

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE COLLECTIVE AGREEMENT
AND THE *LABOUR RELATIONS CODE* R.S.B.C. 1996 c. 244

BETWEEN:

COMPASS GROUP CANADA (HEALTH SERVICES) LTD.
(DBA CROTHALL SERVICES CANADA)

AND:

HOSPITAL EMPLOYEES' UNION

(Nos. 19-13/112880; 31-13/113802; 32-13/113803 and 33-13/113960)
( Grievances)

Arbitrator:	Christopher Sullivan
Counsel:	Keith J. Murray for Employer David Tarasoff for Union
Dates and Place of Hearing:	December 11 and 12, 2014 Nanaimo, BC
Published:	May 4, 2015

The parties agree I have jurisdiction to hear and determine the matters in dispute, which initially involved four grievances filed by the Union on behalf of [REDACTED]. Three of the grievances allege unjust discipline. The fourth grievance alleged harassment against the Employer. At the outset of these proceedings the harassment grievance (Grievance No. 33-13/113960) was withdrawn by the Union.

The grievor is a Cleaner who works at the Nanaimo Regional General Hospital, where the Employer provides contracted services. The grievor has been employed with the Employer since 2007, and he has been a Union Shop Steward for about seven years. The grievor was the Local Union's Chief Shop Steward during the time frame within which the incidents giving rise to the grievances took place.

The discipline being grieved are a two-day suspension issued in June 2013, and two 5-day suspensions issued in October 2013, which the Employer had the grievor serve concurrently, which raises a question as to whether there were actually one or two separate 5-day suspensions. In any event, the grievor's record indicates he has a two-day suspension and two five-day suspensions on file.

The incident that gave rise to the two-day suspension involved an altercation the grievor had with the Night Shift Supervisor, [REDACTED] on June 5, 2013. The June 11, 2013 letter of suspension outlines the allegations against the grievor as follows:

On June 5, 2013 you were approached by your supervisor who requested information on why you were not in your work area along with an update on your progress with your assigned work. You responded in a rude and aggressive manner stating that you would not speak with the Supervisor. You were asked again to follow their direction and you again refused and walked away stating that you would not speak with him. You continued into the supervisor's office where you called the manager and then continued to state that you would not listen to or take direction from your supervisor.

Regarding this matter, the Employer called Mr. [REDACTED] as a witness and he gave evidence consistent with the allegations contained in the letter of suspension, and also a typed out statement he made immediately subsequent to the altercation in question. Mr. [REDACTED] testified that during the evening shift in question he initially questioned the grievor as to what floor he was working on and the grievor replied that he was not feeling well. When Mr. [REDACTED] asked his question a second time, the grievor raised his voice and replied, "I'm not talking to you", and walked away. Mr. [REDACTED] essentially stated that this exchange continued and escalated as he told the grievor that if he walked away he would be insubordinate, and the grievor again replied in a raised voice, "I'm not talking to you". Mr. [REDACTED] recalls the grievor stating he would not talk to Mr. [REDACTED] without a witness present, and that Mr. [REDACTED] was "harassing" him.

Mr. [REDACTED] recalled telling the grievor he needed to know the location where the grievor was working. At one point the grievor stated it was almost his break time, and Mr. [REDACTED] replied, "not yet", and added he had seen the grievor speaking with another employee. The grievor told Mr. [REDACTED] this was not his concern, and that he was working on corridors that evening. Mr. [REDACTED] responded by telling the grievor that the required corridor work to be performed was in the tower, not the area the grievor was working. The grievor again replied in a very loud voice, "I'm not talking to you", and walked away. Mr. [REDACTED] testified he felt threatened by the grievor's tone of voice, and also that he felt "pretty upset".

Mr. [REDACTED] then went to his office where he saw the grievor talking on the telephone "in a pretty loud manner." Mr. [REDACTED] overheard the grievor telling the Manager, Gordana Vuckovic, that he was not going to take direction from Mr. [REDACTED] and that Mr. [REDACTED] shouldn't be a supervisor and was not good at his job. At that point Mr. [REDACTED] went into his office and wrote out a statement and emailed it to his manager.

As a result of Mr. [REDACTED] expressing his concerns, management offered, and Mr. [REDACTED] accepted, a security escort to his home nearby the Hospital after the conclusion of his shifts for the week following the incident.

The grievor testified at these proceedings and acknowledged that on the day in question he spoke to Mr. [REDACTED] in an inappropriate tone of voice, and made statements to him that were rude and unprofessional, which included making comments about Mr. [REDACTED]'s lip quivering.

The grievor testified that Mr. [REDACTED] appeared upset at the time and was following him and yelling at him. The grievor ended up calling the Manager, Ms. Vuckovic, on the telephone because he did not know how else to deal with Mr. [REDACTED] and during the call the grievor expressed his frustration to the Manager about Mr. [REDACTED] skills as a supervisor.

As a result of this situation the grievor was initially suspended with pay for two shifts while the Employer conducted its investigation. The grievor was then suspended without pay for two shifts as provided for in the June 11, 2013 letter quoted above.

The Progressive Discipline Notice dated October 29, 2013 sets out the grounds for the first 5-day suspension, as follows:

On October 23, 2013 [REDACTED] was noted by the supervisor wearing 2 bracelets pinned to his uniform. The supervisor indicated to [REDACTED] that he could not wear the items on his uniform as it was against VIHA infection control policy on the floor and on the property. [REDACTED] responded to the supervisor by laughing and walking away. At this time he also told the supervisor that "you do not know what you are talking about and you are a joke."

[REDACTED] failed to comply both with the uniform policy for Compass and the infection control policies for Compass and VIHA.

Further [REDACTED] exhibited disrespectful and insubordinate behavior to his supervisor.

Essentially, this suspension was meted out for an incident that occurred on October 23, 2013 in relation to statements the grievor made to Manager of Housekeeping and Linen Services, [REDACTED] in front of others. The facts indicate Ms. [REDACTED] took issue with the grievor wearing Union support bracelets prior to the commencement of his shift at about 3:00pm or 4:00pm, and told him to remove them, and he allegedly responded, "[REDACTED] you are such a joke." Ms. [REDACTED] and Supervisor Susan Sutherland testified the grievor uttered these words. The grievor and a coworker, Brie-ann Balance, who overheard the exchange, testified the grievor did not say Ms. [REDACTED] was a joke, but rather he said, "this is such a joke."

The evidence indicates the matter of bargaining unit members wearing Union support wristbands at the Nanaimo Regional General Hospital during the parties' labour dispute had been a topic of discussion between management and Union representatives at that facility. The wristbands, which had been distributed by the Union to its members at a rally in August, are blue, with white script stating: "HEU" and "UNITED FOR FAIRNESS". At these proceedings the Union called witnesses who testified they and others displayed the wristbands in this manner at the workplace; the Employer called witnesses to say they did not see them worn.

The Local Union, with the grievor involved in the discussions, arrived at an agreement with local management to the effect that the wristbands would not be worn on the wrist while one was on duty, but rather could be pinned to one's uniform. Such wristbands are not worn at the Cowichan District Hospital work location that Ms. [REDACTED] usually works at, and she was unaware that this arrangement had been reached at the Nanaimo Regional General Hospital work location. Ms. [REDACTED] was in

charge of the Employer's operation at that work location on the day in question because its usual managers were in Toronto for the day.

Ms. [REDACTED] testified that at about 2:55pm on October 23, 2013 she was in the office area where employees signed in and out of work, and she noticed an employee with a Union wristband pinned to his shirt and she told him that such was not allowed, and the employee removed the wristband.

Ms. [REDACTED] stated she then saw the grievor in the office area prior to the commencement of his shift and he was wearing one of the wristbands on his wrist and two or three of them pinned on his uniform. Ms. [REDACTED] testified she told the grievor to remove the wristbands and he replied, very loudly: "You don't know what you're talking about." She added the grievor was at the time pacing back and forth with his hands in his pockets and was boisterous in informing Ms. [REDACTED] that permission to wear the wristbands had already been attained at the facility. Ms. [REDACTED] recalled telling the grievor that employees were not allowed to wear the wristbands while on the floor and that he replied, "[REDACTED] you're such a joke", and then he left the area.

Ms. [REDACTED] typed her statement of events and emailed it to the management members in Toronto. Ms. [REDACTED]'s statement, in its entirety, reads as follows:

At the 3pm sign in I saw an associate with the bracelet pinned to his crothall shirt. I informed him that he can only wear heu insig pin, he said ok. Then [REDACTED] comes into the inner office with 3 pinned to his uniform. I gave him the same info and he just started laughing loudly and said it is allowed you are such a joke [REDACTED]. Very rude and disrespectful. I did not respond I wanted to wait to hear from you first. Sorry to bother you guys with this nonsense. I asked Susan to make it part of her morning talks with the staff today.

Ms. [REDACTED] testified she sent this email to her manager counterparts and later received a response to the effect that there were to be "no wristbands". Ms. [REDACTED] stated that after she received the response to her email she telephoned the Nanaimo Regional General Hospital workplace and asked to have the grievor put on speakerphone, but he refused to speak to her without a shop steward present. Ms. [REDACTED] recalls asking the supervisor at the time if the grievor still had the wristbands pinned to his uniform and was told yes. Ms. [REDACTED] stated she then emailed her manager with this information, and this concluded her involvement until these arbitration proceedings.

I pause to note that no credible evidence was led at these proceedings to indicate the grievor continued to wear the wristbands after Ms. [REDACTED] told him to take them off. Rather, the evidence indicates that not only did the grievor remove the wristbands he had displayed, but also he told other employees to remove the wristbands they were wearing.

At these proceedings Supervisor Susan Sutherland corroborated Ms. [REDACTED]'s account in a manner consistent with a note she wrote subsequent to the event. Her handwritten note stated:

October 24, 2013
Approx 3:00pm

[REDACTED] was speaking to Riley Pender about removing his HEU bracelets and that they are not allowed to be worn on uniforms or put on their carts or any VIHA (Vancouver Island Health Authority) area.

Riley agreed to remove it and did so.

[REDACTED] came into the office area approx. 5 minutes later with 3 of them on, 2 on uniform, 1 on wrist.

I was in the inner office and I heard [REDACTED] call [REDACTED] a joke.

He said they were allowed to wear them and that [REDACTED] didn't know what she was talking about and he said "[REDACTED] you are such a joke." Then he walked out of the office area.

Ms. Sutherland testified that no one asked her to write her note, and she could not recall who asked her to submit it or when she was asked to do so.

The grievor's evidence regarding this matter is that prior to the commencement of his shift he encountered a coworker, Riley, who told him that Ms. [REDACTED] barred the wearing of Union wristbands, to which the grievor essentially replied she must be wrong, and then went to see her to discuss the matter. The grievor testified he approached Ms. [REDACTED] and told her that permission had been given for employees to wear the wristbands pinned to their uniforms. The grievor recalled Ms. [REDACTED] rudely stating that the wristbands could not be worn on the wrist, nor pinned to one's uniform at the workplace, and that the grievor needed to immediately remove the ones he wore. The grievor testified he laughed, and stated: "[REDACTED] this is such a joke". He walked out of the office and removed the wristbands and put them in his locker and, during the course of his shift, he informed other employees to take them off.

The grievor's account as to what he said to Ms. [REDACTED] was corroborated at these proceedings by a coworker, Brie-ann Ballance, who was in the vicinity at the time. Ms. Ballance testified she was approximately six feet away from the grievor when he told Ms. [REDACTED] "this is a joke." The witness added the grievor "absolutely" did not call Ms. [REDACTED] a joke.

The Union called two other witnesses, Dianna Fagan and Elsie Martin, who testified that during the afternoon in question the grievor informed them to remove the Union support bracelets they wearing. Both of these witnesses recalled that the grievor

was not wearing any bracelets on his wrist or pinned to his uniform at the time he conveyed this message.

A Progressive Discipline Notice, also dated October 29, 2013, sets out the grounds for this 5-day suspension, "to be served concurrently" with the 5-day suspension for the October 23, 2013 infraction, stating as follows:

On October 29, 2013 [REDACTED] was noted by the supervisor talking with an associate during the associate's work time. The supervisor directed the worker to return to their job. The supervisor further indicated to [REDACTED] that he cannot be disrupting associates during work time to which [REDACTED] commented to the supervisor indicating "oh right, this is a jail". Within 15 minutes of the initial incident, [REDACTED] was seen in ER (Emergency Room) by a supervisor (different supervisor) speaking to one of the ER associates in the housekeeping room during the ER associates (2 – Dawn and Sheila) scheduled work time, regardless of the direction previously provided.

[REDACTED] failed to comply with the direction provided by the supervisor.

Further [REDACTED] exhibited disrespectful behavior to his supervisor.

On the second incident, [REDACTED] displayed insubordinate behaviour by continuing to meet with staff while they were on work time.

Regarding this grievance the Employer called as a witness supervisor Sharon Phillips, whose observations culminated in the issuance of the disciplinary notice to the grievor. The grievor in his evidence acknowledges having spoken with the employees referred to in the disciplinary notice, but that these conversations were very brief. The grievor stated he was seeking to meet with an employee to pick up a document, and management was aware of this meeting. In one case he asked a coworker if she knew where was the employee he was meeting. While seeking out the employee he was meeting another coworker asked him a question. The grievor disagrees with the

Employer's assertion that he was chatting with employees or otherwise disrupting their work.

SUMMARY OF ARGUMENTS

On behalf of the Employer, Mr. Murray argues that the Employer was justified in issuing to the grievor all of the discipline that it imposed. Counsel asserts the grievor was not acting in capacity as a shop steward during the relevant periods of time. Even if he was, his behaviour was not acceptable. Being appointed shop steward does not give one a license to make personal attacks or be abusive towards supervisors or managers. An extra level of protection in the workplace is not provided to shop stewards simply because of their status as such within the Union.

In relation to the initial two-day suspension, Mr. Murray states Mr. [REDACTED]'s evidence should be preferred to that over the grievor's testimony where there is a conflict. Counsel adds there is no reason to conclude Mr. [REDACTED] exaggerated his concerns about feeling threatened by the grievor. During his interaction with Mr. [REDACTED] and while on the telephone with Manager Gordano Vuckovic, the grievor displayed behaviour properly characterized as insubordinate, threatening and contemptuous of management. The grievor's apology was not sincere but rather strategic. It was not even a full apology as the grievor in part continued to blame Mr. [REDACTED] for what occurred.

Mr. Murray states that the grievor's declaration to the effect that he was being harassed by Mr. [REDACTED] compounds the seriousness of the grievor's behaviour. The term "harassment" is one the grievor throws around lightly. If the grievor had truly felt harassed at the time this would have been recorded on the grievance form, which it was not.

In relation to the five-day suspension issued to the grievor for his comment to Ms. [REDACTED] on October 23, 2013, Mr. Murray argues the evidence of Ms. [REDACTED] and

Ms. Sutherland should be preferred over that of the Union witnesses regarding what precisely the grievor stated. Counsel asserts the grievor at the time was not acting in his capacity as a shop steward, as he did not make his adverse comment during a grievance or discipline meeting or collective bargaining, or any other labour/management meeting. Counsel points out that during the time in question, Ms. [REDACTED] was specifically addressing the grievor about the bracelets he was wearing on his person, not what other employees were wearing. He submits the grievor called Ms. [REDACTED] "a joke" in a purposely loud and boisterous voice so that others could hear him be contemptuous towards management. Given the fact that the grievor already had a two-day suspension on his record from his earlier altercation with Mr. [REDACTED] a five-day suspension was appropriate.

Regarding the October 29, 2013 incident the grievor conceded he knows he was not supposed to engage employees during their working time, but that he did so anyways. After being informed by Ms. Phillips to move along from speaking with the first coworker, the grievor was compelled to make the contemptuous comment, "You'd think this was a prison". Instead of leaving at this point, the grievor goes on to speak with other employees during their work hours without contacting a supervisor for permission to do so. Mr. Murray submits the grievor's conduct was insubordinate, insolent, defiant and offensive.

In support of its position the Employer cites the following authorities: *Northwest Waste System Inc. and Transport, Construction and General Employees' Association, Local 66 (Brickland Grievance)*, (2007) 164 L.A.C. (4th) 311 (Blasina); *Foremost Industries Ltd. and C.A.W.-Canada, Local 1112 (Molina Grievance)*, (2008) 178 L.A.C. (4th) 272 (Beattie); *Parmalat Canada Inc. and C.A.W.-Canada, Local 462 (Leach Grievance)*, (2005) 141 L.A.C. (4th) 377 (Jamieson); and *Millenium Construction Contractors and Construction and General Workers' Union, Local 92 (Poole Grievance)*, (2001) 97 L.A.C. (4th) 1 (Sims).

On behalf of the Union, Mr. Tarasoff argues that the discipline imposed on the grievor by the Employer in relation to the two-day suspension was excessive, and that the two separate five-day suspensions, which were served “concurrently”, were not at all justified as, during the relevant periods of time, the grievor was acting in his capacity as shop steward.

Regarding the two-day suspension grievance that arose from the grievor’s behaviour towards Mr. [REDACTED] on June 5, 2013, the Union acknowledges the grievor’s conduct was improper and that some penalty was warranted, but a two-day suspension was not. At the relevant time the grievor possessed a discipline-free record; he candidly admitted that his conduct was not appropriate; and he sincerely apologized to Mr. [REDACTED] for his conduct. Mr. Tarasoff points out that during the time in question Mr. [REDACTED] was being provocative and haranguing towards the grievor and this should be taken into account in assessing the matter of appropriate discipline to be meted out to the grievor. The Employer’s assertion that Mr. [REDACTED] was at the time acting in a calm matter is not credible, nor is Mr. [REDACTED] claim that he felt scared and threatened by the grievor.

Regarding the five-day suspension issued to the grievor for his statement to Ms. [REDACTED] on October 23, 2013, Mr. Tarasoff argues the testimony of the witnesses tendered by the Union should be preferred over that given by Employer witnesses in relation to what the grievor said. Specifically, the grievor did not call her “a joke”; rather, he said: “this is a joke”. Mr. Tarasoff challenges the credibility of the Employer witnesses who gave contrary testimony. Counsel submits that even if the grievor did say what the Employer alleges, he did so in his capacity as a shop steward during the course of a labour dispute in relation to a Union issue regarding the wearing of Union support bracelets, which had previously been resolved at the workplace. Mr. Tarasoff adds that not only did the grievor comply with Ms. [REDACTED]’s direction, but he also took it upon

himself to inform others to remove their wristbands in accordance with what she had told him.

Regarding the five-day suspension meted out to the grievor for his conduct on October 29, 2013, Mr. Tarasoff observes the novelty of having this suspension served “concurrently” with the five-day suspension for conduct that occurred on October 23. In any event, the situation that led to the Employer disciplining the grievor involved employees approaching him, and having with him brief conversations associated with his role as their shop steward representing their interests under the Collective Agreement. The grievor did nothing to warrant a disciplinary response. No industrial offense whatsoever was committed. Contrary to the Employer’s suggestion at these proceedings, it would not have been appropriate for the grievor or his coworkers to have sought and received permission from management for the very brief questions and responses that were exchanged.

Mr. Tarasoff points out that the law regarding shop steward immunity relates to union business broadly defined, and protects shop steward conduct and statements made in their representational role. The immunity is not confined to statements made only in relation to collective bargaining, labour management meetings, or the grievance procedure.

In support of its position the Union cites the following authorities: *Pacific Press, a Division of Southam Inc. and Graphic Communications International Union, Local 25-C*, [2003] B.C.L.R.B.D. No. 102; *Richmond Lions Manor Long Term Care Society and Hospital Employees’ Union (Roy Grievance)*, [1994] B.C.C.A.A.A. No. 275 (Munroe), and [1994] B.C.L.R.B.D. No. 391.

DECISION

In *Wm. Scott and Company and Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 CLRBR 1, the British Columbia Labour Relations Board set out a three-question inquiry for the assessment of discipline grievances. The first question is whether the grievor's conduct gave rise to just cause for the imposition of a disciplinary penalty. The second question is whether, in light of all of the surrounding circumstances, was the discipline imposed excessive. If so, what should be substituted as just and equitable.

The *Wm. Scott* analysis applies to each of the individual situations that led to the discipline imposed on the grievor.

Regarding the initial two-day suspension meted out by the Employer for the grievor's behaviour towards Mr. [REDACTED] on June 5, 2013, I accept the grievor's conduct did give rise to some form of discipline, but that a suspension for the duration of two days was excessive in all of the circumstances. Without question the grievor's conduct towards Mr. [REDACTED] at the time in question was rude and unprofessional as acknowledged by the Union and the grievor himself.

There are, however, a number of mitigating factors that call for a reduction in the penalty imposed, including the grievor's prior discipline-free record, and his actual role in the confrontation with Mr. [REDACTED] which basically involved the grievor seeking to walk away as Mr. [REDACTED] pursued him and continued his questioning. To the grievor's credit he apologized to Mr. [REDACTED] after they both attended a respectful workplace training session that occurred two to three weeks after the incident occurred.

In arriving at my conclusion in relation to this particular grievance I am compelled to add that I find Mr. [REDACTED] to have understated his role in exacerbating the situation, and overstated his concern for his personal safety being compromised as a result of his

interaction with the grievor. I do not accept he was at all fearful of the grievor, who had issued no physical threat towards him, nor had in the past ever manifested that type of behaviour. Although it was management that suggested Mr. [REDACTED] to have security personnel accompany him home for the following week, he agreed to it, likely with a view to supporting his claim that he was fearful of the grievor and felt intimidated by him as a result of their interaction on the day in question.

The evidence supports a conclusion that during a significant portion of their interaction at the time in question, the grievor was seeking to walk away from Mr. [REDACTED] and he sought to disengage from what may have become a heated confrontation, but Mr. [REDACTED] pursued the grievor and continued to seek a response to his inquiry, actions that belie his assertion that he felt intimidated by the grievor and fearful.

In the result, I accept that the grievor's behaviour in relation to this situation was sufficiently improper to warrant discipline in excess of a written warning, but that a two-day suspension was excessive. In response to the third question of *Wm. Scott*, I determine that a one-day suspension shall be substituted as just and equitable in all of the circumstances. In arriving at this conclusion I accept that arbitrators should generally not disturb employer issued discipline if it falls within a reasonable range of sanctions, but that the reduction in the present case is significant in context and does not constitute mere arbitral tinkering.

Regarding the five-day suspension issued to the grievor on October 29, 2013 for his behaviour on October 23, I find that the grievor's behaviour in relation to Ms. [REDACTED] gave rise to a minimal disciplinary response. The evidence supports a conclusion that the grievor did, in fact, tell Ms. [REDACTED] she did not know what she was talking about and he did call Ms. [REDACTED] "a joke" to her face in a loud voice, intended to disrespect and humiliate her in front of other employees within hearing reach. It was, however, a spur of the moment reaction, vented in frustration after hearing a

manager was effectively renegeing on a deal that had been reached regarding the wearing of Union wristbands at the workplace during the parties' labour dispute.

In *Richmond Lions Long Term Care Society and Hospital Employees' Union*, the British Columbia Labour Relations Board summarized the law regarding the limits of acceptable statements from employees acting in the capacity of shop steward, which the grievor was in the present case at the relevant time. The Board stated:

Acknowledging the necessity to accord union officers a wide latitude in the performance of their duties, I agree with Arbitrator Munroe that some limits on the concept of steward immunity must be recognized to preserve the underlying employment relationship. While Arbitrator Ladner correctly says that no issue of authority, obedience, or insubordination arises during a meeting between employer and union, there is a broader basis upon which an employer may assert a right to discipline. Where the conduct of an employee/union officer goes beyond the bounds of lawful union activity and is detrimental to the legitimate interests of the employer he or she cannot expect to be protected from discipline solely because the impugned acts occur during the course of official duties. In my view, the boundaries of steward immunity must be drawn in a manner that balances the need to preserve the viability of the employment relationship with the legitimate right of the union to carry out its responsibilities without undue interference from the employer. This balance is achieved by requiring proof of conduct that is both beyond the bounds of lawful union activity and detrimental to the interests of the employer. Absent some evidence of impairment to the interests of the employer and, consequently to the employment relationship, there is no basis upon which to justify discipline. In each case, however, whether an employee's actions have crossed the line of lawful union activity and whether such actions have negatively affected the interests of the employer so as to warrant discipline are matters of judgment for the Arbitrator.

Suffice it to observe that the law recognizes the grievor's status as a shop steward does not provide him with immunity from discipline, and that the grievor's personalizing the matter and calling Ms. [REDACTED] a joke in a disrespectful and belittling manner in front of others overstepped the bounds of appropriate behaviour in the circumstances.

While the grievor's comment to Ms. [REDACTED] was improper, there are significant mitigating factors present that compel a conclusion that the discipline issued was excessive to a significant degree. Of note is that the grievor had some reasonable basis to have been frustrated and upset with Ms. [REDACTED]'s approach to the display of Union support bracelets at the workplace, given previous discussions and apparent consensus at the worksite that Ms. [REDACTED] was not aware of as things were dealt with differently at the facility she was based at. The grievor's comment to Ms. [REDACTED] was clearly made in the heat of the moment and, in all of the circumstances that occurred over a year previously, it cannot be surprising at all that both he, and Ms. Balance, both recollected he stated something different. In context, the statement of the grievor that the Employer found objectionable comprised of a single terse sentence, that cannot be characterized as abusive.

As noted the grievor, in his capacity as Chief Shop Steward, is to be accorded some amount of immunity for comments made in relation to his position with the Union, particularly in the midst of a labour dispute, which existed during the time in question. Union officers must be free to express themselves in what are often heated exchanges with emotions running high, but there are limits as to what is acceptable, and the scope of immunity in any given case depends on the totality of the attendant circumstances. In the present case the limits of acceptable conduct were exceeded to a degree sufficient to warrant a relatively minor disciplinary response in the form of a written reprimand.

In arriving at my conclusion I note that contrary to the statement contained in the Progressive Discipline note regarding this event, there is no evidence whatsoever that the grievor, "failed to comply with both the uniform policy for compass and the infection control policies for Compass and VIHA." In fact the evidence showed the opposite as the grievor not only removed his bracelets, he also approached other employees and told them of Ms. [REDACTED]'s direction. Ms. [REDACTED]'s evidence that she was informed the

grievor continued to wear wristbands pinned to his uniform later in his shift was not at all supported at this hearing, but rather was contradicted by witnesses who gave evidence to the effect that the grievor was not wearing the wristbands when he told them that they were no longer allowed to.

In the circumstances, and even assuming the Employer had just cause to suspend the grievor for two days for his June altercation with Mr. [REDACTED] which I have found it did not, the appropriate discipline in this situation is a letter of reprimand, which is what I substitute as just and equitable.

Regarding the five-day suspension issued to the grievor on October 29, 2013 for conduct in relation to conducting meeting with staff during their scheduled working time on that day, I find the grievor's conduct did not give rise to any cause for discipline. By all credible accounts the grievor, in his capacity as a Union shop steward, was at the workplace to meet with a coworker to pick up some documentation in relation to a matter that the Employer was aware about. While on his way to that meeting he asked an employee if she knew where was the employee he was to be meeting, and another coworker asked him a brief question relating to an issue she had. The evidence indicates that the grievor's interactions with his coworkers on the day in question were brief, and there is no credible evidence to indicate such interactions in any way disrupted the performance of work by the involved employees.

In the result the two-day suspension for the grievor's conduct on June 5, 2013 shall be reduced to a one-day suspension; the 5-day suspension issued on October 29, 2013 for the October 23 comment to Ms. [REDACTED] shall be reduced to a written reprimand; and the other 5-day suspension issued on October 29, 2013 shall be removed entirely as being without just and reasonable cause. The grievor shall be made whole for his losses incurred as a result the excessive discipline and I shall remain seized with

jurisdiction to resolve any dispute that may arise out of the implementation of this decision.

It is so awarded.

A handwritten signature in black ink, appearing to be 'CS', written over a horizontal line.

Christopher Sullivan

