UNIFOR Local2301

BULLETIN

Kitimat Smelter and Kemano Power Operations Workers

2015 Legal Overview

As per the 2014 extra hours dues motion, the Union continues to use lawyers to represent our members through the various legal proceedings.

The following are short summaries of cases that were determined through the grievance and arbitration process. For the full text of any legal proceedings, please contact your Union hall.

2015/01 Discipline 3 day suspension – Heard November 12 & 13, 2014 – Award January 23, 2015

The grievor was given a three day suspension for not wearing a seat belt. The arbitrator dismissed the grievance, but reduced the suspension to a one day suspension. In the arbitrator's view, "While it might be otherwise in other workplaces, in this plant a three day suspension is regarded as a heavy penalty …. I do not think the grievor should be seen to be at risk of point of discharge as a result of the incident but I do not wish to suggest that he is without fault. Therefore, I would dismiss the grievance but reduce the penalty to a one day suspension."

2015/02 Seniority / Transition to new smelter – Heard Oct 21 & 22, 2014 – Award February 13, 2015 (Section 104 Expedited)

In June 2013, during the transition process into KMP and the Company offering positions in the new plant, the grievor, based on his seniority, was offered and accepted a continuing / corresponding job. The grievor felt, that based on his seniority, he should also have had the opportunity to claim other positons in KMP and that his job rate and premiums should be maintained if he accepted one of these positions.

The arbitrator ruled that in the plain meaning of the language in 24-LU-#2 3(b)(ii) that the grievor would have to be placed into a job similar to his lived filed job, or the position that he was in prior to KMP would have had to be eliminated in order for him to be entitled to carry his premiums into a different KMP job.

2015/03 Unjust termination – Heard Feb 18 & 19, 2015 – Award April 2015 – (Regular Arbitration)

The grievor was terminated by the Company in April 2014 for non-culpable reasons. The grievor's D.I.P. benefits ended in March 2014 and the grievor did not qualify for long term disability benefits. The Company, in a letter to the grievor explaining his termination wrote, "The Company has determined there is no reasonable likelihood you will be returning to work in the future."

The grievor, while on DIP benefits, at the Company's request, in 2013 was examined by several medical specialists. Reports and recommendations from these specialists were reviewed by the Company doctor and in March 2014 the Company doctor informed the company that the grievor was permanently disabled.

In 2014, prior to receiving the termination letter, the grievor was examined by his family doctor, who sent a report to the company outlining that the grievor be provided with a "graduated return to work program." This report also stated that the grievor was not totally disabled from all work duties and that he could perform modified or alternate work as of 17/4/14.

At arbitration the Union introduced a medical assessment based on a medical examination of the grievor in September 2014. This report found that the grievor had recovered and did not have the level of impairment that the company specialist based his 2013 reports on.

In the arbitrator's decision he wrote that the grievor was never assessed in 2014 at the time of his discharge for a potential accommodation that should have been considered by the parties' Joint Medical Placement Committee and that the Company did not consider that the grievor's condition would improve between the Company's specialist assessment in 2013 and grievor's termination in April 2014. The arbitrator continued, "Given the information available as at the time of the grievor's discharge it is not reasonable for the Employer to have concluded there was no reasonable prospect of him being able to regularly attend work.

The arbitrator reinstated the grievor and for the grievor to have his situation considered by the Joint Medical Placement Committee.

2015/04 Time limits 2nd Stage Grievance Procedure – Heard March 24 & 25, 2015 – Award May 6, 2015 (Section 104 Expedited)

The Union filed a grievance regarding the company not following time limits in giving written answers to 2nd stage grievance hearings. This, after a company manager took over 6 months to give a written answer to a 2nd stage grievance heard in September 12, 2013.

The Arbitrator dismissed the Union's grievance, but in his decision the arbitrator states that the Union, in the case of 2nd stage grievances, is within its power to refer a grievance to arbitration if a manager hearing the grievance takes more than 7 calendar days to provide the Grievance Committee a written answer.

2015/05 Time off in lieu, if Stat Holiday falls within an employee's vacation – Heard April 9, 10, Award July 9 (Section 104 Expedited)

A grievance was filed on the interpretation and application of Article 13.05(a) of the CLA.

The grievor, who is a 12 hour shift worker, had booked a weeks' vacation, in which two statutory holidays fell. When he booked this vacation, the grievor arranged with his supervisor, to take an additional two work days off on his first two work days after the 7 day period of his vacation. This additional time was in lieu of working the two statutory holidays. The first day after the 7 day vacation period was a scheduled day off for the grievor. While on vacation, the Company cancelled these two in lieu of days, resulting in the grievor having to return to work early. The arbitrator in denying the grievance ruled on the interpretation of the language. In his conclusions the arbitrator wrote, "If the time off they are otherwise entitled to is taken consecutive with the end of their schedule vacation, they are free to take it. ….. I would find that the Employer is required to grant days off under the circumstances described in Article 13.05(a) but the employee is not compelled to take the grant of days off."

2015/06 Live-filed as gangleader if working as gangleader for 1400 hours over 2 consecutive years – Heard April 22, Award August 18 (Regular Arbitration)

The Grievor worked 2900 hours as a temporary gangleader between Oct, 2010, and June, 2012. In June, 2012, the Company stopped paying the grievor the gangleader premium.

In 2012 negotiations wording was agreed upon that, in part says, if an employee worked in excess of 1400 hours per year in a gangleader's position the employee would be live-filed as gangleader.

The Union filed a grievance, on behalf of the grievor, in Oct, 2012, that the grievor be live-filed as a gangleader based on 2012 negotiations new gangleader language.

The arbitrator dismissed the Union's grievance. In his decision the arbitrator stated, " In the present case the contractual rights at issue were introduced effective July 24, 2012, and the rights established by the newly bargained Appendix I(d) apply as at that date.

2015/07 Abuse of process – drug and alcohol testing of employee, scheduled to be heard Oct 28, resolved before arbitration (Section 104 expedited)

One of our members was required to undergo drug and alcohol testing by the Company. After the testing, which all results were negative, and further investigation by the Union and Company, **the Company realized that they did not have reasonable cause to ask the member to undergo this testing.** The grievance was resolved at arbitration with the Company sending a letter of regret to the grievor and removing the incident from their work file.

2015/08 Termination – Heard September 22, Award Nov 6 (Section 104 expedited)

This arbitration dealt with three separate company disciplines imposed on the grievor. The last one resulted in the grievor being terminated by the Company. The Union filed grievances on each of the three disciplines and argued that each one was unjust and/or excessive.

In the first incident the grievor was given a three day suspension for making a fraudulent claim for overtime and a meal ticket.

The second incident resulted in the grievor being given a 30-day suspension for obtaining work clothing the grievor was not entitled to.

The third incident, theft of time / misuse of time, resulted in the Company discharging the grievor.

The arbitrator dismissed all three grievances and upheld the termination of the grievor. In his decision the arbitrator wrote, "Despite significant and progressive discipline in the form of a three and thirty day suspensions the grievor showed he was unable or unwilling to change his behaviour and I am left without any real basis upon which to conclude the relationship can be restored. In arriving at this conclusion, I accept that the Union may be correct in its assertion that the grievor acted without premeditation in relation to all of the incidents in this case, but the evidence does show he certainly kept his mind open to various ways in which he could access a benefit or pay he was not entitled to, in a manner that is incompatible with continued employment."

2015/09 Termination – Heard November 18, awaiting arbitrator's decision

The Company terminated the grievor's employment for insubordination resulting from comments the grievor made towards area management on their way to and at a meeting with management. The Company justified the termination of the grievor based on the principle of progressive discipline and the grievor's past discipline record.

During 2015 the Union filed two applications with the BC Labour Relations Board

Labour Board Application(s) March 12, 17 & June 16 – Reorg lines 2- 5

On March 12 the Union filed an application with the Board alleging that the Company was acting in violation of the labour code and in violation of 26-LU-#5 and 24-LU-#3 by dealing directly with employees and disregarding the Union as the exclusive bargaining agent.

On March 17 the Union filed a second application asking for an interim order that until the March 12 application was heard that the Board direct the Company to stop implementation of changes affecting employees working in the pot lines. The Board declined to make such an order. In its decision the Board wrote, "Taking into account the Union's claim of interference appears to be a matter of Collective Agreement interpretation and considering the harm claimed by each

party, I find the balance would be tilted in the Union's favour if an interim order was granted. I find the prejudice to the Employer outweighs the prejudice to the Union if the Employer is ordered to stop the implementation of the changes given the stage of KMP."

Ultimately, the Board declined the March 12 application. The Board sided with the Company, in a separate application, that the issues raised by the Union in the March 12 application should be resolved through the parties' grievance process.

On June 16 the Union, before the BC Labour Board, was successful in a related application that the Board direct the Company that the grievance filed by the Union dealing with the Company not following 26-LU-#5 and 24-LU-#3 go directly to arbitration. The Company argued that the grievance should start at the first stage of the grievance process. In its decision the Board Vice-chair wrote, "I have found the Employer's position that the grievance must proceed under Stage One to be artificial in the circumstances of this case. I do not accept the Employer's positon that there has been no failure to appoint an arbitration board under the Collective Agreement. Pursuant to Section 88(b), I order the difference be submitted to arbitration under the Collective Agreement.

This grievance is scheduled to be arbitrated in December, 2015.

Labour Board Application – August 12 – Grievance committee members to be placed in dayshift positions

In August the Union filed an application asking the Board to appoint a Special Officer to resolve the issue of the Company not placing members of the grievance committee in day shift jobs. The Union submitted that the grievance committee could not function without its officers being available to attend to their duties. That the employer, by changing its practice of placing newly elected members of the grievance committee into dayshift positions, would prevent the grievance committee from functioning efficiently and would prevent the Union from performing its role as an effective bargaining agent. That the actions of the Company was causing industrial unrest. By appointing a Special Officer this would resolve this dispute in an expedited fashion.

The Board declined to appoint a Special Officer. In its reasons the Board ruled that the Union had not shown that the Company's actions were causing industrial unrest, and that the differences between the Union and Company could be settled through the normal grievance procedure. The Union is proceeding with this through the grievance procedure and is presently waiting for the Company's Stage Two grievance answer before deciding to advance this to arbitration.

In addition, the Union for the remainder of 2015, and into 2016 has the following scheduled;

Nov 25, 26 - Judicial review of a 2014 arbitration ruling where the arbitrator ruled that in the case of Section 104 expedited arbitrations the Company was obliged to follow its cost-covering obligations to the Union, the same as regular arbitrations.

The Company appealed this arbitration award and the original arbitration award was overturned by the labour board.

The Union has asked for a judicial review by the BC Supreme Court and are asking them to overturn the Labour Board's decision.

March 29, 30, Mandatory Medical Policy (Section 104 expedited)

The Company introduced a new policy of mandatory medical examinations. This replaced their old policy that medical examinations were optional to employees. Union is challenging the mandatory aspect of the examinations as well it's intrusiveness to the employee.

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