In the matter of an Arbitration

Between

United Steelworkers Local 4045 (the union)

and

Cambridge Brass Inc. (the employer)

Grievance of Bronson Cox

Before Arbitrator Michael McCreary

Appearances:

For the employer

Dan Shields, counsel

Brad Johnson

Cecilia Villanueva

Anirudh Datta

For the union:

Tony Ciaramella, union representative

Jake Hancock

Jim Clegg

Rolf Schuh

Decision

I was appointed pursuant to section 49 of the *Labour Relations Act* to adjudicate the discharge grievance of Bronson Cox. The union and the employer are parties to a collective agreement that came into existence after a strike that had ended just days before the incidents giving rise to Mr. Cox's termination.

The facts are largely not in dispute as a result of and with the help of 3 videos that recorded the events of October 8th, 2024. The interpretation of those facts and the explanation for the conduct memorialized in the videos consumed the majority of the hearing time. The employer called two witnesses- Ms. Villaneuva and Mr. Datta. The union also called two witnesses- Mr. Clegg and the grievor Mr. Cox. The hearings took place over three days.

The employer operates a production facility in Cambridge, Ontario where it produces brass fittings and components. The employer's product leaves the plant from the shipping area. The employer utilizes a 3rd party distribution company to deliver its products to customers.

At the time of his termination the grievor was employed in the shipping department. On the day he was terminated he was performing the duties of a wrapper. His job was to wrap boxed products on a skid, check them and send the skids off too the third-party logistics company who would pick up the boxes from the employers shipping bay. As part of his job, he operated a forklift.

The grievor's first interaction with acting supervisor Cecilia Villanueva occurred when she approached him while he was speaking to two other bargaining unit employees in the shipping department. She inquired as to what was going on. The grievor responded with a complaint that there was a mistake in the computer system and the printing of a ticket that resulted in two different customers products being on one skid. Ms. Villanueva confirmed the mistake. The error was not of the grievor's making. The boxes that were on the single skid, were supposed to be destined to two different customers. As a result, the boxes needed to be placed on two separate skids. She asked the grievor to fix it. What she meant was for the grievor to separate the boxes onto two skids from one so that each skid would have just a single customers product on it. The grievor responded by saying "fuck that" "I am not going to fix it', "call customer service" He added sarcastically that "you guys fix it you did such a great job during the strike you fix it". This was a reference to the fact that supervisors did bargaining unit work, including shipping, during the strike. Ms. Villanueva found the grievors tone to be aggressive and responded by saying let's all calm down, everyone makes mistakes let's fix it and move on and separate the skids. The grievor responded by saying "fuck that".

The supervisor then separated the boxes onto two skids herself. The grievor claims he did not witness Ms. Villanueva separate the boxes. He stated that perhaps he went to the washroom during that time. Once the boxes were on two skids she directed the grievor to call the logistics company. To which the grievor responded "fuck that". Ms. Villanueva then went to the service department to make sure that the product got to the logistics company. The video shows the grievor clapping his hands after a discussion with Ms. Villanueva in a mocking gesture of a job well done i.e. the mistake on the ticket.

Shortly after that interaction, Ms. Villanueva met Mr. Datta, the director of operations. Mr. Datta advised Ms. Villanueva that he had heard that the grievor was no longer in the shipping area. Surprised to hear that, she went back to the shipping area and confirmed with two bargaining unit employees that the grievor had left the building. As he left, the grievor did not inform the two bargaining unit employees as to why he was leaving.

While she was in the shipping area, one of the bargaining unit employees pointed out a number of boxes that had fallen off a skid. The bargaining unit employee indicated that the grievor had hit the skid with the forklift resulting in the boxes falling off the skid. According to the video this took place about 13 minutes after the grievors interaction with Ms. Villanueva about the ticket mix up.

Mr. Datta, who by this time had come to the shipping area, took pictures of the boxes which were lying on the floor around the skid. The boxes were filled with brass fittings. Mr. Datta and Ms. Villanueva then walked to an office to review 3 videos-one showing the grievor leaving the premises and one showing him running into the pallet with the forklift and the third showing the grievors interaction with Ms. Villanueva in which he is seen clapping his hands.

A few hours after the grievor left the plant Mr. Datta called him to inquire as to why he had left, the grievor claims the call was to ask about his health. No one had mentioned a health issue to Mr. Datta. The next day Mr. Datta sent a text to the grievor informing the grievor of his termination.

As noted above, just days before the incidents, the bargaining unit had returned from the strike. Before the strike began the grievor was a lead hand, when he returned to work after the strike this position had been taken away from him. The strike was challenging- the employer engaged supervisors to perform bargaining unit work and there was some evidence of questionable behavior on the picket line by two bargaining unit employees one being the grievor. Mr. Clegg testified that the union did not get what it wanted from the strike. Once the strike was over the employer signed a no reprisal agreement. Also, upon the workers returning from the strike the employer initiated a Code of Conduct.

Employers Submissions

The employer alleges that the grievor engaged in industrial misconduct on three occasions on October 8, 2024. First, the griever was insubordinate, disrespectful and rude to a company supervisor. Second, the griever purposely destroyed company property and third, he left the building without permission. In the result discharge was clearly justified.

The employer encouraged me to focus on the incidents on October 8, 2023. It submitted that the evidence about the strike and its aftermath and feelings of frustration in the bargaining unit were not relevant to my consideration. Further, that there is simply no evidence that anyone other than the grievor had a sense of frustration with either the result of the strike or the return-to-work environment. In addition, to the extent that the union placed reliance on the fact that the griever was demoted upon his return from the strike, this is also irrelevant. It was noted that the company, pursuant to the collective agreement,

has the sole discretion to determine who and who is not a lead hand. Moreover, there is no evidence that the demotion was a reprisal for the grievors questionable behavior on the picket line. As well, given that the employer signed a no reprisal agreement it would be unlikely that it would engage in a reprisal. In the result the employer stated that the demotion argument as a mitigating factor leading to frustration, has no merit.

Anticipating the unions argument that the Code of Conduct was never brought to the attention of the grievor, the employer states that whether or not the Code of Conduct was brought to the attention of the grievor is irrelevant. It was pointed out that the grievor admitted in cross examination that he didn't need to read a piece of paper to know that insubordination is wrong. The employer noted that the Local President Jim Clegg agreed that leaving work without permission, wilful destruction of company property and insubordination were unacceptable. The idea being that you don't need a rule to know you shouldn't destroy company property or refuse a direct order.

The employer says that I ought not to reduce the penalty because the grievor attempted to shift blame to the company and showed remorse only in redirect examination. No apology was offered to Mr. Datta in the conversation in the afternoon after the incident nor did the grievor respond to a text message the next day with an apology. It was the employers view that the last-minute claim of remorsefulness should not be believed or at its highest be an indication that the griever is only remorseful for the loss of income and benefits for his family.

The employer submits that the case law makes it abundantly clear that abusive language, willful damage and insubordination are serious offences.

Specifically, dealing with the three reasons for termination, the employer suggests that it is not relevant what Ms. Villanueva asked the griever to do whether it's fix the ticket at the computer terminal or separate the boxes from the skid, the grievor still engaged in a work refusal. As for the damage to the employer's property, the employer invites me to simply look at the video which shows that the grievor was not engaged in a maneuver to manipulate the pallet with the leading edge of the forks on the forklift but rather purposefully contacted the pallet with the forklift he was operating. The employer says that the video is clear-there was no effort to try to avoid contact with the pallet.

The employer acknowledges the grievor's seniority of 9 1/2 years but other than that none of the traditional factors an arbitrator looks at determining a reduction in penalty are present. The employer pointed out that the griever claimed not to have had an opportunity to apologize, and this simply was not true. It is the absence of the vast majority of the

typical mitigating factors which suggest that there simply not enough facts for me to reduce the penalty. The employer asked that I dismiss the grievance.

Unions submissions

The union focused its submissions on mitigating factors and tried to downplay the degree of the grievors culpability. First, the union drew my attention to the years of service of the grievor-9 1/2 years being a significant investment of time particularly given that in todays labour environment, employees are staying for shorter periods of time with their employers. The union next focused on the fact that the grievor had a wife and four children, the idea being his family would suffer significantly from his loss of employment. The union next submitted that the greivors record was good. The Union defended the grievors last minute apology by stating that it was his first opportunity to do so. With respect to the insubordination the union submits that there was some ambiguity in Ms. Villanueva's order to the grievor. In addition, the union claims that the griever had a good working relationship with both Ms. Villanueva and his regular shipping supervisor. The union goes on to point out that rather than look at the grievers conduct as three separate incidents, given that they all transpired within minutes of each other, it really was just one continuing event. Furthermore, the griever ought to be excused to some degree because he was frustrated as a result of losing the lead hand position and being asked to do that exact job. Further, it was submitted that the grievor was feeling sick that day and should be credited with removing himself from a situation where feelings of illness and frustration had built up to the point of propelling him into engaging in inappropriate behavior. As for the allegation that the grievor purposely rammed the forklift into the pallets, the union states that the forklift simply got away from him as he was trying a sophisticated maneuver. Finally, the union advances a post strike frustration argument. This submission goes as follows: after a difficult strike feelings of frustration will be present, and workers may act out in their first few days back because of those feelings, the frustration arises from a labour relations issue in which the employer had a hand in and is a relevant mitigating factor.

The union also advanced the argument that the grievor suffered more than others financially as a result of the strike. During the strike the grievor was forced to cash in his RSPP's to put food on the table and in the result was not entitled to EI benefits and therefore the negative economics of the strike were disproportionately visited on the grievor. The union also claimed that his conduct on October 8th did not reflect the grievor's normal work ethic. It was noted that the employer promoted the grievor to the lead hand position in March of 2024 shortly before the strike. In the unions view, that fact demonstrates that the grievor was a good worker and is worthy of a second chance. It was noted that three individuals had more seniority than him in the shipping department, yet he

was elevated to the position of lead hand. The submission was that just a few short months before his termination, the company thought highly enough of him to promote him over 3 other more senior employees. I will note that the union did advance all of the arguments on mitigation that the facts would allow it to advance.

It is the union's position that the penalty of discharge is too severe in all of the circumstances and that I should exercise my discretion to reduce the penalty to some lesser form of discipline.

The parties relied on the following decisions: National Grocers 23 LAC 4th 213, Service New Brunswick (Johnson) 25 LAC 4th 331 and Zochem, a division of Hudson Bay Mining, 2010 CarswellOnt 10655.

Decision

There is no doubt that the grievor engaged in serious industrial misconduct on three occasions on October 8, 2024. Leaving work without permission was contrary to the employers Code of Conduct and was not acceptable. The reasons are obvious but perhaps need to be stated. The employer decides its complement of workers on any given day, and it relies on those workers to complete their jobs such that that the business of the employer can be completed. When an employee simply gets up and leaves an important cog in the system becomes missing impairing an employer from getting the work done that it needs to get done.

By requesting that employees check in with a supervisor when they feel a need to leave the premises is a relatively simple request and can allow an employer to rearrange its complement of workers to get the work done. The union defends the grievor by claiming that the Code of Conduct was never brought to his attention and that further, he had a history of leaving the plant and only advising a fellow bargaining unit employee not a supervisor. Some context here is helpful. The strike lasted about 12 weeks. Coinciding with the workers return to work, the employer instituted a Code of Conduct. It was rolled out at a meeting-which the grievor did not attend and posted in numerous places in the plant, which the grievor did not see. The Code explicitly states that an employee needs to advise a supervisor before leaving the plant. The grievor says he looked for his supervisor, Ms. Villaneuva, but believed her to be in the office. He didn't go into the office because he believed there was a rule that workers needed permission to go into the office. No one backed up the grievors claims of a practice of telling only a bargaining unit employee when leaving the plant or the rule about not going to the office without permission. As will be described later I had much difficulty with the grievors evidence, and I find on balance that he ought to have known that he should have at least spoken to a supervisor before

checking out, even if he wasn't aware of the new promulgated Code of Conduct. This conclusion is buttressed by the fact that he did attempt to contact Ms. Villanueva, since he would not have gone to that effort if it was truthful that he believed that he only had to advise a fellow worker of his impending departure.

Being disrespectful to a supervisor, disobeying a direct order and swearing in an unprovoked manner is also unacceptable. I am cognizant of the age-old labour relations maxim that a workplace isn't a church and some degree of shop talk is permitted and comes with the territory. That said, an unprovoked "fuck that" directed at a supervisor has never been acceptable behavior. Also, the grievor was much bigger physically than the female supervisor, as is evident from the video, and he appears to be acting in the manner of an intimidating bully. The video of their interaction coupled with Ms. Villanueva's testimony creates a cringe worthy picture. The grievor simply teed off on a supervisor who was just trying to solve a mistake in a polite and respectful manner.

There was much discussion in argument about what Ms. Villaneuva directed the grievor to do. He testified that he believed she asked him to change the ticket at a computer terminal, Ms. Villaneuva states she asked him to unpackage the skid. On balance it is more likely she asked him to do his job rather than hers. It defies common sense that she would ask him to do her job and then for her to do his job. My sense from the evidence is that rather than make a big deal of the refusal, she just got the job done- dismantling the skid. She had just been subjected to swearing and clapping in a mock fashion. Regardless of whether she asked him to fix the ticket at the computer terminal or unpack the skid, he did neither. He refused a direct order to perform work and that is insubordination. The fact that the insubordination was coupled with abusive language and an aggressive tone elevates the inappropriateness of the conduct. Finally, the mock clapping doesn't show favourably on the grievor.

Perhaps the most egregious misconduct engaged by the grievor was the willful destruction of company property. Driving into the skid with boxes of product ready for shipment was reckless yet not done without forethought. Further, not only was there a risk of damage to the employer's property, the pallet and the forklift but also it was pure blind luck that no employee was injured as a result of the hit and run. The grievor explains this away by saying that the forklift "got away from him" as he was trying to realign a pallet using the tips of the forklift. His evidence is not credible. The video certainly does not show an out-of-control forklift. In fact, it shows the grievor in control of it moving towards impact, at the time of impact and through impact. Frankly, the video is absolutely inconsistent with the grievors explanation. Further his body language doesn't show surprise or embarrassment at the

collision. He looks methodical. I find that the grievor was not being truthful in his explanation.

The grievor then says that he was not in the right frame of mind and was sick. This explanation came out in redirect examination at the 11th hour of the hearing. No mention was made of this explanation in his evidence during his examination-in-chief or during cross examination. Further there was no attempt, in the video, to pick up the boxes or clean up the area, the grievor simply and slowly walks away. No witnesses testified that he said he was sick, no witnesses testified that the grievor said he was sick, no doctors note was provided. Simply put, I just don't believe that the grievor was sick. There is no doubt in my mind that the grievor purposefully hit the pallet with the forklift. His claims otherwise are inconsistent with the video, common sense and the preponderance of the evidence.

In the result I have no difficulty finding that the grievor engaged in serious misconduct worthy of serious punishment. The question then become whether termination was justified and whether there are mitigating factors that justify substituting a lesser penalty.

With respect to whether termination was justified, the grievor engaged in three incidents of serious misconduct, including intentional damage to company property, and in a context where other employees may have been at risk of injury. While the three incidents occurred close in time, they were separate types of misconduct, they indicate a continuing pattern of serious misconduct, and they did not occur as part of the same interaction. In these circumstances, I cannot conclude that they should be treated as one continuing incident. The grievor also has numerous previous incidents of misconduct for absenteeism on his work record. In the result, I conclude that termination was justified.

Should I exercise my discretion to substitute a lesser penalty? Service New Brunswick, *supra*, and Zochem, *supra*, and the cases cited therein suggest that I should look at the following mitigating factors when considering reinstatement:

1. The previous good record of the grievor.

2. The long service of the grievor.

3. Whether or not the offence was an isolated incident in the employment history of the grievor.

4. Provocation.

5. Whether the offence was committed on the spur of the moment as a result of a momentary aberration, due to strong emotional impulses, or whether the offence was premeditated.

6. Whether the penalty imposed has created a special economic hardship for the grievor in the light of his particular circumstances.

7. Evidence that the company rules of conduct, either unwritten or posted, have not been uniformly enforced, thus constituting a form of discrimination.

8. Circumstances negativing intent, e.g., likelihood that the grievor misunderstood the nature or intent of an order given to him, and as a result disobeyed it.

9. The seriousness of the offence in terms of company policy and company obligations.

10. Any other circumstances which the board should properly take into consideration.

I have applied the 10 factors gleaned from the case law. On the plus side of the ledger- the grievor has 9 1/2 years of seniority which is a significant investment of time. He is married with four kids and the discharge has created financial hardship on him and his family. Cashing in his RRSP's during the strike likely leaves the grievor today in a precarious financial situation.

On the negative side of the ledger, the grievor doesn't have a good work record, it could be best described as spotty. The employer introduced into evidence a summary page of the grievor's work record, there were 11 different pieces of discipline most of which were for attendance issues. At the time of his termination, he was sitting on two 3-day suspensions. Leaving work without permission is easily described as an attendance issue. There is no discipline for wilful destruction of employer property, on the other hand, some 7 years earlier there is discipline for a violation of the workplace violence policy. It is hard to conclude that the incidents on October 8, 2024 were isolated.

The offences of wilful damage to an employer's property and insubordination are at the highest end of unacceptable conduct according to the Code of Conduct, that said, the

Code had just been implemented and the grievor had not received a written copy of it. On the other hand, I don't think you need a written rule to know you shouldn't destroy company property, mouth off to a supervisor and refuse a direct order. In addition, given that the incidents were distinct and different and took place over a span of about 20 minutes, it is hard to conclude that he is only guilty of an isolated single incident that happened on the spur of the moment- he had time to breathe in between incidents. As well, although it could be said there is ambiguity int the phrase "fix it", as stated earlier, the grievor neither fixed it at the computer terminal nor did he fix the skid. There is no ambiguity that an order was given.

I accept that a difficult strike can cause hurt feelings and frustration which can boil over once the workers return to work. The union says that this sense of frustration caused by a labour relations issue should be considered a mitigating factor.

The previous collective agreement expired in April 2024 and the workers went on strike in May. During the strike, as noted above, supervisors performed bargaining unit work. There was evidence that the grievor was an active picket line participant. Mr. Datta described the grievors picket line conduct as "questionable". The workers didn't do as well as they had hoped in the strike. The incident took place just days after the strike had ended and on the grievors second shift. He had been a lead hand when the strike started but when the strike was concluded the employer decided that lead hands were no longer needed in the shipping department and in the resolve the grievor reverted back to being a regular bargaining unit employee with no lead hand responsibilities. This also resulted in some lost pay. On the day in question, the grievor testified he felt frustrated, and those feelings of frustration boiled over partly explaining his conduct. The union strongly advocates that this is a mitigating factor that tips the balance in favour of reinstatement.

I do conclude the post strike feelings of frustration are a legitimate mitigating factor. Nevertheless, I do not believe this factor should result in reinstatement in this case. At best even adding this legal construct to the other mitigating factors present, there are not enough factors to tip the balance in favour of reinstatement.

Where the grievor runs into the most difficulty is in his own testimony. He never used the word sorry, despite three opportunities to do so- chief, cross and redirect. He only said in redirect and near the end of that portion of his evidence that he was 100% remorseful. I believe he is sorry for losing his job but not for his conduct. In addition, he had chances to apologize before his evidence. On the afternoon on the day of the incidents during the call with Mr. Datta, at no time did he apologize. He received a text the next day informing him of

his termination- no response, no apology. Once his evidence began, he could have apologised to Ms. Villanueva or the company, but he did not do so. The comment at the end of the hearing that he was remorseful seems designed to win his job back rather than coming from a place of sincerity. My conclusion is consistent with his repeated statements that he wants the benefits the employer offers and getting his job back will secure those benefits for his children. I just don't get the sense that he is remorseful for any other reason. At best, he was remorseful for the consequences of his actions to his family not the actions themselves.

Further, the grievor was not credible in much of his other evidence. His evidence about the forklift hitting the pallet is inconsistent with the video evidence. His suggestion he was sick was not backed up by one single piece of evidence. There is no evidence at or shortly after the incident and his termination supportive of this assertion. His claim that Mr. Datta called him after the incident to inquire about his health is implausible. Mr. Datta did not even know that a health issue was involved as no one had told him that. The grievor further testified that Mr. Datta did not question him about the events of the day. Mr. Datta testified that he did ask the grievor about what happened that day. On balance, it is more likely Mr. Datta called to ask why the grievor had left rather than make a friendly inquiry into how the grievor was feeling. Simply put, there no credible evidence of an acknowledgement of the extent of the misconduct, remorse for it or a heartfelt apology.

Accordingly, even if I were convinced that his frustration, seniority and family circumstance were enough to consider reinstatement, I just didn't believe much of the grievor's story and therefore any sympathy earned is erased by his own less than straightforward testimony.

In the result, I hereby dismiss the grievance.

Dated this 6th day of February 2025.

Michael McCreary