LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION DECISION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115

UNION

HIWAY FUEL SERVICES LTD.

EMPLOYER

(Re: [redacted] Dismissal)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	John MacTavish
Representing the Employer:	Keith J. Murray
Dates of Hearing:	May 12 and 13, 2014
Date of Written Submissions:	May 23, 2014
Date of Decision:	June 12, 2014

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1. Dismissal, Settlement and Reinstatement September 2011

[1] The union seeks reinstatement and compensation for lost medical benefits for [redacted] who was previously dismissed and reinstated under terms that settled a prior dismissal grievance.

[2] Mr. [redacted] began employment as a fuel truck delivery driver May 4, 2010. He was registered with the insurer in the employer's group extended health and dental care policy on October 6, 2010. The policy had been in place since March 1, 2009.

[3] In April 2011, he was working a fulltime schedule of four ten-hour shifts from Friday to Monday plus overtime as required to complete his daily route. While operational overtime was usual for all drivers, it became an issue between Mr. [redacted] and the employer on April 16 and 17, 2011 because of an undisclosed illness he has. April 18, 2011 was the last day he worked before an absence due to illness that has continued to date.

[4] On June 2, 2011, the day before Mr. [redacted]s expected return to work as identified on a short term disability claim form, he told the employer he would be absent another six weeks and a physician's note was delivered to the employer. Shortly afterwards, President Kelly Grehan telephoned Mr. [redacted] The call ended with Mr. [redacted] refusing to answer questions about his medical condition and hanging up.

[5] The next day, Mr. Grehan assumed administrative conduct of all matters relating to Mr. [redacted]s sick leave and benefit claim. He telephoned and spoke with Mr. [redacted]s physician. He then told Mr. [redacted] to attend a meeting on June 7th or risk loss of his employment and his short term disability benefits.

[6] Mr. [redacted] replied he was busy at the scheduled time. He underwent chelation therapy that week. His physician wrote a note that he was much worse due to a recent

round of treatment and therapy. She advised he not attend the scheduled meeting, which could adversely affect his health. The note included a request that the employer "NOT" contact Mr. [redacted] at home while he was on sick leave.

[7] Mr. [redacted] forwarded the note to Mr. Grehan on June 6th with an email that states, in part:

> Kelly, you or your staff of employees are not to contact me. This is through phone calls, emails, postal service, courier and any other means of communication that is available.
> No contact means no contact, **PERIOD!!**
> Govern yourself accordingly.

[8] Mr. Grehan responded to the union that he had received the physician's note, but the meeting would proceed as scheduled the next day. It did and on June 9th the employer dismissed Mr. [redacted] for his "actions prior to April 20, 2011." The union grieved and arbitration was scheduled for October 31 and November 1, 2011.

[9] The grievance was settled September 26, 2011. Mr. [redacted] was reinstated with benefit coverage under the collective agreement. His future return to work was dependant on supplying a "detailed psychiatric opinion, from a psychiatrist acceptable to the Company, that Mr. [redacted] is fit to return to active service and resume all duties normally associated with his position." The employer committed "to cooperate with Mr. [redacted] and to make reasonable efforts to facilitate his access to any further benefits to which he may be entitled."

2. Benefit Coverage Stopped and Dismissed February 15, 2012

[10] The employer did not pay Mr. [redacted]s Medical Service Plan premiums in 2011. The employer paid monthly premiums for his group long term disability coverage and sought reimbursement from him. On October 12, 2011, the employer emailed the union that Mr. [redacted] had to pay his premiums to prevent delays in processing a long term disability claim.

[11] Mr. [redacted]s short term disability coverage period ended October 24, 2011, six months after a three-day waiting period in April. At the time, his short term disability claim had been accepted but not approved for benefits beyond July 22nd.

[12] Following a 182 day elimination period, Mr. [redacted] was eligible to apply for long term disability benefits commencing October 18, 2011.

[13] Without notice to Mr. [redacted] or the union, the employer stopped his extended health benefit coverage effective October 24, 2011. The employer's position was that he was only entitled to group coverage at the employer's expense if he was in receipt of short or long term disability benefits.

[14] On October 25, 2011, a physician provided a medical note for Mr. [redacted] that the insurer received November 22, 2011. Also on October 25th, Mr. [redacted] paid the employer $458.58 to reimburse it for his long term disability coverage premiums.

[15] On November 29th, the insurer extended and paid Mr. [redacted] short term disability benefits to September 30th.

[16] On December 3rd the employer emailed the union that it could not process long term disability paper work for Mr. [redacted] until he reimbursed the employer $277.98 for his long term disability premiums. This increased to $397.92 in mid-December.

[17] Because he had to reimburse the employer, Mr. [redacted] did not apply for long term disability benefits until January 19, 2012. The employer sent its completed portion of the claim form to the union by letter dated January 26, 2012. The insurer acknowledged receipt of the claim in a letter dated February 10th, a copy of which was sent to the employer.

[18] On February 22, 2012, the insurer accepted and paid Mr. [redacted]s short term benefits for the maximum period to October 24, 2011.

[19] The union's lawyer wrote the employer's lawyer on March 8, 2012 that the union did not agree the employer did not have to provide benefit coverage for any period Mr. [redacted] was not receiving short or long term disability benefits. The employer's lawyer at the time replied March 13th that the employer was not responsible to provide medical and dental coverage for periods when the employee had not established short or long term disability benefit entitlement.

[20] On March 27th, the union referred this dispute to arbitration. On the same day, the employer instructed its lawyer that it would reinstate Mr. [redacted]s benefits.

[21] On June 15th, the employer wrote the BC Medical Services Plan that it had erroneously cancelled Mr. [redacted]s coverage effective August 1, 2011 and wanted him retroactively reinstated.

[22] On July 18th, after six months of investigation, the insurer accepted Mr. [redacted]s claim for long term disability benefits for the period from October 18, 2011 to March 8, 2012.

[23] Mr. [redacted] did not appeal this limited period of benefits to the insurer during the 90-day appeal period in the group policy. He did not reimburse the employer for continuation of his long term disability coverage. He did not provide continuing medical reports to the employer to support his continued absence from work.

[24] Effective September 12, 2012, without notice to Mr. [redacted] or the union, the employer discontinued paying Medical Services Plan premiums for Mr. [redacted].

[25] The employer terminated Mr. [redacted]s group benefit coverage as of October 31, 2012. Mr [redacted] learned this in December. The policy booklet he had states an extended health benefit claim must be made by December 31st in the following calendar year (p. 34) and a dental benefit claim within one year (p. 40).

[26] He had not made a claim since April 2011. He did not know his coverage had ended October 31st. On December 31st, he made a claim with the insurer for extended health care benefits for reimbursement of $4,349.96 spent from April 21, 2011 to December 20, 2012. The insurer did not accept any of the items claimed and did not reimburse him any amount.

[27] The union raised the termination of benefit coverage with the employer in early January and grieved on January 14, 2013. It referred the matter to its lawyer, who emailed the employer's lawyer with whom the settlement had been made. A new lawyer for the employer wrote the union lawyer on February 15, 2013 in reply to the grievance as follows:

> **Re: Hi-Way Fuel Services – [redacted] Grievance**
>
> We are counsel for Hi-Way Fuel services respecting the above matter. Accordingly, Mr. Swerdan's January 14, 2013 letter has been forwarded to us for reply.
>
> We have reviewed the background of this matter, including the previous resolution regarding the grievor.

> The insurer discontinued Mr. [redacted]s LTD benefits on March 8, 2012. The insurer sent Mr. [redacted] a letter informing him that benefits had only been extended to March 8, 2012 and explaining the appeal process to him. As we understand it, no appeal was pursued.
>
> Mr. [redacted] did not contact the Employer subsequent to the denial of LTD benefits either to return to work or substantiate his continuing absence.
>
> Mr. [redacted] has not paid the premiums required for any LTD coverage. If he still was an employee he would be in arrears for over two thousand dollars for such premiums.
>
> Having not contacted the Employer about a return to work or provided medical information to substantiate his absence (notwithstanding the discontinuance of LTD benefits), the Employer has concluded Mr. [redacted] has abandoned his employment. Alternatively, his employment has been terminated for absence without leave.
>
> Neither the Collective Agreement or the Settlement Agreement provide for extended health benefits or MSP for life. There has been no violation of either the Collective Agreement or the Settlement Agreement.
>
> If the Union disputes the Company's position, please provide complete medical records for Mr. [redacted] from January 1, 2012 forward relating to any disability that has required him to remain off work or prevented him from contacting the Employer along with the prognosis for his return to full driving duties at Hi-Way Fuel Services.

[28] The employer issued a Record of Employment February 18, 2013 stating it had terminated benefit coverage on November 30, 2012. The union grieved Mr. [redacted]s dismissal on February 27, 2013.

[29] Mr. [redacted] filed a civil claim against the insurer for long term disability benefits on March 8, 2013.

3. Hearing Adjournment Conditions January 13, 2014

[30] A tentative settlement of both grievances negotiated at arbitration on June 11, 2013 was not acceptable to Mr. [redacted] Although the employer sought an earlier date, the arbitration was scheduled to continue on December 9, 2013. That hearing date was adjourned by agreement to January 13, 2014. The union's application to adjourn was granted on conditions that include:

1. No later than February 28, 2014, the union disclose to employer counsel complete and up-to-date particulars of the entire claim for benefit costs, under either or both grievances, with copies of supporting receipts or other documents.
2. No later than February 28, 2014, Mr. [redacted] through union counsel disclose to employer counsel complete and up-to-date medical records of the illness that has prevented him from returning to work since March 8, 2012, including any prognosis for his return to work. These records are to include

all records relied on in his outstanding claim and suit against the insurer except any over which his counsel in that proceeding claims solicitor-client or litigation privilege.

3. If full and complete disclosure is not made in accordance with either of these two conditions, the employer may apply to have either or both grievances dismissed on the basis this adjournment application and a failure to comply with a condition on which it is being granted is an abuse of process.
4. There will be a presumption that any continuing employer liability ceases effective January 13, 2014. The union will bear the onus to rebut this presumption by establishing there exists a medical or other justified reason for Mr. [redacted]s asserted inability to attend on January 13th that is the basis of the union's adjournment application. (*Hiway Fuel Services Ltd.* [2014] B.C.C.A.A.A. No. 1, ¶ 13)

[31] The employer did not receive the directed complete disclosure. Mr. [redacted] made additional benefit claims on May 1, 2014. Complete up-to-date medical records were not disclosed.

4. Current Medical Condition is 100% Disabled

[32] Mr. [redacted] has not recovered. On March 26, 2013, his physician wrote:

> I have never seen someone so ill with Chronic Fatigue Syndrome. This man would like nothing more than to be healthy and have his life back. Unfortunately he is too ill to do anything at this time or for many months or years to come. He is totally compliant with any suggestions made by his physicians.

His diagnosis includes other conditions.

[33] In January 2014, he was awarded a 100% Canada Pension Plan disability pension retroactive to September 2012.

[34] On May 6, 2014, his physician wrote that multiple stressors during his absence from work up to the present have prevented identifying a specific date for return to work. Until the ongoing litigation is completed and the related stress is removed "his condition will remain unchanged and the length of time to recover will be even further extended."

5. Employer and Union Submissions

[35] The employer submits its discontinuance of benefits without notice:

> ... was warranted, given his failure to contact the Company or substantiate his absence after his LTD benefits were discontinued. The grievor was not entitled to stay away from work indefinitely, without contact, when not in receipt of LTD or other income replacement benefits. The Employer appropriately waited for the LTD appeal period to expire, and then discontinued the health benefits — after having had no substantive contact from the Grievor in over a year.

> Alternatively, even if the Board determines benefits should not have been discontinued at that time — we submit the Board has no jurisdiction to extend benefit coverage past April 5, 2013 — the date the new Collective Agreement came into effect. The Grievor would not have met the minimum threshold for benefit coverage as of that date. (*Employer Outline of Argument*, ¶ 27 - 28)

[36] The employer submits the amount of any valid claim Mr. [redacted] has is $264.59 based on a mock adjudication of the claim he submitted for 2011 and 2012. On the May 1, 2014 claim for benefits not purchased, the employer submits:

> The Grievor cannot claim for expenses not incurred. First, these purported expenses were submitted well past the February 28, 2014 deadline in the Order. The Grievor has simply attempted to inflate his benefit claim with a number of dubious expense claims not supported by any real medical evidence of need and by submitting expenses which cover time frames outside any period that could be deemed reasonable (even if his employment period is extended). (*Employer Outline of Argument*, ¶ 30)

(See *Westminster Chevrolet Geo Oldsmobile Ltd.* [1996] B.C.C.A.A.A. No. 438 (Kinzie))

[37] The employer submits:

> In our view, the presentation of further expense claims on May 1, 2014 and the failure to comply with the medical disclosure Order is an abuse of process. The Grievor has "invented" new and dubious expense claims well after the deadline for detailing his benefit claims. More seriously, he has refused to provide the required medical disclosure, yet selectively provided one letter well past the deadline, in an attempt to support his case. The Grievor cannot be permitted to selectively disclose medical information. We have been provided with no medical records from his suit against the insurer — in which he asserts he is totally disabled and cannot work.
>
> In our view, the Grievor's grievance can be dismissed for failure to comply with the January 9, 2014 Order. If not dismissed entirely, then other consequences must flow from what we submit is an abuse of process by the Grievor. Those consequences will be discussed below.
>
> **********
>
> At the current time, there is still no reasonable prospect of a return to work by the Grievor. He has been off work for three years. While the most recent medical appears to blame the litigation and the Employer for the Grievor's condition, it ignores there was no litigation with the Employer from September of 2011 (when he was reinstated), until January of 2013 (when the benefit grievance was filed). It appears there was no improvement in the Grievor's condition during that time. Further, the Grievor continues to be in litigation with the insurer, with no trial dates having been set.
>
> We submit it would allow an abuse of process to give any weight to the physician's letter provided on May 8, 2014. The Griever has failed to provide the medical disclosure ordered — so he cannot be permitted to selectively rely on a letter prepared to advance his case at arbitration, while shielding the remainder of his medical file.
>
> **********

> Additionally, the purported expenses are not appropriately documented so as to establish they were or will be required. Lastly, the purported expenses were both created and submitted subsequent to the February 28, 2014 deadline in the Order. No justification has been provided for their late submission. (*Employer Outline of Argument*, ¶ 10 - 11; 25 – 26; 33)

[38] The employer submits when it learned in July 2012 that Mr. [redacted]s long term disability benefits had been discontinued effective March 8, 2012, it had received no medical information from Mr. [redacted] or his physician since June 2011. It had no contact from Mr. [redacted] and did not contact him. The employer submits benefit coverage discontinuance was warranted in the absence of any communication from Mr. [redacted] and, in any event there was no entitlement after April 5, 2013, the date of the new collective agreement.

> Given the Grievor had been cut off disability benefits in March of 2012, had not returned to work, appealed the insurer's decision or contacted the Employer at all (or provided new medical), it was not unreasonable or a violation of the Collective Agreement to discontinue his benefits in the fall of 2012.
>
> While the Union grieved the discontinuance of the benefits, the Grievor still took no action to contact the Employer in any way, or to provide updated medical information. It was the Grievor's responsibility to do so.
>
> When the Grievor still failed to make any contact with the Employer, he was terminated in February of 2013.
>
> Notwithstanding the Grievor's termination in February of 2013, he was invited to provide medical records that would substantiate his continuing absence and his failure to contact the Employer (Ex. 3, Tab 6, p. 2 [February 15, 2013 letter]). The requested information was not provided. The Employer was prepared to revisit its conclusions if appropriate documentation was provided.
>
> No further medical information was provided until shortly before the June 12, 2013 arbitration date (Ex. 3, Tab 9). That March 26, 2013 letter (not provided at that time) stated the Grievor would be too ill "to do anything"... "for many months or years to come".
>
> That letter confirmed there was no reasonable prospect of the Grievor returning to work in the foreseeable future, if ever. The Employer has a relatively small operation with a single classification — Fuel Truck Driver. Given the medical, there is no prospect of the Grievor's return to work. The Employer will not be placing Mr. [redacted] in a truck with tens of thousands of pounds of fuel, potentially endangering himself, the public and the environment.
>
> Accordingly, the termination of the Grievor in February of 2013, after almost two years of absence (and 1.5 years of no substantive contact) was not premature or unlawful. The Grievor had only worked for approximately one year, and had now been absent for almost two years. The Grievor, through his Union, declined to provide any medical information that would have caused his Employer to review the merits of the termination.
>
> Even if the discontinuance of benefits or termination was premature under the Collective Agreement that existed at the time of termination, a new, substantially different Collective Agreement was entered into on April 5, 2013. Under Article

> 10.07 the Grievor's seniority would not have continued. The Grievor would not have been in compliance with Article 10.11. Further, the Griever would have no longer qualified for benefits by virtue of the minimum quarterly hours requirement in Article 16. (*Employer Outline of Argument*, ¶ 17 – 24)

[39] The employer submits its decision to dismiss Mr. [redacted] was justified because he was absent without leave for eleven months after his long term disability benefits ceased. (*Meyers Transport Ltd.* [2012] C.L.A.D. No. 366 (Martin), ¶ 19)

> We submit the obligation was on Mr. [redacted] to contact the Employer (or have his Union do so), particularly in the circumstances where he had advised the Employer to not contact him. The Employer was quite patient — it was almost one year after his LTD benefits were cut off, that Mr. [redacted] was finally terminated. It was incumbent on Mr. [redacted] to reach out to the Employer, not vice versa. (*Employer Outline of Argument*, ¶ 39)

[40] The employer submits the dismissal is justified for Mr. [redacted]s innocent absenteeism. "Non-culpable absenteeism, including failure to achieve a reasonable degree of attendance because of illness is accepted in arbitral jurisprudence as just cause for dismissal." (*McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal* [2007] 1 S.C.R. 161, ¶ 62)

> The fact that termination brings the Grievor's health benefits under the Collective Agreement to an end does not make the termination a violation of the parties' previous settlement or the Collective Agreement. The previous settlement agreement did not require the Employer to continue to employ the Grievor indefinitely so as to maintain health benefit coverage, and neither the current nor prior Collective Agreements require that. (*Employer Outline of Argument*, ¶ 41)

(See *Golden (Town)* [2012] B.C.C.A.A.A. No. 118 (Glass), ¶ 18 - 20; 34 - 36)

[41] The union submits there was no just cause to dismiss Mr. [redacted] for innocent absenteeism and his dismissal without warning and inquiry was a violation of the *Human Rights Code*. The nub of the union's submission is factual.

> The Grievor was absent from work for two years due to his disability. This may amount to undue absenteeism; however, the Employer has not established that, based on the information it had at the time of the termination, the Grievor was incapable of regular attendance into the future.
>
> We submit that it would be impossible for the Employer to know or come to a conclusion about whether or not the Grievor was capable of regular attendance in the future, because the Employer made no inquiries into the Grievor's current state of health or current prognosis before it terminated him.
>
> Moreover, there is a clear requirement in the arbitral jurisprudence that an employer must at the very least give an employee notice that his employment is in jeopardy before it can terminate him for an absence due to disability. The Employer failed to do so.

> As set out in *Senyk*, [*Senyk v. WFG Agency Network (B.C.) Inc.* [2008] B.C.H.T.D. No. 376) the requirement to warn is important because it gives the employee a chance to provide current medical evidence that may show he is capable of returning to regular attendance in the future. It also opens up a dialogue between the employee and the employer that can facilitate the duty to accommodate. Because the Employer failed to warn the Grievor that his employment was in jeopardy, these opportunities were lost in this case.
>
> Without having warned the Grievor that his employment is in jeopardy, the Employer cannot establish just cause for his termination. (*Union's Written Outline of Argument – Termination Grievance*, ¶ 65 – 69)

[42] Further, the union submits the employer failed to fulfill its duty to accommodate Mr. [redacted].

> In fact, it appears that the Employer did not turn its mind to accommodation at all. When it terminated the Grievor, the Employer attempted to justify the termination by saying the Grievor had abandoned his employment. Given its view that the Grievor quit, the Employer clearly did not think it had any obligation to pursue accommodation possibilities. (*Union's Written Outline of Argument – Termination Grievance*, ¶ 75)

[43] The union seeks reinstatement or alternatively damages for lost opportunity to be accommodated and injury to dignity.

6. Discussion, Analysis and Decision

[44] Prudently, the employer does not press with force or extensive submissions that its 2012 discontinuance of benefits for Mr. [redacted], who remained an employee until February 2013, is supportable under either the terms of settlement or the collective agreement. This is because the discontinuance of medical benefits was in contravention of both. As a reinstated employee, Mr. [redacted] was entitled to benefit coverage in accordance with the terms of the collective agreement for the period he remained an employee.

[45] Effective October 31, 2012, the employer stopped paying extended health premiums contrary to Article 14(a) of the collective agreement: "The Company will provide and maintain the following coverage for its employees at no cost to such employees: (a) Medical – B.C. Medical and extended health benefits." It stopped providing BC Medical Services Plan premiums effective September 12, 2012.

[46] Each act was a contravention of the collective agreement and the settlement agreement. The grievance of January 14, 2013 is allowed.

[47] What compensation for lost benefit coverage is to be awarded to Mr. [redacted]? The monthly MSP rate was $64.00 per month in 2012; $66.50 in 2013; and $69.25 in 2014. His extended health benefit claim in December 2012 for $4,349.96 was denied. He claims $6,162.70 in damages for dental, optical and other expenses he did not incur but would have incurred if his coverage had not been discontinued. The expenses he claims he would have incurred are based on diagnosis and recommendations subsequent to the date of his dismissal in February 2013. The total extended health and dental claim is $9,456.54.

[48] The history of the relationship between Mr. [redacted] and Mr. Grehan might explain, but it does not excuse the employer's failure to leave Mr. [redacted] completely in the dark about the discontinuance of his medical coverage under Article 14(a) and the settlement agreement. This was purely a punitive action by the employer followed by dismissal when it became known.

[49] In response to the union's grievance over discontinuance of these benefits which Mr. [redacted] did not learn until December 20, 2012, the employer wrote on February 15, 2013: "... the Employer has concluded Mr. [redacted] has abandoned his employment. Alternatively, his employment has been terminated for absence without leave."

[50] He did not abandon his employment. The submissions on abandonment have not been summarized because the employer acknowledges:

> Based on events subsequent to the termination, we accept the Grievor did not intend to abandon his employment — although it is a reasonable conclusion that he never intends to return to active employment with the Employer. It appears he wants to preserve employment status to maintain benefit coverage. (*Employer Outline of Argument*, ¶ 35)

[51] On the employer's assertion that Mr. [redacted]s absence without leave was just and reasonable cause for dismissal, the employer submits it had no responsibility to warn Mr. [redacted] despite the dismissal was in response to a grievance. It was well understood that Mr. [redacted] did not have to and could not report to work. The settlement from September 2011 was in effect. He could not simply telephone or email and say he was returning to work. There were agreed preconditions and process to his return to work. The employer wanted him to provide psychiatric clearance.

[52] The employer does not identify when he became absent without leave. It could not have been when it discontinued paying his MSP premiums in September 2012 because he continued as an employee with the employer continuing to pay for his extended health coverage. The earliest date could be October 31, 2012 when it discontinued that coverage. However, that discontinuance was a contravention of the settlement agreement that it cooperate with Mr. [redacted] and makes reasonable efforts to facilitate his access to any further benefits to which he may be entitled. Discontinuing benefit coverage is not cooperation or reasonable efforts to facilitate access to benefits.

[53] The core substance of the settlement terms is that Mr. [redacted] would be absent from work but remain an employee with benefit coverage. There was no cause to dismiss him for being absent without leave. Certainly there was none without an inquiry about his medical condition and prognosis for return to work.

[54] The employer now constructs a third cause not asserted at the time of dismissal – innocent absenteeism. Mr. [redacted]s absence from April to September 2011 cannot be a consideration because of the terms of settlement. At that time, it was known and contemplated Mr. [redacted] would have a continuing absence. It was known he had a serious health issue that required medical clearance before his return to work. The employer had an obligation to give Mr. [redacted] some notice that it believed his absence was longer than anticipated and to inquiry about the prospect for his return to work in the foreseeable future. Without a current medical assessment the employer could not know what the prospect was for the foreseeable future. It could not make that assessment in October 2012 or February 2013.

[55] The fact is the employer did not make any assessment. The assertion of just cause for dismissal based on innocent absenteeism is entirely after the fact. The employer discontinued benefits contrary to the settlement agreement and collective agreement. Mr. [redacted] learned this. The union grieved. Then the employer fired Mr. [redacted] There was no just cause. The grievance is allowed.

[56] With the benefit of having heard both Mr. [redacted] and Mr. Grehan; evidence of the events and their interactions since April 2011; and more current medical opinions about Mr. [redacted]s health, it is clear that, even with good intentions and a sincere effort, resurrection of this employment relationship is beyond their capacity. It is

foreseeable that continuance of the relationship will generate more disputes and more litigation and the length of time for Mr. [redacted] to recover will be extended. This is a situation where it is in Mr. [redacted]s best interest that he is not reinstated.

[57] In addition, a realistic assessment is that there is no reasonable likelihood that he will be able to return to work with this or any employer in the foreseeable future. This crystallized in January 2014 with the decision to award him a 100% disability pension under the Canada Pension Plan. With knowledge of that development, the employer would have been justified in concluding Mr. [redacted] would not be returning to work and consider dismissing him for innocent absenteeism. Therefore, I conclude reinstatement is not an appropriate remedy in this situation.

[58] I also conclude compensation for benefit loss should not extend beyond January 2014. I make this decision for two reasons. First, Mr. [redacted] was found to be 100% disabled in January 2014. Second, Mr. [redacted]s failure to fulfill the disclosure conditions on the union's adjournment application reinforces the presumption the employer's continuing liability ceased effective January 13, 2014.

[59] I order the employer to pay Mr. [redacted] compensation for MSP premiums as follows:

2012 MSP premiums:	3 x $64.00 =	$ 192.00
2013 MSP premiums:	12 x $66.50 =	$ 798.00
2014 MSP premiums:	1 x $69.25 =	$ 69.25
	Total	$1,059.50

[60] Without deciding the question of Mr. [redacted]s entitlement to benefits under the new collective agreement effective April 5, 2013, I estimate the extended health benefits for which Mr. [redacted] would have received reimbursement if benefit coverage had continued from to January 2014 to be $3,500.00. This global amount recognizes there might have been, as the employer submits, some reimbursement entitlement for the 2011-12 claim. It also presumes, if benefit coverage had continued and Mr. [redacted] had been given notice of prospective dismissal, Mr. [redacted] would have incurred some of the expenses claimed for 2013 and 2014.

[61] Finally, the employer's treatment of Mr. [redacted] as a disabled employee with whom it had made an agreement and then disregarded that agreement was

discriminatory and, in gentle terms, dishonourable, disrespectful and an affront to his dignity as a human being. It was spiteful and not done for any legitimate business purpose. I award Mr. [redacted] damages in the amount of $4,000.00.

[62] The employer is ordered to pay Mr. [redacted] $8,559.50 in total damages without any statutory deductions or withholding. I retain and reserve jurisdiction over the implementation of this decision.

JUNE 12, 2014, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

James E. Dorsey