

**IN THE MATTER OF THE ONTARIO LABOUR RELATIONS ACT, 1995
AND IN THE MATTER OF AN ARBITRATION**

B E T W E E N :

DOMTAR INC.

(“the employer”)

- and -

UNIFOR and its ESPANOLA LOCAL 74

(“the union”)

AND IN THE MATTER OF the grievances of Joshua Westwell, dated February 10 and March 11, 2019.

BEFORE: John McNamee, Sole Arbitrator

APPEARANCES: For the employer:

Joseph Cohen-Lyons (Counsel, Norton Rose Fulbright LLP)
Teresa Miller (Human Resources Manager)

For the union:

Maeve Biggar (Counsel, Caley Wray LLP)
Jerry Logan (National Representative)
Joshua Westwell (Grievor)
Joanne Lamothe (Local President)
Dalton Makahonuk (Shift Vice President)
Christopher Presley (Day Vice President)

Hearings in this matter took place via Zoom, on April 15 and 20, 2021.

A W A R D

These grievances both relate to the employer's actions in suspending the grievor from work. The suspension, which was initially with pay, commenced on February 10, 2021, and, was converted into an unpaid suspension on March 12, 2021. The union asserts that the two suspensions were unjust and contrary to the collective agreement, and claims that the grievor should be reinstated with full redress in respect of the unpaid suspension, and should receive damages for breach of privacy as a result of the employer's actions in engaging a private detective agency to investigate him.

Both parties agreed that I have jurisdiction to hear and determine the issues involved.

The employer called *viva voce* evidence from Teresa Miller, its Human Resources Manager. Ms. Miller was the employer's point person with respect to the events leading up to the suspension. The union called *viva voce* evidence from the grievor. The parties also agreed to the introduction of a number of documents which, although technically hearsay, fleshed out the background of the events.

THE EVIDENCE

There were no substantial differences between the parties as to the evidence. I do, however, note that the grievor is facing criminal charges in respect of the matters which led up to the suspension, and those charges have yet to be determined by the courts. In light of the unresolved charges, both counsel acted responsibly to ensure that the relevant circumstances were placed before me, without prejudicing the grievor's right to a full and fair defense of the charges against him. The grievor's testimony was given after counsel for the union claimed, on his behalf, the protection of the *Canada Evidence Act* and the *Ontario Evidence Act*.

The evidence before me can be summarized as follows:

- a) at all relevant times, the grievor was classified as a Hog Fuel Operator in the employer's wood yard (which is attached to the Domtar pulp and paper plant in Espanola, Ontario). His job was as a bulldozer operator, at a rate of \$32.93 per hour;
- b) the grievor is 41 years old, with a seniority date of February, 2014. He has a nine year old son, who lives with him part-time and with respect to whom he shares joint custody with the boy's mother, to whom he pays child support;
- c) the employer facility involved is located in Espanola, Ontario, a community of approximately 5,000 inhabitants. The employer is the largest employer in town, with approximately 500 employees, of whom 350 to 400 are represented by the union;
- d) the circumstances giving rise to the grievor's suspension occurred on January 20, 2021, when officers from the Ontario Provincial Police executed a search warrant at the grievor's home. The union stipulated, for purposes of this proceeding, that the police seized approximately 27 firearms and firearm related materials, including a sub-machine gun, three semi-automatic rifles, two shotguns, a stun gun, a rifle, and three pistols, together with ammunition for a number of these firearms, and some firearm accessories including four suppressors (two of which were "fake"). The grievor was charged that he did:
 - 1) without lawful authority import into Canada a prohibited device, to wit a device or contrivance designed or intended to muffle or stop the sound or report of a firearm, contrary to section 104 (1)(a) of the Criminal Code
 - 2) have in his possession a prohibited device, to wit a device or contrivance designed or intended to muffle or stop the sound or report of a firearm, without being the holder of a licence under which he may possess it contrary to section 91(2) of the Criminal Code
 - 3) have in his possession a prohibited weapon, to wit a conducted energy weapon without being the holder of a licence under which he may possess it contrary to section 91(2) of the Criminal Code

4) have in his possession a prohibited device, to wit a device or contrivance designed or intended to muffle or stop the sound or report of the firearm, without being the holder of a license under which he may possess it contrary to section 91(2) of the Criminal Code

5) did store a restricted firearm with ammunition readily available thereby contravening regulation e.g. s. 5(1)(a) of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations contrary to Section 86(2) of the Criminal Code

6) did possess a prohibited firearm, to wit a .22 Caliber P. Beretta Short Handgun with barrel length less than 105 mm without being the holder of a licence under which he may possess it contrary to section 91(1) of the Criminal Code.

e) Following his arrest, the grievor was released on a Promise to Appear. The initial hearing was scheduled for March 1, 2021.

f) The employer heard about the arrest and the outline of the charges on or about February 5, 2021, from news stories published in three different outlets of the local media. None of the stories mentioned Domtar as the grievor's employer, and only one of the stories identified the grievor by name.

g) Ms. Miller spoke to the grievor by telephone on or about February 10, and questioned him as to the charges. She confirmed with him that the weapons and other materials had been seized from his house, and that he had been charged, with a court date set for March 1. The grievor also told her that he was innocent and that he believed that the charges would be withdrawn on March 1. Ms. Miller also testified that she was shocked by the circumstances, and that she was afraid for her safety and for the safety of other employees; and that, with the concurrence of her colleagues and superiors at head office, she placed the grievor on a paid suspension effective February 10;

h) Ms. Miller also engaged the services of a private detective agency to investigate the grievor and, in particular, to attend at the court on March 1 in order to observe and report on the proceedings. The agency subsequently reported to her:

1) the grievor had no criminal record, but that the charges as described were pending;

2) that the grievor had not been active on social media since September, 2019. The agency did not comment upon his social media activities prior to September, 2019, which presumably means that they were innocuous;

3) that one its employees had attended at court on March 1, and had observed and videotaped the grievor's activities between the hours of approximately 7:00 a.m. on that day until approximately 4:00 p.m. As it turned out, due to Covid-19 restrictions, the hearing took place virtually and (as the grievor later testified) his attendance was not required; and

4) that the charges had not been withdrawn, and that new court dates had been established for March 12 and April 12.

i) As a result of the events of March 1, 2021, Ms. Miller emailed the grievor on March 3. She reproached him for telling her that he expected that the charges would be dropped on March 1, and indicated to him that the charges and the firearms seized from his home had given the employer serious concerns for the safety of management and other employees at the employer's facility. She also said that his continued employment was under review, including the possibility of a discharge for just cause. In the result, she extended the paid suspension until March 5, and told him that the employer expected that he would provide it with copies of the documents giving rise to the charges against him, and that he would instruct his defence counsel to speak to Domtar's legal counsel about the charges.

j) The grievor replied to Ms. Miller's email, also on March 3, and told her that he had expected that his lawyer would receive disclosure from the Crown on March and that his lawyer had told him that the matter could take years to sort out. He also said that he had never been accused of threatening physical harm to anyone, and that there was no reason for concern on the part of the employer.

k) After a further email from Ms. Miller dated March 4, reiterating the employer's demands and advertng to the possibility of disciplinary action up to and including discharge, the grievor replied the same day, advising of the name of his criminal counsel and further advising that his counsel would be in contact with the employer. He said that he would instruct his counsel to cooperate with the employer.

l) The grievor's criminal counsel was in contact with Ms. Miller on March 5, and the lawyer subsequently did correspond with Ms. Miller and Domtar's legal counsel via email. He provided the employer with the charging documents, but advised that he had not yet received disclosure from the Crown, and that no plea had been entered. In the result, he said that he was not in a position to determine what other documents were relevant to the grievor's defence. He also said that, even when he received disclosure, he would be prohibited, by reason of an undertaking to the Crown, from sharing the information contained in the disclosure with any other person.

m) On March 11, Ms. Miller advised, via email, that the grievor's paid suspension was to be converted to an indefinite unpaid suspension effective the following day. She also conducted a search of the grievor's locker, but found no weapons or other items of concern.

n) In cross-examination, Ms. Miller agreed that the grievor had been cooperative with her in providing information and access to his counsel. She also said that the employer had no issue with employees who owned legal weapons, but that the employer had a strict rule against employees bringing weapons to work. She said that, if the grievor was re-instated, the employer did not possess the existing resources to ensure that he did not enter the facility with a weapon.

o) The grievor testified that he was suffering financial hardship in that he was required to pay his lawyer (whom he described as very expensive) and make \$400/month child support payments for his son, as well as paying \$800/month rent. He said that he had used up his savings and had no other income except Unemployment Insurance of approximately \$500/week,

which would soon terminate. He had not applied for Legal Aid, and did not believe that he was entitled to it, and had not tried to negotiate an amendment to his child support obligation.

p) The grievor also said that he was not a risk to the workplace, and that he currently possessed no firearms, since all the ones that he owned had been confiscated by the police.

q) There is no disciplinary sunset clause in the collective agreement, and the grievor has one item of discipline on his record. This item, dated June 14, 2017, was an ungrieved one day suspension for making a remark to a cafeteria employee to the effect that a firearm was “a breach weapon”. This remark apparently upset the other employee, who was unable to work for the remainder of the day and who, presumptively, took the comment as a threat. In addition to the suspension, the grievor was required to undergo training regarding Respect in the Workplace, Workplace Violence and Harassment and the *Human Rights Code*.

POSITIONS OF THE PARTIES

The employer emphasized the number and type of firearms which the grievor had possessed and, in particular, referred to the four unlicensed items which were the subject of the most of the charges against him. It pointed out that an energy weapon (presumptively a taser), a short barreled pistol (which could be easily concealed) and two silencers (which were intended to suppress the sound of a firearm), could be used surreptitiously against others while attracting little attention, and were of little or no use for sport hunting or target shooting. These items, it submitted, were intended for use only against people, and were intended to hide or disguise the use of firearms.

It argued that the employer had properly balanced the risk to its employees, and to its reputation, against the grievor's interest in continuing to work, and that the potential consequences of permitting the grievor to return to work far outweighed the economic straits in which the grievor found himself. It conceded that the grievor had not been convicted of any wrongdoing, but said that the allegations against him were serious enough that it could not take the risk of reinstating him in light of the carnage that could result if it provided him with the benefit of doubt only to

guess wrongly and to endure fatal consequences to its employees, as well as severe damage to its reputation, especially in a small community such as Espanola.

It further said that it had given the grievor every opportunity to provide an explanation for the events, and that it had taken the threat of potential discharge to persuade him to waive solicitor-client privilege. Further, it said, the uncontradicted evidence of Ms. Miller was that there was no reasonable way to mitigate the risks involved.

It reminded me that the grievor already had an item of discipline on his employment record for making a remark in respect of firearms which at least one employee had taken as a threat, and who had been so alarmed thereby that she was unable to finish her shift, and argued that the grievor's return to work could easily frighten other employees (even if it had no other, more serious consequences), and it pointed to the evidence of Ms. Miller to the effect that she had been scared when she heard of the size of the grievor's collection of weapons and the charges against him. Any reasonable employee, the employer said, would have every reason to be fearful in these circumstances.

By way of authorities, the employer relied upon: Re Phillips Cables Ltd. v. U.S.W.A., Local 7276, 1974 CarswellOnt 1384 (G.W. Adams) (also cited as [1974] O.L.A.A. No. 13 and 5 L.A.C. (2d) 274); Re Ontario Jockey Club v. Mutual Employees' Assn., S.E.I.U., Local 528, 1977 CarswellOnt 76 (Kennedy) (also cited as [1977] O.L.A.A. No. 4 and 17 L.A.C. (2d) 176); Re Exhibition Place (Board of Governors) and L.I.U.N.A., Loc. 506, 1990 CarswellOnt 4206 (Schiff) (also cited as 16 C.L.A.S. 47 and 9 L.A.C. (4th) 124); Re Canadian National Railway and Unifor (Zunti), 2019 CarswellNat 349 (Clarke) (also cited as 139 C.L.A.S. 12 and 299 L.A.C. (4th) 348); Re Canadian Pacific Ltd. and United Transportation Union, 1987 CarswellNat 1646 (M.G. Picher) (also cited as [1987] C.L.A.D. No. 61, 31 L.A.C. (3d) 179 and 7 C.L.A.S. 100); Re Canadian Union of Public Employees and Canadian Staff Union, 2006 CarswellBC 1936 (Sullivan) (also cited as [2006] B.C.W.L.D. 5419, [2006] B.C.W.L.D. 5422, [2006] B.C.C.A.A.A. No. 45, 148 L.A.C. (4th) 269 and 85 C.L.A.S. 25); Re Toronto District School Board v. C.U.P.E., Local 4400, 2007 CarswellOnt 7164 (Albertyn) (also cited as 166 L.A.C. (4th) 254 and 91 C.L.A.S. 219); Re British Columbia (Government Personnel Services Division)

and B.C.G.E.U. (Daniels), 1990 CarswellBC 2025 (Ladner) (also cited as 22 L.A.C. (4th) 20 and 23 C.L.A.S. 62); and Re Chilliwack General Hospital and Hospital Employees Union, 36 C.L.A.S. 404 (Kelleher) (also cited as 1993 CarswellBC 3124, [1993] B.C.C.A.A.A. No. 401 and 42 L.A.C. (4th) 442).

The union submitted that the charges against the grievor were, at this stage, merely unproven allegations, and that the general principle was that the grievor was entitled to the presumption of innocence unless and until he was proven guilty. The employer, it said, had treated him as though he had already been convicted of the charges against him, and that the indefinite suspension which might last for a considerable length of time was tantamount to a discharge.

It reminded me that Ms. Miller had testified the grievor had been cooperative with her, and submitted that the employer's demands for information had been unreasonable in that they could compromise the grievor's defence to the criminal charges. It pointed out that the grievor had, nonetheless, waived solicitor-client privilege, by putting the employer in touch with his criminal counsel, and instructing counsel to respond to the employer's demands for information.

The authorities cited by the employer were, the union said, quite old, and there was no evidence to establish that there was risk to other employees or to the employer's reputation. Any concern, the union submitted, was pure conjecture. Further, the grievor had not uttered any threats against anyone, and the only notice of discipline on his record was almost four years old. In addition, the testimony of Ms. Miller was to the effect that the employer had no concern with employees who owned legally registered weapons, despite the fact that such weapons could produce the same catastrophic effect as unregistered firearms. In short, the union said, that there was no evidence that the grievor's return to work posed a significant, credible and immediate risk, especially in light of his clean criminal record and innocent use of social media.

The union also reminded me that, in balancing the interests of an employee, who had not been convicted of anything, against the possibility of a safety concern, I should seriously take into account the severe economic impact upon the grievor, including the possibility that his defence would likely suffer if he was unable to pay his criminal counsel. With respect to the employer's

reputational concern, the union submitted that the grievor did not deal with customers or the general public in his job, and that it was unreasonable to think that anyone might believe, even in the worst case scenario, that the actions of the grievor reflected the employer's beliefs or values. Accordingly, the union said that the balancing of interests clearly favoured the grievor's immediate return to work, and that the issue in this case clearly involved the grievor's off duty conduct which had no nexus to the employer or its business.

By way of authorities, the union relied upon: Dorr-Oliver-Long Ltd. v. U.S.W.A., Local 4697, 1973 CarswellOnt 1482 (O'Shea) (also cited as [1973] O.L.A.A. No. 70 and 3 L.A.C. (2d) 193); Re Kenora Association for Community Living and Ontario Public Service Employees Union on Behalf of Its Local 702, 2005 CarswellOnt 7879 (Springate) (also cited as 141 L.A.C. (4th) 160 and 81 C.L.A.S. 354); Re Ontario Nurses' Association and Cambridge Memorial Hospital, 2012 CarswellOnt 15046 (Jesin) (also cited as 113 C.L.A.S. 10 and 227 L.A.C. (4th) 213); Re Toronto District School Board and CUPE Local 4400, 2013 CarswellOnt 8216 (Gray) (also cited as [2013] O.L.A.A. No. 215, 115 C.L.A.S. 131 and 232 L.A.C. (4th) 13); and Re St. James-Assiniboia School Division and St. James-Assiniboia Teachers' Assn. (MTS), 2014 CarswellMan 331 (Peltz) (also cited as [2014] M.G.A.D. No. 15, 119 C.L.A.S. 260 and 244 L.A.C. (4th) 361).

The union also submitted that the employer had unnecessarily invaded the grievor's privacy by employing the private detective agency to obtain information about him, and to shadow his movements on March 1. It said that the grievor had been open and honest with the employer, and that it was unreasonable for the employer to utilize covert surveillance when it already knew the nature of the charges, and in light of the grievor's waiver of solicitor client privilege. In the result, it said that the grievor should be awarded damages for the intrusion into the grievor's private life and off duty conduct.

In support of its claim of invasion of privacy, the union cited Re L.I.U.N.A., Local 625 v. Prestressed Systems Inc., 2005 CarswellOnt 3493 (Lynk) (also cited as [2005] O.L.A.A. No. 125, 137 L.A.C. (4th) 193 and 80 C.L.A.S. 376); and Re City Of Port Coquitlam and Canadian

Union Of Public Employees, Local 498, 146 C.L.A.S. 87 (Saunders) (also cited as 2020 CarswellBC 2423).

DECISION

I cannot blame the employer for being alarmed when it saw the media articles as to the size of the grievor's cache of weapons, and learned of the charges against the grievor for importing and possessing still more unlicensed firearm related items. It is true, of course, that the charges, at least at this stage, are unproven allegations, and, as the union pointed out, the general principle is that the grievor is entitled to the presumption of innocence until proven guilty. However, as Arbitrator Adams indicated in Re Phillips Cables Ltd. (supra):

In the first place, the board accepts the general principle that in some circumstances a company can suspend an employee charged with a criminal offence pending its outcome in the criminal Courts. The presumption of innocence has its purpose and relevance grounded in the substantive area of criminal law. It is not a doctrine that can be unqualifiedly transported to the context of labour relations. Many situations can be envisaged where a work-related criminal charge against an employee will substantially undermine his effectiveness in the work environment. And in these same circumstances it may not be fair to impose any financial obligation upon an employer whether the employee eventually either escapes the charges or does not.

The authorities cited by both parties are to the same effect. In circumstances such as these, an arbitrator must weigh the competing interests of the employer in maintain a safe and reputable workplace against the employee's "compelling interest in earning a living" (Re Phillips Cables Ltd. (supra).

In order to assist in balancing these interests, Arbitrator Kennedy, in Re Ontario Jockey Club (supra), proposed five general principles which should be considered. These principles, which have been approved by other arbitrators on many occasions, are:

1. The issue in a grievance of this nature is not whether the grievor is guilty or innocent, but rather whether the presence of the grievor as an employee of the Company can be considered to present a reasonably serious and immediate risk to the legitimate concerns of the employer.

2. The onus is on the Company to satisfy the Board of the existence of such a risk and the simple fact that a criminal charge has been laid is not sufficient to comply with that onus. The Company must also establish that the nature of the charge is such as to be potentially harmful or detrimental or adverse in effect to the Company's reputation or product or that it will render the employee unable properly to perform his duties or that it will have a harmful effect on other employees of the Company or its customers or will harm the general reputation of the Company.

3. The Company must show that it did, in fact, investigate the criminal charge to the best of its abilities in a genuine attempt to assess the risk of continued employment. The burden, in this area, on the Company is significantly less in the case where the Police have investigated the matter and have acquired the evidence to lay the charge than in the situation where the Company has initiated proceedings.

4. There is a further onus on the Company to show that it has taken reasonable steps to ascertain whether the risk of continued employment might be mitigated through such techniques as closer supervision or transfer to another position.

5. There is a continued onus on the part of the Company during the period of suspension to consider objectively the possibility of re-instatement within a reasonable period of time following suspension in light of new facets or circumstances which may come to the attention of the Company during the course of the suspension. These matters, again, must be evaluated in the light of the existence of a reasonable risk to the legitimate interests of the Company.

In attempting to apply these principles to the instant situation, I have come to the conclusion that the balance of the competing interests favours the grievor, and that the employer has failed to meet the onus imposed upon it in paragraphs 1 and 2 above. The main reason for this conclusion is that I cannot see that the grievor posed a greater threat to the safety of the employees at the workplace because four of his approximately 15 firearms and firearm related accessories were unlicensed as opposed to licensed. (I exclude a number of items seized by the OPP on the basis that they were documents and other materials which no offensive capability).

In so saying, I acknowledge that the four unlicensed items with which the grievor is charged are only useful against human beings, and that the grievor possessed the means to create utter mayhem, including the deaths of many, at the employer's facility. The safety risk to which the employer adverted, does exist. However, the mere fact that the grievor possessed the means to take the lives of his fellow employees is not by itself sufficient to overcome the onus on the

employer. Many employees in this society own firearms (in some cases multiple firearms) and have the ability and resources to take the lives of others, including those of their fellow employees. An employer cannot rely solely upon the fact that an employee possesses lethal weapons as grounds for a suspension on the theory that such weapons could be used at work.

Does the fact that some of the weapons may be unlicensed and the subject of criminal charges enhance the risk to the safety of the grievor's fellow employees? In these circumstances, I do not think so. Even without the items which form the subject of the charges, the grievor possessed more than enough licensed firepower to turn the workplace into a killing ground, and the evidence of Ms. Miller was that the employer did not possess the means or resources to ensure that the grievor did not enter the premises with a weapon. If that is true even when the employer's suspicions have been aroused by the charges and the news of the other weapons he possessed, it must have been at least equally true before his arrest on January 20.

In my view, the fact that the grievor has been charged with the possession of four unlicensed firearms or firearm accessories is not as pressing an issue as the size and type of the licensed weapons which he legally possessed and which he could have, if he had so chosen, turned upon other employees. The unlicensed items could no doubt have added to any mayhem which the grievor might have wanted to create at work, but they were by no means necessary to his ability to do so if he had wished to "go postal". In fact, if the grievor had wished to murder any of his fellow employees while at work, I doubt that the lack of active employee status would have proved to be a significant barrier to his ability to do so.

Further, there is nothing in the evidence which indicates that the grievor harboured any malicious intent toward his fellow employees. On the contrary,

- a) he had no criminal record;
- b) he had not participated in social media for more than a year, and there was no indication that his participation before September, 2019, was anything but innocuous;

- c) there was no evidence that he had difficulties at work, either with any other person, or as the result of his job performance; and
- d) his only previous discipline dated back to June, 2017, and, although it related to a comment about a firearm or firearms, the fact that it was a suspension for only one day likely indicates that the employer did not believe that it was a threat of physical harm against any person. The notice of discipline does not describe the grievor's comment as a threat, despite the fact that it alarmed another employee.

I also note that on January 20, the police confiscated all of his firearms and firearm accessories and that they released him on his own recognizance with only a promise to appear in court on March 1. The charges relate only to offences which are in essence regulatory in nature, even though they are serious and fall under the Criminal Code, and the actions of the OPP do not indicate a belief on their part that they had any information that the grievor was planning to use any of the weapons to cause physical harm to any person.

At any event, the grievor, based on the evidence, is not now in possession of any firearms.

The employer also indicated that it was concerned for its reputation. Despite the fact that the media articles did not mention the employer, and only one of them identified the grievor, I do not doubt that, in a community of 5,000 inhabitants, there will be many people who will come to hear of the charges against the grievor and be aware where he is employed. I doubt that this knowledge will damage the employer's business to any discernable degree, but it may have some impact upon the employer's ability to recruit new employees if and when it needs to do so. In my view, however, it is unlikely that anyone will associate the charges with the employer's ethics and values, and even with respect to current or future employees, I would be surprised if most of them did not at least know people who owned firearms (whether registered or not).

In the result, I find that the employer has not discharged the onus upon it of establishing that the charges against the grievor give rise to the belief that he "present(s) a reasonably serious and immediate risk to the legitimate concerns of the employer

As to the union's claim for damages for breach of privacy, I have no difficulty with the employer's actions in retaining a private detective agency for the purposes of doing a criminal records check on the grievor or accessing his social media accounts. Nor do I fault the employer for causing the agency to attend at court on March 1 in order to learn the result of the hearing on that day. Court hearings, at least in non Covid times, are open to the public and the grievor could have had no expectation of privacy at the hearing, even if it had taken place in person as opposed to virtually.

However, I do not see any legitimate purpose in having the agency follow the grievor's movements, and videotape some of them, for the remainder of March 1. He did have an expectation of privacy with respect to his movements before he arrived at, and after he left, the courthouse and for the balance of that day, and there is no evidence that would suggest that he planned any activity which related even remotely to the interests of the employer on that day. In the result, I find that the employer unreasonably intruded upon the grievor's privacy by causing him to be surveilled on March 1 from approximately 7:00 a.m. to 4:00 p.m. except with respect to the time spent at the courthouse itself (which was quite minimal).

ORDER

For all of the above reasons, I direct the employer to reinstate the grievor in employment as soon as possible with no loss of seniority and full compensation for his losses. I remit to the parties the calculation of the grievor's losses, while retaining jurisdiction in the event of a dispute. I also award the grievor the sum of \$250.00 as damages for breach of privacy.

This reinstatement, however, is conditional. If at any time following his reinstatement and until the charges against him are resolved, the grievor:

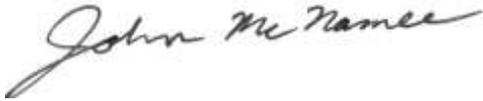
- a) utters a threat of physical violence against any person, whether directly or via any electronic or other means, whether intended seriously or as a joke, and whether or not the grievor is at work at the time of the threat; or

- b) brings a firearm to work (including one left in his car while the vehicle is parked in the vicinity of the employer premises while he is at work),

the employer shall be entitled to re-implement the suspension until such time as the charges are resolved.

I remain seized as to the implementation and interpretation of this award.

DATED at Toronto, this 12th day of May, 2021.



John McNamee, Sole Arbitrator