

IN THE MATTER OF AN ARBITRATION

BETWEEN:

EVRAZ REGINA STEEL
(A DIVISION OF EVRAZ INC. NA CANADA)

“EMPLOYER”

AND:

UNITED STEEL WORKERS , LOCAL UNION 5890
and BRENT WIESE

“UNION/GRIEVOR”

A W A R D

Sole Arbitrator: Kenneth A. Stevenson, Q.C.

Counsel:

For the Union: Leslie McNabb,
Staff Representative

For the Employer: David T. McDonald

Hearing Dates: May 5 and 6, 2015
Regina, Saskatchewan

Award: June 9, 2015

A W A R D

I. INTRODUCTION

1. Brent Wiese (“Grievor”) commenced employment with Evraz on August 21, 2013. In the months of August and November 2014 he held the position of O.D. Inspector Two in the Tubular Division, Spiral Finishing Department.

2. The parties agree that I have been properly appointed and have jurisdiction to hear and determine the issues raised by two grievances filed by the Grievor. The September 4, 2014 grievance alleges that the Grievor was unjustly and unreasonably disciplined. The Grievor received a one-day suspension for failing to report for work on August 21, 2014 for his regularly scheduled shift and did not notify his supervisor. The second grievance is dated November 14, 2014. It alleges that the Grievor’s discipline was unjust and unreasonable. On November 14, 2014 the Grievor was indefinitely suspended for events which occurred on November 12, 2014. The second grievance also covers the November 20, 2014 termination of the Grievor’s employment as a result of the November 12, 2014 incident and the Grievor’s disciplinary record since April 2014.

II. THE EVIDENCE

The Events of August 21, 2014

3. The Grievor was scheduled to work a night shift commencing at 6:30 p.m. on August 21, 2014. He says that he was running a bit late; he clocked in, was hurrying but his boots were not tied properly and his foot fell out of his boot, was caught and injured his ankle.

4. He stopped at the Security desk and advised that he had rolled his ankle. According to protocol Security called the Employer’s first responder; two of the Employer’s first responders attended. Because of the Grievor’s pain, a representative of Haztech, the Employer’s contract provider of on-site medical coverage, was summoned.

5. Mr. Landan Reimer, a trained Paramedic, attended to the Grievor. Examination of the Grievor’s ankle showed no swelling, he responded to normal palpations and reported a pain of 6 out of 10 up to 8 out of 10 on assessment. The ankle was wrapped in a tensor bandage and an ice

pack applied. Mr. Reimer says he gave the Grievor two options: that he would take him to the hospital emergency room or he could attend a walk-in clinic on a priority basis the next day. With the second choice, Mr. Reimer would take him to the supervisor. Mr. Reimer says that the Grievor said that he would attend the clinic the next day. Mr. Reimer says light duty and the clinic option were put together. He would take the Grievor to the supervisor so that the supervisor could assess any possible light duties. He never suggested to the Grievor that he go home without seeing his supervisor. Mr. Reimer is not allowed to prescribe medications, including painkillers. As the Grievor was leaving, Mr. Reimer endeavored to get information required to complete his patient care form.

6. The Grievor says that he decided to go home. Security advised him that he could not drive himself. He then left Security, walked to his car and left the plant. He understood that he had three options: go to emergency and be there all night; go to the clinic the next day; or go on light duty which he did not consider to be a good option because of his pain. He acknowledges that the Haztech employees do not have the authority to send an Evraz employee home. He says that Haztech was to contact him the next day to inform him as to the doctor to be seen; he never got any contact and went to see his own doctor two days later.

7. The Grievor says that he does not recall Mr. Reimer saying that he would take him to his supervisor to discuss light duty. Rather, he recalls being told that it was up to him to decide whether to leave or go to the supervisor. He never thought to phone his supervisor, Dave Syrota. Security knew he was leaving and in the past, if he notified Security that he would not be at work, Security would notify the supervisor. He acknowledges that this event occurred within one month of him receiving a three-day suspension and a warning that if he received further discipline, the Employer would look at such for consideration of termination.

8. Justin Carr, General Foreman, Spiral Finishing, made the decision to suspend the Grievor for one day as a result of the Grievor not attending work and not reporting to his supervisor on August 21. Mr. Carr decided that a one-day suspension was appropriate as the Grievor had shown for work and was injured. The Employer was sympathetic but it expected the Grievor to be more diligent and to report to his supervisor so as to permit the Employer to investigate. The

essence of the reason for discipline was the failure to report to his supervisor. Following the July 24 discipline, it was clear to the Grievor that he was to notify his supervisor of any absences.

9. Mr. Carr says that if an employee is to miss a shift, he is required to contact both Security and his supervisor; the Grievor was fully aware of this. On July 4, 2014 the Grievor had received a one-day suspension for his failure to notify his supervisor that he would be absent. The Notice of Disciplinary Action provides that in the future the Grievor “... shall notify Evraz and his supervisor if he is going to be absent from a shift. In accordance with the Evraz phone in procedure.” On July 24, 2014 the Grievor received a three-day suspension for not notifying Security that he would be absent for his July 19 scheduled shift. The Notice of Disciplinary Action notes that in the future the Grievor would be expected to adhere to the Call-In Procedure and follow the Employer’s policies and procedures; it cautions that future incidents or infractions “... will be reviewed with consideration for termination of employment”.

10. Dave Syrota has been Area Supervisor in the Spiral Mill since 2001. He says that when an employee does not attend work, he needs to give proper notification and a reasonable explanation to the supervisor or through Security. Neither of these occurred on August 21. Mr. Syrota follows the Step-by-Step Procedure of the Call-In Procedure; if an employee notifies Security two hours in advance of the start of his shift of his absence, Security will provide notification to the supervisor. Typically, if an employee is injured he is brought in for a preliminary investigation. It is determined what the employee is able to do during the shift with accommodation or reassignment of duties. He believes that there would have been some light duties available for an employee with a turned ankle who was able to walk to his vehicle. The Company would make every effort to accommodate the employee.

The Events of November 12, 2014

11. Justin Carr has 9 supervisors reporting to him in relation to 4 crews with between 220 to 260 employees. The Spiral Mill turns coils of steel into spiral pipes up to 24 inches in diameter and 50 to 80 feet in length with wall thicknesses of 250/1000^{ths} to 750/1000^{ths} inch. The pipes are welded inside and outside and are manufactured to customer specifications.

12. The Inspector Two position is responsible for ensuring pipe quality and pipe weld integrity by visual inspection to ensure the pipe complies with the customer's specifications. In performing these duties, the Inspector is provided with Measure and Test Equipment (MTE) including tape measure, diameter tape, ruler, curvature gauge and off-set gauge. The off-set gauge is used to detect differences between the pipe on either side of the spiral weld; these differences must be less than 60/1,000th of an inch. Mr. Carr says that variances should be apparent to an experienced Inspector on visual examination. If the Inspector visually detects a questionable off-set, he will need to use his off-set gauge to check the pipe. The amount of the offset is then marked on the pipe as a signal to other employees.

13. If an Inspector determines that a pipe is non-conforming, the pipe is to be marked; any non-conforming sections cut off and the information is entered into the computer pipe record. The pipe may be downgraded or scrapped. Mr. Carr says that it is very rare that a full length (80 feet) pipe would be rejected. This should be a red flag to the inspector who would be required to get his supervisor involved. The Inspection And Test Work Procedure provides: 3.4.1 – Report any repetitive preventable non-conforming quality issues to ALL of the following: **Mill Supervisor**, Finishing Supervisor, and Team Leader. Mr. Syrota says that the unusual circumstance of a downgrade of a whole pipe would likely point to a systemic issue; this would require the notifications which would prevent production of more non-conforming pipe.

14. Mr. Syrota has been the Grievor's supervisor throughout his employment. He considers the Grievor to be an inconsistent employee in: attendance, work performance and safety habits. He noticed these issues shortly after the Grievor's probation ended. On August 17, 2014 Mr. Syrota completed an evaluation on the Grievor covering six areas used to evaluate probationary employees: Timekeeping, Quality of Work, Job Knowledge, Judgment and Decisions, Cooperation and Initiative, Attentative (safety). The Grievor met expectations in Job Knowledge but was reported to Need Improvement in each of the other five areas. It was unusual for Mr. Syrota to need to perform this review and to re-coach an employee so that the employee understands what he needs to do to improve. Mr. Syrota says the process did not result in any improvement in the Grievor's work performance.

15. Mr. Syrota says that on November 12, while in the Burn Bay, he received a call from John Sloman, a Final Two Inspector, about what to do about a pipe. Mr. Syrota told him to inspect the pipe as normal. Mr. Syrota was unaware of this pipe until he received the call from Mr. Sloman. Mr. Syrota says that Mr. Sloman came to him, they looked up the pipe number and saw that it was downgraded by the Grievor for visual inspection of offset. According to Mr. Syrota, Mr. Sloman gave a bit of a sigh and said the Grievor is in trouble given his record.

16. Mr. Syrota and Mr. Sloman looked at the pipe looking for clues as to what went wrong. The pipe was properly painted with the downgrade code. The pipe did not have any markings to suggest any measurements had been taken. There were no offset problems nor weld seam issues, these were uniform in width and length. It was a “nice looking pipe”. The pipe did not have any of the required markings to confirm the measurements so others could verify the work. Mr. Syrota had not been called by the Grievor to advise of the downgrade.

17. Mr. Syrota says that at approximately 04:45 to 05:00 he requested that the Grievor and Adam Campbell come and bring their offset gauges. They examined the pipe and did not find any non-conformity – no offset or any other defect on the pipe. The actual readings of the offset on the pipe never exceeded 35/1000^{ths} and were mostly under 15/1000^{ths}. Mr. Syrota says there were multiple offset gauges present during the measuring but he cannot positively say if the Grievor’s gauge was used. Mr. Syrota did not hear that any MTE was malfunctioning nor did the Grievor have any explanation for not contacting a leader or supervisor before downgrading the pipe.

18. Shortly thereafter, the Grievor came to Mr. Syrota’s office asking if he could get parts for his offset gauge; he said that the depth gauge was loose and he needed bolts. Mr. Syrota told him that he would have to go to the lab to get a replacement. Near the end of his shift Mr. Syrota went to the lab where he got Adam Mohr to retrieve the subject gauge from the repair bin. The covering glass of the gauge was missing but the needle and spring mechanism were in good condition. Mr. Syrota kept the offset gauge in his office until it was given to Justin Carr. Mr. Syrota did not repair the offset gauge; he says that the gauge is fine and would not have caused the discrepancy in readings that the Grievor claimed to have made with his offset gauge.

19. During the following night shift, Mr. Syrota and Jeff White, another supervisor, met with the Grievor and his Shop Steward, John Sloman to conduct further investigation about the pipe downgrade. During this meeting the Grievor said: he checked a number of spots on the pipe and got readings in the range of 50/1000^{ths} to 64/1000^{ths}; no offset numbers were written on the pipe; when the pipe was checked with the proper gauge, the offset was 25 to 30/1000^{ths}; the offset gauge was missing four screws; he ran the whole shift with the offset gauge which he knew was broken; he did not notify his supervisor prior to downgrading a full-length pipe. When Mr. Syrota asked the Grievor to describe in his own words what occurred, the Grievor wrote:

Visually checked pipe, looked offset, rechecked with gauge roughly every 10 feet, gauge showed in the ranges of 50-64 offset, pipe was scrapped, downgraded for offset.

According to Mr. Syrota the offset gauge back is secured by 4 tiny screws which may become loose. In Mr. Syrota's opinion, based on his experience, any loose screws would never put the reading on the gauge out by more than 10/1000^{ths}. Mr. Syrota says that when he retrieved the offset gauge from the lab, the screws were not loose. The lab, where the offset gauges are stored is approximately 40 feet from the Grievor's work station.

20. Other than the suspension of the Grievor on November 13 pending further investigation, Mr. Syrota was not involved in the disciplinary process. In his opinion discipline was warranted as the Grievor did not follow company procedures (i.e. reporting to the supervisor prior to downgrading the whole pipe), his conduct raised questions of his accuracy and inconsistency in ensuring pipe quality and integrity despite earlier counselling/coaching. The Grievor was given appropriate opportunity to succeed in his job. He was not a good fit for Evraz employment; he has demonstrated that he cannot or will not follow proper procedures in his job duties. Mr. Syrota acknowledges that the Grievor did not have any prior work performance or safety discipline.

21. John Sloman says that Mr. Syrota had asked him to re-inspect the subject pipe downgraded by the Grievor. When he inspected the pipe, he thought it was okay. He

determined that the pipe had been downgraded for offset but while there was some offset in the cut-off point, the maximum he found was 34/1000^{ths}. He says that when the Grievor and Adam Campbell inspected the pipe, *I believe they used my gauge – I don't remember it that well – don't remember them bringing another one.* Mr. Sloman did not observe any reason to downgrade the pipe; there were not any of the markings commonly placed on the pipe noting deficiencies.

22. When Mr. Sloman asked the Grievor why he downgraded the pipe, the Grievor said it looked bad to him and when he used his gauge he was getting 65/1000^{ths} and over. Mr. Sloman says it can be an optical illusion on a weld bead and make it appear to be an offset. He acknowledges that this issue is different than an offset and there was no reason to downgrade for any bead miller issue. He noted that the screws on the Grievor's offset gauge were loose; this could give a faulty reading but he does not know how much. He told the Grievor to take the gauge to the lab and get a new one. A Shop Steward attended with the Grievor and counseled him.

23. Mr. Sloman says that it is unusual to downgrade an entire length of pipe; a problem with a full length of pipe would indicate a problem with the upstream work and the company would want to catch this as soon as possible. The expectation would be that you would get a supervisor involved; he would tell a supervisor in these circumstances. It is the responsibility of the employee to ensure that all of his work station MTE is in good working order; if improper, an employee should change it out at the lab or with the supervisor. Mr. Sloman reviewed the statement the Grievor gave during the investigation of November 13; he acknowledges that the statement does not include any mention of a faulty offset gauge. He was uncomfortable when involved with Mr. Syrota inspecting the pipe; he understood the Grievor had done his job incorrectly and he believed that the discipline would result from that type of error. He was aware of some of the Grievor's prior discipline; he and the Grievor knew the Grievor's job was in jeopardy.

24. Adam Mohr works in the lab performing physical testing on cut-out sections of pipe. He has used MTE and is aware that the offset gauges are stored in the cabinet in the lab and in the

shop they are often stored against a grinder stand. On November 23, 2014 he gave a statement in which he said the Grievor came to the lab asking for a new offset gauge; he noticed that the glass cover was missing from the gauge and all four screws were loose. He gave the Grievor a replacement gauge. In his opinion if the screws are loose the gauge would probably not give an accurate reading. He assumes that he put the Grievor's gauge in the broken MTE bucket, he does not remember if he gave the gauge to Mr. Syrota.

25. The Grievor says that he has worked for Evraz for approximately one and one-half years in Inspections; he started in ID and moved to OD Inspections ultimately as Inspector Two. He believes that he is good at his job – always learning, including from mistakes and with peer to peer reviews. He always produced good footage with low rejects; he realizes the importance of sending out quality pipe meeting customer specifications; he knows that oil is pumped at high pressure through the pipe; errors cost the company money and time. At the time he was evaluated by Mr. Syrota on August 17, 2014 he had a few weeks of work as an OD Inspector; he believes that he changed things after this and sought help with any improper work matters.

26. The Grievor says that the pipe which he downgraded was an unusual one – an overly long spliced one. He could see offset but not tell how much. He used his offset gauge to measure the offset throughout the length of the pipe and got readings of 50 to 60/1000^{ths}. He had reason to downgrade the pipe. It was spliced pipe which was downgraded – it would be cut off. The proper procedure is to mark the amount of every offset to make the job in Final easier. He never wrote on the subject pipe. He had been told not to spend too much time on bad pipe and to keep the pipe moving.

27. The Grievor says that when he attended Mr. Sloman's bench, he was told to re-inspect the pipe. In the better light, he could not see the problems which he had seen before. Using Mr. Sloman's gauge the maximum offset was 35/1000^{ths}; he knew something was wrong with his gauge which he did not bring to Mr. Sloman's bench. He acknowledges that Mr. Syrota may have told him to bring his gauge. After the re-inspection the Grievor and Mr. Sloman went to his work bench and wondered how he had "screwed up". Mr. Sloman said the screws were loose on the gauge and that he should go to the lab to get it fixed. Adam in the lab said four screws were

loose and removed one by hand. Adam said to get a precision screwdriver to tighten them. Mr. Syrota did not have one so the Grievor took the gauge to the lab and got a replacement. At his bench his gauge sits on a large industrial fan which vibrates. He acknowledges the requirement that his MTE be inspected at the start of the shift to determine if it is working properly and that such information be recorded in the computer.

28. The Grievor says that he was moved to and kept in OD Inspections; if he was not doing a good job – why was he kept there. His rejects were decreasing. He believes he is able to return to work and follow “letter to the book”. He apologizes for his absences, which he knows make the supervisor’s job harder. He has sought to deal with his personal issues related to his spouse’s addictions and believes that these are now managed; he has the tools and resources in place to deal with this issues now and is in a position of thinking more clearly. In August 2014 in connection with his work attendance issues, he told management of the issues his family was experiencing and that he was accessing the EAP Program; he was seeing a therapist. He thought that with this information the company would be more lenient. Things are under control and his life had now turned around.

29. The Grievor acknowledges that he “screwed up” on November 12 when he downgraded the pipe. He thought he found offset but his gauge was screwed up. He accepts responsibility for the improper downgrading and knows the Employer relies on the Inspector to properly grade the pipe. He acknowledges that his conduct on November 12 was worthy of some discipline but he says termination is excessive “*as my first problem with the pipe*”. He knew in the Fall of 2014 that his employment was jeopardy. He was told on September 18: *This is the sixth incident in the last 5 months. Any future infraction will result in immediate termination.* This was made clear to the Grievor. On July 24 he was suspended for three days for his failure to report his absence for his shift on July 19. He was told that any future incident or infraction “... *will be reviewed with consideration for termination of employment*”. The evaluation on August 14 in which five of six categories, he did not meet expectations, was a message that his work was unsatisfactory; he needed to improve or be consequences. He agrees that he was given every opportunity to succeed at Evraz and that he was properly trained. He acknowledges that none of

the early clocking out on September 18, the August 21 ankle incident nor the November 12 incident relate to his personal issues.

30. The Grievor says that he has never before downgraded a full 70 foot pipe. He was aware of his obligation to contact the Mill Supervisor, Finishing Supervisor and Team Leader. He did not contact any of them; he never thought to call his supervisor.

31. The Grievor acknowledges that he knew the November 13 meeting was to investigate the pipe downgrading incident, yet in his statement, he makes no reference to having an offset gauge problem. When Mr. Syrota asked some questions, the Grievor acknowledged not putting any markings on the pipe and said that his gauge was broken. At the hearing he says that if he knew his gauge was broken, he would have had it fixed; he did take it to the lab tech to look at and exchanged it for a new gauge.

32. Mr. Carr received an Incident Fact Sheet in relation to the November 12 pipe downgrade, a copy of the Grievor's statement, as well as the notes made by Mr. Syrota and Mr. White during the investigation containing the Grievor's responses to questions. In Mr. Carr's opinion Evraz never received a satisfactory explanation from the Grievor as to why he downgraded the pipe.

33. Mr. Carr received the subject offset gauge from Mr. Syrota and kept it in his possession unused after November 13. The gauge was not repaired nor was its condition altered. On examination the gauge did not appear to have anything wrong with it. When the gauge was tested on April 14, 2015 it was found to be within the calibration standard. The pipe was downgraded from Prime by the Grievor at 2140 hours. After the pipe was re-examined it was sold as Prime. The work history did not show any other improper downgrades by the Grievor for that shift.

34. The Employer concluded that the Grievor's actions in regard to the pipe were worthy of discipline. The Employer trusts the Inspectors to determine compliance with specifications and provide reasons for a downgrade. There was no reason for this downgrade; this was a big concern. On a review of the Grievor's disciplinary record, including prior warnings that further

infractions would result in a consideration of termination and finally that any further incident would result in termination, the Employer lost trust that the Grievor would be able to inspect products as required. The Employer concluded that discharge was appropriate. The discharge letter referred to the Grievor's discipline history since April 2014.

35. It is Mr. Carr's opinion that it would be inappropriate for the Grievor to be returned to work having regard to the concerns about the quality of his work, his apparent unwillingness to change and his failure to report the downgrade. The Employer could not trust the Grievor to perform the work required as he downgraded a pipe without reason; he would be a liability to Evraz and its customers if returned to inspections. A consequence of the failure to inspect and accurately determine that a pipe meets or does not meet specifications could be very serious including lost business and employee jobs.

III. DISCUSSION, ANALYSIS AND CONCLUSION RESPECTING THE FIRST GRIEVANCE

36. The Notice of Disciplinary Action for the August 21, 2014 incident states: "*On August 21, 2014 Brent failed to report for his regular scheduled shift and did not notify his supervisor*". Mr. McDonald says that I should make my decision having regard to all of the issues in dispute. The infraction is the Grievor's failure to report; he did not report, rather he left work. Mr. McDonald says that the issue is not solely whether or not the Call-In Procedure was followed. Ms. McNabb points to the different interpretations/application of the Call-In Procedures given by Mr. Carr and Mr. Syrota. The Union says the Grievor was not required to report to his supervisor as he had reported to Security that he was leaving; this is all that is required.

37. This is not a situation in which the Call-In Procedure has any specific application. This is not a case where the Grievor could call-in two hours prior to his scheduled shift to report a lateness or an absence. He had attended at the workplace; he had clocked in. While on his way to report for duty, he injured his ankle. This was duly reported to Security.

38. I am satisfied that the Grievor was given two options: one, that Mr. Reimer would take him to the hospital emergency, or two, that he would wait until the next day to attend a walk-in

clinic on an expedited basis. With the second option Mr. Reimer would then take the Grievor to his supervisor to report the incident and address work assignments for the balance of the shift. The Grievor chose neither of these two options. Rather, he chose to leave the workplace and contrary to the advice of Security and company procedures, left driving his own vehicle.

39. The Grievor's failure to report for his regular shift or to notify his supervisor of the reason for not reporting for his shift is conduct worthy of discipline. The Grievor had a recent history with his failure to comply with the requirement that he provide the company and his supervisor with notice of his absence from work. His decision to leave work in these circumstances was a violation of his reporting obligations. A one-day suspension was reasonable discipline for this infraction. For these reasons the September 4, 2014 grievance is dismissed.

IV. DISCUSSION, ANALYSIS AND CONCLUSION ON THE TERMINATION GRIEVANCE

Position of the Employer

40. Mr. McDonald says that both the Grievor and the Union acknowledge that the events of November 12 gave the Employer grounds to discipline the Grievor for his failure to mark the pipe properly as required and his failure to notify anyone that he had downgraded a complete length of pipe. On the application of the Employer's progressive discipline policy, discipline must progress to an end and that end came as a result of a culminating incident which occurred November 12. The Grievor has been given sufficient chances and there is no evidence that these chances have had any positive effect on his work performance. The decision of termination was not excessive having regard to the Grievor's substantial disciplinary record and the conduct on November 12. Mr. McDonald says that the Employer's progressive disciplinary policy is worthy of upholding. He requests that the grievance be dismissed.

41. The Employer refers to the Grievor's two explanations for the downgrading of the subject pipe. First, he says he conducted a visual inspection and then on using his offset gauge found offsets between 50 and 64/1000^{ths} of an inch; for this reason the pipe was scrapped for offset. Secondly, he acknowledges that he made none of the required writings on the pipe as to the offset and that he got the large reading because he was working the shift with a broken gauge (4

screws were missing). The Employer says that the gauge is not an issue. It has not been repaired and when tested on April 15, 2015 was shown to be in compliance and functioning properly. The faulty gauge is nothing more than an excuse by the Grievor for his carelessness in downgrading the pipe. Even if the gauge was faulty, it was the Grievor's obligation to understand that it was faulty and not to use it; he had an obligation to ensure that his MTE worked properly.

42. The Employer says that the issue to be decided is whether or not the termination was excessive; in making that decision I ought to give deference to management's decision and consider the factors outlined by Arbitrator Weiler in *Wm. Scott & Co. v. Canadian Food and Allied Workers Union, Local P-62* (1977), 1 Cdn. LRBR1. When tested against relevant factors in determining whether or not the penalty was appropriate or whether a lesser penalty should be substituted, it is clear that the penalty was not excessive.

43. The Employer submits the most notable feature is the Grievor's short service: August 21, 2013 to November 2014. The Employer tried to correct the Grievor's behaviour through a progressive disciplinary program, however this was unsuccessful. He has no good record behind the November 12 discipline to mitigate the penalty. Mr. McDonald references the extensive disciplinary record from April 16, 2014, moving to a three-day suspension on July 19, a one-day suspension on August 24, followed by a three-day suspension on September 18. He was notified that any further infraction would result in immediate termination.

44. The nature of the November 12 incident is a concern; the incident indicates that Evraz cannot have confidence in the Grievor to do the job right. A trained Inspector improperly downgrading a pipe; he was negligent and failed in his duty. Evraz needs confidence in the ability and judgment of its Inspectors; the core of the Inspector's job is to do a visual inspection and testing. It is extremely serious to downgrade as a result of carelessness. The downgrading was not the result of being cautious; if it was, the Grievor would have called his supervisor, marked the pipe and noted the loose screws in his gauge. The Grievor accepts the seriousness of his conduct but says that this is the first time there had been a pipe problem.

45. The Grievor's work performance was inconsistent at best. The Grievor's suggestion that he was a good employee was either an exaggeration or that he did not understand on how many levels he was failing in work performance notwithstanding that he had been spoken to and coached. He has not shown that there was any special economic hardship. Evraz has been consistent in the application of discipline. The evidence establishes that other employees had received a three-day suspension for similar type conduct. There was no evidence as to any prior disciplinary record in such other instances.

46. The Employer refers to the decision of a Board chaired by L. Ted Priel, Q.C. in *Retail, Wholesale and Department Store Union, Locals 496, 558 and 568, Saskatoon, Prince Albert and Regina v. Brinks Canada Limited* (2006), CanLII, 80655. The termination of an employee with less than one year seniority was upheld on the basis of an application of the culminating incident doctrine. The decision supports the position that prior disciplinary offences need not be of the same nature as the culminating incident and refers to the factors to be considered in deciding whether or not the penalty was appropriate or a lesser penalty should be substituted.

47. The Employer also refers to the decision of Arbitrator Julie Nichols in *Teck Metals Ltd. (Trail Operations) and United Steelworkers, Local 480* (April 7, 2015 – unreported). A 34-year employee had his employment terminated on the basis of a culminating incident. The grievor had seven disciplinary incidents within the last four years. The final incident leading to termination was a berating of another employee but the grievor did not have a record of bullying. The arbitrator weighed all of the relevant factors in deciding whether or not the grievor should be given another opportunity to maintain his employment. The Employer cites the decision of Arbitrator John Kinzie in *Teck Coal Ltd. – Elkview Operations and United Steelworkers, Local 9346* in support of his application of progressive discipline even where there was no similar safety related discipline. The decision of Arbitrator Brandt in *Re Culinar Foods Inc. and American Federation of Grain Millers, Local 242* (1995), 48 L.A.C. (4th) 99 which is cited in the *Teck Metals* and *Teck Coal* decisions, reviews the factors for arbitrators to consider in whether to exercise their remedial discretion to substitute a different penalty for that of discharge.

Position of the Union

48. Ms. McNabb says that the Grievor was terminated because he erred on the side of caution when he downgraded the pipe that looked bad to him. His actions were not malicious; they did not involve safety, negligence, insubordination or harassment. The Grievor's conduct in failing to mark the pipe with the offset readings and his failure to report the downgrade to his supervisor was worthy of discipline. However, the Grievor was following Company advice not to waste time on poor pipe; the pipe looked bad so he moved on to more worthy pipe. Ms. McNabb says that the offset gauge was an issue and that the evidence of Adam Mohr and John Sloman confirms the problem of loose screws which could cause a discrepancy in readings.

49. Ms. McNabb notes that while the Grievor has a prior disciplinary record, the pipe downgrade incident is the first issue of faulty work performance. For that reason the unrelated disciplinary record should be given less weight. The Grievor has learned from the discipline to correct his inappropriate conduct related to reporting and attendance issues. Discipline should be corrective and the Grievor has shown that he responds to discipline. *Alcan Smelters and Chemicals Ltd. v. CAW-Canada, Local 2301*, 1998 Carswell B.C. 3145; *Hydra-Dyne Industrial Cleaning Services Co. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128*, (1997) Carswell Ont 7026.

50. With reference to the *Wm Scott* factors, Ms. McNabb acknowledges that the Grievor does not have a previous good disciplinary record and is not a long-service employee. The incident was an isolated event; the Grievor believed he was downgrading a bad pipe and moved on with his work. He accepts the seriousness of the offence, however, he believed he was removing a bad pipe. He has accepted blame for his inappropriate conduct. The penalty of termination is much too harsh. The penalty is inconsistent as other employees were guilty of similar misconduct in downgrading a pipe and received only a three-day suspension. There should be equal treatment for the same employment offence.

Analysis, Discussion and Conclusion

51. The Employer's decision to terminate the Grievor's employment was made as a result of the improper pipe downgrade incident and his disciplinary history since April 2014. The

decision was based on the doctrine of culminating incident and the application of the Employer's progressive discipline policy. It is acknowledged that the Grievor's conduct and his failure to mark the offset on the pipe or to notify his superior of the downgrade was worthy of discipline. The purpose of discipline is to correct inappropriate behaviour and to give the employee an opportunity to learn from his errors. The Grievor says that he has learned from his errors and that he ought to be given another opportunity to maintain his employment.

52. The question which I must answer is, having regard to the conduct on November 12 and the doctrine of culminating incident, was termination an excessive response in all of the circumstances?

53. In my opinion Arbitrator Priel properly summarized the application of the doctrine of culminating incident in *Brinks* (supra) at paragraphs 52-55:

52. The Employer relies upon the doctrine of culminating incident. That doctrine rests on the proposition that an employee who engages in conduct which is worthy of discipline may, in appropriate circumstances, place himself in a position where his employer can rely upon the employee's poor employment record to justify a more serious penalty by way of discipline than would otherwise be the case if one were to consider only the circumstances of the most recent incident.

53. Just as an arbitrator can consider an employee's lengthy and unblemished record in determining the appropriateness of the penalty meted out to a grievor, so can an employer, in appropriate circumstances, consider the entire disciplinary record of a grievor when arriving at what the employer considers to be an appropriate penalty. Repeated incidents which are worthy of discipline, are normally met with increasingly severe penalties. That is because an employer who practices progressive discipline ought to be able to expect that an employee will learn from his or her errors. Repeated infractions can lead to the conclusion that an employee is unwilling to do so.

54. If an employer is not able to rely upon the doctrine of culminating incident, an employee would be able to engage in numerous relatively minor disciplinary offenses without being faced with a possible discharge, so long as that employee did not engage in very serious misconduct or repeated offences of a similar nature.

55. Arbitral jurisprudence makes it clear that in order for an employer to apply the doctrine of culminating incident, the final incident must be deserving of some discipline.

54. The Grievor's seniority date is August 21, 2013. He was terminated November 20, 2014. Between April 17, 2014 and the date of the termination the Grievor amassed the following disciplinary record:

- April 17, 2014 – Written Warning – un-attentive and not alert during tool box meeting
- May 14, 2014 – Written Warning – failed to follow the call-in procedures after missing shifts on May 9, 10 and 11
- July 9, 2014 - One-day suspension – failed to show for the night shift July 4 – did not notify company and supervisor of absence in accordance with phone-in procedure
- July 24, 2014 – Three-day suspension – not follow the call-in procedure and failed to notify security of absence for shift. Notice that future incidents or infractions will be reviewed with consideration for termination.
- August 21, 2014 – One-day suspension – failed to report for shift and to notify supervisor. Notice that future violations or infractions may result in further disciplinary action up to and including termination.
- September 18, 2014 – Three-day suspension – left work early. Notice that any future infraction would result in immediate termination.

55. The Union asks that I set aside the termination decision on the basis that there are mitigating circumstances; termination is excessive. Ms. McNabb argues that factors which weigh in favour of the Grievor retaining his employment include the fact that the downgraded pipe incident is conduct which is unrelated to the other conduct for which he had been disciplined. It is my conclusion that the fact that the work-performance issue on November 12 was not of the same nature as the earlier attendance and call-in matters for which the Grievor had been previously disciplined, does not, in these circumstances ultimately assist the Grievor in determining whether termination was excessive. The majority of the Grievor's disciplinary record relates to his failure to follow the call-in procedures and report to Security and/or his supervisor absences from work. This fact does not ultimately assist him because in the period of five(5) months to September 18 he was disciplined on six (6) occasions for misconduct.

56. On May 14 he received a written warning and was warned that if he was going to be absent from a shift he must notify Evraz and his Supervisor and that the consequence of a recurring action would be "progressive discipline up to and including termination". In July he received suspensions for one day and three days for repeated instances of failure to follow the proper procedure to notify Evraz of his absence from work. With the one-day suspension he was

advised that consequences of recurrence or no improvement in this behaviour would be “progressive discipline up to and including termination”. With the three-day suspension the Grievor was advised: *This was the 4th incident of progressive discipline in the past 4 months. Future incidents or infractions will be reviewed for consideration for termination of employment.*

57. The Grievor was disciplined on August 21 in the circumstances dealt with in this Award. I have determined that the discipline was appropriate. In connection with the one-day suspension the Grievor was advised that the Employer’s expectations for his future actions and behaviors: *You are expected to adhere to the work rules, policies and production/quality procedures. Future violations or infractions may result in further disciplinary action up to and including termination of employment.* In less than one month the Grievor was given a three-day suspension when he left work early; the discipline was noted to be the sixth incident in the last five months. He was warned: *Any future infraction will result in immediate termination.* Within two months the Grievor again engaged in conduct which he and the Union agree is deserving of discipline. The Employer did not move automatically to termination as a result of improper downgrading of the pipe, the failure to mark the pipe or to notify the supervisor of the downgrade as required by procedure.

58. In reaching its decision to terminate the Grievor’s employment the Employer relied on the doctrine of culminating incident – the Grievor’s misconduct on November 12 and his disciplinary history from April 2014. In less than seven months the Grievor engaged in seven incidents of disciplinary conduct. Most of the previous incidents were related to his failure to follow company call-in procedure related to providing notice to the company and/or supervisor: on a return-to-work, when not reporting for a scheduled shift, when leaving work early and a failure to report for his shift and not notify his supervisor on August 21. The Grievor received warnings that a recurrence or further incident would result in further discipline up to and including termination and ultimately that any further incident would result in termination. He knew that he was on the cusp of termination. He was at this point as a result of his failure to comply with or as a result of his disregard of the Employer policies and procedures. However, on his own admission, on November 12 he disregarded the policy requirement to mark the downgraded pipe and to notify his supervisor of the downgrade. He has not provided any

explanation for this except to say the pipe looked bad (it wasn't – it was Prime) and he and the company did not want him to waste time on it. He says he forgot to notify his supervisor.

59. The Grievor says that he got excessive offset readings and that it was likely due to a faulty gauge. He did not offer this explanation to Mr. Syrota when the pipe was re-inspected. This does not excuse the requirement to mark the offset on the pipe. While not necessary for my decision, I must say that I have grave doubts as to the Grievor's claim that his gauge was not working properly and gave him false readings. One might reasonably expect that this explanation would have been offered when the pipe was re-inspected and during the investigation meeting. It was not offered on either occasion. The accounts of the Grievor, John Sloman and Adam Mohr vary as to the nature of the problems with or the state of the screws in the back of the gauge. When the gauge was received by Mr. Syrota it did not have any loose screws; there is no evidence of repairs being made by anyone to that time and none were made by Mr. Syrota or Mr. Carr. At the hearing the gauge was intact with no loose screws. It had been tested and was properly calibrated and was working properly. Further, if the gauge was not operating properly and had loose screws the Grievor ought not to have used it. At the start of his shift he is responsible to, and did certify, that the gauge was properly calibrated and was working properly. There is no evidence to explain how the defect would occur or why the Grievor continued to use the gauge. As an experienced Inspector, the Grievor ought to have been able to determine, on visual inspection, if offset existed and if he did test the pipe he ought to have been in a position to question the accuracy of the readings given the evidence as to the pipe having little offset and being considered Prime.

60. In my opinion the Grievor's conduct on November 12, when he knew he was on the cusp of termination, shows that he has not, in fact, learned from earlier disciplines and his conduct has not improved as a result of these. He knew, or ought to have known, that his actions were inappropriate and would attract disciplinary consequences. He should not have been surprised that the consequence was termination.

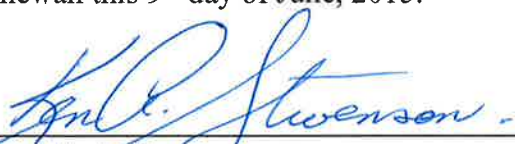
61. The Grievor was experiencing some ongoing issues at home; these may have contributed to some of the conduct which gave rise to earlier disciplines. However, the Grievor agrees that

any personal issues were not relevant to or causal in relation to the conduct giving rise to the discipline on August 21, September 8 or to the November 12 incident.

62. In reaching its decision the Employer took into account all of the circumstances of the Grievor's employment, including his disciplinary history and events of November 12. I am unable to conclude that termination was excessive discipline in these circumstances. The Employer's concern about the Grievor's quality of work and his inability or unwillingness to follow its procedures and protocol notwithstanding a number of prior disciplines and a warning that any further recurrence or issue would result in termination followed by the November 12 conduct justified the Employer's decision that it could no longer rely on the Grievor to perform his job duties as an Inspector. The Employer's consideration of the Grievor's short service and substantial disciplinary record was reasonable in all of the circumstances. I accept the Employer's submission that its decision to terminate the Grievor's employment would have been the same even if the August 24 grievance had been upheld. Should I have erred in dismissing that grievance, I would have upheld the termination as a reasonable response in all the circumstances.

63. For the foregoing reasons the November 14, 2014 grievance is dismissed.

DATED at Saskatoon, Saskatchewan this 9th day of June, 2015.



Kenneth A. Stevenson, Q.C.
Sole Arbitrator.