

**DISSENT OF EMPLOYER NOMINEE
REGARDING ARBITRATION AWARD IN A DISPUTE**

BETWEEN

City of St. John's

(hereinafter called the Employer)

AND

**International Association of Fire Firefighters Local
1075(hereinafter called the Association)**

RE:

THE GRIEVANCE OF Randy Hammond

Counsel for the Union: Mr. Ian Patey

Counsel for the Employer: Mr. Chris King

ARBITRATION BOARD:

Nominee for the Union: Mr. Donald Ash

Nominee for the Employer: Mr. Geoff C. Williams

Chair of Arbitration Board: W. John Clarke, C.Arb. C.Med.

With respect to the majority decision, I concur with the majority of the Board's finding why the grievor was disciplined, as noted on the top of page 16 where the majority outlines "It should be borne in mind, however, that it is the breach of the Policy #22 for which the discipline was dispensed". As well, I would add that it is not disputed that the grievor continued to back the vehicle while looking in the side-view mirrors. The grievor's actions were confirmed in his report provided to Deputy Chief Tucker which in part read:

...On May 14/2005 at approx. 1930 hrs when returning from an emergency call I stopped on the ramp and waited for the door to go fully up and my spotter, F/L Paul Reddy, to be in full view before proceeding to back in the station. While backing up I was checking my passenger side rearview mirror when I rechecked my drivers side mirror I saw my spotter indicating for me to stop.

I disagree with the majority of the Board's characterization of the breach whereby the majority indicated:

"The obligation is, in its essence, that looking in the passenger side rear-view mirror amounts to letting the truck move while the spotter was not in full view".

Discipline was meted out as a result of the grievor looking in the side-view mirrors while continuing to back the truck. Admittedly, the grievor continued to back the vehicle while looking in his side-view mirrors. This is substantiated in the June 10, 2005, letter of reprimand which outlined, in part "You did not act in a responsible manner and proceeded to back the Rescue into the station without keeping the spotter in full view."

The majority has appropriately attempted to apply the common sense meaning of the wording in Policy #22, "The driver shall not let the vehicle move until the spotter is in fully view;" to essentially mean there was no obligation on the driver to keep the spotter in view after initially finding the spotter prior to backing his vehicle. With due respect the application of this interpretation leads to an absurd result which means once a spotter is in full view a driver can back the vehicle without any further requirement to look at his/her spotter. Surely the role of a

spotter is to provide assistance to the driver; therefore, it is inherent in the policy that the driver must keep the spotter in fully view at all times the vehicle is moving. With respect, to complying with the Policy #22 the grievor was required to stop his vehicle when he checked his side-view mirrors. When the grievor sought to continue to back the vehicle, he could only do so after having the spotter in full view. The grievor did not follow this procedure.

The issue is not when the accident occurred; rather the grievor was not permitted under Policy #22 to back his vehicle without having a spotter in full view. It is an impossible task to continue to back the vehicle while looking in the side-view mirrors and having the spotter remain in full view.

The majority of the Board referenced an incident involving firefighter Blackwood which occurred in March 2006; however, the grievor's accident occurred in May 2005. As well, based on the evidence presented, firefighter Blackwood's incident involved slippery road conditions while backing his vehicle. The circumstances were not comparable to those of the grievor and I submit there is no comparability between the two accidents.

With due respect, I would have denied the grievance on the basis the grievor violated Policy #22 by continuing to back the vehicle without having his spotter in full view.

Having concluded that the grievor's actions did not constitute just cause for discipline, the majority of the Board proceeded to address the issue of "excessiveness of the discipline" in the event they arrived at an incorrect conclusion on the first question. Essentially the majority of the Board concluded that the one shift suspension was too harsh given the potential impact on the grievor's opportunity for promotion. The evidence was uncertain at best, with respect to whether the loss of seniority would impact on the date of the grievor's potential promotion. One unknown factor is the number of employees at the higher rank who will retire. No evidence was presented

relating to the number of potential retirees in early 2008. At this point the impact of the grievor's suspension, on his promotion is unknown. With this respect, this factor should not be considered when assessing the appropriateness of the one shift suspension.

The evidence presented to the Board outlined the grievor's prior discipline record was considered by the Employer when deciding on a one shift suspension. The employer was bound to follow the principles of progressive discipline when determining the penalty to impose. The majority of the Board noted Article 28.05(4) which provides for the removal of disciplinary documents from a personnel file after certain time frames have been met, upon the request of an employee. The majority of the Board relied on this factor to support its finding that the one shift suspension imposed by the Employer was too harsh, given the two prior disciplinary letters should have been removed from the grievor's personnel file. On page 20 the majority of the Board outlines, "In this case, the Grievor was unaware of that process and as a result the two incidents remained on his file and were not removed". With due respect, the grievor was not asked why he did not seek to have the disciplinary letters removed from his file. At no point during the hearing did the grievor provide any evidence outlining why he did not request to have the letters removed. There is no evidence to conclude the grievor did not request to have the letters removed as a result of being unaware of the required process. In any event, if the grievor was unaware, this would not provide a foundation for the majority of the Board to discount the grievor's prior disciplinary record. As well, the grievor is represented by a professional Association and had ample opportunity to seek advice from his Association if in doubt about how to have disciplinary documents removed from his file.

The role of the arbitration board is to apply the evidence presented and come to a conclusion with respect to the grievance(s). I submit that the majority of the Board has exceeded

its jurisdiction by choosing to discount the grievor's prior disciplinary record, on the basis that the grievor could have requested the disciplinary letters be removed. If the parties had intended for disciplinary documents to be automatically discounted after a time lapse, they would have placed such language in the collective agreement; however, they choose not to do otherwise. One of the fundamental rules of language construction is to determine the parties' intention by the language they wrote in the collective agreement. In this case it appears the majority of the Board discounted the collective agreement language and applied its own interpretation when to discount disciplinary documents in the grievor's file. In its opening statement the Association raised the issue that the disciplinary letters could have been removed from the grievor's file and a similar point was made as part of the Association's argument. The Association did not request the Board discount the prior disciplinary letters form the file. The fact that the grievor had a right under the collective agreement to request removal of the disciplinary letters form his personnel file and elected not to do so, cannot be used by the majority of the Board to determine that the penalty of a one shift suspension was too severe.

Respectfully, for the reasons noted above I would have denied the grievance in its entirety.



Geoff C. Williams
Employer Nominee

March 3, 2008