

In the matter of an arbitration pursuant to the *Canada Labour Code*

Between:

Purolator Inc.
(the "Employer")

and

Teamsters Local Union 938
(the "Union")

Grievance of Jaskaran Ranu

AWARD

Appearances for the Employer

Gurjit Brar, Counsel
Jerry Shelly, Manager, Ontario Hub Operations
Michelle Heath, Senior Manager, Human Resources
Adrian Balah, Operations Manager
Iain Gair, Human Resources Partner
Anthony Ciccodemarco, Manager, GTT Operations
Pedro Do Vale, Control Room Section Manager

Appearances for the Union

Alex St. John, Counsel
Nora Parker, Counsel
Omkar Maraj, Business Agent, Teamsters Local Union 938
Jaskaran Ranu, Grievor

Arbitrator: Diane L. Gee

Date of Award: July 26, 2023

1. This matter is a grievance filed by the Union on behalf of Jaskaran Ranu arising out of the termination of his employment on May 29, 2019. At the commencement of the hearing, the Union conceded the Employer had just cause to discipline Mr. Ranu because of an incident that occurred on May 17, 2019, however, the Union argues that discharge is an excessive level of discipline and that a warning or suspension is warranted. The Union further argues that Mr. Ranu's rights were violated as no investigation was conducted by the Employer and Mr. Ranu was denied his right to Union representation.
2. The Employer called Pedro Do Vale, the Control Room Section Manager, Adrian Balah, Operations Manager, and Fatima Resendes, Human Resources. The Union called Mr. Ranu.

The Facts

3. The facts are largely not in dispute. Mr. Ranu was employed by Purolator Inc. ("Purolator" or the "Employer") as a shunt truck driver. He had seven and half years of service and a five-day suspension on his disciplinary record at the time of the incident that led to his termination.
4. Mr. Ranu was aware of Purolator's Yard Safety Rules that stipulate he is only to pull a trailer from a dock door if the dock light is green and that a red dock light means that there may be employees working inside the vehicle and means "do not pull." He was aware he was required to follow the "Stop and Check Rule" which means he was required to pull the trailer ahead one foot and then stop and walk to the rear of the vehicle to ensure there are no people or equipment in the vehicle.
5. There is no dispute that, on May 17, 2019, Mr. Ranu was instructed to pull a trailer from door 11. Mr. Ranu testified, when backing his truck to door 11, he became distracted by another truck, overturned his steering wheel, and ended up, on an angle, at the trailer parked at door 12. His truck contacted the trailer at door 12 with sufficient force that the trailer can be seen to shift in the video footage entered into evidence. After considerable questioning about the way he backed his truck, Mr. Ranu agreed that this was not correct procedure and was unsafe. Due to the angle of his truck, Mr. Ranu could not see the dock lights at door 12. He did not straighten out his truck which would have put him in position to see the dock lights. He coupled his truck with the trailer at door 12. Nick Ramkishun, the Yard Coordinator, signalled to Mr. Ranu that he would remove the wheel chock for him. Mr. Ranu connected the lines between truck and trailer. According to a statement written by Mr. Ramkishun, Mr. Ramkishun noticed the light was red when he removed the chock but thought Mr. Ranu knew what he was doing. Mr. Ranu pulled forward without checking the dock lights himself. He did not pull the vehicle ahead one foot and then stop and check to make sure there were no people or equipment in the trailer. Mr. Ranu testified that he pulled forward and did not do the stop and check because the Yard Coordinator waved him out. When he pulled out, and

his vehicle straightened, and he saw that the dock light was red. He stopped about 18 feet away from the door. Mr. Ranu testified he was very shaken and upset because of the incident. He knew it was a serious mistake and that people could have been injured and property damage could have been sustained.

6. When Mr. Ranu's truck contacted the trailer causing it to shift there were several people working inside the trailer. Upon feeling the trailer shift they exited the trailer and got out before the trailer was pulled away from the dock. No one was injured and no damage occurred.
7. Mr. Do Vale was advised of the incident by someone in the Control Room within minutes of it occurring. Mr. Do Vale attended at the dock where the trailer had been pulled to assess the situation. He determined no one had been hurt and there was no damage. Mr. Do Vale testified that there was a history of external carriers pulling on a red light, so a process had been put in place to inform the health and safety group, have them on scene, and get their input. That would have happened in this instance. Mr. Do Vale also testified that pulling on a red light had been happening so frequently with external carriers that the facility implemented a power chock system on some outbound doors.
8. After the incident, Mr. Ranu was spoken to by his immediate manager, Mr. Coote. Mr. Coote reports to Mr. Do Vale. The Employer has a policy that near miss incidents are to be investigated. Mr. Coote was responsible for carrying out the investigation. Mr. Do Vale testified that, while Mr. Coote was meeting with Mr. Ranu, he reviewed video footage of the incident and gathered information. After doing so, he testified he would have ensured that the meeting between Mr. Coote and Mr. Ranu was proceeding. The meeting between Mr. Ranu and Mr. Coote resulted in the creation of a report that was signed by both Mr. Coote and Mr. Ranu that day. The report was later signed by Mr. Do Vale. At the conclusion of his meeting with Mr. Ranu, Mr. Coote directed Mr. Ranu to return to work. Mr. Do Vale could not recall if there was a union steward present at the meeting between Mr. Coote and Mr. Ranu on May 19, 2019, and testified he had no reason to dispute the assertion that there was no steward present. Mr. Do Vale testified it was not normal procedure to have a union steward present at health and safety meetings to discuss a near miss.
9. The incident report, under the heading "Detail Description," reads as follows:

Instructed by Controller to pull from door 11. Didn't think he needed to check with the controller. Saw the light red on 11 and automatically thought of going to 12 as 11 was the wrong door. Coordinator signaled to Jaskaran that he would move the chock. Pulled out of door 12 and when the trailer and tractor was straightening out saw that the light was red and stopped about 18' away from the door

10. Mr. Ranu testified that he does not agree with the first three sentences of the incident report. That is not what happened. When asked why he signed it, he testified that he was very shaken and upset at the time.

11. That same day, after the incident report had been completed, Mr. Do Vale sent the following email:

Iain,

Had a very serious, dangerous occurrence with Jaskaran Ranu here at Ontario Hub.

He hooked up to a door on a red in such a careless way in the upload, and then pulled it out about 18 feet before he realized it.

Thankfully employees exited the trailer the moment they felt someone hooked up.

What's the next step? Apparently a near miss has been documented with him with a similar scenario twice already in the past.

What's on file?

Wasn't he on a caution already?

Thank you.

12. Anthony Ciccodemarco responded to the email as follows:

It's automatically a 1 day suspension if there is nothing else on file.

Not sure what the conditions of his re employment

13. Mr. Do Vale was asked in cross-examination if he agreed with Mr. Ciccodemarco's statement that "it's automatically a 1 day suspension if there is nothing else on file" and he responded that he agreed that, at the time the incident occurred, an employee who pulled a trailer on a red light would be given a one-day suspension, however, if the employee had discipline on their file, that would potentially change things. The collective agreement between the parties has a one-year sunset clause. Mr. Do Vale testified that it was common to look and see if the employee had any similar occurrence on their file over the past year. If there was prior discipline on file, progressive discipline would be imposed.

14. On May 21, 2019, Mr. Do Vale met with Mr. Ranu and advised him he was suspended with pay pending the outcome of an investigation into the incident. Mr. Do Vale testified that Mr. Coote and David Trudell, the union steward, were also at the meeting but then in cross-examination, stated that, given that three years had passed, he could

not recall if Messrs. Coote and Trudell were present or not. Mr. Do Vale initially testified that, when he spoke to Mr. Ranu on May 21, 2019, Mr. Ranu told him that the Yard Coordinator had removed the chock and questioned why the Yard Coordinator didn't say anything about the light being red. In cross-examination Mr. Do Vale indicated that he could not be sure it was at the May 21, 20219 meeting that Mr. Ranu made these remarks, but he did recall them being made and thinking that Mr. Ranu was not taking ownership of his conduct. Mr. Ranu testified that there was no union steward present at the May 21, 2019 meeting.

15. The statement written by the Yard Coordinator on May 22, 2019, reads as follows:

Jas A Shunter in the yard of 62 Vulcan St was supposed to pull door 11, instead pulled door 12 on a red light. He gave me hand coordination cause I always kick the drivers chock to eliminate downtime in the yard. I seen a red light when I went to kick the chock but from my knowledge the way he hooked up to the trailer in the door I assumed he knew what he was doing. Then when he pulled out he too noticed he hooked up to the wrong trailer and wrong door. Then he asked was it always red and I said yes.

16. Mr. Balah testified as to the reasons for terminating Mr. Ranu. He recalled viewing the video and discussing the infractions that occurred with others. He had a discussion with his team as to the level of discipline to impose, their views of Mr. Ranu, and whether this was an isolated incident or more in line with repeated incidents. Mr. Balah testified that his team did not view Mr. Ranu as a safe and conscientious shunt driver. Mr. Balah agreed on cross-examination that Mr. Ranu had no discipline on his record for a safety infraction. Mr. Balah agreed with Union counsel that, when deciding to discharge the grievor, he considered the views of his team that Mr. Ranu's performance was not up to the standards expected.
17. Mr. Balah further testified that Mr. Ranu was terminated for backing up in an aggressive and unsafe manner, hitting the trailer with such force that it moved, going to the wrong door and pulling on a red light, asking for help from the Yard Coordinator instead of moving the chock himself, and not following the stop and check rule. Mr. Balah testified that the Employer also took into consideration that Mr. Ranu put responsibility on the Yard Coordinator and did not take ownership of his conduct. Mr. Do Vale's evidence as to the reasons for termination were consistent with those given by Mr. Balah.
18. In cross-examination, Mr. Balah stated that, if Mr. Do Vale said he usually issues a one-day suspension for hooking up on a red light, he has no reason to dispute his evidence. Two letters imposing a one-day suspension on two different employees for pulling on a red were entered into evidence. These employees will be referred to herein as "IO" and "MB." Mr. Balah agreed it would appear these two employees received a one-day suspension for pulling on a red but stated he was not familiar with the incidents. The letters given to IO and MB are both in relation to incidents that occurred after the

incident in issue herein. Both letters describe the incident for which discipline is being imposed. The letter issued to IO provides:

On February 23, 2020 you pulled your trailer from Dock Door #51 at the Ontario Hub when it was not clear and was still being loaded. You also admitted to not performing the mandatory 1 ft pull....

As a result of this infraction, you are being issued a for not following proper yard safety procedures while performing your tasks.....

The letter issued to MB provides:

On November 3, 2020 at approximately 00:01. You were instructed to move a trailer from door 66 to door 61. When you arrived to door 66 you hooked up the trailer and pulled it out about 8ft before you realized that the light was red. You then stopped and backed into door 66 again.

...

You are being issued a **one (1) day suspension** for failing to follow proper yard safety rules....

19. Mr. Ranu was terminated on May 29, 2023. There is a dispute as to who was at the meeting. I find, based on emails and notes that were written at or very close to the time of the meeting, that Mr. Do Vale, Ms. Resendes, Mr. Trudell and Mr. Ranu were at the meeting. The decision to terminate Mr. Ranu had been made prior to the meeting being held. I find that Mr. Do Vale read the termination letter out loud. There is a dispute as to whether, after the letter was read, Mr. Ranu said “this is correct what is says, I don’t know how I hook/got do door 12.”

The Employer’s Submissions

20. The Employer submits the incident was a serious safety-related infraction. The Employer relies on *Imperial Tobacco Canada Ltd. and BCTGM, Local 364T (Lambert)*, 2001 CarswellOnt 10355 (Lynk) for the following list of guiding principles, set out at paragraph 26, to judge the appropriateness of punishment for safety-related infractions.

1. Safety in the workplace is both a stringent statutory obligation and an important industrial relations concern that involves employers, unions and employees. Given the potential consequences, safety infractions are among the most serious of workplace offences.
2. As the industrial relations party with the preeminent control over the workplace, the employer has a legal obligation to provide a safe and secure workplace for its employees. Hand in hand with this obligation is the employer's authority to insist that workers perform their duties in a safe and efficient manner.

3. Workplace misconduct arising from deliberate, reckless, or negligent behaviour and which results in a potential safety threat or an actual injury is grounds for significant discipline, up to and including dismissal.
4. There does not have to be a physical injury or actual harm to establish the seriousness of the incident.
5. The mitigating circumstances that an arbitrator will consider in a safety discipline case are those accepted disciplinary elements as listed in *Steel Equipment Co. Ltd.* (1964), 14 L.A.C. 356 (Reville) and *Wm. Scott & Co. Ltd.*, [1977] 1 Can. L.R.B.R. 1 (B.C.L.R.B.). In any particular safety-related offence, the most important mitigating factors are those that will address the probabilities of the grievor repeating the same type of offence.
6. Safety rules have to build in the concept of the duty to accommodate. These rules have to ensure that, while they may be stringent and demanding, they also incorporate concepts of equality that eliminate all forms of discrimination.
21. The Part II of the *Canada Labour Code*, section 124, obliges the Employer to ensure that the health and safety at work of every person employed by the Employer is protected. The Employer had safety rules in effect and the Employer is statutorily obliged to take steps to ensure that rules enacted to protect the safety of its employees are followed. A failure to enforce its safety rules would be a violation of its statutory obligations.
22. The Employer submits that the conduct in issue in this case was “deliberate, reckless, or negligent” and, according to the third guiding principle from *Imperial Tobacco Canada Ltd.*, *supra*, warrants significant discipline up to dismissal.
23. The Employer relies on *Apel Extrusions Ltd. and USW, Local 6034 (Schmidt)*, 2020 CarswellAlta 498 (Tettensor) in which, at paragraph 90, the arbitrator writes:
- 90 From *Canadian Red Cross Society v. S.E.I.U., Local 183*, [1999] O.L.A.A. No. 907 (Ont. Arb.), also cited in the *Calgary (City) and CUPE, Local 37 (Irvine)*, *Re case*:
- Negligence is inadvertent misconduct. Negligent conduct is thought to be unintentional or inadvertent. Negligence is contrasted with, and considered to be less blameworthy than advertent or intentional misconduct. "Reckless" behaviour is distinguished from negligence on the basis that it contains an element of advertence or intent. Recklessness is understood to require a conscious effort to be indifferent to the consequences of one's conduct, even if those consequences are not specifically anticipated or predicted.
24. In the Employer’s submission, Mr. Ranu’s conduct was reckless as he was indifferent to the consequences of his conduct making discharge appropriate.
25. The Employer argues there are only two factors that weigh in Mr. Ranu’s favour; his length of service, which is just under eight years, and the fact that it is arguable that this

was an isolated incident. In the Employer's submission those factors are insufficient to overwhelm the factors that support termination.

26. Anticipating that the Union would be relying on the two letters of discipline given to IO and MB to argue that the discipline imposed in this case was differential and discriminatory compared to other employees, the Employer argues that there is no evidence as to the circumstances or context of those matters before me. The Employer relies on the following excerpt from section 7:70 of *Canadian Labour Arbitration*, 5th Edition, Brown and Beatty:

The principle of equal treatment is typically violated where it is shown either that the material facts of an employee's case substantially conform to the circumstances of others who were treated less severely or that the employee's behaviour was less culpable than someone else who received the same or a milder sanction. Where it is found that the penalty imposed on a person was based on materially different circumstances than in other cases, an allegation of discriminatory treatment will fail. In arbitration law, equality requires not only that those cases that are alike be treated the same, but also that those that are different be treated differently, in proportion to their differences.

[footnotes omitted]

27. The Employer argues that the evidence must establish that the material facts of the case being used for comparison purposes are substantially similar to the case at hand and, in the absence of establishing the material facts of both cases are substantially the same, an argument of differential treatment must fail.
28. The Employer relies on *Miscellaneous Employees Teamsters Local 987 of Alberta and Purolator Inc.*, unreported, June 16, 2021, Phyllis Smith, in which the union argued there was uneven discipline for similar offences. Arbitrator Smith found, at page 32, that context, including "details of the circumstances and the individual employee" had not been provided and therefore there was insufficient information to reach any conclusion about whether similarly situated employees had been treated differently. The Employer submits that no context has been provided concerning the discipline imposed on IO and MB or information concerning IO and MB and thus it cannot be concluded that similar employees have been treated dissimilarly.
29. According to the Employer, the evidence of Mr. Do Vale establishes that the employee's disciplinary record is a relevant factor in deciding the level of discipline to impose. In the absence of knowing anything about the disciplinary records of IO and MB it is impossible to say how they compare or contrast to Mr. Ranu.
30. The Employer argues that the conduct in question was serious in nature and Mr. Ranu behaved recklessly and these factors tip the balance in favour of discharge.

31. In the Employer's submission, Mr. Ranu was not a credible witness as he evaded answering questions and initially denied propositions with which he later agreed. Only after lengthy questioning did Mr. Ranu agree that the way in backed the truck to the trailer was wrong and unsafe. The Employer relies on the evidence of Mr. Balah who testified he has never seen a truck back up in that manner before, as well as Mr. Ranu's acknowledgement that the way in which he backed the truck was wrong and unsafe, to say that Mr. Ranu's behaviour was reckless.
32. The Employer further relies on Mr. Ranu's failure to check the dock lights in support of its argument Mr. Ranu behaved recklessly. Mr. Ranu, the Employer argues, acknowledged he knew the rules and yet did not follow them. That, the Employer submits, in the absence of any rational or logical explanation, was reckless.
33. In response to Mr. Ranu's evidence that he was distracted by the truck that was behind him when he was about to back his truck up, the Employer argues that such "distraction" only explains how he arrived at the wrong door. It does not explain his failure to straighten out his truck, check the dock light, or follow the Stop and Check Rule. There was no traffic in the yard after the initial truck that caused Mr. Ranu's distraction drove out of the area. Mr. Ranu gave no explanation for his subsequent failures.
34. Turning to Mr. Ranu's evidence that the Yard Coordinator waved to him, and he understood that to mean it was alright for him to pull the trailer, the Employer argues that such is not credible. Mr. Ranu was an experienced, professional driver. At the time he was shunting hundreds of trailers in any given week. He had received training and he knew the rules. He knew that it was his responsibility to check the dock lights, not the Yard Coordinator's. The Employer submits, based on the wording of the Yard Coordinator's statement entered into evidence, it can be inferred that he gave no instruction or direction to Mr. Ranu to pull out. The Employer argues that it is simply not credible that he relied on the Yard Coordinator waving him forward.
35. Further, relying on *Ottawa (City) v. A.T.U. Local 279*, 2012 CarswellOnt 4618 (Sheehan), the Employer submits, if the Union relies on conduct on the part of the Yard Coordinator to exonerate Mr. Ranu's conduct, it was incumbent on the Union to call the Yard Coordinator as a witness.
36. According to the evidence of Mr. Do Vale, when he met with Mr. Ranu on May 21, 2019, Mr. Ranu said that the Yard Coordinator moved the chock and questioned why the Yard Coordinator didn't say anything about the light being red. Mr. Do Vale testified it is the shunt driver's responsibility to check the lights and the Yard Coordinator is not responsible for directing shunt drivers to move in and out from dock doors. Mr. Do Vale further stated the Yard Coordinator has little or no involvement with shunt driver after they have been assigned to a door. He stated that there would be no reason for the Yard Coordinator to be waving Mr. Ranu out.

37. The Employer further relies on the evidence of Ms. Resendes to the effect that, at the meeting on May 29, 2019, Mr. Ranu agreed the termination letter reflected what had happened and did not make any mention of the Yard Coordinator waving him out.
38. In the Employer's submission, the incident report describes what happened. There is no mention in the initial incident report of Mr. Ranu indicating that the Yard Coordinator waved him out. This report was prepared right after the incident and after speaking to Mr. Ranu. Mr. Ranu signed the report.
39. The Employer submits that the evidence supports a finding that the Yard Coordinator did not wave Mr. Ranu out. Mr. Ranu's evidence to the contrary is self-serving and not reliable. The Employer argues it is an after the fact effort to deflect blame and reduce culpability and on that basis termination ought to be upheld.
40. The Employer further submits that the evidence supports a finding that, on May 29, 2019, a meeting took place at which the termination letter was read to Mr. Ranu, and he responded that the letter was accurate and he did not know how he ended up at the wrong door. Mr. Ranu made no mention of having been waved out by the Yard Coordinator.
41. The Employer relies on Mr. Ranu's disciplinary record and asserts he has a five-day suspension on his record for breach of trust. The Employer states that, when questioned about his earlier discipline, he attempted to shift the blame onto others and deflect his own responsibility. A failure to accept responsibility is a factor consistently considered by arbitrators to be an aggravating factor. The Union paints Mr. Ranu's conduct as an honest mistake but, the Employer submits, it was wilful blindness.
42. The Employer submits Mr. Ranu placed the blame on others and refused to take responsibility. At one point he accused the Employer of not producing all of the video of the incident. His assertion, if returned to work he would follow the rules, is not comforting given that he knew the rules at the time of this very incident and failed to follow them. The Employer argues Mr. Ranu did not express any genuine contrition or acceptance of responsibility.
43. The Employer asserts Mr. Ranu behaved recklessly, and he fabricated a story in an attempt to mitigate his conduct. There is no basis on which to believe that, if returned to work, he would behave in a safe manner. The Employer asks that the grievance be denied.

The Union's Submissions

44. The Union does not dispute that, at the time of termination, Mr. Ranu had a 5-day suspension on his record for breach of trust but argues he had no discipline on his file

relating to a safety related incident. In the Union's submission, the discipline imposed on Mr. Ranu was disproportionate to the misconduct. The Union argues Mr. Ranu ought to have received a warning.

45. The Union begins with an overview of key facts not in dispute. Shunt truck drivers move loaded and empty trailers to and from dock doors. Dock doors are where the parcels are loaded into and out of trailers. Trailers are moved around the yard by shunt truck drivers as directed by the Control Room. There is a non-union employee in the yard known as the Yard Coordinator. Mr. Ranu testified that the Yard Coordinator is like a police officer who directs drivers in yard to ensure smooth traffic and reduce driver down time. On the exterior of the dock there are lights that indicate if a trailer is ready to be pulled or not. Mr. Do Vale testified that, pulling on doors on red lights was a common enough issue that power chocks had been installed on some doors to prevent a pull on a red light.
46. The Union submits that it has now been four years since the incident. Most of the evidence was given more than three years after the incident and that delay has had an impact on the witnesses' memories.
47. The Union argues that what happened was an accident. Mr. Ranu felt rushed by the other truck that had come along and wanted to pass, got distracted, and made a mistake. The Union disputes that Mr. Ranu tried to shift blame. When Mr. Ranu testified about being distracted by the other truck and believing the Yard Coordinator to have signalled him to pull out, he not shifting blame; he was providing context for the mistake that he made.
48. After Mr. Ranu accidentally connected to the wrong trailer, the Yard Coordinator approached him and said he would remove his chock. This was something a driver would normally do but the Yard Coordinator had done this for Mr. Ranu and other drivers in the past so Mr. Ranu agreed. Mr. Ranu testified that, it is when removing the chock, that he would normally check the light. Mr. Ranu connected the lines to the trailer. Because Mr. Ranu connected his truck to the trailer on an angle, and because the Yard Coordinator removed the chock, Mr. Ranu did not see the light was red. The Yard Coordinator saw that the light was red but did not tell Mr. Ranu. Mr. Ranu testified that he then re-entered his truck and the Yard Coordinator waved to him that he could pull out. The Union submits, there is nothing in the evidence or documents that is inconsistent with Mr. Ranu's testimony that the Yard Coordinator waved to him that he could pull out. While the Employer argues that Mr. Ranu never told to Ms. Resendes or Mr. Do Vale that he was waved out by the Yard Coordinator, the Union submits but neither of them has direct evidence that he was or was not waved out.
49. The Union argues that Mr. Ranu testified according to his memory of what happened. His memory provides the context for his actions. Mr. Ranu is not saying he should be

exonerated, he is explaining the context in which event occurred and there is nothing improper about that.

50. When Mr. Ranu pulled his truck forward, and the trailer straightened, he saw the light and stopped. He went to make sure no one was hurt, and he was very upset and concerned about what had happened.

51. Article 10.04 of the collective agreement provides:

10.04 Presence of a Union Steward

Any employee covered by this agreement who is called into the Company's office for any discussions pertaining to disciplinary or administrative measures or during an investigation by the Loss Prevention department which could result in disciplinary measures for the employee shall be informed of his right to be accompanied by a steward of his choice who is readily available. The member must inform the steward that he does not require his presence at the meeting.

52. The Union submits that article 10.04 was not followed and, further, the Employer failed to carry out a proper investigation. Mr. Ranu was never afforded a proper opportunity, in the presence of a union representative, to explain what happened. There is no evidence of any Employer representative informing Mr. Ranu of this right prior to any of his interactions with management. Mr. Ranu had a meeting with Mr. Coote on May 17, 2019, immediately after the incident. Mr. Ranu discussed the incident with Mr. Coote. On May 21, 2019, Mr. Ranu met with Mr. Do Vale who informed him that he was suspended pending the outcome of an investigation. On May 29, 2019, there was a meeting where Mr. Ranu was informed he was terminated. On the first two occasions there is no evidence of a steward being present or Mr. Ranu being informed of his right to be accompanied by a steward. Ms. Resendes testified a union steward was at the May 29, 2019, meeting but, by the time that meeting took place, the decision to terminate Mr. Ranu had been made. No meeting took place where, in the presence of a steward, Mr. Ranu was given the chance to say he knew he did something wrong and should not have done it.

53. In the Union's submission, the right to union representation is a collective agreement right but is also part of the procedural element of the just cause standard that employees have the right to have their version of events heard prior to imposition of discipline. In support, the Union relies on the following excerpt from Section 7.8 "Disciplinary Procedures – Union Representation" from Canadian Labour Arbitration, 5th Edition, Brown and Beatty:

One of the most important ways that collective agreements shape the structure of the disciplinary process is by guaranteeing that employees will be able to call on their unions for help when faced with the threat of discipline. Representing employees during disciplinary meetings, interviews,

etc., has always been seen as a fundamental, substantive right flowing from the union's statutory designation as the exclusive representative of all employees covered by the agreement in all of their dealings over terms and conditions of employment with the employer, including last-chance agreements. The expectation is that, with their experience, union representatives can improve the disciplinary process and make it more balanced by giving employees counsel and advice, and by directing the employer's attention to matters that it might otherwise fail to consider.

[footnotes omitted]

54. The Union also relies on *Code Electric Products Ltd. and I.B.E.W., Local 258*, 2009 CarswellBC 2510 (Laing) wherein, at paragraph 79, Arbitrator Laing found:

However, this failure may be a relevant and important factor, depending on the individual circumstances, in an arbitrator's consideration of the appropriateness of the employer's specific disciplinary penalty. While its presence or absence is not determinative of the correctness of the decision that was made, it may mitigate the way the decision is viewed by an arbitrator. Thus, the employer's failure to conduct a full investigation and to allow the grievor to explain himself may be taken into account when considering the second and, where appropriate, the third question in *William Scott*.

55. The Union further relies on *Joseph Brant Memorial Hospital v. O.N.A.*, 2011 CarswellOnt 9503 (Margo Newman) in support of its submission that the Employer's violation of Article 10.04 should be treated as a mitigating factor with respect to the penalty imposed.
56. The Union argues that the evidence supports a finding that the misconduct in issue usually attracts a one-day suspension. The email adduced into evidence written by Mr. Ciccodemarco, in which he states: "it's automatically a 1 day suspension if there is nothing else on file" was written in response to Mr. Do Vale's email that described the incident. Mr. Do Vale had viewed the video tapes and had full knowledge of the extent of what had occurred and conveyed that information in his email. Thus, after having seen the video, but before looking at Mr. Ranu's disciplinary record, it was the Employer's view that the conduct warranted a one-day suspension. The grievor had a five-day suspension on his file for breach of trust and no discipline on his file in respect of a safety-related matter. Mr. Do Vale testified that the relevance of checking the employee's file was to see if there was discipline for other safety-related matters. In Mr. Ranu's case, there was none. In the Union's submission, Mr. Ranu should have been given a warning and a chance to show that he can comply with the Employer's safety rules. He should not have been terminated.

57. The Union argues that, while the actions of the Yard Coordinator do not exonerate Mr. Ranu, they should be treated as a mitigating factor. Further, Mr. Ranu has accepted that he should not have done what he did and has stated that he will not do it again. The Union submits that there is no need for Mr. Ranu to express his regret in specific words and the manner in which he expressed regret and stated his commitment to follow the rules in the future is sufficient. There were no injuries and no property damage in this case.
58. The Union relies on *Canada Malting Co. Limited and UFCW, Local 1118 (Allen)* 2015 CarswellAlta 1382, (Sims), a case involving a safety-related infraction that was found to be serious but not knowingly reckless, in which the arbitrator found the penalty of discharge not to be appropriate on the basis that there was no reason to believe progressive discipline would not have served its purpose.
59. The Union further relies on *Invista (Canada) Company, Kingston Site and Kingston Independent Nylon Workers Union (Bedard)*, 2019 CanLII 104636 (Silverman) in which the grievor was terminated for a safety violation. The grievor testified that he assumed a dock lock, that was his responsibility to engage, had been engaged by another employee. The other employee had not engaged the dock lock and an accident occurred. No one was injured but there was a potential for injury and other employees were placed at risk. Arbitrator Silverman found the grievor to have been careless and inattentive but rejected the Employer's submission that, by failing to follow the safety rules that he was fully aware of, the grievor had acted deliberately. Arbitrator Silverman considered the nature of the grievor's actions, and the appropriate penalty, as follows:

24. The grievor contravened the safety requirement for the operation of a forklift and placed himself, and others, in danger of a serious accident. He clearly knew the protocols he had to follow. I weigh that incident against factors that favour a mitigation of penalty: the grievor's length of service, his lack of disciplinary record and his genuine understanding and remorse over the incident.

...

30. In summary, the grievor is a long service employee with a clear disciplinary record. Although he engaged in a serious safety incident in this case, his actions were careless and inattentive, but not deliberate and wilful. This incident represented a departure from the way the grievor has worked for this Employer. Further, the grievor acknowledged wrongdoing and was immediately apologetic and remorseful. He did not attempt to minimize the seriousness of his conduct.

The grievor was ordered reinstated.

60. In *Stericycle ULC and Teamsters Local Union 847 (Wylie)*, 2023 CanLII 190 (ON LA) (Albertyn) the grievor was terminated when he failed to follow safety procedures resulting in considerable property damage. Arbitrator Albertyn found the Employer had just cause to terminate the grievor but, for the following reasons, exercised his discretion to substitute reinstatement without backpay:

31. In applying Section 48(17), I consider the Grievor's misconduct (his serious act of negligence); the importance of safety within the Company; the Employer's extensive training of the Grievor; and the Grievor's relatively recent direct instruction to always use a spotter and apply GOAL properly.

32. I also consider the factors that mitigate the penalty, referred to by the Union. The Grievor is a long-serving employee with a clean employment record. He reported the incident immediately. He took responsibility for what he had done right away, and he has been consistently remorseful.

33. I find that the Grievor appreciates the gravity of what occurred and understands that he must use a spotter when he reverses if one is available. He also recognises that his GOAL check around the vehicle must be thoroughly done. He understands that all the many Company driving safety rules must be always adhered to.

34. The *Invista* case most resembles the facts of the present case.

61. In *Sysco Food Services of Ontario and National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada Local 414) (Krisko)* 2002 CanLII 45561 (ON LA) (Gray) the grievor, who was employed as a truck driver, struck the edge of a roof when backing his tractor-trailer. At paragraph 35, Arbitrator Gray found the accident involved an element of negligence or carelessness on the grievor's part as he should have been more cautious when backing up. The grievor acknowledged it was a preventable accident. At page 11 of his award, Arbitrator Gray set out the following quote from *Lowther and Midland-Transport Ltd.*, (1982), 4 LAC (3d) 265 (Stanley):

These cases clearly establish that carelessness is cause for discipline. They also seem to establish just as clearly that a single act of carelessness would not warrant discharge -- though the severity of an accident may "in exceptional circumstances" justify summary dismissal.

62. Arbitrator Gray then states: "I accept that as an accurate statement of the arbitral jurisprudence." Finding the grievor had no record of prior discipline for careless or negligent driving, Arbitrator Gray found discharge to be an excessive response and found the appropriate penalty to be a suspension of five working days.

63. In *Dufferin Concrete and TC, Local 203*, 2013 CarswellOnt 13852 (Marcotte) it was found that the employer's decision to terminate the grievor for a second safety offence within three months of an identical offence for which he had received a 1-day suspension to be

excessive. Arbitrator Marcotte notes that the infractions occurred in low-risk situations, there was no injury to person or property and no evidence of loss of production. The grievor was found to have exercised poor judgment and to have been influenced by his desire to complete the work in the time allotted to him. The grievor was ordered reinstated with the period of time spent off work to be treated as a suspension without pay.

64. The Union further relies on *Union Gas Limited and UNIFOR, Local 999 (Mastrolacasa)* 2017 CarswellOnt 2656 (Gedalof) and *Harris Rebar and Ironworkers Shopmen's, Local 834 (Radford)*, 2021 CarswellOnt 15375 (Kitchen) in support of the proposition arbitrators are satisfied where a grievor, who has violated a safety rule, acknowledges their wrongdoing and commits to adhering to safety rules in the future. The Union also relies on *ADM Milling Co. and UFCW, Local 401 (Wheeler)*, 2017 CarswellAlta 411 (Beattie) for the proposition that a lack of remorse is not an aggravating factor.
65. The Union submits that Mr. Ranu acknowledged the seriousness of what occurred, testified that he realizes he should have checked the dock light himself, he should not have had the Yard Coordinator pull the chock and he should have done the one-foot pull. Mr. Ranu testified that, in the future, he would follow the requirements of the Yard Safety Rules. Mr. Ranu has full insight into what he did wrong and what he needs to do in the future. Mr. Ranu accepted, when questioned in cross-examination, that the way he backed up his trailer was wrong and unsafe.
66. The Union distinguishes *Apel Extrusions Ltd., supra*, as it involved an incident that resulted in \$50,000 in damages and a grievor who did not consider the incident to be a big deal in stark contrast to the present case where there was no damage and the grievor was in shock after the incident. The grievor in *Apel Extrusions Ltd.* was found to be “very careless” and “clearly negligent” whereas Mr. Ranu made a mistake based on his belief the Yard Coordinator was signalling to him that he could pull the trailer.
67. The *Purolator Inc., supra*, decision relied upon by the Employer involved different facts. With respect to Arbitrator Smith’s rejection of the union’s argument that the employer had imposed uneven discipline for similar offences based on her finding that “there is no context provided including details of the circumstances of the individual employee” the Union submits that, in this case, there is evidence given by management employees that the usual disciplinary response is a one-day suspension. If more is needed to reach the finding that uneven discipline was imposed on Mr. Ranu, the disciplinary letters in evidence contain a detailed description of what occurred, and the incidents described in those letters are quite similar to the incident in issue.
68. Turning to the case of *Ottawa (City), supra*, relied upon by the Employer as support for its position that it was incumbent on the Union to call the Yard Coordinator as a witness given the Yard Coordinator’s conduct was being advanced as an exculpatory argument, the Union argues that there is nothing in the documents or the Employer’s evidence that

contradicts Mr. Ranu's evidence on this point. The Union submits that the Yard Coordinator's statement adduced into evidence supports Mr. Ranu's evidence as it says he always kicks the chock acknowledging a common violation of the rule.

69. The Union submits a warning or short suspension should be substituted for the dismissal and Mr. Ranu should be made whole for his losses.

Employer Reply

70. In reply, the Employer advised that, in *Purolator Inc., supra*, the actual disciplinary letters of other employees were put into evidence. Further, the Employer submits that it is not simply the incident that must be similar, according to Arbitrator Smith, it must also be established that the employees involved are similarly situated. In this case, we do not know if the other two employees had discipline on their records. That fact alone, the Employer argues, would prevent a determination as to whether there is differential treatment in this case.
71. The Employer does not agree with the Union's submission that Mr. Ranu did not act in a deliberate manner. The Employer argues that what occurred in this case goes beyond mere carelessness or inattentiveness. Mr. Ranu has much knowledge and experience, and he knew the correct way to do his job and failed to do so. He knew the correct procedures to follow and with no reasonable explanation he failed to do so. The Employer also relies on the statement contained in the incident report that he went to door 11 and saw a red light so, on his own and without checking with the Control Room, he went to door 12. That, the Employer argues is indifference to his responsibilities. The Employer describes Mr. Ranu's conduct as reckless and argues, in the circumstances, there is no reason to believe he will follow the Yard Safety Rules if reinstated.
72. Concerning article 10.04 of the collective agreement, the Employer argues that the only interaction that was of a disciplinary nature was the May 29, 2019, meeting where Mr. Ranu was advised of his termination. The May 17, 2019, meeting, the Employer submits was a health and safety meeting conducted immediately following an incident. Article 10.04 does not apply to this meeting. On May 21, 2019, he was suspended pending investigation and there was no need for a union representative at that meeting. The Employer submits that the grievor was given an opportunity at the May 29, 2019, meeting to give his version of events; he was asked if he had anything he wanted to say regarding the termination letter and he said nothing other than to point to the Yard Coordinator.
73. Finally, the Employer submits Mr. Ranu has not demonstrated that he knows what he did was wrong and has provided no good reason for his conduct. There is no basis upon which to have confidence that he will not do the same thing in the future and for that reason the grievance should be dismissed.

Analysis and Decision

74. The termination letter states the reasons for termination as follows:

On May 17th, 2019, while stunting in the Purolator Inc. yard at 62 Vulcan Street you were in direct violation of Purolator’s Health and Safety procedures. Jaskaran, you were assigned to pull a trailer from door 11 by the control room and instead you pulled a trailer from door 12, where there were Purolator Inc. employees working with manual material handling equipment.

...

Purolator Inc. has concluded our investigation and it has been determined that on this day you pulled from door 12, rather than the assigned door 11. When interviewed regarding this matter, you advised that there was a red light at door 11 and that was why you pulled from door 12; the cctv footage supports the fact that the light at door 11 was green when you hooked up to door 12 and had been green since 20:14 pm. Furthermore, when you pulled from door 12, you pulled at such an angle that you could not tell whether or not the light was red or green on door 12; again supported by the cctv footage. When you hooked up on an angle you shifted the trailer approximately 2 feet and at that time the employees working in the vehicle accident. You then pulled the trailer 18 additional feet, at which time, you could see the red light and you stopped your vehicle.

Your unsafe and careless actions on this day jeopardized the personal safety of your co-workers. Unsafe actions in the workplace are unacceptable and will not be tolerated! The safety of all Purolator employees is our first responsibility.

75. The evidence establishes that Mr. Ranu backed up his truck in an unsafe manner, contacting the trailer, and causing it to shift. He ended up at the wrong door, pulled the trailer on a red light and failed to do a one-foot pull.
76. The evidence given by Mr. Do Vale, as well as the email from Mr. Ciccodemarco, establishes that it is the Employer’s practice to impose a one-day suspension for pulling a trailer on a red light and failing to do a one-foot pull if there are no other safety infractions on the employee’s file. The presence of other safety infractions on an employee’s file may result in a higher level of discipline being imposed.
77. In addition, there are disciplinary letters in evidence given to MB and IO, both of whom were given a one-day suspension for pulling a trailer on a red light or, in the case of IO, when the trailer was not “clear and still being loaded” and in both cases not performing the one-foot pull. Thus, months after the incident in issue in this case, two shunt drivers were given a one-day suspension for pulling a trailer on a red light and not

performing the one-foot pull. These letters corroborate Mr. Do Vale's evidence that it was the Employer's practice to impose a one-day suspension on a shunt driver who pulls a trailer on a red light and fails to do the one-foot pull. The evidence of Mr. Do Vale and the email by Mr. Ciccodemarco establish that a one-day suspension is imposed for a first offence, with subsequent offences potentially attracting higher discipline. Thus, it can be inferred that both IO and MB had no prior infractions of the Yard Safety Rules on their records. If they did have prior infractions of the Yard Safety Rules on their records, the letters would be even more compelling evidence of differential treatment as it would mean the Employer imposed a one-day suspension even where the shunt driver had safety infractions on their record. Thus, the lack of evidence as to the disciplinary records of IO and MB does not mean the letters do not support a finding that the Employer has disciplined shunt drivers who pull on a light red and fail to do the one-foot check with a one-day suspension.

78. The evidence further establishes that Mr. Balah took into consideration views expressed by his team that Mr. Ranu was not a safe driver. As such, Mr. Balah improperly considered events in respect of which discipline imposed on Mr. Ranu had, by virtue of the sunset clause in the collective agreement, been removed from Mr. Ranu's file and/or events for which Mr. Ranu had not been disciplined.
79. The Employer argues that Mr. Ranu's behaviour was reckless because he knew the rules and did not follow them, however, it must be the case that any shunt driver who pulls on a red light knew the rules and didn't follow them. Knowing the rules and not following them can't be a differentiating factor.
80. The Employer argues the explanation given by Mr. Ranu during the hearing differs from that given by him on May 17, 2019, during his meeting with Mr. Coote and is recorded in the incident report and the termination letter. The Employer argues the explanation given by Mr. Ranu at the hearing was an after the fact fabrication and self-serving.
81. There are two main differences between the explanation set out in the incident report and termination letter and the explanation given at the hearing. In the incident report and the termination letter, it is stated that Mr. Ranu was assigned to pull from door 11, he saw there was a red light on door 11, thought door 11 was the wrong door, and went to door 12. At the hearing, Mr. Ranu testified he was backing into door 11, got distracted by another truck, overturned his steering wheel and, without his realizing it, ended up at door 12. I find the explanation given Mr. Ranu at the hearing to be far more consistent with the video footage than the version set out in the incident report and the termination letter. It is also consistent with the statement the Employer's witnesses indicate Mr. Ranu made at the termination meeting to the effect "I don't know how I got to door 12." I find this part of the explanation given by Mr. Ranu at the hearing to be probable.

82. The second difference, the Employer argues, is that, at no time prior to the hearing did Mr. Ranu say that he pulled out without checking the light and without doing the stop and check because he was waved out by the Yard Coordinator. The Employer argues that Mr. Ranu's evidence on this point is not credible, and he is attempting to transfer blame to the Yard Coordinator.
83. I do not find the fact that Mr. Ranu had not, prior to the hearing, informed the Employer that the Yard Coordinator waved to him that he could pull out, a reason to find his evidence not credible. As argued by the Union, the only time Mr. Ranu was asked to tell the Employer what happened was immediately after the incident occurred at a very short meeting with Mr. Coote at which time Mr. Ranu was stressed and anxious.
84. Mr. Ranu stated several times during his evidence that the Yard Coordinator is like the yard police, and he must do what a Yard Coordinator directs him to do. Mr. Ranu also stated that, if reinstated, he will not allow the Yard Coordinator to do tasks that are his responsibility; he will follow the Yard Safety Rules and carry out each step as written and not allow the Yard Coordinator to do any step in his place. There can no longer be any confusion in Mr. Ranu's mind as to his responsibility, regardless of the actions of a Yard Coordinator, to abide by the letter of the Yard Safety Rules. I am not persuaded that Mr. Ranu cannot be trusted to abide by the Yard Safety Rules if returned to work.
85. The Employer argues that factors such as Mr. Ranu not taking ownership for his actions and not being truthful during the investigation and/or arbitration support upholding termination. Mr. Ranu was terminated for the reasons set out in the termination letter and I have found the penalty of discharge to be excessive. I do not consider it appropriate, in circumstances where an employee is improperly dismissed, to uphold dismissal based on their conduct during an investigation or the arbitration unless the level of behaviour engaged in completely undermines the employment relationship. Mr. Ranu's behaviour does not rise to that level.
86. The Employer's practice is to impose a one-day suspension for pulling on a red light and failing to do a one-foot check subject to a review of the employee's file for safety related offences. The misconduct in this case is broader than pulling on a red light and not doing the one-foot check. Mr. Ranu also backed his truck in an unsafe manner, contacting the trailer and causing it to shift. This additional misconduct means the level of appropriate discipline exceeds what would be imposed for only pulling on a red light and failing to do the one-foot check. I find a five-day suspension to be appropriate.
87. The Union argued the Employer failed to hold an investigation meeting and violated article 10.04 of the collective agreement and that such are mitigating factors. The Employer explained that the first meeting between Mr. Ranu and Mr. Coote was considered a health and safety investigation and the practice was not to have a union steward present at such meetings. The May 21, 2019, meeting was quite short with the sole purpose of informing Mr. Ranu he was suspended pending the outcome of an

investigation. On the face of the language of article 10.04, Mr. Ranu should have been informed of his right to have a union steward present. He was not. I have found that there was a union steward present at the termination meeting. Thus, there was a violation of article 10.04 in connection with the May 21, 2019, meeting. I do not consider it appropriate to reduce the suspension as a result.

88. Having regard to the foregoing, I order a five-day suspension to be substituted for the termination and for Mr. Ranu to be compensated for lost wages and no loss of seniority or benefits. I declare the Employer to have violated article 10.04 in connection with the May 21, 2019, meeting.

89. I remain seized of any dispute arising from the application, interpretation, or implementation of this award.



Diane L. Gee