follow the chocking Policy but the Employer knowingly did not discipline them. There is no proof of that allegation. Indeed, the evidence actually indicates that the Shop Steward followed the Policy, but the grievor did not.

The evidence is that the Employer has disciplined the grievor at least 5 times, only 4 of them grieved and subject to this arbitration, but none of the disciplinary penalties imposed went beyond reprimands and warnings. Even if a progressive discipline system for minor offenses had applied to all of those incidents, the grievor would have been subject to suspension at the 3rd or 4th stage, and he would be facing certain dismissal at the 5th stage (according to the Employer’s evidence it has a 5 step system). But despite repeated warnings of potential dismissal for the next offence, the Employer did not attempt at any time to escalate the pressure on him to conform and to move him definitively to the precipice of his employment status. In my view, if the Employer really intended to get the grievor, it could have easily have put him perilously close to dismissal at this juncture.

It should be noted that discipline is an important function of management. Management has the responsibility of establishing reasonable rules and policies and it has the commensurate responsibility of enforcing them. In doing so, its job is to observe violations by employees and to discipline them immediately, impartially and consistently so that they will learn from the experience and abide by the rules in future. Seniority or long service does not entitle an employee to an exemption from discipline. However, that factor along with other deserving factors such as exemplary service and a clean discipline record should be properly recognized in determining an appropriate lesser penalty for a violation than might be the case with an employee without those credentials.

satisfied that a requirement for chocking vehicles outside the operations office (or on the ramp for that matter) should not be directed solely at ground crew. Management should also be held to the same requirement. As an arbitrator, however, I am without jurisdiction to discipline management for such matters. Usually in these situations, it is possible to consider a management shortcoming as a mitigating factor in determining the amount of discipline that should be imposed on a grievor. In other words, it may be used to substitute a less severe penalty. However, in the grievor's circumstances, he has never been disciplined as severely as he should have been for his safety infractions, especially for repeated safety infractions, for which, in my opinion, a reasonable response would have been a suspension. Clearly, the Employer has not significantly increased the grievor's penalties as a means of reinforcing the seriousness of safety violations and to make it abundantly clear to him that his employment status is increasingly at risk if he does not cease his conduct. Despite the warning statement at the end of the various discipline letters, the series of extremely mild penalties actually imposed by the Employer did not follow through with more severe penalties. It was beginning to seem that yet another infraction would simply result in yet another mild penalty, etc., etc. Not until the Letter of Final Reprimand (whatever that means), a notion that has not been adequately explained by the Employer, was there any indication that the grievor should be more concerned about his status. However, it is still unclear what the Employer's next step will be. And there is certainly no sense that discharge is imminent. Therefore, in light of the fact that all the penalties imposed have been mild, I find that I have been left with no meaningful allowance available to substitute a lighter penalty as a means of addressing management's chocking shortcomings.

I find that the preponderance of evidence in each individual issue in dispute supports the Employer's claim that it observed and acted upon actual workplace offences that individually and collectively constituted just cause to discipline the grievor.

In rebuttal, the Employer pointed to the fact that the issue of Mr. Faulkner not chocking his own vehicle was never raised before this arbitration. If that was the grievor's problem, he should have raised it at the time, but he did not do so. Obviously that was not the reason the grievor offered for not chocking properly. Also the Employer pointed out that the grievor signed the January 12th Safety Bulletin, which was something that happens every year. His evidence was that he knew and understood the Safety Policy and Procedures on chocking. Yet the evidence is that he repeated the same offense less than 3 hours later.

At the conclusion of the hearing, the Union took the position that the Policy was not the problem. Rather the problem was the Employer's inconsistent application of discipline on the matter, as evidenced by the fact that, for 30 years, nobody had ever been disciplined for not chocking. Mr. Gough was the only employee to be disciplined.

Finally, the Employer indicated that it has no written progressive discipline system.

Considerations

On the basis of the evidence, I am satisfied that the incidents of January 18, 2010, occurred as the Employer has described. I am not persuaded that just because the incidents took place outside the operations and maintenance buildings they should be ignored. I am satisfied that the grievor was aware that his vehicle had to be chocked in those areas. In fact he did so. But the issue was that he did the chocking improperly, and he committed the same offence twice in spite of being specifically instructed on the correct insertion by the General Manager.

Since the issue of management not chocking their own vehicles was not raised prior to this arbitration, I find that it had nothing to do with the grievor's failure to chock properly at the time. In the result, I find that little weight should now be ascribed to it as a valid excuse for the grievor ignoring his safety responsibilities. In my opinion this is an after-the-fact attempt to shift blame away from the grievor and onto the Employer. Having said that, I am

to ask any questions. Then he hung up. So Mr. Milley went to the meeting on February 15th where there was a difference of opinion whether the chocks had been put in place correctly. Mr. Milley suggested that the grievor's co-workers should be brought in, but that did not happen.

Argument

The Employer's position was that the grievor's own story was that Mr. Faulkner told him if he had to he would have him position chocks properly all day long. Yet less than 3 hours later, he inserted chocks improperly again despite having been told that there would be an audit. The Employer argued that Mr. Gough was the only employee who was not following the Safety Policy correctly. In its view, he was the only employee who was not getting the message. While it may seem that Mr. Faulkner was bugging him at that stage, under the circumstances he had no real choice except to call him on his persistent wrongdoing.

The Union argued that this incident occurred nowhere near the service area. Also management does not have to chock their vehicles on the ramp. Therefore, the Policy is worthless. The Union further alleged that management tries to trade off certain actions on condition that the grievor withdraws some of his grievances. Essentially, management insists that the grievor does what they say, not what they do. In the Union's view, despite the Employer's denial, there is a conspiracy to get the grievor. Because an arbitration was being brought against the Employer, management went outside of the operations area to find some matter that would discredit the grievor. While Mr. Faulkner chooses not to chock his own vehicle, he goes after the grievor for the same thing. In the Union's view, the Employer's issuance of the Safety Bulletin was designed to support its case at arbitration. In essence, the disciplinary action against the grievor was a senseless action and it should be removed from his record. All the Employer has done to the grievor is treat him as a schoolboy instead of the senior employee that he is.

meeting that followed, the grievor acknowledged that the photos were accurate and that the chocks on his vehicle were improperly positioned. Given the fact that the subject of chocking had been addressed recently and that the grievor understood the Policy and the January 12th Safety Bulletin, he was asked why he was not willing to respect and follow company procedures relating to safety. Mr. Gough's response was "everyone makes mistakes."

Mr. Faulkner was puzzled by the grievor's conduct, especially since he was aware of and understood the requirements of Company Safety Policy. For the second time, he expressed concern about the grievor's leadership, particularly with respect to his direction of junior staff on safety matters, compliance with Policies and Procedures, etc. Once again, he advised the grievor in writing that his lead responsibilities continue to be under review and that they would be subject to removal from his ramp attendant position should no improvement occur.

The last paragraph of the letter confirmed that he was being issued a Letter of Final Reprimand, and the usual statement was expressed that any future incidents will result in further disciplinary action up to and including termination.

Mr. Gough's response attached to his February 8th grievance indicated that there were inaccuracies in the Letter of Final Reprimand in that "the chocks were inserted correctly on the van and that he does understand and respect company policies and procedures". On February 16th Mr. Faulkner wrote Management's response to the grievance, stating: "It is my opinion based on the frequency of incidents and training and instruction provided to you that you seem to be intentionally violating company policy and procedures."

The grievor testified that he was parked in front of the operations office and he dropped the chocks in place. Mr. Faulkner then came by, booted the chocks and said "this is the way you put chocks in and if I have to I'll have you do this all day long." The grievor related how he contacted Shop Steward Max Milley to attend a meeting with him. His preference was to meet the next morning, but Mr. Faulkner said no, that the meeting was at 3:30 pm and that he was not

whose record clearly demonstrated reason for serious concern about his workplace leadership and in minimizing the potential for accident or injury.

Also concerning at this point is the grievor's demonstrative disdain for management personnel, his total unwillingness to accept any responsibility whatsoever for his workplace conduct, and his persistent inclination to blame others for his own improper actions.

I will say more later about the allegation that the Employer had not disciplined anybody for failing to chock and that the Employer singled the grievor out for discipline.

Issue No. 4: Letter of Final Reprimand for Failure to Properly Chock a Vehicle

This letter was dated January 22, 2010 for incidents that occurred on the morning of January 18, 2010, when Mr. Faulkner observed at 0845 hours that the grievor's vehicle parked at operations was improperly chocked. He came into the office where Mr. Gough was being briefed on flight activity for that day; he questioned him on the situation, and he took him out to the vehicle and physically showed him how the wheel chocks should be properly positioned. This incident occurred only days after a safety memorandum was issued on January 12th, which the grievor acknowledged he read and understood

Mr. Faulkner apparently issued the grievor a "verbal warning" at that time (for which no letter of discipline was introduced into evidence) and also expressed his frustration over Mr. Gough's continued lack of regard for Company Policy. There was no further information on the status of that verbal warning and I have no idea whether it is part of the grievor's discipline record – although one would expect that should be the case.

Later that same morning at approximately 1130 hours, Management Supervisor Mike Kennedy observed the same vehicle parked at the maintenance building with wheel chocks again improperly positioned. Since the same issue occurred less than 3 hours earlier, the Supervisor took pictures of the vehicle and the grievor was immediately made aware of the situation. In the

Argument

The Union maintained that in disciplining the grievor for another chocking incident, the Employer's intent was to build a case for itself going to arbitration. Claiming that there had been no discipline for chocking for 11 years, the Union believed that the Employer singled out the grievor for this incident, which occurred on a dark evening when he was by himself and was extremely busy. Although the Employer claimed that this matter was serious, the Union's position was that it was not important enough for Mr. Faulkner to chock the belt loader himself when he noticed there was a problem. It was also the Union's view that it was inconsistent of Mr. Faulkner to fault the grievor when he himself does not chock his own vehicle.

The Employer complained that the Union raised past issues, but objected to the Employer doing the same. The Union claimed that it never received any discipline correspondence about chocking in the past, whereas the Employer read from an incident report (never received by the Union) about the grievor having been spoken to about such matters in 2008.

Decision

On the basis of the evidence and the foregoing considerations, I find that the Employer had just cause to discipline the grievor for his failure to chock the belt loader on December 13th. I find that the safety considerations of this issue made it a serious offence and, therefore, not a minor infraction that should be dealt with by a progressive discipline system.

I further find that the penalty of "Letter of Reprimand" was on the light side of a range of just and reasonable penalties that might have been appropriate to impose in these circumstances and that the warning in the last paragraph that "any future incidents will result in further disciplinary action up to and including termination" was an appropriate warning for the grievor

after he saw him drop the chocks in place. By all indications, he did this promptly and within moments of observing the incident. In the result, I find that nothing material turns on this allegation.

On balance, I am also inclined to agree with the Employer that, rather than an attempt to correct the date of a meeting on this matter, the grievor's testimony strongly suggested that no meeting occurred. That was my distinct impression until Mr. Gough was challenged on the issue at the hearing. Despite the grievor's denial that it was his intention to play games with this matter, I am convinced that this was yet another attempt to cast dispersions on the management of the Company in order to deflect blame away from himself.

On the other hand, I note the grievor's unchallenged claim that Mr. Faulkner later attempted to convince him to overlook this chocking incident for arbitration or he would be suspended or fired. It is unfortunate that I did not hear from Mr. Faulkner on this matter because such a claim strongly suggests a threat, which would be improper, and would only exacerbate the grievor's opinion of management. I will say however that, if this exchange actually did take place, Mr. Gough did the right thing by rejecting Mr. Faulkner's comment. I suggest that such conduct should have been grieved as a separate matter immediately rather than saving it for this arbitration. I have no jurisdiction to consider this issue as a grievance. Under the circumstances, in the absence of full opportunity to hear evidence and receive submissions on this matter, I am not inclined make a ruling on the basis of what really constitutes a last minute allegation by the grievor. However, I emphasize that in the interest of attaining a reasonable working relationship between the grievor and management, such alleged conduct must be eliminated in future.

Shop Steward Max Milley also testified that Mr. Faulkner once mentioned chocking to him concerning a vehicle parked by the airport building. Mr. Milley said that he was asked if he would be attending the arbitration in March and when he said yes, Mr. Faulkner told him he would consider this vehicle incident as a verbal warning – which is the penalty he received.

why the truck was parked in the way in the first place. No satisfactory answer to that was offered at the hearing. It also begs the question why it was not necessary in those circumstances to chock the belt loader when it was initially positioned at the rear of the Boeing 767 aircraft. By Mr. Gough's own evidence, it took a negligible amount of time to drop the chocks in place after he returned from moving the water truck. Therefore, I am satisfied there was no reasonable reason for the chocking not to have been done immediately upon positioning the belt loader. In my view, it could have been done then just as quickly and effectively as it could have been done afterwards. On balance, I am convinced that the grievor ignored this task because he personally did not consider it important to address. Under the circumstances, I find this was inexcusable conduct given that 1) he had been recently disciplined for not chocking aircraft; 2) there had been a recent incident a week earlier where a belt loader had jumped its chocks and hit a plane and 3) he was aware of the Employer's chocking Policy.

Once again, the Union accused Mr. Faulkner of not chocking his own vehicle and not ensuring that chocks were placed on the belt loader. I again reiterate that management needs to demonstrate its concern for safety by leading by example when their vehicles are on or near the ramp. However, I am of the view that this excuse does not absolve the grievor from the responsibility of performing his chocking duties himself. It would be absurd for the grievor to claim that he did not immediately chock the belt loader because Mr. Faulkner had not chocked his own vehicle. Indeed the evidence reveals that this had nothing whatever to do with his own violation of the safety Policy at the time. Rather I see it as an argument advanced long after the fact for the purpose of shifting the focus of blame away from the grievor. In other words, I do not consider this claim sufficient to nullify the discipline imposed against him. As for the allegation that he did not ensure that the belt loader was chocked when he observed the situation, I am satisfied that no delay in chocking was caused by Mr. Faulkner in these circumstances. On the contrary, the evidence indicates to me that he approached Mr. Gough directly on the matter

Essentially, Mr. Gough confirmed that Mr. Faulkner actually did see the belt loader unchocked, but he insisted that the General Manager had it wrong about the reason for it. Frankly, I find it difficult to believe the grievor's testimony on this matter. The evidence is that Mr. Gough's first response was that the belt loader was chocked, and there was nothing to write about. Later his story changed, confirming that the loader was not chocked when Mr. Faulkner observed the scene. This was an admission, but not an unqualified one, because the grievor then introduced new evidence that essentially provided him with an excuse for what his General Manager had seen. Not only did he attempt to shift the blame to operational needs that suddenly required his attention, he also attempted to shift the focus of blame to management – not an unfamiliar diversion given his similar attempt for the first safety incident -- accusing Mr. Faulkner of not chocking the wheels of his own vehicle, which was parked on the finger of the ramp, but not involved in servicing of the aircraft.

While I do not disagree that management needs to demonstrate a greater example of safety concern by chocking its own vehicles on the ramp, I am satisfied that Mr. Gough's testimony on every issue raised to date in this hearing contains a familiar pattern, namely, first he claimed there was nothing to report; second, he didn't do anything wrong and 3) when pressed on the issue, he claimed that if he did do something, it was somebody else's fault; or 4) there was an excuse for it, and 5) management doesn't follow its own safety rules. Among all of the evidence introduced to this point in the hearing, there is not the slightest hint of recognition on the grievor's part that he should bear the slightest responsibility for any of the incidents, which the evidence has proven conclusively actually did happen – they were not contrived or fabricated in any way.

On balance, I do not believe the grievor's testimony why the chocks had not been put in place when Mr. Faulkner observed the scene on December 13th. In my view, if he did have to move the water truck so that it would not be in the way of the arriving flight, it begs the question

The December 13, 2009 Issue

Mr. Faulkner was on a site visit on the evening of December 13th when he observed a Boeing 767 aircraft being serviced and noticed that the baggage belt was in position at the rear of the aircraft, but the wheels of the belt loader were not chocked. The chocks were on the loader itself. He saw Mr. Gough walk over to the belt loader and drop the chocks in place and position them on the tire. In Mr. Faulkner's view, the grievor did this because he saw him there. At that point, he approached the grievor and told him that a meeting was needed to discuss the incident and to address his concerns around safety and following procedure. He then left the scene and contacted the Supervisor on duty, asking her to obtain an incident report from Mr. Gough explaining why he had not chocked the belt loader that had been positioned at the aircraft.

Mr. Gough's statement was that there was nothing to write about because the belt loader was chocked. This frustrated Mr. Faulkner who had witnessed the incident personally, so he asked the Supervisor to obtain another incident report from him. The Supervisor explained to Mr. Gough that Mr. Faulkner was very upset that he had essentially called him a liar and that he was returning to work to meet with him personally. Only after they met in the office and discussed the matter did the grievor write the report indicating "to the best of my knowledge I thought I had the conveyor belt chocked . . . in which the General Manager saw that the chocks were not inserted".

Testimony received at the hearing established another story on the grievor's part, one previously not mentioned in the discipline letter or in the grievance correspondence. He told the hearing that he had dispatched two of his crew to service another flight arriving in 5 minutes. Prior to that he had positioned the belt conveyor at the rear of the aircraft and left it briefly to move a water truck that would be in the way of the arriving aircraft. He said that, on returning, he dropped the chocks and positioned them. This was apparently what Mr. Faulkner saw on the day in question, mistakenly assuming that he did so because the General Manager had seen him.

as “verbal reprimand (or warning)” or “written reprimand (or warning)”. Such penalties often constitute the first two steps of a progressive discipline system, but they may also be independently imposed for more major offenses where all the relevant information justifies such a penalty. However, I have been given no clear indication whether or not this Employer considers the various terms to be synonymous with warnings, or whether they should be distinguished among themselves.

The second discipline letter of December 3, 2009 was titled “Safety Infraction,” but the penalty was described in the last paragraph as “*Written Warning*”. This appears to be logical because it reflects the more serious nature of the incident. It also appears to be logical that the immediately preceding discipline on October 2, 2009 for failure to notify the Employer of a delay was described as a “*verbal warning*” because it reflected the less serious (minor) nature of that particular incident. Unfortunately, the discipline letter for that incident was not admitted into evidence. Therefore, we have no way of knowing whether the “*verbal warning*” was described consistently throughout the letter. There is also no evidence whether the Employer considered both these incidents subject to the first and second steps of progressive discipline, or whether it considered that the December 3rd incident deserved a written warning on its own merits, or that penalty was chosen because the written reprimand for the July 16, 2009 offences was already on the grievor’s file.

The third issue in dispute was consistently referred to as a Letter of Reprimand throughout the January 7, 2010 discipline letter.

All the foregoing matters illustrate the difficulty in determining the true nature of the grievor’s discipline record. At all times he should be entitled to know where his employment security stands should he commit another offense. Unfortunately, as the fourth incident will indicate, his status is rendered even less clear by a “Letter of Final Reprimand”.

Continuing Difficulties Understanding the Grievor's Discipline Record

A "Letter of Reprimand" dated January 7, 2010 contains the information about the December 13th incident and also indicates that the grievor received a "Verbal Warning" on October 2, 2009 for failing to notify the Company of an aircraft delay which had been contributed to by his crew. That matter was apparently not grieved. This was the first time reference was made to a disciplinary action called a verbal warning. It appears then that, as of January 7, 2010, the Employer had imposed the following sequence of disciplinary action against the grievor: 1) a letter of reprimand; 2) a verbal warning; 3) a written warning and 4) another letter of reprimand. No explanation was offered which penalty is intended to be ranked higher or lower than another penalty. Logically it would seem that a verbal warning might be considered lower than a written warning, but I would have to guess where a letter of reprimand fits. On the one hand, the Employer has indicated surprise that a penalty as insignificant as a reprimand would be grieved by the Union. Yet on the other hand, it appears that a letter of reprimand was imposed for the second safety offence involving chocking, which followed a written warning for the first such offence. This would suggest that the Employer considered the January 7, 2010 letter of reprimand to be more severe than a written warning.

Frankly, I am somewhat at a loss to understand how the Employer views reprimands in its scheme of disciplinary actions, and I am not at all clear how to interpret its application of that penalty. To complicate matters further, the Employer uses different terms to describe "reprimand." For the first issue grieved, the discipline letter was titled "Letter of Reprimand," which was later carefully termed "*written reprimand*" in the last paragraph, and addressed in testimony as a "reprimand". I do not know if these terms mean the same thing to the Employer, or if they are intended to be different. I am aware by experience that a reprimand is generally synonymous with a warning, and can be either verbal or written, the latter considered a little more severe than the former, but the relevant letter of discipline would state the specific penalty

job, but I would ordinarily consider it fair in the circumstances that it should serve to diminish the severity of the penalty imposed. Thereafter both individuals should be expected to give the matter the serious attention it deserves. The trouble here is that the Employer has once again chosen a relatively mild penalty to address a matter with potentially severe safety implications. In my view, a light suspension without pay would not be an unreasonable response to this infraction. If that had happened, it might have been appropriate to reduce it to something like a written warning. In these circumstances, I consider the written warning penalty imposed the lightest reasonable penalty for this type of serious infraction. Therefore, I have no means of reducing the penalty further without negating the action entirely, which I am unwilling to do because that would suggest that just cause to discipline does not exist in this case. I reiterate: just cause to discipline does exist for this infraction. The only question is the extent of the penalty and I have been left with no means to address that issue in this case. Therefore, the written warning issued to the grievor is confirmed.

I also reiterate that I consider this infraction to be a major, not a minor offense. As such I consider it to be inappropriate for being dealt with by a progressive discipline system. I am satisfied that such a matter should be dealt with as a matter of corrective discipline for major offenses. In these circumstances, the grievor should be duly warned that another similar incident, or another equally serious offense, shall result in further disciplinary action up to and including discharge. The warning statement at the end of the grievor's warning letter is both sufficient and appropriate for that purpose. Should another major offense occur, the Employer would assess the appropriate penalty after considering the level of seriousness of the offense as well as all the other mitigating and/or aggravating factors affecting the grievor at that time.

No. 3 Issue: Letter of Reprimand for Violation of Safety Policy on December 13, 2009

given is that the matter was not addressed until a meeting was held the next day. This appears to cast doubt on the seriousness that Mr. Kennedy has attributed to the safety aspect of the grievor's actions. On balance, I agree with Mr. Gough that it was inconsistent for Mr. Kennedy to allow an unsafe condition to continue that he considered serious enough to discipline him for with a written warning.

Under the circumstances, Mr. Kennedy provided Mr. Gough with a convenient excuse to make the claim that his Supervisor's actions should shield him from disciplinary action on this issue. One of the fundamental principles of discipline is that an employee's conduct should be addressed promptly (immediately in this case) or the employer will run the risk of appearing to condone the infraction. The blunt prescription is: if something observed done by an employee is not serious enough to be dealt with immediately, then it is questionable why it should be considered serious enough to be dealt with later.

The evidence before me indicates that, while Mr. Kennedy may have provided the grievor with a convenient excuse he could use against his management, he did not establish a valid reason why Mr. Gough should be able to ignore the Policy. The Policy applies to everybody who is involved in servicing aircraft. Mr. Milley clearly knew that and I believe the grievor also knew it. In my view, his seizing on Mr. Kennedy's short-sightedness in failing to insist on the immediate chocking of the Military aircraft was an attempt to lay the blame for his actions anywhere but on himself. To be sure, where serious matters of safety are concerned, Mr. Kennedy needs to be as actively involved as ground crews are in ensuring that chocking of an aircraft is actually done immediately. Though he may not always in a position to be present, if he does observe a failure, his first concern should be to instruct the employee to perform the function properly and thereafter subsequently deal with disciplinary action for a major offence.

In this particular incident, Mr. Kennedy's apparent failure to ensure that the chocking was done at the time does not negate the Policy or totally excuse the grievor's failure to do his own

was led. In fact, Shop Steward Max Milley's testimony effectively contradicted this claim. He has always chocked the Military aircraft despite knowing the aircraft crews' contrary wishes because it was the Employer's Policy to do the chocking. This strongly suggests a practice of adherence to the Policy. There is no plausible reason why the grievor should choose to ignore the Policy. Where the adherence of this Safety Policy is concerned, Mr. Gough's responsibility is to his Employer, not to rely on the contrary wishes or preferences of aircraft crew, including Military aircraft crew. Bluntly put, it is not the "customer" who decides the Employer's chocking Policy. That safety matter is the sole purview of the Employer. If the "customer's" crewmembers subsequently remove the Employer's chocks, so be it; but neither Mr. Gough nor any other employee is free to participate in such removal. Their responsibility is to follow the Employer's chocking Policy in the first instance and not deviate from it unless specifically told to do so by the Employer.

In my view, it was not open for Mr. Gough to ignore the Employer's Policy. There is no evidence that he has done this before with the Employer's knowledge, but has never been disciplined. Therefore, I find that he has not been lulled into a false sense of security by the Employer's actions. His was a deliberate act in contravention of the Policy and the Employer had every right to consider it a serious matter of safety risk.

In response to the grievor's violation of Safety Policy, the Employer disciplined him with a Written Warning. On balance, I would consider that to be a light response for a deliberate safety violation, especially where the grievor attempted to excuse his actions by blaming them on aircraft crewmembers. However, while I am thoroughly satisfied that the Employer did not discriminate against the grievor in these circumstances, I note that there was no challenge to the grievor's charge that Mr. Kennedy did nothing at the time of the incident to insist upon or ensure that the chocks were put in place. He did not directly confront the grievor at the time and he did not personally place the chocks on the nose wheels himself. In fact, the evidence I have been

Considerations

I am not persuaded by the Union's claim that there is no requirement throughout the industry for aircraft wheels to be chocked by ground crews. To be accepted at arbitration, such a universal claim would require proof in the form of unequivocal *viva voce* and documentary evidence. No witnesses were called on this matter and no supporting documentation was introduced. In contrast, witnesses appearing at this arbitration have unequivocally confirmed the fact that this Employer has long had a known Policy in effect on the matter. That alone is enough to refute the Union's claim. In my view, this is a safety matter which a reasonable person, even a layperson, would consider to be inherently obvious.

Regardless what approach other industry employers may have in dealing with the chocking of aircraft wheels, I find that this Employer's Policy is valid, reasonable, and absolutely justified. The safety of ground crew, aircraft crew and the travelling public is not an issue an arbitrator would consider lightly. Although not addressed by the parties, it occurs to me that a potential costly liability issue of property damage might also exist if the Employer should fail to ensure that its employees took the necessary precaution of chocking any aircraft. In other words, there is potential for more than safety considerations here.

I am also not persuaded by the Union's claim that the Employer is not serious about its Policy because it has not previously disciplined anybody for failing to chocking aircraft. This claim also requires supporting evidence. None was introduced. I am aware that it is possible for an employer to have a perfectly valid safety policy, which it has not consistently enforced in the past. This would go to the reasonableness of management's actions, not the reasonableness of the rule itself. Essentially, the Union has accused the Employer of not insisting that its Policy be adhered to. In my view, for this claim to have merit, the Union would have to present convincing supporting evidence such as examples where the Employer was aware of other employees who actually did not chock aircraft, and the Employer failed to discipline them. No such evidence

1. It was the known policy of the Employer that the nose wheels of all aircraft had to be chocked. They may be removed only when advised by a crewmember that the brakes have been set.
2. Some Military aircraft crew usually chock the rear wheels themselves and do not want the nose wheels chocked. They have been known to remove those chocks put in place by ground crew.
3. Shop Steward, Max Milley, testified that he always chocked the nose wheels of such aircraft because he knew it was Company policy to do so. If then the Aircraft crew removed them, that was their choice.
4. The grievor had 26 years of service and was a former member of the Health and Safety Committee.
5. The grievor testified that he has not chocked the nose wheels of C-17s in the past because the USAF is the customer and the customer did not want it done.

The Employer's position is that Policy is Policy; the reason for this Policy is safety; despite knowing the difference, the grievor potentially exposed ground crew and air crew to risk of the aircraft rolling by itself.

The Union argued that the event was not a safety issue and, therefore, should not have been disciplined. It insisted that it is not something that is required throughout the industry and it has never been disciplined by the Employer before. In the Union's view, the Employer only disciplined the grievor for this because there was an arbitration coming for the first issue grieved and the Employer wanted to pad his record so as to portray him in a bad light.

The Employer argued that it had no intention of padding anything. The incident occurred and it was addressed. The grievor's extensive experience should have made him realize what he did was wrong. Arguing that it never had a grievance before on a reprimand, the Employer said it did not expect a grievance on this safety issue either. It was January before the reprimand was scheduled for arbitration. The safety infraction happened in December. In other words, the Employer did not know then that the reprimand was going to arbitration.

The Union insisted that it was understood that all outstanding matters would go to arbitration once it was booked.

Sunday the 9th, should not have been more than necessary for him to attend the meeting. Bluntly put, I have been offered no compelling reason why he should lose a full day on August 9th, unless valid reason existed why the meeting could not have been scheduled before August 12th. In the result, I consider it appropriate that the grievor should be reimbursed for time lost on August 9th less the time it would reasonably have taken for a meeting to be held at the first opportunity that day and, if applicable, any time lost on August 10th and 11th.

On balance, I also would deem it appropriate for compensation in these circumstances to include payment for Mr. Gough's time for attending the meeting on August 20th, his day off.

I direct the parties to meet and determine the amount of compensation payable for the foregoing circumstances, and I will remain seized of jurisdiction in the event that the parties fail to agree.

Issue No. 2: Written Warning for Safety Infraction

This incident occurred on December 02, 2009 and was observed by Supervisor Mike Kennedy. The grievor marshalled a Military C-17 aircraft in pit 20 at ~ 1535 hours, gave the signal to stop the aircraft, then turned his back to the aircraft and proceeded to the vehicle he had been driving without chocking the aircraft's wheels; he did not signal to the flight crew that chocks were inserted, and he did not provide the "all clear" signal to the servicing vehicles confirming it was safe to approach the aircraft.

The Employer considered his actions as creating a major safety risk.

The grievor explained that he had previously been advised by a Military crew member that they did not need chocks. And he questioned why, if Mr. Kennedy considered the matter such a serious safety concern when he observed him, he did not come out to the plane and instruct him to chock the wheels, or do it himself.

The evidence confirmed:

The second medical note dated August 20, 2009 was obtained by the grievor after he attended the meeting on August 20th, which apparently was on a Thursday his day off. This note provides less information than the first one. It simply says:

Pt seen in clinic and off until Monday.

Since it does not say that the grievor will be off for medical reasons, it appears that the reader is expected to presume that is the reason. Again, Mr. Gough relies on unproven stress caused by the Employer as the reason. There is no mention in the note of stress or any other specific reason. For the same reasons described above, in the absence of sworn evidence by the author, I do not accept this note as adequately supporting his claim.

Therefore, on the basis of the foregoing considerations, I reject the claim that 60 hours of sick leave should be credited back to the grievor's account. I also reject the claim that the grievor should be paid for 20 hours of work missed – none of that lost time has been proven to be due to stress improperly caused by the Employer.

The evidence is that the grievor was not permitted to work on Sunday August 9th because the meeting had to be held before he returned to work. Since Sunday the 9th would probably have been Mr. Faulkner's and the other managers' day off, I suspect that was the primary reason no attempt was made to schedule the meeting on that day. I have not been told why the meeting was scheduled for Wednesday August 12th, but not earlier. And I have been provided no information whether the grievor also lost time on Monday the 10th and Tuesday the 11th. In my view, every reasonable attempt should have been made to schedule the meeting at the earliest opportunity on August 12th, or as soon as possible thereafter. That way, the purpose of the meeting would have been achieved promptly and with the least time lost from work. Just as Mr. Gough would have been paid for his time had the meeting occurred on July 17th, I see no reason why the time required for the meeting should have been much different on any later date. In other words, the time the grievor should lose if the meeting had been held on the morning of

The Medical Notes

Although the parties were content to have the hearing conducted in an informal manner, that did not relieve them of responsibility for providing sufficient evidence to ground significant claims. In my view, the medical notes introduced at the hearing fall into that category. They were introduced for the purpose of establishing that the grievor suffered stress caused directly by the Employer's badgering and harassment to the extent that he was medically unable to attend work. Such a claim requires adequate supporting evidence to prove it.

The first medical note dated August 11, 2009, written on Gander Medical Clinic stationery, provides the following information on behalf of Darrell Gough:

The above named patient is unable to work Aug 12/09 – Aug 19/09 for medical reasons.

The term "medical reasons" is not explained. Mr. Gough testified that he was put off work for stress caused by the Employer. The medical note did not confirm this. Indeed it made no mention of stress whatsoever. The grievor's self-diagnosis on this matter is not acceptable evidence because he is not a doctor, and neither would any statement attributed to a doctor be acceptable because it would be hearsay evidence. Hearsay evidence is not something arbitrators may rely upon to ground a decision. For the grievor's medical claim to be accepted, it would have to be confirmed by the author of the medical note appearing as a witness, whose testimony would be duly subject to cross examination by the Employer. Absent such sworn testimony, the Employer would be denied the opportunity to cross examine, which would constitute a denial of natural justice, and provide grounds for quashing the award at judicial review. Bluntly put, this medical note does not prove that the grievor was unable to work because of stress caused by the Employer. While the Employer is free to accept a reason-deficient medical note for the purpose of establishing sick benefits, it is not acceptable to establish a claim of Employer-induced stress at arbitration.

it was his own choice not to call Mr. Faulkner back after telling him he would try to contact his Shop Steward.

From that point onward, the matter was a saw-off over when the meeting would be held. The grievor testified that nobody from management tried to contact him while he was on vacation, i.e., he checked his mailbox regularly, etc. So by his own admission, nobody badgered or harassed him for the next three weeks. The sole call from Mr. Kennedy that the grievor was aware of was on August 8th, the day before he was to start work. It was then he was reminded, as Mr. Faulkner originally did on July 17th, that the meeting had to be held before he could return to work. Mr. Gough knew that before leaving on vacation but was not willing to have the meeting at that time. It should have been no surprise to him that the Employer would call him on August 8th for that purpose. The evidence is that no discipline was imposed against him until August 20th when the events of July 16th were discussed and he was advised that a reprimand would be the result. Under the circumstances, this was not a severe penalty.

On the basis of this evidence, I am satisfied that Mr. Gough endured no badgering or harassment by the Employer in those circumstances. His vacation and his days off were not interrupted, and I am not aware that he lost any time except August 9th. I consider his claim for pay for attending the (cancelled) meeting of August 12th to be a specious claim given that he had already notified the Employer that he could not come to work for medical reasons. And I find it difficult to reconcile his appearance for a meeting on the issues that day with the emotional state of a person too stressed to come to work until after August 19th. Nothing occurred after that except for setting the date of the meeting for August 20th, the meeting itself, and the Letter of Discipline on August 27th.

With the greatest of respect, I find nothing among the foregoing that remotely constitutes badgering or harassing.

because of stress. He also claims payment for being called in to a meeting on August 12, 2009, his day off, which the Employer cancelled but failed to notify him.

The Employer was offended at these claims and suggested that anybody with Mr. Gough's experience who could not work because he was so stressed by something as insignificant as a reprimand should consider another line of work. Notwithstanding that suggestion, in my view, the matter to determine here is whether the Employer badgered or harassed the grievor to the point of rendering him unable to work due to stress.

First, the attention given Mr. Gough by Ms. Cesar and Mr. Kennedy on July 16th, 2009, was not badgering. They responded to workplace incidents that have been proven to merit just cause for discipline. I do not need to revisit those considerations. Management's attempts on July 16th to obtain the grievor's written explanation of the events were a reasonable and legitimate exercise of management's authority. Those attempts were persistently and uncooperatively resisted by the grievor, who preferred to stick to his own agenda of continuing to demand a reason why he had been sent home. My earlier comments on the workplace not being a debating society answers that situation. If he believed that the supervisor was wrong to send him home without expressing a reason, his claim should have been pursued by way of a grievance, not by being disruptive in the supervisor's office. By all accounts, he was in her office for quite some time pursuing his interests, and continuing his verbal objections at every turn. One might even draw the conclusion that it was he who was badgering in that situation.

There was also no badgering by the Employer on July 17th. Mr. Faulkner quite properly expressed his request for the grievor to meet with the supervisors present and he asked, i.e., he did not order, to have it done sooner than later. It was Mr. Gough who initiated that call. Nobody harassed or badgered him for anything. Mr. Faulkner could have ordered him to come for a meeting that Friday, but he did not do so. It was Mr. Gough's own choice not to meet and

employer is willing to live with for a reasonably long period of time without significant harm being done to the employment relationship, until it is reasonably apparent that the employee is not willing to correct his/her behaviour. No Steps should ever be skipped, for example because the employee commits a major offense which the employer strongly feels would normally warrant a longer suspension. To skip from say Step 2 to say Step 4 would destroy the progressive aspect of the system.

Major offenses should never be disciplined on a progressive discipline system because they are not a category of infractions the employer would be willing to live with over a long period of time. They should be disciplined on their own system, subject to some measure of corrective discipline, if appropriate. I believe it would be inadvisable to create a discipline system that automatically requires a second chance, for that would make it impossible to discharge an employee for a single major offense that would ordinarily be considered utterly unacceptable in the workplace. After consideration of all relevant facts, including the employee's previous discipline record and other employment circumstances, it is decided to retain the employee but impose a significant suspension for a major offense, it may be said that such discipline is corrective. It would not, however, be progressive.

Simply put, a progressive discipline system is corrective at every Step except the last one, but a major discipline system may or may not be corrective depending on the circumstances. Since serious offenses are being dealt with in a major discipline system, I would caution against applying a progressive discipline system to them. To the extent that a second chance or greater might be appropriate for an employee in particular circumstances, an employer would be both prudent and reasonable to warn the employee that more severe disciplinary action up to and including discharge will occur in the event of another infraction.

Should the Two Discipline Systems Ever be Considered Together?

An employee's major discipline record may be considered at the suspension Steps of a progressive discipline system for the purpose of determining whether to reduce the length of a particular suspension.

If an employee is being disciplined for a major infraction, his/her progressive discipline record as well as his/her major discipline record are both relevant considerations in determining what should be the appropriate penalty to impose.

The Issue of Compensation

Normally a finding that just cause existed and that the penalty was just and reasonable would effectively not require compensation issues to be addressed. However, the grievor has claimed compensation in this case based upon alleged harassment on the part of the Employer which allegedly caused him to draw down 60 hours sick leave and miss another 20 hours of work

Step 3: Light suspension for the third minor offense committed, e.g. maximum of 1 day suspension.

The employee should be written as to why the particular suspension is on his/her file and warned of the consequences of the next Step.

(Contrary to popular opinion that the penalty should always fit the crime, progressive discipline should not subscribe to such an erroneous approach. Instead, particularly at this Step, a progressive discipline system should permit consideration of all the factors that are relevant to an employee's circumstances, not just a single minor offense. This way an employer has discretion to consider not only the employee's minor disciplinary record but also his/her length of service and other meritorious items which might deserve credit. If the scales tip in the employee's favour at this Step, it might be more appropriate to reduce the maximum suspension, say, to ½ day. Ideally, two employees with a third offense will receive the same penalty only if all other things are equal. However, the circumstances of different employees are rarely equal because their work histories and employment records are usually different. If merited, a reduced suspension will recognize an employee's peculiar circumstances and be seen by other employees as a just response. If no further minor infraction occurs within 6 months, the record will be wiped clean. If an offense does occur within that time period, it will be subject to Step 4).

Step 4: Moderate suspension for the fourth offense committed, e.g. between 3 and 5 days.

The employee should be written as to why the particular suspension is on his/her file and warned that discharge will be the consequence of the next Step.

(All the relevant factors surrounding the latest incident and the employee's employment records should be considered in determining the exact penalty within the range permitted at this Step. If no offense is committed within 6 months, the record will be wiped clean. If another offense does occur in that period, no discretion will be available to the employer other than to impose discharge).

Step 5: Discharge for a fifth offense. No further explanation is necessary.

Of course, a different number of Steps may be preferred by different employers because the nature of their businesses may be different. Similarly, different lengths of suspensions might also be appropriate. Ultimately, the fairness and reasonableness of the length and structure of a particular progressive discipline system may be tested at arbitration, unless of course it is negotiated as part of the collective agreement. What is critical to realize is that it is not the severity of the penalty that is important at any particular Step; it is the Step itself that determines where the employee stands. A progressive discipline system could conceivably be designed with a verbal warning at each Step except the last one, at which point discharge will occur. More commonly, however, increasingly more severe penalties are used to convince an employee to correct his/her behaviour before it is too late. It is also quite common to find progressive discipline systems that require 12 months of discipline free behaviour before the record is wiped clean. Clearly, the example I have described is just that, an example.

The employer's role in a progressive discipline system is to observe unacceptable behaviour and take the action prescribed at the next Step. It is the employee's role to correct his/her behaviour so as to get off the system before it is too late. The system should be for minor offenses only, those being ones the

Whether Progressive Discipline Should Have Applied in Ms. Lane's Situation

The Union has suggested that progressive discipline should have applied in Ms. Lane's case. In the "bare bones" decision, I disagreed, saying that progressive discipline is a system of disciplining employees that should apply only to minor offenses, not major offenses. The reason for this is set forth below.

In the workplace, a large number of offenses can conceivably occur, all of them deserving of concern and all of them justifiably subject to disciplinary response. However, the nature of some offenses may be much less serious than others. Individually these less serious offenses would normally attract a minor disciplinary response. I could suggest a number of examples of such offenses, e.g., reporting late for work, leaving work early, needless absence from work, failing to complete tasks on time, and a broad range of other work related incidents that are known to be unacceptable. All such incidents may be grouped under the umbrella of minor offenses, none of which independently would be considered serious enough to impose more than a disciplinary warning, but in conjunction with other minor infractions committed over time, could become increasingly aggravating to the employment relationship such that increasingly more severe penalties may become necessary to address the situation. The idea is to give an employee reasonable opportunity to alter his/her unacceptable behaviour. Discharge could be the ultimate result if all the Steps are followed and the employee still has not changed his/her behaviour.

In my view, a progressive discipline system should be applied to minor offenses, one that all employees should be aware of and expect to apply to them if they commit such offenses. Since it is a system, it should feature specific Steps that must be followed in sequence without fail and without exception. Each employer should determine the number of Steps that should most reasonably be prescribed given the nature of its particular business. There may be some minor variations, but they all progress from a prescribed beginning to a prescribed conclusion with known consequences along the way. For example, a progressive discipline system might look like this:

Step 1: Verbal warning for the first minor offence committed.

The employee should be written and advised of the reasons that this disciplinary action is being placed on his/her file and warned what the next disciplinary action will be if another minor infraction should occur.

(If the employee does not commit another minor offense within, say, a six (6) month period, the record should be wiped clean and the employee will be able to start again at Step 1 if he/she commits another minor offense. If another minor offense (not just an identical offense) occurs within 6 months, it will be subject to Step 2. In other words, the second offense and the first offense will be considered together in imposing the next prescribed penalty).

Step 2: Written warning for the second minor offense committed.

The employee should be written, explaining why the action is being placed on his/her file and warned of the consequences of the next Step.

(If no further minor offence occurs within 6 months, the record should be wiped clean – as indicated above. If another minor offense is committed within 6 months, it shall be subject to Step 3. The penalty will be increased as prescribed in recognition that the employee has not corrected his/her behaviour and has two (2) previous infractions currently on record).

example where insubordination is established, or even something a bit less serious than that) and may be disciplined more severely outside the progressive discipline system. In that event, there would be no automatic next step to a Written Warning. The Employer would be free to impose a penalty commensurate with the seriousness of the incident as well as all the other factors affecting the grievor that should be considered. Among those factors, it might be appropriate for the Employer to consider the grievor's discipline record as an aggravating factor that might serve to increase the size of the penalty.

In summary, I find that the Employer did have just cause to discipline the grievor in these circumstances. I also find that the Employer applied progressive discipline to this situation. I also find that the penalty of a Letter of Reprimand was the lightest conceivable penalty that was available for the Employer to impose. Therefore, the grievance is denied, with the exception that the Employer is ordered to remove the warning sentence at the conclusion of the Letter and substitute it with the following sentence, which is consistent with the principles of progressive discipline.

This Letter of Reprimand will be placed on file as a matter of record as the first step in the progressive discipline system for minor offences. Any minor offence occurring next will be disciplined as a Written Warning at the second step of the progressive discipline system.

Other Jurisprudence Touching on the Subject of Progressive Discipline

For a separate analysis of this subject area, I submit the following excerpt from *Re Canadian Blood Services and Newfoundland and Labrador Association of Public and Private Employees* (August 17, 2007) unreported (Alcock), pp. 55-59:

Serious infractions are major infractions to which a range of major penalties may apply depending upon the degree of seriousness involved, an employee's disciplinary record, and any mitigating or aggravating factors that may exist. In my view, where an employee is found to have deliberately ignored the established standards, the Employer is also entitled to consider such action as a breach of trust, a matter which is much more serious where the situation involves a blood laboratory employee. The grievor has been accused of precisely that conduct, thereby further exacerbating her circumstances.

including termination” for a further occurrence. There is simply too much of a leap to anticipate that a termination would follow a reprimand in a progressive discipline system.

The parties will recall that some time was taken at the hearing to discuss discipline systems, during which I indicated that a reprimand is a discipline and is therefore a grievable matter. I also asked what were the specific steps and associated penalties of the Employer’s progressive discipline system. Despite indicating that they understood the system, neither party could answer my question satisfactorily. The Union was aware there was a system but knew little of the details, and the Employer spoke of five (5) steps, but was unable to describe the details of those steps. My conclusion, therefore, is that there is little understanding here by the parties, the managers and the employees what the progressive discipline is. This now leaves me to decide where the grievor’s discipline should fit relative to any subsequent disciplines.

On balance, having regard to all the foregoing evidence and information, as inconsistent and convoluted some of it is, I am satisfied that the grievor’s Letter of Reprimand should be considered a minor offence at the first step in a progressive discipline system, rather than a major offence to be dealt with by a more serious corrective discipline system. Therefore, I find that the warning sentence contained in the Letter of Reprimand should be deleted and substituted with the following words:

This Letter of Reprimand will be placed on file as a matter of record as the first step in the progressive discipline system for minor offences. Any minor offence occurring next will be disciplined as a Written Warning at the second step of the progressive discipline system.

In my view, the foregoing would advise the grievor where he stood as a matter of progressive discipline, but it would also leave a future offence to be determined on its merits as either major or minor. As indicated in my considerations, if offences for matters of work assignments, challenges to work authority, uncooperative conduct, etc., may be proven to be of a more serious nature next time, the matter might properly be considered a major offence (for

However, if he has already been disciplined for a major offence, i.e., for a serious matter of conduct, which type of conduct (the same, or another different but also serious incident) which the Employer would not be willing to permit in future without imposing a significantly more severe penalty, the employee's previous letter of discipline should warn him of the possible consequences of committing another major offence. This is a fair, reasonable and essential element of corrective discipline, which, for "major" offences, a progressive discipline should not apply. Although the exact penalty in such cases may not be predictable because of a variety of reasons such as the level of seriousness of the next offence and the existence of mitigating factors, etc., a statement to the effect that further disciplinary action may be imposed up to and including termination would serve as a proper warning to the employee of the severity of consequences he may expect if there is a subsequent offence.

In the instant case, the Employer believed the grievor's conduct was insubordination -- a matter which, if established, arbitral law normally considers a major (serious) offence -- and it concluded its letter of discipline with the type of warning statement that is common in such circumstances. For a minor offence, intended to be dealt with by a progressive discipline system, a discipline letter should simply warn what the next step and penalty of that system will be. In the grievor's case, because the lightest conceivable penalty was imposed, there was some confusion at the hearing whether the Employer considered the grievor's situation subject to progressive discipline. But the Employer did state that progressive discipline did apply, a curious conclusion in my view given that the words "serious" and "insubordination" were used to describe what happened. In any event, the Employer advised me that it regarded a reprimand as such an innocuous matter that it was genuinely surprised when the issue was grieved. Indeed, it was suggested that it never happens in this workplace, but now that Mr. Gough did grieve, a problem has been created because of the compensation he is seeking. It strikes me that this position does not establish a reasonable base on which to ground a warning of "up to and

written reprimand was designed to impress upon the grievor the need to ensure that there will be no similar occurrences in the future. The same applies for the other matters for which he has been disciplined.

Warning of Further Disciplinary Action and the Issue of Progressive Discipline

The last sentence of the Letter of Reprimand states:

This letter will be placed on file as a matter of record and any other occurrences will result in further disciplinary action, up to and including termination.

The Union insists that this warning is wrong and should be removed.

The issuance of a letter of discipline is intended to provide written verification of and reasons for a disciplinary action. A copy of such a letter should properly be given to the employee and the Union and also be placed in the employee's personnel file for as long as the collective agreement states, or if not stated, as long as is reasonable. Fundamentally it should be part of the employee's record. On the one hand, an employee's record may be used for his benefit such as support for promotion or advancement, or to mitigate against a future disciplinary penalty (long service, no discipline, etc.) and on the other hand, it may be used against him (if he has a record of previous discipline) in determining an appropriate future penalty.

As an essential element of the effective administration of discipline, an employee who receives a disciplinary penalty should be made aware how his record may affect him the next time he is subject to discipline. Warning statements are a proper and normal way of achieving this. If an employee's previous offence (not necessarily the penalty) was deemed to be minor (i.e., the type of behaviour the Employer would be willing to live with under a progressive discipline system), the employee should be specifically advised in his discipline letter that his next minor discipline will advance to the next step on the progressive discipline system and will be subject to whatever penalty is associated with that particular step. This should occur in each discipline letter he receives, including the one immediately preceding termination.

As for this particular dispute, I am satisfied that the penalty chosen by the Employer to address the various actions of the grievor on July 16, 2009, was perhaps the lightest conceivable response that could have been imposed in these circumstances. I reject entirely the claim that there was no incident and that the grievor should not have been subject to discipline in these circumstances. In my view, it would have been unreasonable for management to ignore the grievor's conduct on the day in question. As the matter stands, at least four (4) matters deserving of discipline occurred on July 16th, but only a single light penalty was imposed for the whole lot. Consideration of mitigating and aggravating factors goes to the issue of *quantum* of penalty. In this case, there is simply no room for an arbitrator to lighten that penalty to something less severe, save for cancelling it altogether, and I reject that notion because it would contradict the finding that just cause to discipline has been established in these circumstances.

If there was any intent to pick on the grievor here, it certainly was not acted on. Clearly an act of insubordination, which the Employer mistakenly believed occurred in these circumstances, would be a major workplace offence, which would normally justify a major penalty (subject of course to any mitigating factors) such as a suspension, yet there was not the slightest indication that the Employer considered such a penalty for Mr. Gough. Given the extremely modest penalty chosen by the Employer here, it is obvious to me that there was no inclination of any kind to "get the grievor."

In my opinion, the fact that there were no operational consequences from the grievor's failure to follow the assignment instructions of his Supervisor does not negate disciplinary action. Such conduct should be addressed so as to deter the grievor from similar behaviour in the future when operational consequences might be greater. Disregarding a supervisor's instructions is an activity that needs to be addressed immediately so as to prevent it from developing into a habit. As a first offence with no operational consequences, this matter is less serious than if service had been affected. And if it is repeated, the seriousness would also increase. This single

uttering his flippant comments to her on July 16th. Although it was less than insubordination, Mr. Gough's conduct with respect to Ms. Cesar's management authority was out of line and it was deserving of disciplinary action. While it might be grating to him that Ms. Cesar does not back down from his reactions toward her, it would be well for him to realize that if he continues this type of conduct in response to management direction, more disciplinary action will surely follow, and he will ultimately become the primary contributor to his own demise.

Since Ms. Cesar did not extract herself from her verbal exchange with Mr. Gough in her office, it is clear to me that both of them contributed to the charged atmosphere of their argument. Although Mr. Gough persisted much more than she did (after all, she did invite Mr. Kennedy's assistance over the phone after she was unable to obtain the grievor's cooperation), this was not altogether a one-sided encounter. In this clash between two determined individuals, neither one a shrinking violet, a mutually satisfactory outcome was impossible. Such clashes need to be managed better. Therefore, I think it would be advisable for management personnel to also examine their own styles of exercising their authority, with a view to handling situations involving all types of employees, especially difficult employees, more effectively. Inflammatory remarks, such as threatening an "extended vacation" if an employee does not cooperate with a request, serve to exacerbate matters and do nothing to preserve, let alone earn, respect. And at the same time, it would profit nobody if unacceptable behaviour by an employee is observed by a manager but is not immediately addressed each and every time it happens. That misleads an individual into a false sense of security that his behaviour is not unacceptable. If a rule is violated, it must be policed. Turning a blind eye renders a rule invalid and useless, thereby rendering it a liability instead of an asset. An understanding of progressive discipline systems and differentiating between minor and major infractions is critical to the fundamental administration of discipline in the workplace. In the hope that it might be of some value to the parties, I will attach some jurisprudence on that subject.

Just Cause For Discipline Established

To reiterate: just cause to discipline the grievor for his conduct on July 16, 2009 has been proven. Therefore, the next issue to be determined is whether the penalty imposed was just and reasonable in all the circumstances. This is a *quantum* of discipline matter.

Whether the Penalty Chosen was Just and Appropriate

Although the Employer has made continued reference to insubordination throughout these proceedings, i.e., Mr. Faulkner attributed that finding to Ms. Cesar after the grievor responded to her radio call about the RAF crew and Mr. Kennedy used the term on the phone to the grievor, I am satisfied that the essential elements of insubordination have not been established. No order was given to the grievor in respect of the Kuwait Airlines assignment or the RAF assignment, or in respect of the unacceptable comments he made to Ms. Cesar, or to complete an Incident Report, or in respect of his uncooperative and argumentative behaviour towards management personnel. Only one order was given, namely, the order to go home, but no consequences were communicated to him should he refuse, and by all accounts, that order was abandoned when Ms. Cesar permitted him to enter her office so that she could give him the Internal Incident Report form to complete, which provided him with the opportunity to pursue his own agenda, i.e., demand an explanation why she had sent him home.

On balance, I do not consider the grievor's comments to Ms. Cesar to be insubordinate in the sense that they were a direct challenge to her management authority. In my view, they were flippant, uncooperative and disrespectful retorts demonstrating his own annoyance and displeasure that she had seen fit to question the performance of his duties. Yet that, if the situation requires it (as it did here) is decidedly one of her responsibilities as a supervisor. Of one thing I am convinced and that is that Ms. Cesar did nothing to provoke Mr. Gough into

you were not being cooperative. More concerning, was your uncooperative behaviour during our meeting which made it difficult to conduct the meeting itself.”

The Grounds for Discipline

The first paragraph of the Letter of Reprimand states:

This “*Letter of Reprimand*” is in response to an incident which occurred on July 16, 2009 and subsequent meeting with you on August 20, 2009. Also in attendance at that meeting were Maxwell Milley, Union Steward, Mike Kennedy and Tammy Costa-Cesar, Management Supervisors.

The last paragraph states:

As explained to you on August 20, 2009 you are being issue [sic] a *written reprimand* for your actions on July 16th, 2009. This letter will be placed on file as a matter of record and any further occurrences will result in further disciplinary action, up to and including termination.

In between these paragraphs, the “incident” above and “your actions on July 16th, 2009” are variously described as including 1) failing to stand by the Kuwait Airlines flight, 2) the grievor’s unacceptable explanation for the absence of the other two crewmembers, 3) the grievor’s unacceptable remark re the RAF issue and 4) the grievor’s argumentative and uncooperative conduct in Ms. Cesar’s office. On these issues, my previous considerations confirm that all of them did occur and did constitute just cause for discipline.

Although the meeting on August 20th is something the Letter of Reprimand is said to respond to, the last paragraph effectively confines the grounds for discipline to the grievor’s actions on July 16, 2009. In other words, no disciplinary action is based on the grievor’s conduct at the August 20th meeting itself. Therefore the references to uncooperative behaviour on the grievor’s part in the August 20th, 2009 meeting serve only to demonstrate that the same kind of behaviour he exhibited on July 16th was not an isolated event or a momentary aberration. Rather it indicates the grievor’s inclination towards argumentative and uncooperative behaviour when dealing with management.

him. I think it is unreasonable that, after obtaining his medical note, the grievor did not contact the Employer to ensure that the meeting would not go ahead. i.e., the note would apply to attending the meeting as well as to attending work. In my opinion, it is difficult to escape the perception that his appearance on August 12th, especially since it was his day off, was prompted more by a wish to ensure that he would be paid for that day, than it was by an altruistic motive to seek resolution of the issues. I am thoroughly convinced that, if any surprise occurred on August 12th, it was on the Employer's part that the grievor showed up for the meeting, not on the grievor's part that he was advised the meeting had been cancelled. On balance, I am satisfied that the Union's claim on this matter amounts to posturing.

The August 20th Meeting

This date was set on or about August 12th, logically because the 20th was the day after the time period established by the medical note. It appears that, in that meeting, Mr. Faulkner initially asked the grievor to write out a report providing a full explanation for the incident on July 16, 2009. It also appears that the grievor was reluctant to comply with this request and it took some time for him to do so, which Mr. Faulkner considered uncooperative conduct, as had been the case on July 16th in Ms. Cesar's office. In this second Internal Incident Report, the grievor answered the claim that no one was standing by the Kuwait Airlines flight by stating, "on July 16/09 at around 18:00 – 18:30, I was standing by Kuwait Airways when Tammy call [sic] me on the radio, told me to go home without a reason. The other two co-workers had gone to the hangar." And his answer to the RAF issue was, "... as far as I [sic] can recall I said to Tammy give me a minute."

In the Letter of Reprimand, dated August 27th, 2009, Mr. Faulkner referenced the fact that he also listened to Mr. Gough's statements and comments and those of the other two Supervisors, and on that basis concluded that "it was evident that an incident did occur and that

on the 10th and 11th. As the matter stands, Mr. Gough's evidence is that he visited a doctor on August 11th, received a note saying that he would be unable to work from August 12th to August 19th for medical reasons, and gave it to a supervisor at the work site. It is not clear whether he dropped off the note on the 11th or on the 12th, but in any event the Employer was aware of this note prior to the time of the meeting and assumed that it meant that the grievor was sick and would not be attending the meeting. In my view, that was a perfectly reasonable assumption. Under the circumstances, the Employer felt that it would not be prudent or reasonable to insist that the grievor attend the meeting while he was sick, and it felt there was no need to notify him that the meeting was cancelled.

The evidence is that Mr. Gough and Shop Steward Max Milley did show up for the meeting on Wednesday August 12th and were then told that it had been cancelled. At the hearing, the Union took issue with the fact that no reason was provided for that cancellation, especially since most of the management people appeared to be on site at the time. Essentially, this was the Union's turn to cast aspersions on the Employer's claim that it made every attempt to have the meeting held as soon as possible and to portray the grievor as the willing participant who would even show up while he was sick. The fact of the matter is that the grievor and the Employer were aware at that time that his medical note already had been submitted. I agree entirely with the Employer that, had it insisted that the meeting would convene in those circumstances, the Union would have reason to condemn such a decision.

In my opinion, it is a specious argument to suggest that the grievor's attendance on August 12th demonstrated good faith on his part, especially given his claim that he was so stressed by the Employer's earlier actions that he had to consult a doctor and be declared unable to come to work. Frankly, I have difficulty reconciling how, on the one hand, Mr. Gough could claim that he was so stressed that it affected his health yet, on the other hand, claim to be willing to place himself squarely in a meeting that would focus directly on all the stressful issues that affected

before his vacation started on Sunday. His unwillingness to meet on his day off prior to his vacation strikes me as being unreasonable given that he was already on the phone with Mr. Faulkner discussing the issues when the request was made and he had advised that he would try to contact his Shop Steward for that purpose.

In essence, I am satisfied that a meeting with all concerned before the grievor returned to the workplace was a reasonable and necessary request. Since neither the grievor nor Mr. Faulkner appeared to be willing to meet during their own vacation days (for which I would not fault either of them) or on their own days off (for which I would fault both of them because days off are not vacation days), real compromise did not occur. If Mr. Gough had compromised on Friday July 17th or Mr. Faulkner had compromised on Sunday August 9th, the meeting could have been held with minimum inconvenience. In my view, they each contributed to the problem.

In light of the foregoing, I do not believe that the issues surrounding Mr. Kennedy's phone calls during the grievor's vacation have much to contribute to this dispute. The purpose of that evidence was for the Employer to demonstrate its willingness to arrange the meeting and the grievor's unwillingness to be contacted during his vacation. To reiterate: since neither the grievor nor Mr. Faulkner was willing to meet during his own vacation, I am not inclined to blame one more than the other for that.

The August 12th Meeting and the Issue of the Doctor's Note.

The evidence is that Mr. Kennedy reached the grievor on August 8th and reminded him that he could not return to work until a meeting could be held with all concerned. The result was that he was not permitted to work a scheduled eight (8) hour shift on Sunday August 9th. According to Max Milley's testimony, the meeting was scheduled by Mr. Kennedy for August 12th at 11:00 am, which was one of the grievor's days off. No explanation was offered why it was not scheduled for August 9th or 10th, or 11th and it is not clear whether the grievor also missed shifts

discussed, all of which were during his vacation. While it is clear that Mr. Faulkner thought the matter was serious enough to warrant a meeting during the grievor's vacation and even suggested he would be around on Monday, Tuesday and Wednesday (morning only) in the next week, the fact of the matter is that Mr. Faulkner was to be away on business on Thursday and Friday and he was to be on vacation himself the following week. So a total of three and one-half (3½) days were offered. There is no indication that Mr. Faulkner was prepared to meet during his own vacation or on a weekend. So, it appeared unlikely that, if the meeting did not occur on the grievor's day off on Friday July 17th, no meeting would take place before the grievor returned to work on August 9th. Frankly, I think it was unreasonable in these circumstances to attempt to schedule the meeting while the grievor was on vacation. After all, Mr. Faulkner's main interest was that the meeting had to be held before the grievor began work on shift again. In my view, that could have occurred on either of the grievor's days off, i.e., Friday July 17th or Saturday the 18th, or be the first thing on the agenda when he returned to work on Sunday August 9th.

Mr. Gough was not inclined to come in on Friday; Mr. Faulkner did not offer Saturday and there was no suggestion that the meeting should be held on August 9th. The grievor was aware that a meeting was required before he returned to work, and since he was already on the phone discussing things with Mr. Faulkner, I am satisfied he knew that Friday July 17th would be the most logically appropriate day to have this meeting. He did indicate that he would try to contact his Shop Steward, Max Milley, and Mr. Faulkner waited for him to call back, but he did not do so. I note that Article 8.09 gives an employee in this type of circumstance the right to request Union representation, but it makes it clear that if a Shop Steward is not available, any Union member would suffice. There is no indication whether Mr. Gough sought out any Union member other than Max Milley. In my view, he should have done so and met on Friday the 16th. Remuneration for coming in on his day off would have been the only issue, to be decided by grievance and arbitration if necessary, and the workplace matter would have been dealt with

warrant no more than a minor response such as reprimand because they had occurred before but had never been addressed, and because other mitigating factors existed such as long service, no discipline record, etc. I note that the first page of the Letter of Reprimand essentially does reference the above incidents, but it goes on to allege argumentative and uncooperative behaviour in the meeting at shift end as well. However, there was no insubordination involved and there were no allegations or actions taken against Mr. Gough at the time for his conduct at the meeting in Ms. Cesar's office.

What is clear is that the primary issue objected to in this case is the extent to which the working relationship between Mr. Gough on the one hand, and Ms. Cesar in particular and Mr. Kennedy on the other hand, had become argumentative and confrontational. There is no doubt in my mind that this was the issue that initially concerned Mr. Faulkner after being apprised of what happened between these individuals on July 16th. And Mr. Gough's alleged uncooperative conduct in subsequent discussions and meetings clearly reinforced Mr. Faulkner's initial perception that this was the most serious problem that needed to be addressed before the grievor returned to work.

The events of July 17th

When Mr. Gough called Mr. Faulkner on Friday July 17th, he was on one of his days off, but did attempt to resolve the situation over the phone. What I think the grievor failed to grasp at that time was Mr. Faulkner's insightful observation, based on the information he had received, that the issue involved a larger relationship problem as well as the specific workplace incidents on July 16th. That is precisely why he insisted that the matter was serious and that a meeting was needed with the Supervisor to sort through the issues and to resolve them so as to minimize a repeat or more serious incident. Because he was about to start his vacation, the grievor expressed reluctance at the suggestion that he come in that day. Other alternative dates were

what incident was not made clear. By the time Mr. Kennedy used that word, he had spoken to Ms. Cesar previously and told her to have the grievor write out the report; he also was aware that a heated argument had transpired for awhile in Ms. Cesar's office and that the grievor had refused to complete the report for her; and while on the telephone during that time, he heard just how heated the argument was between them; and he reiterated to the grievor that he had to write out the report before he left work. There is no indication among the evidence that Ms. Cesar told Mr. Kennedy that she had already told the grievor to go home.

Mr. Kennedy's conclusion in his e-mail was that "I think Darrell tries to run the show when the girls are working but met his match with tammy." Here again is an allegation of prior unacceptable activity on the grievor's part, for which no supporting evidence of any kind was adduced to indicate that the Employer had previously attempted to address such behaviour. In essence it was a conclusion as to the grievor's demeanour towards other female employees, including Ms. Cesar, who apparently was somewhat more strongly willed. All these matters were in Mr. Kennedy's mind when he spoke to the grievor of insubordination. The problem of course was that it was not made clear to Mr. Gough what the "incident" was he had to write about in which he might have been insubordinate. So he wrote a cursory, meaningless, report on the ramp incidents. As for the accusation of insubordination for being uncooperative and argumentative toward Ms. Cesar in the meeting (a general challenge to her management authority), he chose not write about that because it had not been made clear to him that this had anything to do with insubordination. Other than insisting that he had to fill out an incident report, many of management's decisions on July 16th were unclear at best and contradictory at worst.

Yes, there was just cause to discipline the grievor at that point on July 16th for not following a work assignment instruction and for being verbally disrespectful and perhaps dismissive towards his Supervisor's management, which in those particular circumstances would

write out an incident report. It appears that the word insubordination was not used until Mr. Kennedy spoke to the grievor on the phone while he was arguing with Ms. Cesar in her office.

The Office Altercation

I accept that Ms. Cesar gave the grievor no reason for telling him to go home with a half hour remaining in his shift. That apparently is why he came to her office, i.e., he came to get an explanation from her. I do not need to dwell on the well known jurisprudence that the workplace is not a debating society and that the Employer has the right to make decisions about workplace matters, and an employee's responsibility is to obey first and grieve later. Mr. Gough certainly did not obey when he was ordered to go home; in fact he clearly disobeyed, which was not his right to do. Having said that, in my view, it would have been a reasonable exercise of management authority for Ms. Cesar to avoid such an event by briefly telling the grievor why she was sending him home. At the point this order was given, she must have had a reason and, by all accounts that reason had much to do with what upset her the most, namely, his comments to her when she attempted to deal with servicing matters. The order to go home was not mentioned in the grievor's Letter of Reprimand and no attempt was made to justify it, whether by claiming insubordination or something else. And no attempt was made to discipline the grievor for insubordination on the ground that he refused his Supervisor's order to go home. But perhaps I should presume that such action would have been negated by the fact that both Ms. Cesar and Mr. Kennedy wanted Mr. Gough to come to the office to write up an incident report form. It is just that no thought was ever given to the inconsistency of having two opposite orders in effect at the same time.

Mr. Gough protested that he did not know what to write because he believed there had been no incident. This belief was based on the fact that no servicing deficiencies had actually occurred. Mr. Kennedy told him on the phone that "it was insubordination." Insubordination for

The evidence clearly establishes that there was no operational problem with servicing the RAF crew. Rather it was Mr. Gough's grumbling response to Ms. Cesar's radio call that she took issue with. She and the grievor disagreed entirely on what he said to her – the most classic of the “she said/he said” discourse between them. I was not present at the time of that incident and, therefore, do not know for certain what was said, but I am nevertheless expected to choose between them and I do so for the following reasons.

On the one hand, Ms. Cesar did not waiver in her evidence about what she heard. On the other hand, Mr. Gough testified that he did not say “I’ll do it on my own time,” but did say “Just give me a minute.” I note in his incident report dated August 20th, he wrote, “As to the RAF *as far as i can recall* I said to tammy give me a minute.” (Emphasis mine.) Although this report is considerably less definitive than the grievor’s testimony, it still alludes to an expression that sounds nothing at all like “I’ll do it on my own time.” In my view, these opposite expressions could not have been misconstrued by the receiver because they sound absolutely different. Therefore, the only logical inference I feel led to draw from Mr. Gough’s evidence is that Ms. Cesar lied about what she heard. With the greatest of respect, I do not accept that scenario. In my view, Ms. Cesar’s account is the one to be preferred in this situation. Mr. Gough’s response further exacerbated Ms. Cesar’s conviction that he has been consistently uncooperative with her management.

In the Letter of Reprimand, Mr. Faulkner referred to the grievor’s comment saying, “At this point the supervisor determined your actions to be insubordinate and requested that you come to operations and complete an incident report.” I think this mention of insubordination was a conclusion Mr. Faulkner made after obtaining Ms. Cesar’s story. While Ms. Cesar told the grievor to go home shortly after this conversation, there is no indication that she advised him that it was because he had been insubordinate. On balance, I am convinced that, after the RAF incident, she called Mike Kennedy on the matter and it was he who told her to have Mr. Gough

On the evidence, Ms. Cesar gave a general work assignment instruction to the grievor. That assignment was not an order, which the grievor would have been aware of the consequences for refusing. When she noticed that the instruction had not been followed (a disciplinable act itself but not as serious as insubordination), she contacted the grievor for an explanation. No order was given in relation to his explanation. Ms. Cesar simply made it clear that the explanation was not acceptable and she was displeased with him. By all accounts, Mr. Gough did thereafter ensure the Kuwait Airlines assignment. So, to this point, there was no insubordination, but Ms. Cesar was well within her management authority to find the grievor's explanation unacceptable and to discipline him for failing to follow her instructions, subject of course for her decision to be confirmed or rejected by the grievance and arbitration process.

The unacceptable excuse offered was a minor, not a major infraction. It was Mr. Gough's responsibility to ensure that the crew he was supervising did not all leave their stations at the same time. On balance, I find in these particular circumstances where such matters had never been addressed before and, where Mr. Gough has been a long service employee with no discipline on his record, the appropriate penalty for the explanation issue should result in no more than a reprimand. It was within Ms. Cesar's management authority to discipline the grievor for not ensuring that a crew member was standing by for Kuwait Airlines, when she had occasion to observe the area concerned. In my view, from Ms. Cesar's perspective, the "incidents" involved the manner of the grievor's verbal responses to her radio calls. In other words, the distinct impression I gathered from her testimony was that she was bothered most because of his demeanour towards her supervision. From Mr. Faulkner's perspective, the grievor's failure to follow her assignment instructions was just one of several issues grouped together to ground a written reprimand.

The RAF Incident

was always standing by for the Kuwait Airlines flight, I accept Ms. Cesar's evidence that she actually went to the ramp area and observed that nobody was standing by. Therefore, the assignment Mr. Gough was earlier instructed to ensure was not followed at the time of his Supervisor's observation. Since the *raison d'être* for the Company was aircraft ground servicing, it was both prudent and necessary for Ms. Cesar to contact the grievor for an explanation. On balance, I also find it was reasonable for her not to accept the particular explanation he gave her. There is no indication that it was necessary for both individuals to be away from their jobs at the same time.

However, I do not consider it justified that she chose to expand her objection beyond that specific event, by adding that she "was tired of him making excuses for the boys." If there had been evidence provided that the grievor had a record of discipline for making excuses for crewmembers, or it had been previously brought to his attention that the Employer considered this type of conduct to be unacceptable and would be subject to disciplinary action in future, it would be entirely justifiable for Ms. Cesar to make such a comment. As the matter stands, however, Ms. Cesar's own evidence strongly suggests that the grievor had done this type of thing before without his conduct having been addressed; she had grown tired of it; and his excuse for the crew on July 16th was essentially the final straw that caused her to take action.

I wish to make it perfectly clear that it was the grievor's explanation of his crew's whereabouts that primarily upset Ms. Cesar. I also wish to make it clear that insubordination cannot be established for that explanation, or for that matter, for failing to follow the Supervisor's assignment instructions. For insubordination to be proven in such circumstances, the following ingredients must be established: 1) an order must be given (not merely an instruction); 2) the order must be given by a person with proper authority; 3) the order must be understood; 4) the consequences for refusing to comply with the order must also be clearly communicated and be understood; 5) the order must be refused.

Kennedy told Ms. Cesar on the phone that he wanted the report completed before the grievor left and he instructed her to give him a fresh form to fill out. Also curiously, Mr. Kennedy concluded his e-mail with the gratuitous statement, "I think Darrell tries to run the show when the girls are working but met his match with tammy."

The best I can make of the foregoing is that Ms. Cesar alleges that nobody was standing by the Kuwait Airlines flight when she personally observed the area, whereas the grievor insists that there was always somebody standing by, namely, him. The grievor's position was that the Kuwait Airlines flight left about 1830 – 1845 hours and radioed their thanks for a job well done. Also, he said that the RAF crew had been taken care of promptly. Ms. Cesar spoke of her instructions to the grievor being based upon the need for customer servicing, which, although no deficiencies actually occurred that night, Mr. Gough always seemed to challenge her on. In my view, sometime after telling the grievor to go home, Ms. Cesar must have called Mr. Kennedy and received instructions that she should obtain an infraction report from the grievor. Either she then radioed the grievor to come to her office, or he showed up before she had the opportunity to do so. Since there was no evidence that Ms. Cesar ever rescinded her go home order, the latter seems to be the more likely scenario. In any event, after a heated argument, and repeated instructions by Ms. Cesar and Mr. Kennedy, the grievor wrote out a cursory and meaningless incident report, despite being told by Mr. Kennedy that the issue was insubordination.

Under the circumstances described, I do not accept that Mr. Gough was unaware on July 16th that he was being accused of insubordination as well as uncooperative conduct toward his Supervisor. Indeed, his awareness that this was considered to be a serious situation is established by the fact that he initiated a call to Dion Faulkner the next morning to discuss the situation.

On the basis of the events of July 16th only, I am satisfied that there were two incidents in which Ms. Cesar had valid and justifiable reason to contact the grievor about ground crew servicing. Despite the grievor's claim that Ms. Cesar could not see Gate 32 and that somebody

From the various accounts submitted, my best estimate is that these events occurred sometime between 1800 and 1815 hours or so. Mr. Gough testified that Ms. Cesar could not see Gate 32 from her office, and that he was standing by for the Kuwait Airlines flight when she called him on the radio and told him at 1815 hours to go home. He also testified that his response to the call about the RAF crew was “just give me a minute,” and that the RAF crew were not ready in the Holding Bay when he left to go to her office, so he went on. The order to go home was not mentioned by any of the Employer’s witnesses in their written e-mails or the letter of reprimand. Neither Mr. Kenney nor Mr. Faulkner mentioned it in their testimony, but the grievor did make reference to it in his second written incident report completed on August 20th. However, both the grievor and Ms. Cesar confirmed that such an order was given. Mr. Gough testified that he did not go home, as directed, but went instead to Ms. Cesar’s office around 1830 hours to demand an explanation why she had told him to go home. Ms. Cesar’s e-mail to General Manager Dion Faulkner talks about an investigation report that she asked the grievor to write out, and her correspondence concludes with the statement, “He always has something to say about everything I ask him to do. I told him the report has to be done before he leaves shift. He tried to talk his way out of it, but I told him not to leave shift without doing the incident report.”

The evidence does not make it clear how an order to go home could coincide with an order not to leave shift until the report was completed. Further complicating the issue is Mr. Kennedy’s e-mail to Dion Faulkner discussing two (2) phone calls he had received from Ms. Cesar. In the first one he told her to get the grievor to write up an incident report; in the second one, she put him on the phone with the grievor when the two of them were arguing in her office and she said he had crumpled up the investigation report form. The grievor testified that he did not know what to write because there had been no incident. Mr. Kennedy told him that it was for him “being insubordinate,” which the grievor constantly argued he was not. Clearly at that time, Mr.

3. *Allied Aviation to Pay Nearly \$ 2 Million For Harassment of Black and Hispanic Workers*, Press Release 3-11-08: [U.S. Equal Opportunity Commission.](#)

The July 16, 2009 Events

The parties agree that this dispute revolves around accusations made by Tammy Cesar, Mike Kennedy and Dion Faulkner concerning the grievor's activities while at work on July 16th, 2009, as well as subsequent discussions and events up to and including a meeting on August 20th, 2009. Thursday July 16th was the grievor's last day of work for that week. For the next three (3) weeks, the grievor was on vacation; his next scheduled day of work was Sunday August 9th.

On the day in question, Tammy Cesar called in one (1) ground crew employee, so that two (2) men could take care of servicing a RAF flight and one (1) man would be available to service a Kuwait Airlines flight. The grievor had Lead Hand responsibility for his shift. It appears that the crew had previously been advised of their work assignments.

The Kuwait Airlines Incident

Ms. Cesar apparently went out to the work area during the last hour of the 12 hour shift to deal with one of her supervisory duties and noticed that nobody was standing by for the Kuwait Airlines flight. She contacted the grievor by radio and asked him where the other two employees were. He responded that they both went to the washroom and were on their way back. Ms. Cesar told him that "Two of them did not have to go at the same time and that [she] was tired of him always making excuses for the boys." Soon afterwards she radioed to advise him that she had been called by the Control Tower saying that the RAF crew was waiting in the Holding Bay for a ride, to which the grievor allegedly responded "I'll do it on my own time." Ms. Cesar testified that she said nothing in response to that comment, but subsequently told the grievor to go home. Her testimony, however, was that he did come up with the RAF crew in a few minutes.

10.07 In hearing disputes arising out of the suspension or dismissal or [sic] an employee, the Arbitrator, where he finds such suspension or dismissal to be without just cause, may modify the penalty

THE EVIDENCE

The parties wished the hearing to be conducted informally. Witnesses testified under solemn affirmation, but there was not strict adherence to the general rules of direct examination, cross-examination, etc. In the first dispute, reprimand for insubordination, it soon became apparent that the witnesses and the parties disagreed on almost every point raised. The result was a classic “she said, he said” exercise. Virtually every point of disagreement was a matter of witness credibility, which was never addressed by the parties. Therefore, by the conclusion of the hearing, the real truth of what transpired on July 16, 2009 and subsequently was not at all clear.

During the hearing, disjointed pieces of information gradually described a myriad of problem areas all concerning the administration of discipline. The parties are aware that my preference would be to quickly rule on each of the four disciplinary issues, and I admit to being tempted to do so. However, trusting that it might be of some assistance to the parties in developing a future effective discipline system, I have decided to address the issues at some length.

Issue No. 1: Letter of Reprimand

In support of its various positions on this issue, the Union submitted the following jurisprudence:

1. *Re Waste Management of Canada Corp. and Teamsters, Local 419 (Levesque)* (December 23, 2009), 100 C.L.A.S. 122, 2009, Ontario, CLB 20961, P. Chauvin.
2. *Re Toronto (City) and C.U.P.E., Local 79* (July 19, 2005), 82 C.L.A.S. 228, Ontario, R. Brown.

5. that the time limit for filing the award would be extended if necessary.

The parties agreed to the following consent items:

- C#1 collective agreement;
- C#2 package of correspondence relating to the first grievance dated September 4, 2009;
- C#3 package of correspondence relating to the second grievance dated December 20, 2009;
- C#4 package of correspondence relating to the third grievance dated January 15, 2010;
- C#5 package of correspondence relating to the fourth grievance dated February 8, 2010.

Witnesses for the Employer

Dion Faulkner, General Manager
Mike Kennedy, Management Supervisor
Tammy Costa-Cesar, Shift Manager

Witnesses for the Union

Darrell Gough, grievor
Maxwell Milley, Shop Steward

The following items were introduced into evidence by witness Maxwell Milley:

- MM#1 Medical Slip, dated August 11, 2009.
- MM#2 Medical Slip, dated August 20, 2009.

The relevant collective agreement provisions are as follows:

8.09 An employee who is asked to participate in an investigatory interview (which may lead to discipline) upon his request will have the right to Union representation. In the event a Shop Steward is not immediately available; any Union member will suffice.

....

9.08 Letters on an employee's file will be removed after eighteen months (18), the exception is any discipline that results in a suspension. All suspensions will remain in an employee's file until the employee has twelve (12) months without a further suspension.

....

10.04 The proceedings of the arbitration shall be expedited by the parties hereto.

....

Ref: 2010:02

- (a) Reprimand: Insubordination
- (b) Warning: Safety Infraction
- (c) Warning: Safety Violation
- (d) Final Reprimand: Safety Violation

In The Matter of a Dispute

Between

ALLIED AVIATION SERVICES COMPANY OF NEWFOUNDLAND, ULC

(Hereinafter referred to as “the Employer” or “The Company”)

And

**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
TRANSPORTATION DISTRICT LODGE 140**

(Hereinafter referred to as “the Union” or “the Association”)

THE GRIEVANCES

Four (4) grievances were submitted by grievor Darrell Gough concerning:

- (1) a reprimand for alleged insubordination;
- (2) a warning for a safety infraction;
- (3) a warning for another safety infraction;
- (4) a final reprimand for a third safety infraction.

The arbitration hearing was held at Gander, Newfoundland & Labrador on March 12, 2010.

For the Employer: Mr. John Muirhead (Director of Operations Canada), *et al*
For the Union: Mr. Ken Russell (General Chairperson Eastern Region), *et al*
Sole Arbitrator: Mr. David Alcock

The parties agreed:

- 1. to the selection of the arbitrator;
- 2. that the arbitrator had jurisdiction to deal with the dispute;
- 3. that the arbitrator would remain seized of the matter to deal with questions arising from the award including the *quantum* of compensation, if any, should the parties fail to agree.
- 4. that witnesses would not be excluded;