

Subject – Discipline  
– Suspension  
– Discharge

**ARBITRATION AWARD**

BETWEEN: TRANSPORT AND ALLIED WORKERS UNION  
TEAMSTERS LOCAL 8555  
(hereinafter called the “Union”)

AND: COLONIAL GARAGE & DISTRIBUTORS LTD.  
(St. John’s)  
(hereinafter called the “Employer”)

GREIVOR: WALTER DUKE

COUNSEL: For the Union: Stuart Morris  
For the Employer: Darren Stratton

ARBITRATOR: David G.L. Buffett, QC

**INTRODUCTION**

This matter involves three separate grievances. The first is a grievance of a three day suspension imposed on the Grievor on January 6, 2010. The second grievance grieves a two week suspension imposed on the 20<sup>th</sup> day of January, 2010. The third grievance was filed in relation to the discharge of the Grievor on February 8, 2010. All three grievances were heard together. They all relate to discipline imposed when the Grievor allegedly refused or failed to follow the Employer’s directions with respect to the signing of documentation related to the training of an apprentice machinist.

The hearing was held in St. John’s on the 6<sup>th</sup>, 7<sup>th</sup>, 21<sup>st</sup>, and the 26<sup>th</sup> days of April, 2010.

At the commencement of the hearing the parties agreed as follows:

1. That the Arbitrator was a properly constituted tribunal and had authority to hear the case.
2. That the Arbitrator would take notes and in the event of a conflict on the evidence or as to what transpired at the hearing the Arbitrator's notes would prevail.
3. That all parties likely to be affected by the outcome of the hearing had received notice thereof and been informed of their right to appear.
4. That all matters pertaining to the grievance procedure and all times limits, (including time limits governing the publication of the award whether statutory or arising from the Collective Agreement) had been either properly observed or waived.
5. That there are no preliminary points to be raised as to arbitrability and no other preliminary objections.
6. That issues of quantum, if any, would be dealt with separately and that if the parties do not reach an agreement within 60 days of publication of the award, they will be referred to the arbitrator.
7. That the arbitrator would remain seized of the matter for a period of 60 days after publication of the award to deal with any issues of interpretation should they arise.
8. That witnesses would be excluded until their testimony had been heard.

9. That the Arbitrator would have 60 days after conclusion of the hearing for publication of the award.

The following documents were received into evidence:

- Consent 1 The Collective Agreement between the parties
- Consent 2 A grievance dated January 8, 2010 whereby the suspension of the Grievor was grieved
- Consent 3 the grievance of the discharge of the Grievor dated February 9, 2010
- Consent 4 an email from Darren Stratton to Stuart Morris dated February 9, 2010 to which is attached an email from Mr. Morris to Mr. Stratton of the same date
- Consent 5 a letter to Walter Duke from the Employer signed by Boyd Snow dated January 4, 2010
- Consent 6 a letter to Walter Duke from the Employer signed by Boyd Snow dated January 7, 2010
- Consent 7 a letter to Walter Duke from the Employer signed by Boyd Snow dated January 20, 2010
- Consent 8 a letter to Walter Duke from the Employer signed by Douglas Squires dated February 8, 2010
- Consent 9 a letter to Walter Duke from the Employer signed by Douglas Squires dated February 8, 2010
- Consent 10 a Government of Newfoundland and Labrador booklet entitled Record of Occupational Progress (Log Book) Machinist
- Consent 11 a letter to Rick Gill of the Union from the Government of Newfoundland and Labrador dated January 14, 2010 signed by Wayne Predham
- Consent 12 a letter to Wayne Predham from Lewis Day signed by David Day, QC dated February 1, 2010
- Consent 13 a letter to Day, QC from the Government of Newfoundland and Labrador signed by Susan Marrie, Solicitor, and dated February 22, 2010

- Consent 14 a letter to Walter Duke from the Employer dated February 4, 2010 signed by Douglas Squires
- Consent 15 a letter dated January 8, 2010 grieving the Grievor's suspension
- Consent 16 a letter from the Union to Boyd Snow dated January 22, 2010 and signed by Richard Gill
- BS #1 an email from Boyd Snow to Rick Gill dated November 26, 2009
- BS #2 a previous Collective Agreement between the parties from November 1, 2006 to October 31, 2009
- BS #3 a document containing proposed Collective Agreement language
- BS #4 a letter of agreement on Government letterhead dated January 18, 2010 signed by Boyd Snow, Wayne Predham and Jerry Rumbolt.
- WD #1 a bound document setting forth at various tabs the training the Grievor claimed to have done with the apprentice and time tickets
- Rebuttal #1 a letter dated June 22, 2009 from the Employer to Rupert Hayward signed by Boyd Snow

### **The Evidence**

The Employer called four witnesses namely:

William Boyd Snow

Gregory Wayne Predham

Henry Cleverly Brown

Douglas John Squires

The Union called one witness, the Grievor.

The Employer called Mr. Snow as a rebuttal witness.

All witnesses gave evidence under oath.

### **The Employer Evidence**

Boyd Snow testified. Among his other duties he is responsible for labour relations at Colonial Garage & Distributors Ltd.

He described the operational set up of the Employer and its division into four shops, one of which is the machine shop.

He also indicated which persons were working in the machine shop as of January 10, 2010 including what position each was in.

He explained that the Employer had difficulty in hiring a mechanic in 2009 and so decided to transfer Todd Fagan from the machine shop to the service shop and to look for a replacement for Mr. Fagan.

Ultimately, Jerry Rumbolt was hired. He came to work with the Employer on July 13, 2009. He wanted to become an apprentice machinist and get enrolled in the program that would lead to his becoming a journeyman machinist.

At this time there was only one journeyman machinist at the Employer, namely the Grievor. Rupert Hayward and Todd Fagan, though they did machinist work, held no certificates and were not journeymen.

Mr. Snow indicated that Mr. Rumbolt was on probationary status for this first three months. He started working with Rupert Hayward and Todd Fagan and spent the majority of his time with them. He was not assigned specifically to the Grievor in the sense that Snow went down in the shop and said to the Grievor, "he's assigned to you".

The principle reason he was placed with Mr. Fagan for training was that they wanted him to take over for Mr. Fagan thereby allowing Fagan to move over into the service area, as was the plan.

Mr. Rumbolt had to successfully complete his probationary period before being able to be enrolled in the apprenticeship program.

After that period the apprenticeship program officials with government were contacted. Mr. Power visited the Employer's place of business in October and advised that he would have Mr. Nick Flynn contact Mr. Snow since Mr. Flynn was the development officer responsible for the machinist trade. Arrangements were made for Flynn to visit the Employer's place of business to meet both the apprentice and the journeyman. Enrolment in the program entailed having the signature of both the apprentice and a journeyman. In the case of the Employer this would mean that the Grievor would be required to sign as he is the only journeyman machinist on staff.

Flynn attended and reported back to Mr. Snow that he had met with the Grievor and Mr. Rumbolt and that the Grievor was expressing some concerns about being involved in the apprenticeship training program.

As a result Mr. Snow met with the Grievor along with Philip Murphy, the General Manager, in late October or early November 2009. During this meeting the Grievor advised that he had not done training or very little training with the apprentice. Mr. Snow explained that Hayward and Fagan had done the training and Snow advised the Grievor to speak with Mr. Hayward and Mr. Fagan to ascertain the training that had been done. Mr. Snow indicated that the Grievor did not want to do so.

It was explained to the Grievor that the Employer did not expect him to sign anything just because they said they had trained the apprentice but that they wanted him to speak to Hayward and Fagan so that he could know the areas that they had already covered.

At this point Snow's understanding was that the Grievor was willing to participate in training.

Snow instructed the shop manager, Mr. Brown, to assist in the apprenticeship training by getting the apprentice to do duties that the Grievor would be involved in.

Snow received feedback from Mr. Brown that it was not going well and that there appeared to be a reluctance to train on the part of the Grievor. He was informed of the Grievor holding up a screwdriver to the apprenticeship and making a “snarky” remark to the effect “this is a screwdriver”.

As a consequence Mr. Snow decided to get the development officer back to the worksite.

By this time, Mr. Flynn’s departmental duties had been taken over by Wayne Predham. Flynn came to see Snow and Mr. Predham accompanied Mr. Flynn. Predham expressed the belief that if he talked with the Grievor that he could convince the Grievor to participate satisfactorily in the program.

Mr. Snow explained that their thinking at the time was that there were a couple of components to the training. One was training provided by the journeyman himself and the second component was training provided by others that the journeyman could observe to the point where the journeyman could sign acknowledging that the apprentice performed the task to machinist standard.

Snow introduced Predham to the Grievor and left him to speak to the Grievor alone.

Snow stated that at this point the apprentice was not enrolled but wanted to be enrolled.

Predham returned subsequently to Mr. Snow’s office and reported that the Grievor was not going to sign any records because the Grievor believed it is not his responsibility but that he would train.

A couple of days later around November 26, he says that the apprentice called him looking for a meeting. They met and the apprentice expressed concern to Snow that he

was not enrolled in the apprentice program. He also made it known that if he wasn't going to be enrolled he was going to have to leave the Employer.

Snow indicated that the only reason that enrolment had not occurred was because they could not obtain the signature of the journeyman, the Grievor, and his signature was necessary in order for enrolment to occur.

Snow explained to the apprentice that he was doing everything he could and was seeking the cooperation of the Union.

Mr. Snow explained during his evidence that prior to this that he had had a discussion with Rick Gill of the Union about the situation as they were involved at the time in Collective Agreement negotiations.

He says that he sent an email to Mr. Gill that morning attaching a proposed wording for Collective Agreement Article 27. He explained that the Article outlined an employee's responsibility with respect to training but was silent on the signing of apprentice log books and Snow was wondering if the proposed language could be inserted.

He was also enquiring whether the Union had such language in any other Collective Agreements.

He received a response from Mr. Gill on the 26<sup>th</sup> around 6 pm to let Snow know that they had no language in Collective Agreements dealing with signing and that the issue had never been raised before. BS#3 is the Union's response.

The Employer felt the wording which was proposed by the Union could be supported except for the proposed indemnity provision. In BS #3 the language without lines through it was what was presented. The Employer struck out the indemnity provision. Mr. Gill agreed to present it in this form to the Union membership.

The timing of this would be between November 26, 2009 and December 15, 2009 when the Collective Agreement was signed.

Mr. Snow's next involvement in the matter was to get Mr. Predham back into the picture.

Due to the reason that the Grievor was off on vacation on December 18, the earliest a meeting could be scheduled was January 4, 2010.

On January 4, 2010 Mr. Predham met with the Grievor and Mr. Snow. Snow says that they went through the aspects of the journey person training of an apprentice including training, signing of the log book, the fact that the journey person would be required to acknowledge training and the training could include training done by other machine shop staff while the journey person is observing the skills being applied and not only training by the Grievor.

The response from the Grievor was that he would not sign the log book as in his opinion it was the responsibility of a supervisor.

Snow explained that they did not have a supervisor who was a journey person machinist.

The Grievor advised him that he had received advice from a former employee of the Department of Education that it was a supervisor who had to sign the log book. Mr. Snow said that Predham then asked him the name of the former employee but the Grievor would not reveal the name of the person as the person was now retired. Mr. Predham also explained that there had been changes in the program over the years and that supervisor means a person overseeing the apprentice and not necessarily a member of management.

Snow said his understanding was that it was not necessary that the journey person be always standing over the shoulder of the apprentice.

Snow reiterated what the Employer's position was at this point. The Grievor would be required to sign off on any training that the Grievor did with the apprentice plus any skills that the apprentice acquired from training by others. In that case the journeyman would need to observe him perform those tasks and be satisfied that he could do them.

Snow's understanding of the Grievor's position at the time was that the signing off was a responsibility of management and not someone in the bargaining unit.

On the 4<sup>th</sup> day of January, 2010 Mr. Snow issued a written warning to the Grievor in the form of Consent 5. He had attached to the letter a copy of the Collective Agreement provision and pointed out that the Employer was requiring the Grievor to sign the apprentice's log book.

The warning gave the Grievor 48 hours to reconsider his decision and pointed out that if his position went unchanged that the Employer would take disciplinary action.

Snow met with the Grievor on January 6<sup>th</sup>, 2010. The Grievor's position remained the same and he became angry. Snow said that at this point his issue seemed to be that he was not a supervisor and was therefore not required to sign. Snow informed the Grievor that they were going to give the Grievor a one week suspension. At this point, the Grievor turned to his Union representative, Todd Fagan, and said "Mr. Union man, you make a note of that, you make a note of that."

Snow said the further the meeting progressed, the more angry the Grievor became.

He was informed that the suspension letter would be prepared the following day and the Grievor advised Mr. Snow that he was going to file a grievance.

This meeting took place towards the end of the work day.

The following morning, before the letter was completed, Mr. Gill of the Union called and expressed a view that one week was harsh and that three days was more appropriate.

As a result of this Mr. Snow convinced his superior, Mr. Squires, to go along with the Union and the duration of the suspension was changed to three days.

While Mr. Snow was in the process of preparing the letter the switchboard informed him that the Grievor was downstairs. They met and the Grievor was informed that the suspension was changed from one week or five days to three days because of Union intervention. The Grievor was irritated that the letter was not ready. The Grievor wanted to know why he had been suspended and again a discussion was held as to whether he was prepared to sign the log book. Philip Murphy asked him if tomorrow they asked him to sign the log book would he do so and the response was no. The Grievor was described as being adamant and angry at them for bringing it up again.

The Grievor asked for permission to remove his toolbox from the premises and this was granted.

A grievance was received on January 8<sup>th</sup>. Mr. Snow replied to the grievance and his reply is part of Consent 15. He explained that Article 27 required the Grievor to sign the log book and the Grievor refused to sign for any prior or future training provided by him to the apprentice and denied the grievance saying that there were no grounds for it.

Snow explained that they were not requiring him to sign off on hours worked but simply on tasks performed. They had never expected the Grievor to sign off on the hours.

The Grievor returned to work on January 12<sup>th</sup>, 2010.

During that week he was instructed to spend time with the apprentice in training.

Mr. Snow instructed Mr. Brown to ensure that there was training done by the Grievor.

On the 18<sup>th</sup> of January Mr. Predham visited the shop again. He had a letter with him that he wanted the Employer and the apprentice to sign. Instead of having the journey person sign it, Predham was asking to have the Employer sign it so that they could get the apprentice enrolled. This was unusual as it was usually the journey person and not the Employer or company that was required to sign. Here that was not happening so government was asking the company to sign instead. BS#4 was presented for signing.

Again, the apprentice was expressing grave concerns about not being enrolled or getting the training and threatening to leave and go elsewhere.

Mr. Snow explained that they did not want to lose him as he was thought to be an excellent worker and got along well with his coworkers. In addition to that, the company did not want a message to get out that it had a reputation as being a place where one can't get apprentice training.

Mr. Snow explained that throughout this period of time he would hear from Rumbolt and said every week or ten days he would be calling Snow.

Mr. Snow identified Consent 11 as a letter that Mr. Gill of the Union gave him. Gill had inquired at the Department of Education as to the definition of journey person supervisor and this was the response he received.

The next thing that happened was that a meeting was held between Mr. Brown and the apprentice to find out what training had occurred with the Grievor during the week of January 12<sup>th</sup>. He received the information from the apprentice and then met with the Grievor.

He asked the Grievor to sign the log book for the training he had provided but the Grievor had refused to do so. The Grievor held to the position that it was the

responsibility of a supervisor. Mr. Snow explained that this would have been somewhere around the 20<sup>th</sup> of January.

As a consequence of the meeting between the Grievor and Mr. Brown another meeting was arranged with the Grievor which was attended by Douglas Squires, Mr. Snow, the Grievor and Todd Fagan as his Union representative.

They discussed the fact that the Grievor was not prepared to sign and that he was in violation of the Collective Agreement. Squires told him that he was an excellent machinist but that the company could not accept that he was unprepared to sign training records and that he was “going down a road, he really should not be going down”. The Grievor’s response was the same, that it was not his responsibility, but the responsibility of a supervisor.

The Grievor was given a two week suspension and also told that he would be asked to sign when he came back and that if he didn’t at that point he would be dismissed for cause. His suspension was for two weeks or ten business days.

Mr. Snow indicated that they were forced to move Fagan back because the Grievor was off but pointed out that the suspension had an adverse impact on the company simply because Fagan did not have the same set of skills that the Grievor had. They would have liked to have had an option other than imposing the suspension but felt that they had no choice.

Mr. Snow also suggested that the Grievor get independent advice and seek the guidance of a solicitor. He explained that they were concerned they would get as far as dismissal because the Grievor was not listening to them, to the Department or the Union.

Consent 7 is the two week suspension letter.

Mr. Snow explained that the next development was that they received Consent 16 related to the January 20<sup>th</sup> suspension. His reaction to this was that he thought the Union was expressing the Grievor's sentiments rather than those of the Union.

He explained that the Employer next received a copy of a letter sent by David Day, QC to government on behalf of Mr. Duke. This was entered as Consent 12. Snow said that the Employer did not see anything in the letter inconsistent with the way the Employer was saying things should be done.

He explained that they met with the Grievor again on a Wednesday. They let him know at that time once again that he was not responsible for hours and he was asked if he would sign the log book. His position was unchanged. He was asked by Mr. Squires for a yes or no answer. He did not provide one but simply indicated his position was unchanged. Squires gave the Grievor an example of a teacher and pupil and said all the skills that the teacher tests the pupil on do not have to be taught personally by the teacher.

Mr. Squires told the Grievor that it was a serious matter and asked him to take two days off with pay to think about the situation. He was told that the company would pay him for Thursday and Friday, the next two days. He need not report to work on Monday but could consider himself dismissed if he did not change his position.

Snow explained that throughout all this the Grievor never filed a grievance disputing what he was being asked to do but only grievances as to his suspensions and his dismissal.

Mr. Snow explained that Monday morning came and the Grievor presented himself.

He advised that he had been to meet with Mr. Gill on Friday the 5<sup>th</sup> of February and that he was advised to sign the log book for training he had provided and that he was now prepared to do that. He was asked if he would sign the log book where he observed the

apprentice performing tasks when he had been trained in these tasks by other employees. His reply was that Mr. Gill had told him that that was not his responsibility.

Mr. Snow explained that they again went through what it was that they were asking him to do and made it clear to him that they were not requiring him to sign off on tasks that he did not observe. He asked for further opportunities to seek advice on this from the Union and he was afforded the opportunity. This meeting took place first thing in the morning between 8 am and 8:30 am. They agreed to reconvene between 12 noon and 1 o'clock.

They did so and at that time the Grievor said that Mr. Gill advised him that he was responsible for signing off where he observed the tasks being performed even if he did not do the training in those particular tasks and the Grievor expressed the position that the Union was now changing its position on the issue. Snow testified that he, Snow, did not feel that the Union had changed its position at all but that this had been the Union's position throughout.

Mr. Snow said the Grievor would agree to sign for training he had done and he wanted to have that recorded.

Mr. Snow said that the Grievor was again given examples of what was expected of him and was told that he was only expected to sign off on tasks that he had observed. He was asked by Mr. Squires if he would sign. He did not say but started to give excuses. One excuse offered was that he was too busy.

Those present on behalf of the Employer responded by saying that the Employer would make time for him to observe and he would still not agree to sign.

Mr. Snow explained that he never actually said no but that he would not say yes.

Mr. Snow also testified that the Grievor was clearly informed that "if he was prepared to do what was asked of him, he would be working today."

Ultimately the Grievor was advised by Mr. Squires that he was in violation of the Collective Agreement and that he was being dismissed for cause.

Mr. Snow testified that they only recently received a copy of the government response to Mr. Day's letter, namely Consent 13. He said that he saw this late in March and that in his view there is nothing in the letter that affects the Employer's position.

Mr. Snow also testified that there are some changes in the machine shop since the Grievor's dismissal.

He testified that a new journeyman had been hired and had been working there for about seven weeks and that he had signed off on the log book of the apprentice on tasks that he had observed the apprentice perform.

In cross-examination, Mr. Snow confirmed that the Grievor had been with the Employer for 29 years.

The log book C10 was put to him in cross-examination and he agreed that it gave no information to the journeyman as to what was expected of him.

Mr. Snow said that they attempted to involve the Grievor in training but he would not comply.

He agreed in cross-examination that the apprentice has to show the journeyman that he has mastered the skill.

He also said in cross-examination that Mr. Brown was told to tell the Grievor that he was not required to sign off on anything he had not seen the apprentice do.

He said further in cross-examination that in the final meeting with the Grievor that he was not told that he was going to have to sign off on everything but that he was told that he had to observe and if he thought that the apprentice was competent at that task he then had to sign off.

When asked if the Grievor was concerned about his responsibilities with an apprentice on the scene, Mr. Snow said that it seemed like he did not want to participate as he had been told before January 8 by the Union and by Mr. Predham that supervisor did not necessarily mean management. He maintained that at least as early as January 4<sup>th</sup> he was told this and that he, Mr. Snow, was there in one instance when Predham told the Grievor this.

Mr. Snow confirmed on cross-examination that he didn't look upon the reduction of the suspension from one week to three days as cutting a deal with the Union but simply rather as a pitch made by Mr. Gill that he, Snow, thought the Employer should go along with it.

At the final meeting, though he was prepared to sign the book for the tasks he had trained the apprentice in, the Grievor was not given the log book to do so because the Employer was requiring his full cooperation and he was not prepared to give it in that he was refusing to sign the log book for tasks he had observed the apprentice doing.

Mr. Snow indicated that while he would sign for the ones he had trained the apprentice in the Employer also wanted him to sign for the ones he had observed the apprentice doing.

Mr. Morris suggested to Snow that they wanted him to sign off on everything the apprentice had done.

The witness insisted that this was not the case but that he was simply being asked to sign off on the tasks trained by the Grievor and tasks that the Grievor saw the apprentice

satisfactorily perform even though he may have been trained in those tasks by somebody else.

On redirect Mr. Snow said that when he and Gill talked of signing off they talked of signing off on tasks and not on hours and that he can't recall ever having a conversation with Mr. Gill about signing off on hours.

The next witness to testify was Greg Predham, a Program Development Officer with the Department of Education with responsibility for the apprenticeship program in the machinist trade.

He described his role as a liaison between Employers who hire apprentices in designated trades and the Department of Education training institutions. Using the Act, the guidelines of the department, the policy manual, and the procedure manual, he will register prospective apprentices.

He testified that when they are first registered he will monitor their progress, the documentation showing the skills signed off, and the documentation of the hours and from there he will arrange for in-school training. At the end of the apprenticeship he will arrange for a certification exam to take place.

Mr. Predham explained that they have a national Red Seal program in which all the Provinces and Territories take part to ensure that persons are trained to a national standard.

He personally is responsible for nine different trades on the Avalon Peninsula and all trades on the Burin Peninsula. The machinist trade falls in his area of responsibility.

Mr. Predham testified going to Colonial Garage on November 19, 2009 with Mr. Flynn. He met with the Grievor and explained to the best of his ability what he required to sign up Rumbolt as an apprentice.

He said that in his role daily he will have conversations with journeypersons as to their responsibilities with respect to skills sign off to ensure what gets signed is only that which can be legitimately signed off.

He said he was getting a negative response from the Grievor and it was clear to him that the Grievor would not sign off on the skills and that he would not sign the Memorandum of Understanding (which would allow for enrolment) either.

Predham said that made this case different and he had never encountered it before.

He said he discussed with the Grievor the apprentice's responsibilities, the Employer's responsibilities and the journeyperson's responsibilities. He made it clear that the Employer was responsible for signing off on hours and that the journeyperson was responsible only for skills sign off.

He said that he could not get the Grievor to agree that he would not be signing off hours and he explained what supervising an apprentice would mean.

He says that the Grievor had an issue with the term "supervising journeyperson" and took this to mean that only management could sign off on skills and hours despite what Predham was telling him.

Predham said he tried to make a separation between skills and hours. He tried to make the Grievor understand that though the skills were the responsibilities of the supervisor, supervisor did not necessarily mean part of management but rather what was meant by supervisor was the mentor of the apprentice, whether in management or not.

Predham said that he did not think that the Grievor believed him. He said "he thought I was wrong".

He also remembered discussing with the Grievor their common histories, the Grievor's machinist apprenticeship and Predham's experience as an electrician apprentice, and he remembered saying to the Grievor that without a cooperative journeyman "we would have not got far".

He met with Mr. Snow before leaving and reported that he was not successful with the Grievor.

He indicated the memorandum to enrol Rumbolt was later completed by the Employer and Rumbolt and that the Grievor did not sign it. This occurred in January.

He testified that the expectation is that the apprentice will acquire the skills in the workplace, his place of employment.

He was asked the question, "does it matter if people other than the journeyman participate in the acquisition of these skills?" The response was "the expectation is the skills will be certified by the journeyman on staff but it is not the expectation that the journeyman would be with him at all times." He went on to say there may be higher level apprentices or other uncertified people that he can acquire skills from. We want to see the journeyman's name saying the skills have been done to journeyman standard."

Predham went on to say that he had a second meeting at the Employer's place of business on January 4, 2010.

Mr. Snow had indicated that there had been no further movement on the Grievor's part to sign off skills. After meeting with Snow, Predham then went to the machine shop and spoke to the Grievor. He said that he had "pretty much a mirror conversation as the one we had on November 19." He said it came to the same conclusion as the previous meeting. The Grievor was not satisfied that Predham was giving him correct information

and he told him that somebody from Predham's division was telling the Grievor something different.

Predham said he asked who it was but did not find out as the Grievor would not say.

It was on this day that he met with the apprentice, Rumbolt, and accepted his application and supporting documentation.

He said that Rumbolt expressed concerns over his progress at the Employer and was wondering if he would have to go elsewhere.

The next thing Predham recalled was that Mr. Gill of the Union requested a letter identifying a journeyperson's responsibility which Predham wrote up and sent to Gill. He identified Consent 11 as the letter which he wrote to Mr. Gill. This letter made it clear that the term journeyperson supervisor describes an individual who is assisting in the training of an apprentice through mentoring and that such person may or may not be part of management.

Predham recalled another meeting at Colonial Garage on January 19, 2010. At this time a letter was presented to Rumbolt and Snow and another person from the Employer was present as well. He made it clear that while he was signing Mr. Rumbolt up unless the situation was rectified with the journeyperson signing off on tasks that Predham would not accept any hours.

The document placed in evidence as BS #4 was identified as the document that he had signed. It bore the signatures of himself, Rumbolt and Snow.

He explained that the Employer had a person that it wanted to keep on staff, a prospective apprentice who was in limbo, and a journeyperson who was unwilling to sign anything and he wanted to show the apprentice that some progress was being made. It was in that light that he departed from the norm and accepted Mr. Rumbolt as a registrant in the

program. He also explained that this is the only time he has ever had to do this or accept someone with such conditions attached.

He and Snow met with the Grievor during that day and during that meeting it was primarily an exchange between Snow and the Grievor which resulted in an impasse. He remembers feeling uncomfortable and not wanting to be involved in the Employer-Employee relationship. He could recall that the Grievor again mentioned hours and that he, Predham, made it clear to him that he did not have to sign off on hours.

He described the meeting as “not cordial”. He said that “it seemed a little tense”.

He says that he was involved in the preparation of the response to Mr. Day’s letter, Consent 12. The response was Consent 13.

In cross-examination Predham said that what he would like to see “is a journeyman say I saw Rumbolt perform this task to journeyman standard.” He also said that “he does not expect him standing over him at all times.”

He did say “all training being done by somebody else and just the journeyman watching skills be demonstrated is not good enough.” He went on in cross-examination to say that the expectation is that he is “not rubbing shoulders with the apprentice at all times but that the journeyman is the go-to guy”. It is he who “acknowledges skills progression”.

He went on during cross-examination to say that “Colonial does not have a big shop and if he satisfies himself that Rumbolt can use a lathe I am ok with it whether he learned it from Duke or not.” He went on to say “we want them trained by journeymen primarily.”

He also noted that as an electrician apprentice when he reached his third year of studies he rarely saw a journeyman but then went on to say that he would not expect an apprentice to be trained by an apprentice in another trade.

Henry Brown testified. He is the Shop Manager for the Machine Shop.

Mr. Brown described who was in the machine shop on January 10, 2010. He noted that Rupert Hayward was a machinist who had been working as a machinist at Colonial for close to 40 years. He said that Mr. Fagan has been there for 10-12 years.

Mr. Brown said that he himself was a Red Seal body person and has been involved in apprentice training for years. He described how it works with the log book and skills recording. He said "an apprentice comes in, he works, a journeyman usually oversees the work he does and when it comes time to get the log book signed off the journeyman will sign off on the skills he's observed or trained the apprentice in." He said the source of the skills acquisition does not really matter. If he is not up to "spec" the journeyman does not sign off.

He said he asked the Grievor to train Rumbolt on certain machines around the shop so that Rumbolt could acquire the skills. The Grievor was a bit reluctant according to Brown but did say that he would help or oversee him.

He stated that he concluded the Grievor was reluctant because of the attitude the Grievor exhibited. "I am not going to babysit" was one thing Brown claimed the Grievor to have said.

Brown said that there was a week they approached the Grievor and said that they wanted him to take Rumbolt with him. They wanted him to supervise the apprentice and see how he was doing on different machinery.

He said he could not remember when this was but that it may have been in December 2009.

Again, according to Brown, the Grievor was reluctant. Brown said he detected this from his tone of voice.

Brown was able to observe the Grievor watching the apprentice welding seats on manheads. He said Rumbolt was doing the welding and the Grievor was watching.

His next involvement was to meet with the apprentice to get a sense from him how it was going.

He says that Rumbolt reported that the Grievor did not want to give him too much information and that if he asked questions of the Grievor he was not getting proper answers.

Rumbolt gave him no examples.

He next met with the Grievor and asked him to look down through the log book and to go over the different procedures and different levels and determine which ones he observed the apprentice doing and that he helped him with.

He says that machining and flywheels were mentioned. The Grievor said he instructed the apprentice how to maintain and install grinding wheels on a grinding machine and how to operate a surface grinder, and a few other machines.

Brown asked the Grievor what he observed the apprentice doing. Lathes, welding equipment, honing of the stubs on big axles, and cutting rotors on drums were things that were mentioned by the apprentice. The Grievor didn't confirm all those items. What he confirmed were the grinding machines, the drill press and welding equipment.

When looking through the log book in the presence of the Grievor, grinding machines, the grinding wheel, and flywheel surface grinder was the terminology which came up.

Brown asked the Grievor if he would sign off on the things he observed Rumbolt doing. He claims the Grievor said no, that it was not his job, and that he did not have to sign off on it. Brown says that he asked him why and the response was “why don’t you sign off on that?” Brown claims that he replied “if I was a licensed machinist I’d have no problem signing off.” Brown says that he then said “very good Walter, that’s all that we can do for now.”

Brown says this interaction took place on January 20, 2010.

During cross-examination, Brown says he assigned Rumbolt to the Grievor for one week but there were times when he asked Rumbolt to go with the Grievor other than that and prior to that there were instances where he put them together.

He also claimed that there were other times when Rumbolt had nothing to do that he asked him to go and watch the Grievor. He says this would have happened a couple of times per week.

The last Employer witness to testify was Douglas Squires.

He currently is the vice-president of the Employer.

His first involvement in this matter was to be briefed by Mr. Snow and the General Manager, Mr. Murphy, about the situation and to have a discussion as to how it might best be resolved.

He recalls the Collective Agreement language being changed.

From his perspective this issue next surfaced in January when they were trying to bring the Grievor into the training program.

Again, Squires was just being advised to what was going on.

Squires says that his first direct involvement was around the 20<sup>th</sup> of January, 2010 in the Machine Shop. He says he sat in on a meeting mainly as an observer. He says that Mr. Snow was trying to explain to the Grievor what the company's expectations were and the Grievor was adamant that he would not comply with a sign off of any type whether he trained or observed. He claimed it was not his responsibility. He told those present that he had given his position and it would not change.

Squires says he tried to impress upon him that this was going down a path that there should not be a need to go down. Squires could not understand why he was adamant in his position when it was contrary to all the other apprenticeship training that had gone on at Colonial. Squires says that he explained the seriousness of the situation to the Grievor and the potential outcomes. His testimony was to the effect that "I implored him not put me in a situation where I'd have no recourse but to dismiss him."

Squires says that he provided analogies and examples hoping it would lead to a better understanding by the Grievor. The teacher/student analogy was mentioned.

Squires said that the only thing that came out of the meeting was the Grievor's unwillingness to move from his position.

He said that his next involvement was to be consulted by Snow on the five day suspension. They had determined that there would be a suspension for five days but Snow explained Gill's view that it was excessive and three days was more appropriate. Squires says he was reluctant but Snow persuaded him to reduce it. Consequently a three day suspension was imposed.

Squires says that his next involvement was at a meeting, the result of which was a two week suspension. He says that they were again unsuccessful in persuading the Grievor to change his position.

He says that the Grievor was informed that when he returned to work they expected compliance.

Squires said that when he returned it was a Wednesday. The Grievor's position was still that it was not his responsibility to sign and he would not sign.

Squires asked him to take the rest of the week off with pay to consider his position but made it clear that there was no need for him to return to work on Monday morning if his position did not change.

He explained in the course of his testimony that employees were upset at the difficulties Rumbolt was having and he had to bear that in mind as well as look after the interest of the apprentice. He felt that the Grievor was impairing management's ability to properly manage and direct the workforce.

He said it would undoubtedly have an adverse impact on their business in that the Grievor had to be off or that he had to be "let go" but as he saw it, management had to have the ability to manage.

He noted that they have an aging workforce and that it is difficult to attract skilled trades and he could not have his ability to deal with these realities impaired by persons thinking that they could not progress to interprovincial status if employed by Colonial.

Mr. Duke returned to the workplace on February 8<sup>th</sup> and on that day two more meetings were held with him.

The first was around 8 am. Squires testified that the Grievor said he had spoken with the Union and the Union told him that he had to sign for anything that he trained in. Squires told the Grievor that that was not his understanding of the Union's position and that he, Squires, understood the Union's position was the same as the Employer's that the journeyman was required to sign off on a certified apprentice's attainment of the proper standard of knowledge and skill whether he had done the training or not.

Due to the fact that his understanding of what the Union was saying was said to be different from the Employer's understanding of the Union position Squires indicated that it would be best for the Grievor to go see Gill and ensure his understanding of the Union position was correct.

The meeting broke up and Squires' understanding was that the Grievor would be going to seek further advice from the Union.

Squires said the log book was not put in front of the Grievor at that time as he did not see any point in doing so. He felt that his signature on the log book would be dealt with on the Grievor's return.

Squires states that the Grievor returned. A second meeting was held. The Grievor said that now the Union was changing its mind and he was required to sign more than just that in which he had trained and that the Union were now taking the position if the apprentice could demonstrate a proper level of competency that the Grievor was to sign provided he had seen the apprentice perform the duty.

He, Squires, asked the Grievor if there was anything unclear or that he did not understand. He also said he asked this of Mr. Fagan, the Union representative at the meeting, and Fagan indicated that things were clear and that it was in keeping with the apprenticeship program in which he was enrolled.

According to Squires, the Grievor did not really answer with a yes or no as to whether he was prepared to sign but just said that his position had not changed. He was willing to sign for areas where he had directly trained but that was it. Squires said he specifically asked him for a yes or no answer. He refused to give one. Squires advised him that refusal would result in immediate dismissal for cause. Squires said that the Grievor attempted to obscure the issue with commentary and statements that had no bearing on the matter. The Grievor talked about somebody getting hurt in training and that he felt it was not his responsibility to sign. Squires expressed that he was of the opinion that the things the Grievor was talking about were irrelevant.

Squires testified that he then advised him he was terminated effective immediately for cause, for his continued failure to comply with the terms of the Collective Agreement and clear insubordination in his refusal to follow management direction.

He advised the Grievor that he would receive a letter the next day to this effect and that his ROE (Record of Employment) would be provided at a separate time once calculated. Squires then said the meeting was over and left the room.

He identified Consent 9 as the letter of termination.

During the course of his evidence Mr. Squires indicated that they do work for offshore supply vessels. This was a type of work that Todd Fagan was most proficient at. While he is now enrolled in the mechanic apprentice program they hired him originally as an uncertified machinist. They needed someone skilled in the manhead work that would be handed off by Fagan when he moved to the mechanics program and that was one of the reasons Mr. Fagan stayed behind in the machine shop after Mr. Rumbolt was hired and why he spent so much time at first with Mr. Rumbolt. He said that in his first three months there during his probationary period he would be familiarizing himself with the machine shop and learning from Fagan. Squires reiterated that this offshore work is work that Colonial cannot afford to lose.

He said the Grievor, because of his status, was the only person who could do compliance testing. Squires said the Employer's intention all along was to have him head the apprentice training and said that they have always trained with journeypersons and that any suggestion they would do anything else was blatantly false. He said the fact that in an ideal world he'd be involved right away but wasn't due to staffing, business considerations, and difficulties getting the Grievor to comply, did not mean that it was not their intention to not involve him in the training.

Mr. Squires was not cross-examined.

### **The Union Evidence**

The Employer concluded its case and the Union called the Grievor to testify. He said that he has been working at the Employer since February 15<sup>th</sup>, 1980 when he came out of the Trades College with the exception of one period of approximately a year when he worked in Mississauga. He trained as an apprentice with the Employer.

In the 1990's he had an accident on a crankshaft grinder which put him off for 11 months. He says that he had his sleeve catch or hook in the machine. Fortunately the control was on the left side and he was able to reach and turn the machine off or it would have been much worse.

Since then he has been very safety conscious.

He also claimed that around the 17<sup>th</sup> or 18<sup>th</sup> of June he was harassed by another employee, Rupert Hayward. He seemed to insinuate that that case was something the company didn't take seriously or were doing nothing about.

He claimed that Snow spoke to persons about it, Mr. Fagan and Mr. Hayward, the next day and two weeks later he asked Snow how far along he had got with the investigation and Snow indicated that it had been dealt with.

He seemed to dispute that Rumbolt was hired in July and maintained it was June. He said Snow introduced him to Todd, Rupert and me and explained that he had a two year course.

He told them that this person was going to be an apprentice.

The Grievor says that Rumbolt had three trades, millwright, welding and machinist and that Snow didn't say which one he was going to be in.

The Grievor says that he came back from holidays on October 29, 2009 and was approached by Henry Brown in his work area. He says Brown said "Here Walter sign this for us." He said he responded "What is this?" and Brown responded that it was some kind of log book hour sheet. He said that it was just plain pieces of paper with lines on it. The Grievor said that he did not know if it was the same as a page out of the log book.

The Grievor said he responded to the effect "the only thing I signs is paycheques on Friday". He said that Brown said "very well" and left.

He said that he had not worked with the apprentice prior to October 29<sup>th</sup>. He claims the first time he trained the apprentice was on November 26<sup>th</sup>.

He testified within 20 minutes after Brown asked him to sign the paper on the 29<sup>th</sup> of October he was called to the office by Snow and Murphy.

He claims that Snow asked him why he didn't sign the hours and the Grievor's response was that he was not the supervisor or the person who allots jobs or who assesses the quality of his work.

He said Philip Murphy said you have to sign the log book; we can have everybody's job here. According to the Grievor Murphy threatened his job. He also testified that Murphy said he didn't recognize the Union.

The Grievor said that he told Murphy that in order for him to sign he had to be a company representative. He said in his evidence that a retired person told him so, a person who had worked in career development.

With some reluctance the Grievor disclosed in the hearing the name of the person. He said it was Malachi Mandville. He said this person was now a financial advisor.

He says first when he started getting questioned by Snow he spoke to Mandville. Mandville told the Grievor that when he was employed in the program it was the supervisor who was responsible for signing off, a member of management. He also said that Mandville could not tell him what the current situation was. He says that he "asked stuff of people in the trades" and spoke to his brother who is a mechanical engineer in Ontario. He said his brother told him what the Ontario rules were.

WD #1 was introduced through the Grievor. It was said by the Grievor to be a record of his training of Rumbolt.

He said that the first day of training was November 26<sup>th</sup>, 2009 and that he had been told the day previous by Brown and Snow that he had to train.

He said that what he did on the 26<sup>th</sup> was the work of assembling an axle. It was mechanics work and was not one of the things in the log book.

He said on December 4<sup>th</sup> he spent four hours training on the crankshaft grinder. He pointed out that this was in Tab 2 of WD #1 and that there was a time sheet for it at Tab 9 of WD #1.

He said he was operating a machine and Rumbolt was just looking on. He acknowledged that this is machinist's work and that it is called cylindrical grinding.

Tab 3 of WD #1 references December 8<sup>th</sup> and he said he trained for 2.5 hours. Tab 4 references December 10<sup>th</sup> and he says he trained for 1 ¼ hours. Tab 5 references changing a stone on a machine and that was for 2 hours. Tab 6 references the day he was back after the three day suspension, January 12<sup>th</sup>, and shows that on that day he showed the apprentice how to line up a journal on a crankshaft, and did dressing with a ¾ diamond dresser. He says that he learned from the apprentice that he had no grinder experience. He said that when he himself was an apprentice it took him nine months to learn to grind a crankshaft.

He said he told the apprentice the manual was in the stockroom and that he should take it home at night and read it. He also claimed that he told the apprentice he should have a trade theory book because in it are the basics of grinding.

He testified that in relation to Tab 6 of WD #1 the time of two hours and 10 minutes signifies that he took longer to do the job than he normally would because he was training the apprentice. He says that the apprentice was involved on the 13<sup>th</sup> of January in crankshaft work and that on the 14<sup>th</sup> of January he has two hours training recorded related to working on the grinder.

He also said that he was involved with the apprentice in taking a seat out and telling him how to shrink a seat when rebuilding a cylinder head. He had no date recorded for this and can't remember the date.

These are the only things that he has listed as to the amount of training he did with Rumbolt and it's a total of 20 hours.

He acknowledged that Rumbolt spent a lot of time working with Rupert Hayward who was classified in the Union contract as a small engine person and Todd Fagan who has

recently become a apprentice mechanic. He said that first when Rumbolt was there he was assigned to these two persons and not to him.

He testified that February 8<sup>th</sup> was the date that he was ultimately dismissed. He said he didn't have the letter at 8 o'clock and that he did not understand all that was in the letter when he received it.

A question was asked him in his evidence in chief to this effect – “they said in their letter that at the first meeting you said you'd sign for the training you did”, is that accurate? And the answer was “it is not accurate.” A question was then asked “what did you agree to sign?” and the answer given was “I said I would sign for what I witnessed an apprentice do at the second meeting, I agreed I would sign for the 20 hours I was with him, but Snow wanted me to sign for everything, all the time he was with the other employees, Fagan or Hayward.”

He claims that he thought if he signed for the training they did, it would be detrimental to the whole system. He says he had a lawyer write government. His understanding from the lawyer and the Department of Justice, after three weeks waiting for Predham and phone calls from my lawyer, that he was right all along and that he had to train, observe and approve.

He claims that Colonial wanted him to approve other people's time. He says that they showed me copies of the log book and said this is what we want signed and this occurred around 3 o'clock on the 8<sup>th</sup> of February. He says that the first meeting took place at 8:20 and the second meeting started around 11:45 and between the first and second meeting he spoke with Gill and that Gill at that time told him he had to sign all the tasks. He said that he received Consent 8 during the second meeting.

He was asked about the statement on page 2 that if he was trained by another employee such as Todd, that they'd have the apprentice perform the same task in front of the Grievor to the Grievor's satisfaction before the Grievor would be required to sign and his

response was that they didn't let me sign anything that day. He then went on to say that they wanted me to sign all or none.

He claims that Squires temper rose and that he was getting nervous about being suspended for just cause. The question was asked was it dismissal for just cause that you mean and the Grievor responded that could be it. He identified Consent 9 as the letter confirming his firing. It's dated February 8<sup>th</sup> but he claims to have got it on February 10<sup>th</sup>. He said it was handed to him on February 10<sup>th</sup> around 10:45 am.

The Grievor testified that he is 49 years of age and has no dependents. He is single but he looks after his elderly mother with whom he is living.

She is dependent on him somewhat financially plus dependent on him for all the time he spends around the home. He says he has 11 siblings but they are all gone.

He noted that he has a grade 11 education plus a 9 month pre-employment course in 1977 at the College of Trades and that he went on to complete the journey person training at Colonial Garage.

Asked on cross-examination as to why he bothered to bring up the complaint he had made about a violation by someone else of the company's respectful workplace policy he said it was because he spoke to his Union about harassment on the job through management, that his job was threatened and that Murphy said he didn't recognize the Union and could have his job if he wanted it. He was questioned as to when he first saw the Respectful Workplace policy and he claims that it was in a booklet given to him on June 4<sup>th</sup> and his complaint was two weeks after that and it was June 22<sup>nd</sup> that he had harassment on the job. He brought the harassment to Snow's attention the morning that it happened. He said it was not correct that Snow told him he had looked into it and that it had been addressed. He claims Snow simply said that he's looked into it and that's all he said. He claims that in July he spoke to Snow and asked him how far along he was progressing with it and Snow responded that he was looking into it. There was a second

time that he spoke to Snow about it, July 17<sup>th</sup>, and he asked him for a second time how far along he was with it and Snow said that its all been taken care of.

He was questioned about the skills of the people in the shop in the summer of 2009 and he said that Rupert Hayward does some machinist work when people are on holidays and that it is only him and Rupert that exchange time. He said some machinist skills that he does Rupert can't do and there is some machinist skills that Rupert does that he does not do and indicated that they divided up the types of jobs between the two of them. He indicated that Rupert Hayward does do good work.

In speaking on cross-examination about Todd Fagan, he said he performed some machinist skills but not all. He listed three categories of work and said to some degree they are machinist's tasks but that there is an overlap between machinist duties and mechanic duties. He did admit that from what he had seen Todd Fagan did good work.

He said the introduction of Mr. Rumbolt took place before he started work and that he was told that Rumbolt was going to be hired as an apprentice but that at that point the Grievor never said that he would train him. He said he knew that he would have some involvement in his training.

He believes that when Brown gave him the document to sign it was when he first came back from holidays. He mentioned October 27<sup>th</sup>, 2009 at 8:45 am. He said "I did not know what he meant and that I thought he was asking me to sign the hours". He says the same day he had a meeting with Mr. Snow and Murphy at around 9:30 in the morning and that they told him he would have to sign Rumbolt's log book.

He said they also talked about a couple of other things including holiday issues and asking to help out when someone was on holidays as to ordering parts and that Mr. Kennedy in Parts didn't like it because of job security.

He claimed that Kennedy was favouring other workers in giving out work because he, Duke, was “getting broom detail”. He said he asked Mr. Snow about the sharing of work and that Snow just brushed it off. He said that he brought up the topic of harassment by Rupert and asked Murphy why it was not looked into and that Snow replied that he took care of it. He said he was harassed by the managers that day and they were trying to force him to sign a log book, that his job was threatened and that they said if he did not sign they could have his job. He claims it was said, “we can have anyone’s job” and that “we do not recognize the Union”.

He admits that he didn’t file a grievance about this alleged harassment by the two managers.

He said that Mr. Gill phoned him at 11 am on December 1<sup>st</sup> and told him the company had issues about “book signing” and he wanted to know what was going on and he told Gill that his position was that it was unjust punishment and that he thought he had to be a supervisor. He said November was the first time he got the opportunity to train the apprentice and this started the 26<sup>th</sup> of November.

He said it was on October 27<sup>th</sup> at a meeting when they wanted him to sign the log book for the apprentice and it was put to him that he was asked if he would consider it. His response was yes.

October 28<sup>th</sup> Snow asked him if he had considered signing and he said “No, I understood I had to be a supervisor”. He got this from talking to his brother, Robert Duke, an engineer, and Malachi Mandville who had worked in career development but was retired probably at least 15 years. He spoke to his brother October 27<sup>th</sup> when he got home that evening and it was probably the same time that he spoke to Mandville.

He was asked about making a snide remark to the effect that “this is a screwdriver”. His response was that he was busy at a job with a boat at the time that had to be finished and Mr. Brown said stop what you are doing and train the apprentice. He informed Brown

that he had an important job and that he turned and said “this is a file and I am filing here”. He said that Brown said that’s being sarcastic but he was in a rush to get back to the work that he was doing on the boat. He claims that it was a file that he referenced and not a screwdriver.

He was questioned by Counsel for the Employer to the effect that it is the company’s right to take you off and put you elsewhere is it not, and his answer was yes but its more to it than that in that I have two or three foremen to answer to.

The question was then asked “is Mr. Brown over the foreman?” and his response was yes.

He admitted during cross-examination when asked if Rumbolt would pick up tricks of the trade from Fagan and Rupert that he would. His response was “I guess”. He also admitted that when he got his training that he learned from people other than the journeyman in the shop and that when somebody by the name of “Deir” was an apprentice he would learn from him because he was a third year apprentice.

He said that at the November 19<sup>th</sup> meeting with Predham he explained to him that the Employer was responsible for hours and the journeyman is responsible for skills sign off. He said that “who was responsible for the apprentice”, was one question he had for Predham. He asked “do I get paid for this and is there an extra title?” He did say that he mentioned the issue of the supervisor having to be a member of management in this meeting with Predham. He said that Predham did not explain the difference between hours and times. He also said that he did not want the responsibility of someone having an accident on his mind.

He did say that later in another meeting with Predham that Predham said he didn’t have to be a supervisor. He said he had a meeting with Predham on January 4<sup>th</sup> and he told me I did not need to be a supervisor to sign for tasks and time. I did not need to be a member

of management. He told Predham during the November 19<sup>th</sup>, 2009 meeting that he had different information from other people, different than what Predham was telling him.

He was asked why didn't he reveal the name of the person giving him this information and he said it was because the person was retired.

He said that on December 1<sup>st</sup> he and Gill spoke on the telephone and he asked me what I was doing and working on and I told him brakes on a tractor. He said "is the apprentice with you now?" and the Grievor told him what the apprentice was doing. He claims Gill said this was mechanics work and its no good for the apprentice. He said he told Gill at that time he was being harassed on the job and told him that he had had his job threatened by Snow and Murphy. He also told Gill that they said they did not recognize the Union. He said they were asking him to sign time or hours for the apprentice and he said "I thought I had to be a supervisor to do that". He says that Gill told him we were putting something about that in the Collective Agreement which is on the table now. He claims Gill told him that he had to be a manager to sign time. He said that Mr. Gill never had any response when he told him he was harassed.

He said he saw Article 27.4 at the Union meeting when it was being voted on and he said it was approved by "a crowd of hungry men around four or five o'clock in the evening" and he voted for it but didn't fully understand it. He said he was later told by his lawyer that it was poor wording and that there was a difference between direction or guidance and direction and guidance. He said it was not clear enough wording for him that he had to sign off on training received by an apprentice.

On January 4<sup>th</sup>, a second meeting was held with Predham. He said it was also on that day he received a written reprimand Consent 5. He said he got that around 4 o'clock on the 4<sup>th</sup>. The question was asked to the effect "the second paragraph is clear that you had to sign for all his training", and his response was this is not what Gill said. He claims Gill said he only had to sign for what he trained him in. He said what was agreed in the Collective Agreement was that they would sign for time spent with the apprentice.

He referred to his notes and said that January 4<sup>th</sup>, 2010 must be the day of the Union meeting and that he had a meeting with Gill afterwards. There was no vote specifically on that language. There was only a vote on the Collective Agreement as a whole. He claims to have had a heated discussion with Mr. Gill and he didn't think they could put something like that in a contract forcing him to sign paperwork.

He said he got a letter of reprimand and claims to have grieved it.

During the hearing the Union acknowledged that the letter of reprimand was not grieved.

He says he showed it to Mr. Gill on January 7<sup>th</sup>. He was asked the question why didn't you grieve the written warning. He gave no answer and then said that he grieved.

As is stated the Union acknowledged in the hearing that it was not grieved.

It was put to him that on January 6<sup>th</sup> which was a Wednesday that he was asked if he reconsidered his position and if he'd sign the log book and he was asked why he was not prepared to sign it then. The answer given to Mr. Stratton in cross-examination was "the same as before I wasn't a supervisor". The question was then put to the Grievor by Mr. Stratton "but Predham told you that you didn't have to be management". The answer given was that he didn't have faith in Predham.

He says he told management January 6<sup>th</sup> that his position wasn't going to change. He said he was angry that he had lost three days pay and he said I've answered the question already, don't ask me anymore. He claimed that he was under a lot of pressure along with being harassed. He says he ignored Predham because he got two different answers.

It was put to him that he knew the company's position was that he was required to sign off and not being a member of management did not make a difference.

He referenced Consent 11, the letter that Predham had sent to Gill and said that Mr. Gill gave him that letter at the Union office and that he gave him a copy of the log book. He said this was the first time that he had seen a log book. At first he said it was January 15<sup>th</sup> that he got the letter from Mr. Gill and then said "I got the letter on the 14<sup>th</sup> from Mr. Gill. January 15<sup>th</sup> I got the plan of training from Gill and January 18<sup>th</sup> I got the log book for the first time from Gill".

He went on in his evidence on cross-examination to say that Rumbolt would always come up to him asking if he would sign his time and he said his response was "what are you talking about, I haven't been with you, Todd and Rupert have". He said he spent a fair bit of time with Rumbolt the week of January 11<sup>th</sup> and that the documents which he supplied show time on January 12<sup>th</sup>, 13<sup>th</sup>, and 14<sup>th</sup>. He admitted installing wheels on the grinding machine and that the apprentice was involved in that. He says that he did not tell Henry Brown that he was operating a drill press with the apprentice and that the only thing he can recall is informing Brown about the cylindrical grinder.

He said that January 20<sup>th</sup> when he was called in the office and asked to sign off on skills that he told them he was not training Rumbolt in stuff he asked me to train him in. He said "I wasn't comfortable". He says "I don't think I was asked to test him in a procedure then" and said "I think I would have done that if asked". He looked at his notes for an 11 am January 27<sup>th</sup> meeting with Mr. Brown and says that he asked me to observe something. He then changed his evidence and said that was not the case.

He says he spoke to Gill about Consent 8 but it was after he was dismissed. The letter was put to him and it was suggested that it was made clear in the letter they were not requiring him to sign off on tasks that he did not see Rumbolt perform. His response was he had no problem with signing for "stuff" that he trained him in and that his problem is that they were asking him to sign other people's training time. He thought it was dishonest to the system to sign other people's time. He said he had the meeting at 8 o'clock. He then spoke with Gill on the phone. He said he came back to Colonial and went home and read this letter and then went back to the company. He said he went to

the Union and asked Gill about it and claimed they are telling him one thing in conversation and another thing in the letter.

He did recall Mr. Squires using the teaching example.

He said that he would sign for training by somebody else with a red seal.

Boyd Snow was called as rebuttal witness by the Employer to deal mainly with the statements that the Grievor made about the harassment complaint even though the Union said that it would not rely on the harassment complaint or suggest that this was a basis for the Employer acting as it did, however, the Employer's Counsel indicated he still wanted to call the evidence as it went to Mr. Duke's credibility.

Snow gave evidence in rebuttal that the Respectful Workplace policy was originally created in 1999 and it became part of the Collective Agreement in 2000 or 2001 and the most recent circulation amongst employees was June of 2009. He said it was circulated after an incident they had June 12<sup>th</sup> in the body shop between two employees and reprimands were given to each.

He said he got a complaint from Mr. Brown that there was a complaint from an employee in the machine shop and that was the 22<sup>nd</sup> of June. He said it was an incident involving a discussion between Duke and another employee in the machine shop and when he got the call he went to the shop and he and Mr. Brown talked to Mr. Duke. He said the Grievor indicated that another employee had used offensive language against him and the employee in question was Rupert Hayward. He said that they then had a meeting with Hayward in the manager's office which overlooks the machine shop and that it was confirmed by Hayward that what Mr. Duke said was correct. Mr. Hayward apologized to Murphy and Snow and said that he would apologize to Duke. Snow testified later that day Mr. Hayward received a written reprimand and there is a letter on file to that effect. Rebuttal 1 is the letter of reprimand.

Snow said he cannot remember Mr. Duke following up on the complaint and he said that he would never say in July that he told Duke that it was still in progress because he had dealt with it long before that. This was something that he was absolutely 100% sure of.

He also said that Mr. Duke's job was not threatened in the meeting with himself and Mr. Murphy and that Murphy never made a comment about having his job or that the Union was not recognized.

### **Argument**

#### **Employer Argument**

The Employer commenced its argument by saying the Union's position will likely be that Duke had a lack of understanding of what was required of him and can't be blamed for what happened. It argued that position holds no water. It also said the argument that his conduct did not constitute insubordination holds no water.

The Employer argued that the Employer's position was that the Grievor had an obligation to participate in the apprentice's training and to complete the workplace skills section of Mr. Rumbolt's log book. It argued that it's not a unilateral policy but it is in the Collective Agreement.

Mr. Stratton, for the Employer, argued that it cannot be credibly maintained that there is a reasonable misunderstanding in this case. He argued that Mr. Duke was told verbally by Predham and Snow and saw what was required of him in writing on several occasions. The information came from Snow, Predham and Doug Squires.

He said the Grievor's conduct amounts to insubordinate conduct and in one instance there was insolent behaviour on his part plus a statement from him that there would be no compliance by him in the future.

Mr. Stratton argued that right up to the time he was discharged the Grievor was not prepared to sign off on skill acquisition if anybody other than he had a role with the training of the apprentice.

Mr. Stratton maintained that the company's approach throughout was a measured one and in accordance with progressive discipline principles.

The Employer took the position that there was an absence of remorse and that the grievance should be dismissed.

The Employer outlined the evidence and indicated that the apprentice was hired July 9<sup>th</sup>, 2009 to fill a need resulting from Mr. Fagan being moved over to a another position and to address the whole issue of succession planning.

To Mr. Rumbolt, the apprentice, it was important that he be able to participate in apprentice training and this became a problem particularly in or about October when he had passed his probation.

The company was prepared to sign an MOU and we understand from Mr. Predham that Mr. Rumbolt was prepared to sign up in October when ordinarily he'd get credit for five months. When Mr. Duke was asked to play his part he declined and claims that it was a foreman's duty and Rumbolt's progression through the program was "thrown off the rails".

His registration was held up because Mr. Duke, the Grievor, as the journeyman, was required to sign the documents and would not do so.

Mr. Predham had a meeting with Mr. Duke on the 19<sup>th</sup> of November and gave the Grievor a careful explanation on two key points, one being that the Employer reports the hours of work and secondly that the journeyman, the Grievor, signs off on the skills

portion. The government development officer thereby confirmed what the Employer had said two weeks earlier.

The new language in the Collective Agreement is directed specifically at journeypersons and this wording came about as a result of Mr. Duke's reluctance to get involved in the whole process. Mr. Stratton argued that what we see in Article 27.04 is a non-exhaustive list of what the journeyperson is required to sign off. He argued that the Parties are thereby confirming in the Collective Agreement just what the Grievor's obligation is.

The Employer took the position that the Grievor saw this provision in December 2009 and that we know from the evidence that he had a heated discussion with Mr. Gill about it.

On January 4<sup>th</sup> there was another meeting with Mr. Predham and he went over the same issues with the Grievor that the hours were something for the Employer but that the skills sign off was for the journeyperson. Mr. Stratton argued that this is the fourth time the Grievor has been told this.

The Employer suggested that in the meantime Rumbolt's been working for six months and he has spent time with the journeyperson in December and on one occasion late in November and he spent time on his own or with Mr. Fagan and Mr. Hayward. The Employer wanted Mr. Duke, the Grievor, to sign off on the skills that had been acquired but whenever they requested that he do so they would get a refusal.

The Employer was very measured in the actions it took as a result of his refusal.

Their first response was a written warning. This constituted the fifth time he had been told what was required of him.

Mr. Duke's rationale for not signing was that he was not a member of management and he persisted in this position despite being told that this is not a basis for refusal. He was

told this by both the Employer and by the government representative. He claimed that some person who is 15 years past retirement was telling him otherwise and he refused to give the name of this person. He claimed to also be relying on his brother who is in another jurisdiction. The Employer gave him time to consider his position and then he was again asked for the 6<sup>th</sup> time whether he was prepared to participate in the program on the basis required by the Employer. When he is then told for a 6<sup>th</sup> time what is required and asked if he agrees his response was an angry one and a statement to the effect that he was not going to change his mind and to not ask him again.

As a consequence he was given a letter in January giving him a three day suspension. This letter was the third time he had received something in writing and the 7<sup>th</sup> time it had been made clear to him that he was permitted, and it was appropriate for him, to sign off on the basis proposed by the Employer.

Mr. Stratton for the Employer asked me to find that it is a measured response and that it is measured because it's building on a written warning and it would have been five days suspension except for Mr. Gill's intervention. He managed to convince Mr. Snow that it should be reduced to three.

Mr. Stratton asked that I bear in mind the impact on the company in that they are having to put a journeyman out of the machine shop thereby losing revenue. This alone suggests the intolerability of the position the Grievor was taking. Despite what it would mean in lost revenue they had to measure this against the other serious concerns at play. For instance they could have had an employee apprentice leave unless he was allowed to participate in the program.

After serving a three day suspension the Grievor is specifically placed in close contact with the apprentice and spent time training the apprentice. Yet when he is asked by Mr. Brown to sign off on what he trained the apprentice in, he persists in saying it is not his responsibility. Mr. Stratton for the Employer puts this as an 8<sup>th</sup> time that the demand is made of him.

He then received Consent 4 confirming the two weeks suspension. This constitutes the 9<sup>th</sup> occasion that the demand is made of him and the 4<sup>th</sup> occasion in writing.

Mr. Stratton argues that the Employer's expectations were made quite clear that he had to sign when he came back and that he would be dismissed if he refused to do so.

Mr. Gill received a letter on January 14<sup>th</sup> from Mr. Predham and the evidence indicates that Mr. Duke saw it on January 15<sup>th</sup>. This would make the 10<sup>th</sup> occasion that he is told that skills sign off is not exclusively the role of someone in management.

Mr. Stratton next pointed out when we get to February 4<sup>th</sup> a discussion is again held where a demand is made of him for the 11<sup>th</sup> time and there is another refusal. The letter, Consent 14 is generated on that occasion and that this would make the 12<sup>th</sup> occasion that a demand is made of him and the 6<sup>th</sup> time in writing.

Despite all of this resistance on his part the Grievor wasn't fired then and there. Instead he was sent home to consider his situation and given two days off with pay. It was made clear by Mr. Squires that his position is threatened and his career at Colonial would come to an end unless he agreed to do what the Employer was asking.

The Employer noted that this brings us to February 8<sup>th</sup>. A meeting is held at 8 am at Colonial where the Grievor finally says that he will do some form of skills sign off but it will only be with respect to the training that he is directly involved in and not for training done by others when he observes the performance of the work of the apprentice so that he can satisfy himself that the apprentice has acquired the skill. Again the Employer showed moderation and explained that no one is asking him to sign off unless he is satisfied that the apprentice has acquired the skills and he is given another opportunity to contact Mr. Gill.

Only after he does so is a second meeting held. He then reports that he was told by Gill that the Employer is right. Unfortunately he still did not agree and accused the Union of changing its position. Rather than comply with the direction or orders coming from the Employer, and filing a grievance, he persisted in his refusal.

The letter prepared by Day QC, Consent 12 and government's response Consent 13 appear to have little relevance to the dispute. Mr. Stratton for the Employer maintained that Mr. Day is simply asking questions and any position he states is his opinion at best and it is based on incorrect information. He also said that in many instances Mr. Day is not at odds with the Employer.

The Employer indicated that this correspondence appears to confirm that the Grievor could legally and ethically sign even though he has little or no contact with the apprentice.

The Employer takes the position that Mr. Day is incorrect in his statements about an indemnity and that an indemnity clearly was considered by the parties.

On page 3 of his letter Mr. Day talked about the demands of a contemporary workplace and acknowledged that apprentices can be trained by other people. It maintained that Henry Brown said that this is the practice and that Mr. Predham's evidence was to the same effect and it is not expected that the apprentice will be with the journeyman at all times.

The Employer maintained that on cross-examination Mr. Predham's views were not shaken. It said the question was asked "what if the journeyman only did a minuscule amount of training or only other people were involved" and that Predham said he would have some concerns with that. It argued that does not change the situation. Mr. Predham also acknowledged that the journeyman is not expected to be looking over the shoulders of the apprentice at all times and in fact said that in his third year he rarely saw a journeyman but simply had one to go to if he needed him.

The Employer argued that all Colonial is asking of Mr. Duke is what is acceptable to Predham.

The evidence shows that there was a division of expertise within the machine shop and that Rupert Hayward is better at some tasks than the Grievor and that the Grievor is better at some tasks than Mr. Hayward. It suggested that it didn't make sense that the apprentice would have to learn only from the Grievor and not from Mr. Hayward, particularly with respect to those tasks at which Mr. Hayward is better than the Grievor.

It indicated that the government's reply Consent 13 has nothing in it that is inconsistent with the expectations that Colonial set out for Mr. Duke. It argued that this letter does not vindicate his refusals to participate and nothing in it suggests that "not looking at somebody because somebody else is involved in the training" was appropriate. It maintained that Colonial was within its rights to have asked him to do what it had asked him to do.

It maintained that it is clear he did not want the responsibility, that he did not like the Collective Agreement change, and that he will do only what he wants to do.

The Union argued that the Grievor stayed on the same course even up to Wednesday when he testified.

In support of its position the Employer noted a number of authorities and works.

It noted Morton Mitchnick and Brian Etherington, Labour Arbitration in Canada Lancaster House, 2006 as to the prominence of the work now-grieve later principle with respect to insubordination. It referred to page 206 and it maintained that the Grievor cannot say that he was going to stay the course but if he took issue with what the Employer was asking him to do he should have complied and grieved later. At Page 207 of that text the elements of insubordination are noted and they are three in number:

1. That an order be given, as in this case was initially given by Mr. Brown in late October and then subsequently given on a number of occasions by Mr. Snow and others;
2. That there be clear authority to give the order on the part of the person giving the order, and in this case Mr. Brown, Mr. Snow and Mr. Squires all had authority;
3. That there be refusal to comply which we have in abundance in this case.

The next part of the said text deals with the exceptions to the work now-grieve later rule where it is a health and safety issue or a question of illegality which the Employer submitted do not apply in this case.

It also noted the case *Re Southern Railway of British Columbia and I.C.T.U., Loc., 7 60 L.A.C. (4<sup>th</sup>) 11* where at page 3 of 8 the Arbitrator quotes Brown and Beatty as to the work now-grieve later principle. In that case the Union claimed that a prospective refusal was not insubordination where what existed was a prospective refusal followed by compliance. The Employer noted that here there's a prospective refusal of what Colonial could expect if the Grievor was reinstated but more importantly the Grievor provided some training and yet refused to sign off. He is only half-heartedly later saying that he'll sign for what he trained. It referenced comments on page 6 to 8 of the case as to insolent and inappropriate behaviour and argued that it was more severe in the case before me than in the case of *Re Southern Railway*.

It maintained that even if the Grievor thinks it is somehow dishonest in signing off on the skill sets when he's not involved in the training such a philosophical difference is not grounds for him refusing to comply. It pointed out that philosophical differences were rejected as a defence in *Re Hamilton-Wentworth Family Services Inc. and O.P.S.E.U. 30 L.A.C. (4<sup>th</sup>) 41 (Stewart)*.

As to the issue as to whether I as an arbitrator should substitute some other form of discipline for discharge it noted Re United Steelworkers of America, Local 3257 and The Steel Equipment Co. Ltd. 14 L.A.C. 356. There was no provocation factor in this case and it wasn't a spur of the moment thing on Duke's part. It argued special economic hardship does not exist in this case and that some economic hardship applies to any case where a person loses a job. There is nothing here beyond the expected loss of income. This not a case of inconsistent treatment by the Employer of the employee as compared to other employees. Lastly there is no misunderstanding on the part of the Grievor. There is an absence of all these traditional mitigating factors.

It stressed the impact on the company of having a loss of revenue in having to take these measures and in trying to correct his behaviour and says that we cannot now go back to October 2009. We are a couple of months past the new journey person coming on board.

Here there was failure of the Grievor to apologize despite being given ample opportunity to do so and there was refusal to give a name of a person that he claimed gave information contrary to what he was being given by Mr. Predham. In the case Shaniah Forest Products and I.W.A. Canada 62 C.L.A.S. 84, 2000 CLB 13083, from paragraph 41 onwards it was noted to be significant if the conduct was disruptive and detrimental to the workplace. The Employer argued that we have this in this instance. It noted that at paragraph 46 of that case the fact of a spotless record of 27.5 years was held not to be a reason to reduce the penalty and that at paragraph 47 the fact that junior employees would look at this person as an example to be followed was considered significant. The Employer said reducing the penalty here would convey the wrong message to both the Grievor and other employees. The Grievor engaged in conduct that certainly is not an example to follow and it would be sending the wrong message if the grievance were upheld and if he was reinstated.

### **Union Argument**

Mr. Morris for the Union said they agree on certain facts but it is Mr. Predham's testimony that this case turns on. He indicated that he, Morris, and Mr. Stratton "could not have been in the same room" during Mr. Predham's testimony. The Union's position as to what Predham said is entirely different from what the Employer is maintaining was his evidence.

The Union indicated there were three grievances we are dealing with; the three day suspension, the two week suspension, as well as the dismissal.

Looking at the Grievor's conduct and looking at the Employer's conduct the Union argued that one major difference existed between the dismissal and the two previous disciplinary responses. As to the first two the Grievor would not sign anything but later at the time of the dismissal there was a big change in his position. At that time he agreed to sign for training done by him but not training done by Mr. Hayward or Mr. Fagan.

The Union argued that this was a major change in his position. Though he changed his position, the Employer's position was unchanged and their position was sign everything including what was trained by Hayward and Fagan.

When first asked to sign documentation the Grievor was adamant that he had not done any or had done very little training and he did not want to meet with Rupert and Todd to see what training they had done with the apprentice. He said that this was a cordial meeting and he indicated he was willing to participate.

On October 27<sup>th</sup> he was approached by Mr. Brown to sign documentation and refused and as a result went to a meeting with Mr. Snow and Mr. Murphy where he expressed his concern that he had done no training with the apprentice up to that point in time. This was never contradicted.

Over the next couple of weeks Mr. Brown involved Mr. Duke in training the apprentice. This was in late November or early December.

He informed Mr. Snow that the Grievor had reluctance and Mr. Predham was called.

Mr. Predham came in on November 19<sup>th</sup>, Mr. Snow advised the Grievor of the way that they wanted it done, (*i.e.*) they would want him to sign off for training done by himself as well as training done by Hayward and Fagan with Mr. Duke observing the apprentice showing a mastery of the skills.

Mr. Morris for the Union maintained that if that scenario was put to Mr. Predham, Mr. Predham would say that it is not acceptable. It argued that one can discern from Mr. Predham's evidence that if the person doing the training is not a journeyman that the journeyman need not sign off.

Requiring the Grievor to sign for training he had personally done plus training done by others as long as the Grievor tested is wrong and is against the law.

Mr. Morris acknowledged that the Grievor's position that he did not have to be a supervisor is untenable and that to be a journeyman one does not have to be in management.

He admitted that while this was plain and clear it was equally plain and clear that the position that the Grievor was taking to the effect that he would sign for training that he had personally done but not for training done by others if they were not journeymen was the correct one.

The Union maintained that Hayward and Fagan cannot train.

It maintained that February 8<sup>th</sup> was a critical day in that on that particular day the Grievor did nothing which warranted discipline. He was prepared to sign the log book except for the training that was done by Mr. Fagan and Mr. Hayward. His position that he would not agree to sign off on training that Hayward and Fagan had done was proper. To the

extent that Mr. Pearce, the now resident journeyman at Colonial, is signing off on training done by others, he is not acting appropriately but is acting wrongly according to the evidence of Mr. Predham.

According to the Union Mr. Predham confirmed in cross-examination that it must be the a journeyman who is doing the training for the skill sets in the log book and it is not acceptable for a non journeyman to train. It is not acceptable for Mr. Hayward and Mr. Fagan to train and then have the journeyman observe the apprentice doing the work and sign off on the skills.

It has to be a journeyman who does the training and who signs off. The journeyman has a known standard of skills and that is why they want the journeyman teaching the skills as well as signing off. The Union maintains that Mr. Hayward's teaching was put to Mr. Predham and Predham said "no, the journeyman can't sign off with respect to teaching done by Mr. Hayward nor can he sign off with respect to teaching done by Mr. Fagan". The Union maintained that the evidence of Predham on cross-examination was clear and that on redirect Mr. Stratton did not even challenge it.

It maintained that Predham's evidence tells us that on February 8<sup>th</sup> the Grievor was right and that even if he watched the apprentice do a task to his satisfaction this is not acceptable. It maintained that what Predham said was "no, the Grievor has to train and test and that's the law". Based on the evidence all we have is 20 hours of training. At the meeting with Brown the Grievor said that he would not sign off because it wasn't his job. In the two meetings that were held on February 8<sup>th</sup> the Grievor said that he would sign for everything that he trained in but not for training done by Hayward and Fagan and the Employer said he must sign for any training that he did plus training by others where he observed and satisfied himself. When the Grievor refused to sign off on training done by others where he simply observed and satisfied himself as to the competency of the apprentice, he was fired.

The Union indicated that its focus is not on the disciplinary responses in the nature of the two suspensions but was on the dismissal and it said that the dismissal can't stand. On February 8<sup>th</sup> the Grievor was changing his position but the Employer was not. The Union said that is remarkable that the Employer is saying to myself as arbitrator "do not reinstate because he will not in the future sign for Hayward's training and Fagan's training". Mr. Morris is at a loss as to how the Employer can be taking this position after hearing Mr. Predham testify as he did.

Article 27.04 cannot be relied on as warranting the discharge because the Article is not in accordance with the Apprenticeship legislation and if the Grievor was doing what the Employer wanted him to do he would not be complying with the Act. What breach we have is the Employer's breach by requiring him to sign.

It noted Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration* 4<sup>th</sup> edition, Canada Law Book and the commentary therein concerning insubordination and where they reference the work first-grieve later principle as a general rule that does not apply when certain exceptions exist. It argued that this situation fits within the exceptions as what the Employer wants the Grievor to sign is contrary to the legislation. If he did what they wanted him to do he could be prosecuted and Article 27.04 could not be relied upon him to protect him against a prosecution for having violated the Act. The Union submitted that the illegality exception to the work first-grieve later general rule applies. It also cited Palmer and Snyder *Collective Agreement Arbitration in Canada*, Lexis Nexis Canada Inc. at page 512 to the same effect with respect to the illegality exception to the work first-grieve later rule. It cited the Act itself and referenced section 13, the penalty section. It indicated that this is what the Grievor would face if he did what the Employer wanted him to do.

The Union also referenced the Collective Agreement and stated that the Collective Agreement provides that one can't be discharged or disciplined without just cause. It submitted that in this instance there was not cause for any discipline on February 8, 2010 and what the Grievor did before then or whether he acted inappropriately in disregarding

Employer directions prior to that is neither here nor there. His previous actions can't be relied upon for disciplining him on February 8<sup>th</sup> unless on February 8<sup>th</sup> he did something that warranted punishment.

The Union submitted that the final incident has to be deserving of some discipline and if it is not the Employer can't rely on the two week suspension or on the three day suspension to justify the action that was taken on the 8<sup>th</sup> of February. The *Massey Ferguson Ltd. v U.A.W.* decision of PC Weiler 20 L.A.C.370 at paragraph 12 is the law then and the law today. If there is no last incident that should be the end of the case. One must have a further final incident. In this instance the Employer did not prove a final incident. What the Employer did instead prove was that the Grievor's conduct was lawful and that he was without fault on February 8<sup>th</sup>.

The Union referenced paragraph 6:430 of *Brown and Beatty supra* and said that it disputed that the Grievor on February 8, 2010 acted in any way that warranted any punishment.

The Union indicated that my remedial powers are set forth in Section 88(2) of the *Labour Relations Act* and it raised the issue of whether or not compensation in lieu of reinstatement was available as a remedy. The Union referenced the *Alberta Union of Provincial Employees v Lethbridge Community College* case [2004] 1 S.C.R. 727 and in the final analysis submitted that in order for me to opt to award damages in lieu of reinstatement the employment would have to be no longer viable, which the Union contended was not the case. In addition there would need to be culpable or non-culpable conduct on February 8<sup>th</sup>. It contends that there was no conduct, either culpable or non-culpable on the part of the Grievor on February 8<sup>th</sup>. It maintained that thirdly the situation would have to be one of exceptional circumstances and that this case did not qualify on that ground either.

The Union also noted the Northern Lights v Alberta Union of Provincial Employees case 169 L.A.C. (4<sup>th</sup>) 427 to the effect that if damages are to be awarded there would have to be some form of employee misconduct otherwise damages are not available as a remedy.

In any event it stated the Grievor does not want damages. He wants his job back and that this is what this case is all about.

It submitted that there was no cause for discipline of any kind on February 8<sup>th</sup> and that there is no reason to suspect that the continued employment of the Grievor by the Employer is not viable. It requested reinstatement and an order that the Grievor not to be required to sign for training done by others.

### **Reply**

In reply the Employer took the position that there should not be an order for damages in lieu of reinstatement and that there should not be reinstatement either. Damages would be significant given the fact that we are dealing with a 30 year employee plus with a premium for the loss of Collective Agreement rights. This would make damages in lieu of reinstatement wholly unjustified.

The Employer took exception with the Union's assertion that the Grievor and the Union could avail of the illegality exception to the work now-grieve later rule and took the position that what Colonial wanted the Grievor to do was not illegal. It said that all that we have are the comments of Mr. Predham as to whether the department would have a problem with training done to the exclusion of a journeyperson and the only conclusion one can draw from Mr. Predham's evidence is that if miniscule amounts of training are done by the journeyperson that is not in keeping with what the program contemplates. The gist of Mr. Predham's evidence was to say that there is no reason others cannot be involved in the training and it emphasized that what Mr. Duke, the Grievor, was being asked to do was to teach some of the skills but allow some of the skills to be taught by others and to then test the apprentice as to whether he had achieved sufficient proficiency

to allow the journey person to sign off. It indicated that there is nothing inappropriate or illegal in having him teach some skills and having others teach some skills.

### **The Issues**

The issues can be summarized as follows:

1. Whether the discipline imposed on the Grievor on January 6<sup>th</sup>, 2010 was warranted;
2. If so, was the discipline that was imposed appropriate or should some less harsh measure been taken;
3. Whether the discipline imposed on the Grievor on January 20<sup>th</sup>, 2010 was warranted;
4. If so, were the disciplinary measures that were imposed appropriate or should some less harsh measures have been taken;
5. Whether it was appropriate to discipline the Grievor on the 8<sup>th</sup> of February, 2010;
6. If so, was the disciplinary measure of discharge appropriate in the circumstances or should some less harsh measure have been taken.

### **Considerations and Reasons for Decision**

The relevant articles of the Collective Agreement are Articles 8 and 27.

Article 8 – Discipline - reads as follows:

- 8.01 Subject to provisions of this agreement to the contrary, employees who have acquired seniority as provided in Article 16 shall not be disciplined or discharged without just cause. The reason(s) for discharge shall be given to the employee in writing.

- 8.02 Provided there are no intervening disciplinary events of the same nature, the Employer will remove from an employee's personal file all records evidencing verbal and written reprimands that are older than twelve (12) months.

Article 27 – Instruction – reads as follows:

- 27.01 The company and the Union recognize the need for training to meet the challenge of a constantly changing work environment and to promote the development of the workforce.
- 27.02 The company shall provide training, where reasonable, in order to broaden the knowledge and skills of employees.
- 27.03 The Employer may instruct an employee to instruct another employee in the operation of any machine, or in the performance of other job related duties, and both the trainer and trainee shall carry out his Employer's instructions therein.
- 27.04 It is recognized that as part of the Apprenticeship Program, the Employer shall provide Apprentices with on-the-job training and experience (hereinafter "training") under the direction and guidance of Journeyman. A Journeyman, who is training an Apprentice or who has been assigned by the Employer to provide training to an Apprentice, shall forthwith sign, complete and execute such Apprenticeship Program records and other log books, records and documents as are required to be signed, completed and executed by the Journeyman, under and in accordance with the *Apprenticeship and Certification Act*, in order to identify, confirm or verify the training received by the Apprentice, including but not limited to the type, nature and duration of work, training and experience received or performed, under the direction and guidance of the Journeyman. The Employer agrees that the Journeyman shall not be liable in any manner or respect for or in relation to the said training and the Journeyman's execution of the said Apprenticeship records, log books and documents.

In terms of whether discipline was warranted, the case turns on an interpretation of Article 27.04 and just what is required of a person in the position of the Grievor by the *Apprenticeship and Certification Act* and those administering the apprenticeship program thereunder.

Unless Article 27.04 was being violated by the Employer or the Act or the requirements of those administering the apprentice program would not be satisfied by what the Employer was requiring of the employee, clearly disciplinary measures of some nature were warranted on each of the three occasions where it was meted out in this case.

I conclude from the evidence presented that what the Employer was requiring the Grievor to sign off on were two sorts of things. Before stating what they were let me set forth what the Employer was not requiring of the Grievor.

First of all I am satisfied from the evidence that the Employer never required the Grievor to sign off on or certify the time spent on the job by the apprentice.

Secondly, I am satisfied that Mr. Predham made it clear to the Grievor that he was not required to sign off on hours or times spent but simply to sign off on and certify skills or tasks performed satisfactorily by the apprentice.

To the extent that hours kept surfacing as a concern, I am satisfied that it did so either because the Grievor was just not listening or, what is more likely the case it kept cropping up at the instance of the Grievor as part of an attempt on his part to muddy the waters and to obscure the issues, since I conclude that he clearly did not want to participate in the program.

Thirdly, I am satisfied that both the Employer and Mr. Predham made it abundantly clear to the Grievor that he did not have to be a member of management to be a journey person supervisor.

The two things that the Employer was requiring the Grievor to sign off on were:

1. Skills acquired by the apprentice as a result of direct training by the Grievor and at which the apprentice proved satisfactorily proficient.

2. Skills acquired by the apprentice as a result of training by Rupert Hayward and Todd Fagan, who were not journeypersons, provided the Grievor was able to observe the apprentice perform the skills and was satisfied that he was sufficiently proficient thereat.

Article 27.04 prescribes that the Employer may instruct an employee to train another employee and the person so instructed is required to follow the Employers instructions. It also prescribes that a journeyperson who is training an apprentice or who has been assigned by an Employer to provide training to an apprentice is to forthwith sign, complete and execute such apprenticeship programs, records and other log books, records and documents as are required to be signed, completed and executed by the journeyperson, under and in accordance with the *Apprenticeship and Certification Act* in order to identify, confirm or verify the training received by the apprentice including but not limited to, the type, nature and duration of work, training and experience received or performed, under the direction and guidance of the journeyman.

I agree with the submission of counsel for the Employer that it is not an exhaustive list of the things in Article 27.04 that the journeyperson can be required to sign off on and that he can be required to sign off on other items and other work, training and experience, received or performed if it is contemplated by the Act and the training regime established thereunder. In other words, if the Act and the regime established under it contemplate him being able to sign off on skills acquired as a result of training by others in the workplace where the journeyperson works, then under the Collective Agreement he can be required to do so.

An examination of the *Apprenticeship and Certification Act* SNL 1999 c.A-12.1 reveals that there is not any guidance therein as to what a journeyperson may be required to sign or how he carries out his duties.

The evidence that we have on this point is that of Wayne Predham, the Career Development and Training Officer, who became involved with this case, Consent Exhibit

11, the letter from Mr. Predham to Mr. Gill, and Consent Exhibit 13, the letter from Susan F. Marrie, a solicitor with the Department of Justice, to David Day, QC.

Mr. Predham's letter says that by "journey person supervisor" they mean an individual who is assisting in the training of an apprentice through mentoring. He says through this mentoring process the journey person supervisor provides guidance in the workplace to an apprentice.

Ms. Marrie's letter sets forth that:

- “1. the journey person would work with an apprentice in a mentoring role to train the apprentice in the various skill sets of their occupation. It is not the Division's intention that the apprentice and journey person work side by side continually but that the journey person would be available to offer assistance and guidance to the apprentice as required on an on-going basis.
2. the journey person must have seen the apprentice perform the skill sets to journey person standard. The journey person would then sign off on a particular skill set once the journey person has observed and is satisfied the apprentice has learned that skill set. In this manner, sign off on skill sets would occur throughout the apprenticeship and not solely at the end of the apprenticeship.”

Mr. Predham testified that he played a part in the composition of Ms. Marrie's letter.

Neither the letter of Mr. Predham nor the letter of Ms. Marrie suggests that the journey person must be the exclusive trainer of the apprentice. In fact, Mr. Predham's wording "assisting in the training" suggests that perhaps he does not have to be and that it is contemplated that he would not likely be the exclusive trainer.

Ms. Marrie's letter requires that the journey person work with the apprentice and that he have a mentoring role to train. She does not specify that he is to be the exclusive trainer. In fact, I conclude from her statement that they do not have to work side by side continually but that he should be available if needed, that the experience and skills can be acquired from others in the workplace and that while the journey person must have a role in the training he need not be the exclusive trainer and that it need not be he exclusively from whom the skill is acquired.

Her letter, in contrast sets forth that what the journey person and only the journey person must do. This is see the apprentice perform a skill to journey person standard before he signs off on that particular skill.

Mr. Predham's viva voce evidence on the whole leads me to conclude that it is his position that all the training need not come directly from the journey person supervisor.

In his evidence in chief when asked the question "does it matter if people other than the journey person participate in the acquisition of skills", Predham answered, "the expectation is the skills will be certified by the journey person on staff but it is not the expectation that the journey person would be with him at all times. There may be higher level apprentices and other unqualified people that he can acquire skills from. We want the journey person's name saying the skills have been done to journey person standard."

In cross-examination he said that what he'd like to see is "a journey person say I saw Rumbolt perform the task to journey person standard." He also said he "does not expect him standing over him at all times".

He did say all training being done by someone else and just having the journey person watching the skill be demonstrated is not good enough.

He said he does not expect they would be rubbing shoulders at all times but the journey person is the go to guy and it is he who acknowledges skills progression.

Further on in his testimony he said "but we want them trained by journey persons primarily".

He also commented that during his time as an electrical apprentice when he reached his third year he rarely saw a journey person.

He did say in his testimony that he would not expect an apprentice to be trained by an apprentice in another trade. Presumably Counsel for the Union asked the question which elicited that response because some of the training had been provided by Mr. Fagan, who recently became enrolled as a mechanic apprentice.

Given his testimony as a whole I am satisfied that had that last mentioned question also included the information that prior to becoming a mechanic apprentice the person had 10-12 years experience as a non-certified machinist, that his answer would have been somewhat different.

I gather from his testimony as a whole that some training can be done by persons other than the supervisor journeyman, and these persons can be persons other than a journeyman in the trade provided they have the skill sets to be able to teach the apprentice something.

I note from the evidence that Fagan had 10-12 years experience and Rupert Hayward around 40 years experience.

It was not disputed that Rupert Hayward was better at some machinist tasks than the Grievor. It was not disputed that both Hayward and Fagan did good work.

I agree that his evidence can fairly be taken to be that it is not sufficient if a miniscule amount of the training is done by the journeyman. In fact, the journeyman is expected to be involved in a good deal of the training in a meaningful way, whether directly or indirectly. However, having reviewed his testimony as a whole and the Consent exhibits 12 and 13, I think it can be fairly concluded that not all the training need come from the journeyman.

Indeed, it would surprise me if the program did not realize the realities of the modern day workplace and accept the fact that both the journeyman and the apprentice would be expected to be productive members of the Employer's workforce such that the

journey person would not be expected to be totally preoccupied with training the apprentice but would instead be expected to devote a great deal of his/her time to output on behalf of the Employer.

It would be my expectation that while it is not expected that the journey person could or should avoid any role in direct training, it also not expected that all the skills the apprentice acquires need come from the journey person.

In my view what the evidence indicates is that it is expected that he will have some, not insignificant, role in training and that he will have the exclusive role in testing and assessing the skill level of the apprentice.

The foregoing is what I take from the totality of the evidence as to the expectations of those responsible for administering the apprentice program.

I reject any suggestion that the Employer was attempting to have the Grievor blindly sign off on any training.

I accept that it was only requiring that the Grievor would sign off for any training that the apprentice did at the hands of others after testing by the Grievor to ascertain the apprentice's proficiency.

Early on, it was requested by Snow of the Grievor that he speak with Hayward and Fagan to get a sense of what they had done with the apprentice. Snow's evidence was that the Grievor did not wish to do so.

Mr. Snow and Mr. Squires testified that they did not expect the Grievor to sign off on things unless he satisfied himself that the apprentice had achieved a satisfactory level of proficiency. I believe their testimony in this regard. It would not be in the long term interest of the Employer to try to cheat the system so that they would end up with a

substandard tradesperson or risk drawing the anger of Government such that it could no longer participate in training apprentices.

Mr. Snow testified that he asked the Grievor to speak to Rupert Hayward and Todd Fagan to find out what they had covered already with the apprentice. I accept Mr. Snow's evidence in this regard and make the comment that if the Employer wanted him to blindly sign that Snow would not have requested that the Grievor speak with Mr. Hayward and Mr. Fagan.

I therefore find that what the Employer was demanding of the Grievor was something which was entirely permissible and something that was contemplated by the apprenticeship training program.

It necessarily follows that what they were requesting was neither contrary to the Collective Agreement or illegal or unsafe.

The Grievor, in my view, had no reasonable basis for refusing to follow the directions and orders of management and grieving later if he felt the actions and position of the Employer were inappropriate.

He can in my view place no reliance on the illegality exception to the Work now-Grieve later rule.

This results in a finding that there was a failure to follow directions of management and that disciplinary measures of some variety were warranted.

The first disciplinary measure of a three day suspension was in my view a reasonable and measured one. It was given only after a number of efforts were made to make the Grievor see the appropriateness of what was being asked of him. It occurred on January 6<sup>th</sup>, after a warning in writing was given on January 4<sup>th</sup>, 2010. The disciplinary letter was actually dated January 7<sup>th</sup> and the suspension was effective commencing that date.

At this time the Grievor was resolved not to sign anything, not even for the training he himself would do. According to Predham he would not even sign the MOU necessary to allow for enrolment to take place in the usual manner.

The Grievor kept putting forward as the reason that he would not do so was that one had to be a member of management to be a journeyman supervisor. He took this position despite being informed to the contrary by the very person who was administering the program.

He states that he was relying on what a person, who had been retired for 15 years from a position with the government apprenticeship program was telling him. He also placed reliance on what his brother, a professional engineer in Ontario, was telling him. If it was the case that they were telling him this, it was nonsensical on his part to be relying on their advice as opposed to advice from the person currently administering the program. It was not a sensible or reasonable position for him to take or thing for him to do. For this reason I am left with serious doubts that he was being told this at all.

In my view the Grievor just did not want to participate in the program. At various stages throughout different excuses were put forward, not wanting to sign off on hours, not being a member of management, safety concerns, that he was too busy and that his productivity would be affected. In other words, it seems as if any excuse in the book was put forward by the Grievor at one time or another to avoid participation. He had been told several times that he was not expected to sign off on hours, yet that kept resurfacing. He was told repeatedly that he did not have to be a member of management yet he resolutely and irrationally clung to the idea that he did, without any sensible or credible basis for doing so.

The three day suspension was a very measured and reasonable response in all the circumstances.

The two week suspension came only after the Grievor had been given a warning, which was followed by the three day suspension. The two week suspension occurred on January 20<sup>th</sup> after another visit by Mr. Predham and after the Grievor had actually been assigned to work for a week with the apprentice. Also, at this time, the Union had a letter from Mr. Predham setting forth in writing that a journeyperson supervisor did not have to be a member of management and the Grievor had by this time seen the letter. Despite seeing this in writing he still refused to sign even for training he himself had done.

At this point in time he was still putting forth the excuse that it was not his responsibility, that he was not a supervisor.

In my view, this too was a measured response and I find that the two week suspension was justified.

On the 8<sup>th</sup> day of February, the Grievor was discharged for cause. This occurred after he returned to work on February 4<sup>th</sup> at which time he still refused to do what the Employer was asking of him and after he was given two days off with pay, a Thursday and a Friday, to think about it and to consider what he was doing.

It also should not go unnoticed that when he was suspended for two weeks on January 20<sup>th</sup> that it was made clear to him that continued refusal on his part to do as the Employer was requiring would result in his termination. Neither should it go unnoticed that the Employer advised the Grievor at the time of the two week suspension to get independent legal advice.

The discharge came following a warning letter, following a three day suspension, and following a two week suspension that was accompanied by a clear statement that the next measure would be discharge and with the suggestion that the Grievor get legal advice. It also came following the Grievor being given two days off with pay as additional time to think about what he was doing.

However, the Employer even went beyond that. On Monday, the 8<sup>th</sup> of February when the Grievor returned to the Employer's premises, it gave him additional time to consult further with the Union after initially meeting with him on that day around 8 am.

The discharge occurred only after the Grievor had been given this additional opportunity to seek advice and get clarification on what the Union's position was. It occurred only after a further meeting was held on February 8<sup>th</sup> between 12 noon and 1 pm.

At that meeting the Grievor accused the Union of changing its position from one of the Grievor only being required to sign off on training he himself had done to one of the Grievor also being required to sign off on training done by others where the Grievor had seen the apprentice perform the task to the satisfaction of the Grievor.

The Grievor at 8 am had said that he would sign off only on the training he himself had done. At the subsequent noon hour meeting he clung to the same position despite admitting that the Union was telling him that he could be required to sign for training done by others where he had tested in the sense of seeing the apprentice perform the skill or task to the Grievor's satisfaction.

In my view the Employer properly applied the concept of progressive discipline and could be said to have bent over backwards to encourage the Grievor to do what it was requiring of him.

Based upon the behaviour exhibited at the point of the second meeting on the 8<sup>th</sup> of February, 2010, the Employer had a reasonable basis for believing that any further or longer period of suspension would not achieve the desired result. It had a Grievor who would not listen to it, would not listen to Government officials, and who would not listen to the Union. In fact, the Grievor was now accusing the Union of changing its position.

In my view, this undesirable state of affairs has come about solely as a result of the Grievor's unreasonableness, pigheadedness and stubbornness. He was not prepared to

listen to others. He did not for whatever reason want to participate in the program or take on the responsibility of having an apprentice.

In all the circumstances I find that the Employer was justified in and had just cause to discharge the Grievor. It also had just cause to impose the three day and two week suspensions. All three grievances are denied.

### **Order**

It is ordered that all three grievances are denied.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this        day of June, A.D., 2010.

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DAVID G.L. BUFFETT, QC  
Sole Arbitrator