IN THE MATTER OF AN ARBITRATION
(under the *Canada Labour Code*)

BETWEEN:

JOHN GRANT HAULAGE LTD.

("the Employer")

- and –

TEAMSTERS LOCAL UNION NO. 879

("the Union")

AND IN THE MATTER OF A GRIEVANCE CONCERNING THE DISCHARGE OF Bob Gaumont

BEFORE: Shari L. Novick, Sole Arbitrator

APPEARANCES:

For the Employer	Harvey Capp, Counsel Ralph Shepley, General Manager
For the Union	Joanne L. McMahon, Counsel Dave McLeod, Business Representative Graham Smith, Chief Steward Robert Gaumont, Grievor

Hearings were held in Oakville and Burlington, Ontario on July 17, October 21 and December 5, 2013, March 12, June 12 and 23, and July 24, 2014

AWARD:

A grievance was filed by the Union challenging the Employer's decision to terminate the employment of Mr. Bob Gaumont.

The Employer is a trucking company that provides specialised equipment for the transport of bulk cement and resins. It employs approximately sixty drivers. Mr. Gaumont began working for the Employer in 1975. He worked as a driver for almost thirty-six years, until his termination in April 2011. He was a Union steward for twenty-eight of those years, and spent fifteen years as chief steward, a position he occupied at the time of his dismissal.

The grievor's employment was terminated by letter dated April 25, 2011. The reasons provided for his dismissal were "time theft, deliberate falsification of time cards and trip reports, deliberate disobedience of orders, as well as your actions of April 20, 2011 and your past company record".

The arbitration hearing lasted for seven days. The parties called four witnesses, each of whom was examined and cross-examined extensively. Many documents were filed, and referred to by counsel throughout the proceeding. In its closing submissions, the Employer argued that it had seven grounds on which to base the grievor's termination, contending that they arise from the original reasons provided in the termination letter.

I allow the Union's grievance, in part, and find that the evidence before me does not support the Employer's decision to discharge the grievor from employment.

The Evidence:

Most of the evidence centred on the grievor's actions on April 20, 2011. Mr. Gaumont arrived at work before the start of his shift at 5 a.m. on that day. He received instructions from the dispatcher to drive from the Employer's Clarkson yard to its main customer, Dufferin Concrete in Rexdale, to deliver a load of cement. He was expected to arrive at the Rexdale yard by 6 am. After unloading, the grievor drove to Holcim Canada (parent

company of Dufferin Concrete) to load up with cement and make another delivery. This sequence was repeated by the grievor three times that day.

The Employer alleges that the grievor did not do a Pre-Trip Inspection of his truck before leaving the yard, as required by the *Highway Traffic Act.* The basis for this claim is that the Driver's Daily Log that he submitted for that day indicates that he performed the inspection between 5 a.m. and 5:15 a.m., but the grievor is captured on video in the Drivers' Room between 5 a.m. and 5:21 a.m. The Employer alleges that Mr. Gaumont could not therefore have performed his inspection as indicated. It claims that he is in breach of the policy requiring daily inspections to be carried out, and is guilty of "time theft".

The Employer also claims that the grievor deliberately falsified his Daily Log by indicating that he had performed the Pre-Trip Inspection during the above period, when he had clearly not done so. It also noted that the grievor had indicated on the Daily Vehicle Inspection Report for April 20 that there were no defects in either the tractor or trailer he drove that day. The form states "I declare that each vehicle shown on this report has been inspected in accordance with Schedule 1", and the Employer alleges that the grievor deliberately falsified this report as well.

Further, the Employer states that the grievor ignored its well-known "no idling" policy when he arrived at Holcim's premises on that day, and left his truck idling for what amounted to several hours during the course of the day.

Finally, the Employer alleges that on April 13, 2011, one week prior to the events that were the main focus at the hearing, the grievor remained in the cab of his truck while the truck's blower was engaged and his load of cement was being unloaded. The Employer's policy dictates that a driver must remain outside of the truck as a load is being delivered, and contends that the grievor breached this policy.

The Union denied that the grievor had committed any of the infractions alleged. It did concede that the grievor neglected to run the blower test on his truck that he was required to do on the day in question.

I will set out the evidence related to each of the alleged offences below.

(i) Did the grievor conduct a Pre-Trip Inspection on April 20, 2011?

The Employer's records show that the engine on the grievor's truck was started up at 4:51 a.m. on that day. There is no dispute that at some point shortly after that he drove the truck to the dispatch office, parked it and left the engine idling while he entered the building. He obtained his daily log sheet from the dispatch office, and punched in at 5:01 a.m. He then proceeded to the Drivers' Room at the Employer's main office, where he is alleged to have remained until 5:21 a.m.

The Employer relies on a video that apparently shows the grievor in the Drivers' Room during that period. Counsel for the Employer claimed that video cameras were installed in the Drivers' Room for security purposes and for the drivers' protection. The Union objected to the Employer's request to show the video at the hearing, claiming that it would breach the drivers' privacy. The Union was prepared to admit that the grievor was in the Drivers' Room for the time stipulated, and I therefore ruled that it was not necessary to admit the video into evidence.

The parties explained that the Employer had changed its method of paying its drivers in February 2010, when it introduced a "trip rate" system. Drivers had historically been paid for the number of hours worked, but this was changed to being paid fixed rates for the trips that they were assigned to drive. The Union grieved the change in pay structure, and was successful at a subsequent arbitration held to determine the issue in September 2011. The Employer was found to be in violation of the collective agreement, and ordered to return to the hourly pay system. However, the "trip rate" system was in effect at the time of the events in question.

The parties agreed that all drivers are required to do a daily Pre-Trip Inspection prior to driving their trucks out of the yard, as well as a post-trip inspection in the afternoon after they return. Drivers were allotted 15 minutes to do a Pre-Trip Inspection under the "trip rate" system, meaning that the fixed rate they received for the trip included the time spent completing the PTI. They could request additional pay if a maintenance issue arose that required more time to resolve. Prior to the institution of "trip rates" drivers were provided with 30 minutes pay for the completion of a PTI.

Ralph Shepley, the Employer's General Manager, was the Employer's main witness and the person who recommended that the grievor be discharged from his employment. Mr. Shepley explained that he had been assigned to review the Employer's payroll documents on April 21, 2011, and while doing so noted a discrepancy between the grievor's Daily Log sheet for the prior day, which indicated that he had conducted a Pre-Trip Inspection between 5 and 5:15 a.m. and the video, that clearly showed Mr. Gaumont in the Drivers' Room between 5 and 5:21 a.m.

Mr. Shepley explained that the Employer's "park and punch" policy requires that drivers who arrive for their shift first park their personal vehicles, and then proceed to the dispatch office to punch in and get their dispatch instructions. Once they have punched in, they are then expected to head to their trucks and conduct their Pre-Trip Inspections. It was suggested that drivers who began their shifts at 5 am usually did their inspections between 5 and 5:15 a.m., after they punched in.

Mr. Shepley testified that the Ministry of Transportation requires that all commercial drivers perform a daily inspection of their vehicles to ensure that they are in safe condition and in good working order. He stated that this includes a "blower check", explaining that a blower is used to pressurise the tanker, and enables a trailer to be unloaded when the driver arrives at the destination.

The grievor testified that his usual routine was to arrive at the Employer's yard between 4:35 and 4:40 a.m., in advance of his 5 am shift start. He would head directly to the truck

that he was assigned to drive that day, to put his lunch and gloves in the cab. He explained that he would then open the hood of the truck, check the oil and water levels, examine the fan belts and do other visual checks that are part of the Pre-Trip Inspection. He estimated that this would take 2 or 3 minutes. He would then close the hood, start the engine, and check the turn signals. With the engine running, he would get out of the truck and do various tire and brake checks, and would also ensure that the wipers and horns were working well.

The grievor explained that he would then drive the truck while pulling down the spike that pulls down the trailer's brakes, to ensure that they were working properly. After completing that task, he would drive the truck to the main office building, leave it parked or idling nearby, and head to the dispatch office to punch in for his shift. He would receive his paperwork for the day, and head to the Drivers' Room to complete it. He explained that various entries needed to be made both in his log book and inspection book, as part of the inspection, and estimated that this usually took approximately 5 to 6 minutes to complete. He allowed that he might speak to other drivers while there.

Mr. Gaumont claimed that contrary to the Employer's allegations, he did complete a Pre-Trip Inspection on his truck on April 20, 2011. He acknowledged that failing to do so would have been an offence under the *Highway Traffic Act*. He was not certain of the exact time at which he arrived at the truck, but testified that he performed various checks prior to turning on the engine at 4:51 a.m. He stated that he then completed the other required tasks after turning on the engine, and subsequently filled out the required paperwork while he was in the Drivers' Room between 5 a.m. and 5:21 a.m.

When asked why he had indicated on his log sheet and the Daily Vehicle Inspection Report that he had performed the inspection between 5 a.m. and 5:15 a.m., if he had in fact done it prior to that, the grievor stated that he was in the habit of arriving early for his shifts, but that this official start time was 5 a.m. He stated that as the drivers were being paid "trip rates" at that point, recording the exact timing of when the inspection tasks were performed was not as important as it had been when they were paid by the hour.

The grievor acknowledged that the longstanding practice at the Employer's yard was for drivers to punch in before going to their trucks to do the Pre-Trip Inspection, but stated that he had been doing his inspections prior to punching in for years. He suggested that other drivers did the same. When asked whether anyone in management had told him that it was acceptable for him to do his PTI before punching in, he responded that "no one said I couldn't".

Mr. Shepley testified that despite the shift to paying drivers for "trip rates", the Employer continued to make RRSP contributions based on the number of hours they worked. The Union suggested that the amount of the RRSP contribution at that point was $2.05 per hour worked. This was not disputed by the Employer. The Employer's contention that the grievor was guilty of time theft is based on the fact that it would have calculated and paid RRSP contributions from the time that he punched in, on the assumption that he would be performing work duties from then on. Mr. Shepley suggested, however, that the video clearly showed the grievor socialising with other drivers for 20 minutes in the Drivers' Room after punching in.

Union counsel suggested that as 5 or 6 minutes of that time was devoted to completing paperwork, the time that the Employer alleges that the grievor was socialising in the Drivers' Room would have translated into a credit of approximately 50 cents. This statement was not challenged by the Employer.

Counsel for the Employer cross-examined the grievor in detail about the specific brake tests that drivers are required to perform as part of the Pre-Trip Inspection, suggesting that he could not have completed them all in the time that the records indicate he would have had, prior to punching in at 5:01 a.m. Mr. Gaumont then advised that he had completed many of the required checks the evening before, at the end of his shift, while it was still light outdoors. He explained that he preferred to do most of his brake-related tests then, rather than in the morning, because if he discovered a brake problem in the morning, there were no mechanics on duty at 5 a.m. to conduct repairs.

When it was suggested to the grievor that he may have been assigned to drive a different truck than the one he would have checked the evening before, the grievor stated that at that point in time he had been driving the same combination of tractor and trailer 90% of the time. This became a point of contention between the parties, and much time was spent reviewing the grievor's daily logs for the months leading up to the day in question. I will not review this evidence, as in my view it is ultimately not relevant, given the grievor's testimony that if he had been assigned to drive a different truck than the one he had inspected the prior evening, he would do a thorough series of brake tests on the new truck in the morning.

The grievor also stated that if he was assigned to drive the same truck as he had checked at the end of his shift on the prior day, he took note of whether any mileage was registered on the vehicle since he had checked it. If the truck had not been moved, he would simply do a quick visual check as opposed to going under each wheel and measuring each brake. He stated that he did, however, test the brakes for air leaks both in the evening and the following morning, estimating that that series of brake tests only took him one or two minutes to perform in the morning, as he did his "circle check".

Mr. Gaumont acknowledged that part of a Pre-Trip Inspection involved checking the "blower" on the truck, but conceded that he had not done so on April 20, 2011. He explained that whereas the older blowers were prone to carbon build-up and the carbon would have to be loosened with a mallet, the blower on the truck that he often drove during that period was fairly new. He acknowledged that he was supposed to have done so in any event, but noted that the blower had been operating well the prior evening, when he had completed his post-trip inspection on the vehicle.

In his testimony, Mr. Shepley emphasized that a Pre-Trip Inspection must be conducted each day before a vehicle leaves the Employer's yard, as maintenance issues may arise overnight, or last-minute schedule changes may mean that a driver is assigned to drive a different truck than the one he may have checked the evening before. He acknowledged in his cross-examination, however, that the records indicate that the grievor's truck had

been loaded the evening before for the deliveries he was dispatched to make on April 20th, and that no else one had moved the truck in the interim. He also allowed that it took less time to inspect a trailer on the morning it was to be driven, if it had been "hooked" the night before.

Importantly, Mr. Shepley acknowledged under cross-examination that he did not have any proof that the grievor had not completed his PTI on the day in question, other than the fact that his Driver's Log noted that he performed the inspection between 5 and 5:15 a.m., while the video clearly captured him in the Drivers' Room during that period. He stated that if an official from the Ministry of Transportation requested to see the Employer's documentation, it was critical for the Employer to be able to show that the inspection had been conducted and documented properly, and that a failure to do so could lead to prosecution under the *Highway Traffic Act*.

Mr. Shepley also acknowledged that none of the other drivers appearing in the video of the Drivers' Room during the time that the grievor was there were disciplined for the time they spent there that morning.

Finally, Mr. Shepley confirmed that if the grievor had noted on his log sheet that he had performed the inspection at 4:45 a.m., as he claimed he had done, instead of at 5 a.m. it would have created a problem for payroll purposes, given that his shift did not start until 5 a.m. He stated, however, that if the dispatcher agreed to confirm an earlier start time, the grievor would have been paid for his extra time.

The Employer also called Cliff Wilson to testify on this issue. Mr. Wilson is a former truck driver and Driver Operations Manager for Hutton Transport, a company that hauls bulk cement loads using similar equipment to that of the Employer. He testified that he had conducted Pre-Trip Inspections on many types of trucks in the course of his 33 years as a driver. He also taught drivers at Hutton how to do inspections for 13 years, prior to retiring from the business in 2013.

The Employer asked that Mr. Wilson be qualified as an expert witness on the issue of certifying drivers and conducting Pre-Trip Inspections. The Union did not object, and I ruled that Mr. Wilson could be so qualified.

Mr. Wilson testified about the various brake tests involved in a Pre-Trip Inspection on the type of vehicles in question. He stated that a driver would need "in excess of 20 minutes" to complete all of the brake tests, and approximately 30 minutes to do a complete inspection. He advised that drivers are paid for 50 minutes of yard time each day at Hutton Transport, in which they are expected to complete a Pre-Trip Inspection, the Post-Trip Inspection (less onerous) and fuel the trucks.

When asked in cross-examination whether drivers who drove the type of vehicles the Employer used would be able to do a proper Pre-Trip Inspection in 15 minutes, he stated that they would not.

(ii) Did the grievor leave his truck idling while at Holcim on April 20, 2011?

The Employer also alleged that the grievor left his truck idling unnecessarily for approximately three hours while he was at the Holcim yard on April 20, 2011, in contravention of the Employer's clear policy against doing so. Mr. Shepley explained that the point of the "no idling" policy is to reduce wear and tear on the vehicles' engines, and reduce truck emissions which pollute the environment. He explained that there is often a long lineup of trucks waiting to be loaded at Holcim, and stated that drivers are expected to turn their truck engines off once they arrive there.

The Employer relies on the Journey Idling Report, a document generated by the Fleetmatics software system installed in its Employer's trucks, to support this allegation. The report indicates that the engine in the grievor's truck was idling for a total of 7 hours and 25 minutes on April 20th. Mr. Shepley explained that the engine must remain idling in order to run the tractor's "power take off" while a load of cement is being delivered, and that the report tracks these times as well. He stated that when these times are

deducted from the total idling time shown on the report, the information indicates that the truck was idling unnecessarily for approximately 3 hours on that day.

Mr. Shepley noted that the Employer's Manager of Safety and Compliance had sent a message out through the GPS communication system to all drivers on April 13, one week prior to these events, to remind them that idling was not permitted while at Holcim. He stated that Holcim also strictly enforced its "no idling" policy, and that managers there had advised him on occasion not to send a driver who had breached the policy back to their yard. Notably, Mr. Shepley stated that he had not received any such complaint about the grievor's truck on April 20.

The grievor testified that he was well aware of this policy, and denied that he had left his truck idling unnecessarily while at Holcim that day. He agreed that the staff at Holcim consistently enforced the policy, explaining that they are often patrolling the area where the trucks are parked while waiting in line, to ensure that the engines are shut off. He stated that prior to this allegation he had never been disciplined for breaching this policy despite having attended at the Holcim yard a few times each day for the better part of two years.

Mr. Shepley explained that the Fleetmatics software is linked to the GPS devices in the company's trucks, and that the engine's settings can be tracked that way. He stated that when the truck's ignition is turned "on", the GPS records the engine as starting up, and when the key is turned to the "off" position, the GPS records the engine as shutting down. He noted that the Fleetmatics report for the grievor's truck on April 20 notes a "startup" at 4:51 a.m., and does not register a "shutdown" until 3:13 p.m., after the end of his shift. He claimed that this indicates that the grievor never moved the key from the "on" to the "off" position during his shift, including the time that he was putting fuel in the truck.

When Mr. Shepley was asked about the different engine settings, he stated that when the engine is left on at a slow idle, it will automatically shut down after 5 minutes, but that the GPS would not record a shutdown because the key would remain in the "on" position.

The parties agree that as in most vehicles, there are four possible positions for the key to occupy once it is placed in the ignition. If placed in the neutral position the engine remains "off". If the key is turned clockwise one notch from there, it is in the "on" position. It requires one more turn to the right or in a clockwise direction to start up the engine. Finally, if the key is turned counter-clockwise from the "off" position it occupies the "accessory" position. The dispute between the parties on this point hinged on what GPS readings are triggered by the different key positions.

Union counsel submitted in her opening statement that the grievor would turn the truck engine off and then shift the key to "accessory" position after arriving at Holcim, which would turn the engine off but allow the fans and GPS to remain on. She also suggested that she expected the grievor to testify to this, when she cross-examined Mr. Shepley. Later in her cross-examination she suggested that the grievor would state that after arriving at Holcim he would turn the key from the "on" position to "off", wait a few seconds, and then turn the key back to the "on" position. She suggested that when this sequence was followed, the GPS system would continue to operate and would not record a "shutdown", but that the engine would not be running.

The Employer also called Jeff Bates, the owner of the company that installed the Fleetmatics system in the Employer's fleet of vehicles, to testify on this point. Mr. Bates testified that his company has installed thousand of Fleetmatics systems in tractors and had installed them in the Employer's vehicles in 2011. He explained that the system tracks the location and speed of the vehicles, as well as whether the engine is on or off.

Mr. Bates confirmed Mr. Shepley's statement that when the key is turned to the right or clockwise to the "on" position (like most cars) the GPS would record a "start up" of the engine, and when it is subsequently turned to the left (counter-clockwise) to the "off" position, the GPS would record an engine "shutdown". He stated that when the key is turned to the "accessory" position – one notch further to the left than "off" – the GPS would similarly record that the engine was in "shutdown" mode.

In the course of his testimony, Mr. Bates played a video that he had recorded, in which he used an electrical testing tool to test the different voltage values at the various GPS settings. The video supported his oral evidence that when the key is turned to "accessory" mode, the voltage value is not high enough to trigger the GPS device to an "on" reading. He also stated that there is a 5 to 8 second delay between turning the truck engine off and the voltage value dropping to zero.

Mr. Bates was asked to review the Journey Idling Report for the day in question. He noted that there was no indication that the engine on the grievor's truck was shut off at any time between the initial startup registered by the GPS at 4:51 a.m., and the shutdown at the end of his shift at 3:13 p.m., and concluded that the grievor could not have turned the ignition switch to either the "off" or "accessory" positions during his shift.

Union counsel then questioned Mr. Bates on which actions would initiate the GPS system. He agreed with counsel's suggestion that the engine does not have to be turned on in order for the GPS to provide a reading. He allowed that there were two ways in which the GPS would register the engine as being "on" – either when the engine was actually cranked on, but also when the engine was off but the key was in the "on" position.

Union counsel then asked Mr. Bates whether the GPS would continue to be engaged if the truck engine was on, the key was then turned to the "off" position, and then back to the "on" position a few seconds later. He stated that it would, but added that the truck's engine would likely stay on if that sequence of steps were followed within that timeframe. When counsel pressed him on this point and asked whether he had attempted that sequence of steps with the grievor's truck, he conceded that he had not.

Mr. Bates was then re-examined, and asked whether the system would record a "shutdown" if the key was in the "accessory" position and then turned back to "on". He stated that it would. My notes from the hearing do not indicate that the Employer re-examined him on his statement under cross-examination that if the engine was switched

off, but the key then turned back to the "on" position, the GPS system would still be engaged.

The grievor's evidence on this point was at odds with that of the Employer witnesses. He testified that ever since the "no idling" policy was instituted at Holcim, he developed the habit of turning his engine off by turning the key to the "off" position, once he drove onto the scales after arriving. He would then wait a few seconds for the motor to shut down, and once it did, would turn the key back to the "on" position. He explained that when he turned the key back to the "on" position in this way it did not restart the engine, but kept the lift axles up and the air pressure on. He stated that the GPS system remained on and allowed him to continue to have two-way communication with the Employer.

The grievor added that once the truck's air systems are turned off, it would take a few minutes after turning the engine back on for them to re-engage. He stated that by keeping them on in this way, he was able to avoid a 3 or 4 minute delay once he was signalled to move his truck from the lineup.

Counsel for the Employer questioned the grievor as to why Union counsel had stated in her opening, and suggested to Mr. Shepley in cross-examination, that he had turned the key to the "accessory" position, after turning the engine off. He stated that he had never advised Union counsel or the Union officials that were present at the hearing that he had moved the key to the "accessory" position, and that he had tried to pass a note to Union counsel while she was cross-examining Mr. Shepley to advise her that he had switched the engine to the "on" position.

Employer counsel referred the grievor to the Journey Idling Report that indicated that his truck's engine was not in "shutdown" mode until the end of his shift. The grievor responded that the GPS system may have indicated that the engine was not shut down while he was waiting to unload at Holcim, but that he was certain that the engine was not idling, as he could not hear it running.

The Employer did not call any Reply evidence on this issue.

I note that Mr. Shepley also testified that when the grievor had completed his shift on April 20, 2011, he directed the dispatcher to ask a mechanic to test whether the "auto shutdown" feature was operating on the truck that the grievor had been driving. Mr. Shepley was not asked to elaborate on why he had directed that this be done, but I am left with the impression, from other evidence presented, that he had suspected that the grievor had tampered with the "auto shutdown" mechanism on the truck. The mechanic apparently determined that the "auto shutdown" was operating properly. The grievor testified that he had never tampered with it, and that all the drivers knew that if they were caught doing this, immediate termination would result.

Mr. Shepley alleged that the grievor's breach of the policy contravened section 4(c) of the parties' collective agreement which prohibited "wilful damage" of the Employer's property, and section 4(e) which prohibited "deliberate disobedience of orders". He stated that when he considered this offence in addition to the grievor's failure to perform a Pre-Trip Inspection, he felt it indicated that Mr. Gaumont had a very casual attitude about his obligations and a disregard for safety, and justified his dismissal.

(iii) Did the grievor breach the Employer's policy requiring drivers to remain outside of their trailers while unloading on April 13, 2011?

The Employer alleges that the grievor breached another policy on April 13, 2011 while he was at Dufferin Concrete, a week prior to the events described above. Mr. Shepley explained that the Employer's policy requires that drivers remain outside of their trucks by the gages while the loads of cement are being unloaded and the PTO or "blower" is engaged. He referred to a record of Mr. Gaumont having responded to a GPS message from the Employer at a time when the Journey Idling Report noted that the PTO on his truck was engaged. He explained that he took this to mean that the grievor had remained in the cab of his truck while his load was being delivered, when he should have been out of the truck monitoring the blower.

Mr. Shepley testified that he was not aware of this alleged breach of policy at the time that he recommended that the grievor be discharged from employment. As this does not constitute one of the grounds for termination initially relied on by the Employer, the evidence regarding the issue is not technically relevant. However, given that no objection was raised by the Union and both parties solicited evidence from the main witnesses on this point, I will briefly outline the evidence tendered.

The Employer filed a Fleetmatics report indicating that it's Manager of Safety and Compliance had sent a reminder message to all drivers through the GPS system on April 13 at 12:49 pm that no idling is permitted while trucks are waiting at Holcim. The report also indicates that the grievor acknowledged receiving this message, and responded that he "understood" at 1:20 p.m. The Journey Idling Report indicated that the blower on the grievor's truck was engaged at that time.

The parties agreed that the drivers merely had to press a button on the GPS device to acknowledge that they had received a message. Mr. Shepley testified, however, that a driver would have to be in a position to see the screen in order to respond, so he had assumed that the grievor was inside the cab of his truck when he responded at 1:20 p.m.

The grievor denied that he was sitting in the cab of his truck when the message came in. He recalled being in the midst of delivering a load at Dufferin Rexdale at the time, He stated that he was standing at the back of the truck, monitoring the gages and hoses. He recalled spotting Gino, the person who was required to sign the drivers' Bills of Lading, standing nearby. He explained that he usually would have to walk up to the second floor of the office to get his paperwork signed by Gino once he had finished unloading, but saw this as an opportunity to have him do so by the truck. The grievor explained that he has asthma, and would prefer not to walk up flights of stairs if he can avoid it.

Mr. Gaumont recalled climbing up onto the step of his truck by the fuel tank, so that he could reach the forms that he had earlier placed on the seat. While doing so, he noticed that a message had come in from the Employer on the GPS system. He stated that he

quickly read the message, and simply pressed a button on the screen to acknowledge that the message had been received. He then got the Bill of Lading signed, and finished the unloading process. He denied that he had been sitting in the truck at any point while the blower was engaged, as alleged.

When Union counsel suggested to Mr. Shepley in cross-examination that she anticipated that the grievor would provide this evidence, Mr. Shepley conceded that this was possible, and that he did not have any evidence to refute it.

The Employer noted that the grievor had been given a one-day suspension in June 2010, ten months prior to the event in question, for sitting in his truck while the blower was engaged. Mr. Gaumont acknowledged receiving the suspension, but stated that he felt it was unfair, as he had merely reached into the cab of his truck to get something to eat and sat on the edge of his seat while doing so. He stated that this was not in breach of the policy. In any event, no grievance was filed in response to the suspension.

Grievor's discussion with Mr. Shepley – week prior to termination

It was undisputed that the events outlined above took place a few months after the grievor had suffered a series of personal hardships. He testified that his son-in-law had tragically passed away in December 2010, and that his daughter, who was then five months pregnant, lost her baby one month later. Not long after that, he began experiencing breathing problems and sought medical attention. He was initially told by his doctors that these problems were related to his asthma, but unfortunately found out in December 2011 that he had lung cancer. Despite all of the above, Mr. Gaumont continued to attend work regularly until his employment was terminated in April 2011.

The grievor testified that given the stress that he was experiencing as a result of these unfortunate events, he had approached Mr. Shepley in mid-April to ask whether the Employer had any concerns about his work performance. He reported that Mr. Shepley had responded that everything was fine, that he was a "low maintenance" employee and

that he should keep up the good work. He stated that in light of that discussion, he was very surprised when his employment was terminated one week later.

As stated above, the Employer did not call any Reply evidence, or cross-examine the grievor on this point, leaving me to conclude that it does not dispute that this discussion had taken place.

Parties' submissions:

Counsel made detailed arguments on all of the issues raised. I will set out the general gist of the points raised, as opposed to reciting all of the submissions.

Counsel for the Employer noted that the collective agreement in force at the time provides that employees found to have committed the breaches outlined above are subject to dismissal, even for a first offence. He submitted that given the grievor's position as chief Union steward and the length of his seniority with the company, he would have known that the Employer takes its safety and compliance obligations very seriously. He contended that it is open to me to find that his conduct should therefore be held to a higher standard than that of other, more junior employees who were not Union officials.

Counsel noted that the series of offences outlined above suggest that the grievor had developed a very casual attitude toward the Employer's policies, and his obligations with regard to safety and compliance.

Employer counsel emphasized the importance of a Pre-Trip Inspection, noting that it is mandated by the *Highway Traffic Act* and regulations. Failure to abide by the stringent requirements may be reflected on an employer's Commercial Vehicle Operating Report, which is required to carry on business, and may sacrifice public safety. He contended that the available documentation supports the Employer's argument that the grievor did not complete a PTI as required, and urged me to find that he had breached both the *Act* and the Employer's policy in this regard.

Counsel for the Employer also contended that the evidence of Mr. Bates supports Mr. Shepley's allegation that the grievor did not turn the truck's engine off throughout his entire shift. He stated that the only possible conclusion was that the engine was left idling while he was at the Holcim yard, contrary to the Employer's policy. He noted that the grievor drove his truck between the Holcim yard and the Employer's premises a few times over the course of the day, and that he would have had to turn the key from the "on" position, where he says it was positioned while he was waiting, to the "start engine" position on a few occasions. He stated that no such change was registered by the GPS system, and that the most likely scenario was that the grievor had never turned the truck's engine off during his shift.

Counsel for the Employer submitted that the grievor did not show any remorse or provide an apology for having breached the policy requiring drivers to test the blowers on the trucks daily. He noted that section 4(e) of the Rules and Regulations (incorporated into the Collective Agreement) addressing "Deliberate disobedience of orders of authorized personnel" provides that an employee is subject to dismissal for a first offence.

The Employer cited various cases in support of its position that the grievor's actions were fundamentally inconsistent with his obligations to the Employer. He focused primarily on the findings in *Milepost Oilfield Services Ltd and Roberts (2006) CanLII 46756 (AB ESU), BFI Canada and Teamsters, Loc 419 (Wuestefeldi) (2007) CanLII 37668,* and an arbitration award from British Columbia between *Board of Education of School District 10 and CUPE, Loc. 2450 (Sullivan) 2012 CanLII 97748.*

In the *Milepost Oilfield, supra,* case, the judge overturned the Order of an Employment Standards Officer and determined that the employee truck driver's failure to complete his daily log books in a timely manner and the provision of false information in the logs that he did submit constituted a serious breach of company policy, and justified his discharge. Counsel noted that the judge found that the employer relied on the honesty and integrity of its drivers to complete their log books accurately, and that false entries in a log book

"would seriously jeopardise the employer's relationship with the regulating authorities in the trucking industry".

The Employer in the *BFI Canada, supra,* case terminated the employment of a driver for failing to perform a Pre-Trip Inspection. Counsel noted the arbitrator's finding that even if the grievor's evidence were accepted, he would have had only 6 or 7 minutes to perform a "circle check" and that that would have been inadequate. He determined that the grievor was guilty of serious misconduct, but substituted a three-month suspension and final warning for the termination. Counsel noted that the arbitrator based the substitution of a lesser penalty on his finding that the supervisor who had observed the grievor and had confronted him before he was about to leave the Employer's premises did not prevent him from leaving, and so concluded that the Employer should share the blame for the events described. He emphasized that no such blame could be diverted to the Employer in this case.

Counsel contended that the Employer's decision to terminate the grievor's employment should be upheld, and submitted that it was the appropriate remedy in all of the circumstances. Alternatively, he submitted that the grievor should be re-instated to his employment, but without any compensation for the interim period

Counsel for the Union contended that the evidence did not support any of the allegations raised by the Employer, and suggested that no discipline was warranted. She allowed that the grievor had admitted that he did not perform the blower check as required on April 20th, and submitted alternatively that a one-day suspension for that infraction might be appropriate.

She submitted that the Employer's decision to discharge an employee with thirty-six years of service based upon questionable evidence to support its allegations was "a travesty". She suggested that the Employer's treatment of Mr. Gaumont was especially egregious in light of the difficult circumstances that the Employer knew he had been

experiencing, and the reassurance that Mr. Shepley had provided regarding his work performance the prior week.

In response to the Employer's contention that as chief Union steward, the grievor should have set an example for the other drivers, and that his conduct should be held to a higher standard, counsel submitted that the case law does not support that idea. She allowed that a Union officer may be subject to a higher level of discipline if the conduct in question is related to his role as a Union official, which was not the case here. She cited the decisions in *Noranda Metals and IAMAW, Loc 4 (1977) CLBR 106, Mill and Timber Products and IWA Canada Loc. 1-3567(Khatra) (1996) 61 L.A.C. (4th) 52* and *Re Nav Canada and Canadian Air Traffic Control Association (1999) 80 L.A.C. (4th) 410* in support of this point.

Counsel for the Union noted the grievor's evidence that he would routinely arrive 20 to 30 minutes before the start of his 5 am shift, and would conduct the various checks required for the PTI at his truck, before going to the dispatch office to punch in and obtain his paperwork. She referred to his statement that he had been doing this for approximately two years prior to his termination, and suggested that the Employer must have therefore been aware of this and should be found to have condoned this practise.

She noted Mr. Shepley's statement that he had no evidence to refute the grievor's contention that he had performed a Pre-Trip Inspection on that day. She also noted that the grievor had conducted the inspection prior to 5 am, on his own time, despite the fact that the Employer had shifted to paying the drivers "trip rates" and had reduced the time permitted to conduct Pre-Trip Inspections.

On the "idling issue", Union counsel referred to the grievor's statement that when he had switched the truck engine off, waited two or three seconds and then switched the key back to the "on" position, the engine remained off but the GPS system remained engaged. She suggested that this was not contradicted by any other witness. She noted that Mr. Bates had testified that after 5 to 8 seconds in the "off" position, the engine voltage

would drop to zero and the GPS would note a "shutdown", but contended that the grievor did not wait that long before turning the key back to "on".

Counsel for the Union emphasized that in both the *BFI Canada, supra,* case and the *Board of Education and CUPE, supra,* case, the arbitrator had substituted a lesser penalty for the employer's decision to discharge the employees. She noted that neither of those employees had anywhere near the length of seniority that the grievor did, and had more significant disciplinary records.

Union counsel also cited the decision of Arbitrator Carrier in the case of *Grand & Toy Ltd. and United Steelworkers Loc. 9197(Lacauta) (2009) 97 C.L.A.S.60* in which a grievor with eleven years of service was re-instated after being terminated for time theft. While the grievor was found to have repeatedly lied about having arrived 12 minutes late for work one morning, the arbitrator stated that had he not persisted in the lie, the incident would have been characterised as "trivial time theft".

Finally, counsel for the Union noted Mr. Shepley's evidence that he would take the grievor back to work, albeit without compensation for time lost. She suggested that the contrast between this evidence and Employer counsel's submissions that his repeated violations of policy have irreparably destroyed the employment relationship was notable.

Findings on evidence:

(i) Pre-trip Inspection and blower check

The Employer initially alleged that the grievor did not do a Pre-Trip Inspection on the day in question, based on his documentation and the video showing him in the Drivers' Room during that period. It later claimed that it was not possible for him to have completed all of the required tasks within the time stated. To support this claim, the Employer called Cliff Wilson, and proffered him as an expert on the issue of Pre-Trip Inspections. His qualifications and experience justified his being qualified as such.

I found Mr. Wilson's evidence on the length of time required to conduct a proper Pre-Trip Inspection to be interesting. He stated that a proper inspection would require 30 minutes to complete. When asked whether it could be done in 15 minutes, he clearly responded that that would be inadequate to complete the required tasks. This puts the Employer's repeated claims that it is a safety conscious company with no tolerance for any breaches of policy into question, given that its drivers were allotted 15 minutes to complete these inspections at the relevant time (albeit with the option of requesting more time if a serious maintenance issue arose). I will accordingly consider the evidence on this issue with this in mind.

The grievor suggested that the Employer was aware of his longstanding practise of completing his Pre-Trip Inspection prior to punching in. He testified that he had followed this routine for approximately two years, and was never told that he could not do so. He suggested that other drivers followed the same routine. Mr. Shepley was not called to testify in Reply, leaving this evidence uncontradicted. Given the grievor's lengthy service and his status as chief Union steward, it is hard to imagine that his actions went unnoticed. I can only conclude from the evidence on this point that the Employer condoned this conduct, and that its attitude surrounding the timing of the tasks to be completed was more relaxed in practise than Mr. Shepley claimed.

The grievor testified that he completed some of the required tests during the previous evening, at the end of his shift. This evidence came up during the grievor's cross-examination, and may not have been anticipated by the parties. Again, no Reply evidence was called and this point went unchallenged. The grievor stated that he performed other tests prior to starting the truck's engine at 4:51 a.m., and completed the remaining parts of the inspection in the few minutes between starting the engine and driving the truck to the main building. He conceded that he did not perform the "blower check" on that day.

The Employer suggests that it is not possible for the grievor to have completed all of the required tasks within the time indicated. However, Mr. Shepley conceded that he had no evidence to refute the grievor's testimony that he had done so. Mr. Shepley also agreed

that the trailer he was assigned to drive on that day had been "hooked" the night before, and that it would have therefore taken less time to inspect the following morning.

Considering all of the evidence before me, I find that the grievor did conduct a Pre-Trip Inspection, albeit not between 5:00 and 5:15 a.m. on April 20th, as indicated in his Driver's Daily Log. He did not conduct a "blower check", as he was required to do.
It is clear that the grievor's conduct was not in strict compliance with the regulations regarding Pre-Trip Inspections referred to by Employer counsel. While this may amount to a technical breach of the Employer's policy, I do not find that it is cause for discharge or even serious discipline.

Mr. Shepley conceded under cross-examination that if the grievor had noted on his log that he had started his shift prior to 5 a.m., it would have likely created complications for payroll purposes. It was clear from the grievor's evidence that the "trip rate" pay system played a role in his decision to record the timing of his inspection in the manner that he did. On the evidence, I am persuaded that his actions in this regard were motivated by his interest in 'keeping things simple' rather than a desire to collect more RRSP credits than he deserved.

The parties agreed that part of the PTI includes the completion of paperwork. The grievor's suggestion that he would have likely taken 5 or 6 minutes to do so on the day in question was not seriously challenged by the Employer. As the grievor was noted on video in the Drivers' Room for 21 minutes after punching in, the Employer's claim for "time theft" relates to the remaining 15 minutes of that period, during which it alleges that the grievor was socialising with other drivers. Union counsel submitted that Mr. Gaumont would have received approximately 50 cents in RRSP credit for that period. Not only is this amount so minor as to be *de minimis,* but any benefit gleaned by the grievor would arguably be offset by the time he spent conducting work tasks prior to punching in at 5:01 a.m. I find that the evidence before me does not support the Employer's time theft allegation.

I also find that the evidence does not support the Employer's allegations that the grievor deliberately falsified his Drivers' Daily Log and the Pre- Trip Inspection Report. Counsel for the Employer emphasized the importance of accurate record-keeping, given the strict regulatory requirements and the potential risk to the Employer in the event of an audit. I agree that this is a valid concern. Trucking companies operate in a highly regulated environment, and can face serious consequences if they are found to be in non-compliance. While the time recorded by the grievor on these documents is slightly inaccurate, I am not satisfied on the evidence that this was done in a deliberate fashion, and there was no aspect of personal gain.

In sum, I find that some discipline, albeit minor, is warranted for the grievor's technical breach of the PTI requirements, the inaccurate times noted on the documents he completed and his failure to test the blower on his truck on April 20, 2011.

(ii) Did the grievor leave his truck idling at Holcim ?

Much of the evidence on this issue was confusing and appeared contradictory. The Employer chiefly relied on the Journey Idling Report, which indicated that the engine in the grievor's truck was not in "shutdown" mode at any time during his shift. Different statements were made by the principal parties and by Mr. Bates, whose company installed the GPS system, regarding when an engine "shutdown" would be recorded.

Can the grievor's testimony be accepted? He stated that he turned his engine off after arriving at Holcim, waited a few seconds, and then turned the key back to the "on" position. He explained that when he did so the engine remained off but the GPS system stayed on and so would not indicate an engine "shutdown". After considering all of the evidence on this point, I find that this is the most likely of the scenarios proposed by the parties.

The Employer argued as no engine "shutdown" is noted in the Journey Idling Report, his engine must have been running or idling for his entire shift. A careful review of the testimony provided at the hearing, however, does not bear this out. Mr. Shepley

acknowledged under cross-examination that when the truck engine is left on a "slow idle", it will automatically shut down after 5 minutes, but the GPS system would not record a shutdown as the key would remain in the "on" position. And, while Mr. Bates did confirm that the GPS system would register an engine "shutdown" when the key is turned to the "accessory" position, he also testified that the GPS would register the engine as being on, even when it was not running but the key was in the "on position.

These examples clearly challenge the Employer's contention that as no engine "shutdown" is noted during the course of the grievor's shift, his engine must have been running or idling for the entire time. If an "auto shutdown" which Mr. Shepley and Mr. Bates both agreed would cut the engine would not appear as a "shutdown" on the report, and Mr. Bates' statement that the GPS registers the engine as being on if the key is put in the "on" position even when the engine is not running is accepted, it cannot be concluded that any time the key is in the "on" position, the engine is necessarily idling as the Employer suggests.

Mr. Bates was asked in cross-examination about the grievor's anticipated evidence that he would turn the engine off after arriving at Holcim, wait a few seconds and then move the key back to the "on" position, which allowed him to keep the GPS system and air systems operable. He allowed that it was likely that would happen, but suggested that the engine would turn back on if this sequence of steps were followed. However, when asked if he had tested that theory, he conceded that he had not.

Employer counsel fairly pointed out that the Union's position on whether the grievor had turned the key to "accessory" or whether he turned it back to the "on" position after turning the truck off had changed over the course of the hearing. While this made the thread of testimony on this point somewhat difficult to follow, I am prepared to accept the grievor's statement that he had not told the Union that he had placed the key in the "accessory" position. Counsel pointed out that she takes her instructions from the Union officials who are her clients, and not from the grievor. It is certainly possible that in a case with many technical terms and details such as this one, the parties became confused

or had different understandings. The Employer had the opportunity to clarify the question of what key positions triggered which GPS readings by calling evidence in Reply, but chose not to do so.

As stated above, I have concluded that the grievor's evidence on this point is believable, in light of the various statements from other witnesses regarding when the GPS would continue to register the engine as being on. I am bolstered in my conclusion by the fact that the Employer did not receive a complaint from anyone at Holcim about the grievor having left his truck engine idling on April 20, 2011. The one thing that the parties did agree on with regard to this issue was that Holcim enforced its "no idling" policy strictly. Mr. Shepley went as far as to state in his evidence that if a driver breached this policy, the management at Holcim might well advise him not to send that driver back to their yard. He conceded that he did not receive such a complaint about the grievor either on April 20, the day in question, or any other day, and did not provide an explanation as to why that might have been.

The grievor testified that he had followed the same practice and key sequence whenever he arrived at Holcim, and that he had been dispatched to drive there more often than anywhere else in the two years prior to being discharged from his employment. I can only presume that if this resulted in his engine idling while his truck was in the lineup to be loaded, this would have come to the attention of Holcim management and he would likely have been disciplined by the Employer.

I accordingly find that no discipline is warranted on this count.

(iii) Did the grievor remain in his cab while blower was engaged on April 13th?

As stated above, Mr. Shepley candidly admitted that he was not aware of this incident at the time that the decision was made to terminate the grievor's employment. While the Employer clearly did not rely on this allegation as a ground for termination when it wrote its letter on April 25, the Union did not object to evidence being tendered on this point.

Having considered the evidence on this issue, I find that the Employer has not proven that the grievor remained in the truck while its blower was engaged. Mr. Gaumont stated that he was able to read the message and press the button on the GPS screen while standing on the step as he leaned in to take some papers out of the cab, and Mr. Shepley allowed that this was possible.

I therefore find that no discipline is warranted on this count.

Summary of findings:

As outlined above, I have determined that the Employer's allegations of time theft and deliberate falsification of time cards and trip reports related to its claim that the grievor did not conduct a Pre-Trip Inspection on April 20, 2011 cannot be sustained. I have also found that its claim that the grievor left his truck engine idling while at Holcim that day is not supported by the evidence, nor is its contention that he remained in the cab of his truck while its "blower" was engaged on April 13th. The Employer has therefore not made out its claims regarding the grievor's "deliberate disobedience of orders" cited in the termination letter of April 25.

The one allegation that has been proven is the grievor's failure to test the "blower" on his truck on April 20, 2011. Mr. Gaumont conceded that he had not done so, and acknowledged that the Employer had advised its drivers that this was required as part of the daily Pre-Trip Inspection. Mr. Gaumont provided an explanation for why he did not do so, but the Union acknowledged that some discipline is warranted for this breach.

As stated above, I also find that some discipline is warranted for the fact that the grievor bifurcated his Pre-Trip Inspection between the evening and the morning, and the fact that the times indicated on the two forms reviewed do not correlate with his evidence regarding when they were completed. While I appreciate the practical reasons for doing this, and the fact that public safety was not placed at risk, the regulations surrounding these issues are strict and the consequences faced by the Employer serious if its records were to be audited by the Ministry.

Remedy:

Given my findings above, the grievor's discharge from employment cannot be sustained. I find that a five-day suspension is warranted for the combination of breaches outlined above, and exercise my discretion under section 60(2) of the *Canada Labour Code* to substitute that penalty for the discharge imposed by the Employer on April 25, 2011.

That is not the end of the matter. While no detailed evidence was called on "remedy", counsel did make general submissions on the issue at the end of the hearing. As noted above, the Employer argued that if the discharge was not upheld, the grievor should be re-instated, without compensation. The Union, however, submitted that re-instatement would not be appropriate in the circumstances, and contended that the Employer should be ordered to pay compensation to Mr. Gaumont, in lieu of reinstatement.

Compounding the difficulty with these different approaches to remedy urged on me by the parties is the length of time that has now passed since the events in question. The grievor was terminated from his employment in April 2011. The first day of the arbitration hearing did not take place until July 2013. Various discussions were held between the parties in the more than two years between those two events, in which the grievor's return to work was discussed. For some reason, the parties were unable to resolve the matter.

The Employer directly referred to these discussions, at several points during the course of the hearing. The Union objected at each mention of these, reminding the Employer that the nature of these discussions are privileged. I sustained each of the Union's objections. As the arbitrator appointed to determine the grievance, I should not be privy to the details of unsuccessful negotiations that were conducted prior to my appointment.

I facilitated further attempts to negotiate a resolution of this matter with the parties on the first day of hearing. When they were unsuccessful, we proceeded with the evidence.

Despite the clear difficulty that the parties experienced in reaching a negotiated resolution of this grievance, Mr. Shepley testified that the Employer was prepared to re-instate the grievor to his position, albeit without any "back pay" and subject to a Last Chance agreement. He explained that if the grievor's actions had not been subjected to any discipline, he was concerned that he would continue to "go his own way" and that that would send the wrong message to other employees. I am unable to reconcile this statement with the assurance that Mr. Shepley had provided the grievor one week earlier that the Employer had no concerns about his performance. In any event, if the Employer was actually concerned about the grievor's actions, the message could have been sent in a more effective way by administering progressive discipline.

Understandably, the Union did not take well to the approach taken by the Employer. Counsel contended that the Employer's actions showed a lack of respect for the grievor's lengthy seniority and difficult circumstances, such that the employment relationship has been irreparably destroyed from Mr. Gaumont's perspective. She also pointed out that the grievor's termination resulted in him being unable to access benefits under the Unions Health & Welfare plan, when he most needed them. She suggested that reinstatement would accordingly not be appropriate in the circumstances, and that the grievor should be entitled to substantial compensation, in order to make him "whole".

The grievor did not state in his evidence that he was opposed to being re-instated, should his discharge be overturned.

Awarding damages in lieu of re-instatement has become more commonplace in recent years. It does, however, remain a remedy to be applied in "exceptional circumstances". (*Alberta Union of Provincial Employees v. Lethbridge Community College [2004] 1 S.C.R. 727, DeHavilland Inc. v. CAW Canada, Local 112 (1999) 83 L.A.C. (4th) 157, Vale Canada Ltd. V. United Steelworkers of America, Local 6500 (2012) CanLII 51445).* I am not satisfied that such circumstances apply here. While I realise that a long time has passed, and the experience of having to go through a protracted and adversarial arbitration process creates a certain amount of tension between the grievor and the

Employer, I am not persuaded that the relationship is irreparable and that a resumption of the grievor's employment would not be productive for both parties.

Order:

Having heard all of the evidence, I am left with the view that the Employer acted unnecessarily harshly in terminating the grievor's employment. He had almost 36 years of service, with a one-day suspension on his record at the time of his discharge. The provisions in the collective agreement relied upon by the Employer stipulate that those who commit the offences discussed are "subject to dismissal" for a first offence: It is clear that a range of penalties are possible, and that the Employer is not compelled to dismiss an employee in the event of a breach. I find the Employer's decision to impose the harshest penalty available to be unreasonable, in light of the grievor's many years of service, and almost clear disciplinary record, but especially in view of Mr. Shepley's assurance the week prior that there were no concerns about his performance.

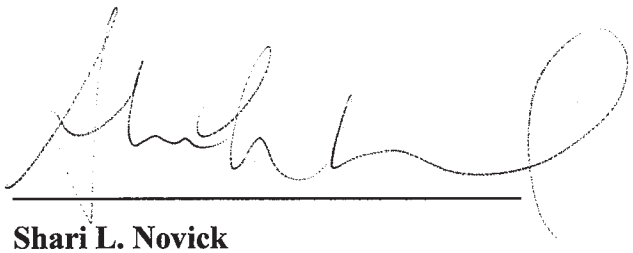
In addition, the grievor's termination from employment resulted in him losing his eligibility for Short Term Disability payments, and other benefits available under the Union's Health and Welfare Plan when he became ill. He was also unable to seek reimbursement for the medication he required during the course of his various treatments. This would have compounded the stress and hardship of losing the job he had enjoyed for almost 36 years, to an almost unimaginable degree.

I conclude that a fair result would be to order the grievor to be re-instated to the position he held when his employment was terminated, with full seniority and benefits, from May 3, 2011, five days after his date of termination. He should also be compensated at his regular rate, for all of his lost wages for the periods that he would have been able to work, with any income he has earned in the interim to be deducted.

I appreciate that the Employer may have a concern regarding the Union's role in the delay in getting this matter to arbitration. I leave it to the parties to discuss these issues,

and remain seised of this matter in the event that they are unable to agree on the quantum owing to the grievor, or for purposes of clarification or recitification.

DATED at TORONTO, ONTARIO this 21ST DAY OF NOVEMBER, 2014.



Shari L. Novick
Arbitrator