

Veltri Glencoe Ltd. and U.A.W., Local 251 (Re)

**Concerning an arbitration Pursuant to section 49 of the Labour Relations Act Between:
Veltri Glencoe Ltd. and The International Union, United Automobile, Aerospace and
Agricultural Implement Workers of America (UAW-CLC), Local 251; Grievance of Brad
Shaw, dismissal**

**45 C.L.A.S. 105
1996 CLB 13681
Ontario
Samuels
October 2, 1996**

**DISCIPLINARY OFFENCES -- Absence without leave -- Leave work without permission --
Grievor not working for all of work period -- Just cause for discipline -- Three unrelated
previous disciplinary penalties on record -- Discharge excessive -- Company not facing
escalating problem concerning grievor's work attendance -- Grievance allowed. (6 pp.)**

**For the Union: D. V. Caryn, International Representative, T. Keech, Unit Chair, D. Cooper,
Alt. Chair, B. Shaw, Grievor
For the Company: T. Crljenica, Counsel, R. Marko, Director Human Resources, T.
Blancher, Human Resources Manager**

[1] On May 31, 1996, the grievor was dismissed from his employment at Veltri Glencoe. The Company's termination letter, sent by Ms. T. Blancher, Human Resources Manager, said that the Company's action was taken because

- * the grievor was absent from the plant during his regular shift on Wednesday, May 29, and that a search conducted by a Production Supervisor found the grievor in his vehicle listening to a **hockey game** on the radio;
- * the grievor did not ask permission from his supervisor to leave his work assignment;
- * the grievor failed to punch his time card before leaving the plant; and
- * he received compensation for work he did not perform.

[2] The grievance protests the Company's action and asks for full redress.

[3] At our hearing, we had the testimony of only four people—Ms. Blancher, and three bargaining unit employees who were summonsed to tell us what they observed on the evening of May 29 (I will refer to these three witnesses as A, B and C). Several of these witnesses spoke of their conversations with other people, and related to us what these other people had told them to be facts, but this evidence was all hearsay and could not be used as proof of the facts spoken of by the other people.

*Based solely on the testimony which told of the **direct** involvement or observations of the witnesses*, I find the following to be the facts of this case:

- * The grievor had three years' seniority.
- * The grievor was a Shipper/Receiver.
- * On May 29, 1996, the grievor worked the afternoon shift. Normally, on this shift, a Shipper/Receiver will spend the early part of the shift loading and unloading trucks and setting up loads for outgoing shipments, and then will do general material handling throughout the plant later in the shift.

* The lunch break for Shipper/Receivers and other "indirect" employees is normally taken from 20:30 to 21:05. On the evening in question, the grievor took his lunch break at the usual time and, during this break, he played cards with A and B and another employee.

* At some point soon after this break, the grievor was out in the yard behind the plant assisting C to deal with some scrap metal. C was cutting up the scrap with a torch and the two employees were loading the good steel in one bin for reuse and the true scrap into another bin for disposal. This work took about 45 minutes to one hour and was completed before it was fully dark outside (since the longest day of the year was only 23 days away, the time must have now been around 10PM). After this work was completed, the grievor went off somewhere and C cleaned up the work site in the yard. This took C about one-half an hour. Then the grievor returned to help C in the tool room where the two employees unloaded the salvaged steel from the bin. This work in the tool room took about one-half an hour. By the time this work was done, it was dark outside.

* After the lunch break, B, a Material Handler, heard that the Production Supervisor on the midnight shift was looking for the grievor, so he made a point of looking for the grievor as he drove around the plant doing his work. He did not see the grievor from 21:45 to 23:00, whereas normally he'd see the grievor during such a period. It does not appear that B looked out in the yard or in the tool room, so I can understand why he didn't see the grievor for most of the period-the grievor was assisting C in the yard or in the tool room.

At the end of his late break, taken from around 20:40 to 20:50, B headed out to the parking lot to look for the grievor. The afternoon Production Supervisor followed him out. The two men found the grievor in his car listening to the **hockey game**. The car was parked at the rear of the lot, whereas earlier B saw it parked near the front of the building. It is darker at the rear of the lot.

* At the time, Shipper/Receivers carried pagers, so it is most likely that the grievor had a pager that night.

* Tricia Blancher, the Company's Human Resources Manager at the plant, heard from a manager on May 30 that the grievor could not be found during the shift on May 29. During the course of her investigation, she spoke to the grievor and he told her that he had taken a late lunch on May 29, during which he had gone out to his car to listen to the **hockey game**; that later he'd forgotten his safety glasses in his car and had gone back out briefly to retrieve them, passing the midnight Production Supervisor on his way out at around 21:45; that after this he had gone to work with C on the back pad; that after the last break, he had slipped out to his car briefly to catch the hockey score and it was then that he was found in his car by B and the afternoon Production Supervisor. I find now that a significant part of the grievor's story to Ms. Blancher was false, because he took his lunch break at the normal time and he helped C for a considerable period of time before 21:45.

[4] In sum, I find that the grievor was working or on his late break for most of the time between the end of his lunch break (21:05) and when he was found in his car listening to the **hockey game** (23:00). With respect to the time for which I heard no account, I don't know what the grievor's particular work assignment was, I don't know what he did (he may have gone to a washroom at some point). The Company asks me to find on the reasonable balance of probabilities that the grievor was out in his car listening to the **hockey game**. I don't think that the evidence was sufficient for such a finding. However, I do find that the grievor was not working for all of the work period between 21:05 and 23:00 and, without any explanation from the grievor, this is sufficient to find on the reasonable balance of probabilities that he did offend for at least a brief period during the shift. There was just cause for discipline.

[5] The grievor's record discloses three previous disciplinary incidents. On January 10, 1995, he received a verbal warning for careless driving. He had carried too many containers. On February 13, 1995, he received a written warning for careless operation of his towmotor. On January 4, 1996, the grievor, Union and Company agreed to a three-day suspension and other requirements for the grievor because he had caused damage while operating his lift truck. The Union objected to this evidence, but I find it to be admissible, based on the general principle that if an arbitrator finds that certain conduct warrants discipline, the arbitrator is to consider the employee's total

record in order to determine the appropriate penalty (see the extensive discussion and citation of authority in *Re Canadian Lukens Ltd. and United Steelworkers of America* (1976), 12 LAC (2d) 439 (Schiff), at pages 439 to 442). This is not a case of adding grounds to justify the imposition of discipline-it is the grievor's conduct on the evening of May 29 which justifies the imposition of discipline-but simply looking at the previous record in order to determine the appropriate penalty (see *Re American Standard, Division of Wabco-Standard Ltd. and International Brotherhood of Pottery & Allied Workers* (1977), 14 LAC (2d) 139 (Burkett), at pages 143-4).

[6] Bearing all of this in mind, I find that dismissal was not the appropriate penalty for the grievor's conduct on May 29. His previous record related entirely to his failure to operate his equipment safely. The Company has not faced an escalating problem of failure to attend at work. The grievor was not away from his work for very long on May 29. In fact, I find that he was working for a substantial part of the period that the Company thought he was out in his car listening to the **hockey game** . However, the grievor was not at all candid with the Company when he was asked what he had been doing on May 29, and his false story aggravated the situation. Furthermore, he offered us no assistance at the hearing, leaving as the only evidence of his story the tale he told Ms. Blancher during her investigation. In these circumstances, it would not be right to visit on the Company any obligation to make financial reparations to the grievor. The Company should not have to pay for time not worked when much of the loss is due to the grievor's own failure to be truthful.

[7] I order that the grievor is to be reinstated with no loss of seniority.

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