

IN THE MATTER OF AN ARBITRATION

BETWEEN: TORONTO TRANSIT COMMISSION

AND: AMALGAMATED TRANSIT UNION

AND IN THE MATTER OF THE GRIEVANCE WITH RESPECT TO VITO STINA

SOLE ARBITRATOR: O.B. SHIME, Q.C.

APPEARANCES:

GLENN P. CHRISTIE COUNSEL, and others
B. RAY-CHOUDHURY for the Commission

IAN J. FELLOWS COUNSEL, and others
for the Union

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Hearings were held in this matter at Toronto
on November 30, 2001, June 19, August 14, 15, October 28 and November 12, 2002
January 7, 10, April 7, November 10, 11,12,13 and December 2 and 5, 2003
April 29, 30, June 1, 2004

AWARD

In this matter, the Union grieved the foreperson's workplace harassment of the grievor, Mr. Vito Stina, as well as the Commission's continued refusal to properly investigate and rectify the poisonous work environment. The Union seeks the removal of the foreperson, Mr. Frank Zuccaro from Duncan Shop, concurrent with Mr. Stina's placement back into his service person position at Duncan Shop and requests all lost wages, interest, tort damages, an apology and the imposition of anti-harassment training for TTC Supervisors as well as other appropriate remedies. The Commission at all material times maintained there was not any workplace harassment of Mr. Stina and that it had acted properly.

The grievor, Vito Stina, has been employed by the Commission since 1988. From 1988 until 1996 he was classified as a Group 3 employee, and in 1996 he bid for the job of a mechanical service person which was a Group 7 position. From 1988 until 1996 the grievor had numerous evaluations which were all good. He testified that some evaluations indicated he was over-qualified and should look forward to moving ahead. Between 1988 and 1996 the grievor did not have any problems with any of the forepersons for whom he worked. Until he moved into the Group 7 position, the grievor's health was excellent and he suffered no psychiatric or psychological conditions.

The grievor was a successful candidate for the mechanical service person position and commenced work in that position in the Spring of 1996. He worked under a mechanic and was employed on the buses at Malvern garage. At the beginning of each day he received instructions, retrieved a bus, put it on a hoist, took out broken parts and replaced them. Also, he was involved in replacing equipment that was worn or broken, and served as a backup for inspections. Approximately 90% of his time was spent performing mechanical service work and 10% of his time was spent doing backup inspections.

Mr. Frank Zuccaro was the grievor's foreperson and the grievor had never worked with him

previously. The grievor did not receive any training in the job. When he showed up on the first day he was told to retrieve a bus, put it on the hoist and hoist it up. He told Mr. Zuccaro that he had never put a bus on a hoist before and asked if someone could instruct him, whereupon Mr. Zuccaro told him to bring the bus to the hoist and hoist it up. Since he had never done this before, the grievor asked "what if the bus falls off the hoist?" Mr. Zuccaro replied he would be fired. The grievor asked a mechanic to show him how to lift the bus onto the hoist without dropping it. The grievor maintains he was not given any advice or instruction about his work and told if he had any questions he was not to ask a mechanic because he would be taking the mechanic away from his job. The grievor claimed he was frightened because he was trying to learn a new job and to better himself.

Over the next month or two, the grievor asked, on numerous occasions, if he could be trained on the mechanical aspects of the job, but Mr. Zuccaro refused. The grievor was struggling to cope and attempting to figure out how to replace parts he had never seen before. He requested the mechanics' assistance, notwithstanding it was not permitted. He was concerned if something happened, he would be responsible.

The grievor testified that mechanics document their time and could not justify the time taken to assist him. On occasions, when he asked a mechanic for help, Mr. Zuccaro came over and asked if there was a problem; the grievor replied he had asked the mechanic to show him how to perform the work. When this occurred, Mr. Zuccaro sent the mechanic back to work. On numerous occasions, Mr. Zuccaro told the grievor not to disturb the mechanic because he had buses to send out. The grievor replied if he'd had any training he wouldn't bother anyone and Mr. Zuccaro replied there was to be no training. The grievor had this conversation on more than one occasion; he advised Mr. Zuccaro he was willing to learn and would benefit from some training.

The grievor stated he was trying his best, but it was a new job and he was struggling. On July

18, 1996, the grievor received a performance appraisal which indicated his probationary period was extended. The performance appraisal did not show his work was unsatisfactory, but indicated he needed improvement in a number of areas, although in other areas the appraisal indicated he met the job requirements. The appraisal stated his productivity and work performance were poor and he needed to improve "generally" on all aspects of the job. The performance appraisal also indicated the grievor did not show a lot of interest. There was a question for the supervisor which asked "would you rehire?" and the response was "No". The grievor refused to sign the appraisal.

The grievor testified he had never received such an evaluation and he told Mr. Calvin Hewitt, the Superintendent, it was unfair to have an appraisal without any training. Mr. Hewitt responded "this is what you are getting". The grievor asked for a shop steward, but was told there was not much he could do other than to write a comment.

The grievor claimed, because he hadn't received any training, he was compelled to ask other employees for assistance. He acknowledged receiving some training on brake inspections and on backup inspections, which was given by a technician over five days. That training was given five months after the grievor started the job and he was surprised to receive it. He testified he did not really require that particular training. The grievor felt the training he received was inadequate because he wasn't trained in all aspects of his job. He consulted with his shop steward who tried to get him a two week training period, but was told by the steward he would not receive any more training.

The grievor testified that after he received the job evaluation, the situation deteriorated; he continued to struggle with his work. Mr. Zuccaro watched him struggling and asked why it was taking him so much time to perform. The grievor was not aware there were allotted times for the work and took whatever time it required.

On one occasion, the grievor was required to take a generator out of a bus and Mr. Zuccaro and Mr. Greg Langer, the afternoon foreperson, watched him struggle. They did not say anything to him, but the next day Mr. Langer told the grievor he had improperly removed the generator. Mr. Langer also told him what he had done was unsafe and the mechanic who completed the job could have crushed his hands. The grievor was in a state of disbelief, because both Mr. Langer and Mr. Zuccaro were present when he did the work and did not say anything about what was being done. The grievor had never before removed a generator.

It became more difficult for the grievor to get answers and assistance because the mechanics felt he would attract a foreperson if he asked questions, and they didn't want to get into trouble. From time to time, Mr. Zuccaro came around when he was getting assistance and would tell the mechanic to get back to work. The grievor became frightened to come to work and lost his confidence. He felt trapped, because nothing he did was right, and he was unable to correct what he was doing. He didn't associate with anyone and was left alone. Other employees did not want to be seen talking to him, because the foreman was watching him and it became uncomfortable. The grievor attempted to bid out of the job. Since foremen are required to sign the bid sheets, the grievor went to another garage to get his bid sheet signed.

On October 23rd, 1996, the grievor received another performance appraisal from Mr. Zuccaro which indicated he met the job requirements in every category except job knowledge and initiative, which required improvement. Mr. Zuccaro commented that the grievor showed willingness to carry out his responsibilities, and indicated the grievor "shows intimidation, on the mechanical duty, which to this day he should be comprehending." The grievor responded as follows: "how does anyone become successful in any job if training is not given. I've asked numerous times for training and have been refused. I feel that given the proper training would benefit the Commission". The grievor refused to sign the performance appraisal.

Between October 1996 and February 24th, 1997, the grievor booked off sick. The job was becoming more difficult for him every day. No one would speak to him or have anything to do with him and getting to know the job was becoming increasingly difficult. The grievor maintained Mr. Zuccaro treated others differently from him, and the difference was like night and day. Mr. Zuccaro constantly came over to check why it was taking him so long, while others were free to do their work. The grievor claimed that Mr. Zuccaro talked down to him and his manner of speaking was such that it put him down for not knowing anything. The grievor continued working at the job between February and April 24th, 1997, when he had a concussion. He did not return to work until July 31st, 1997, when he was given light duties.

On November 20th, 1997, the grievor was given another performance appraisal by Mr. Hewitt which indicated he met the job requirements in a number of categories, but needed to improve with respect to "quantity of work, initiative, attendance, and that his overall evaluation also required improvement". Mr. Hewitt commented that the grievor needed to improve his mechanical skills and showed no interest in the job. Mr. Hewitt also stated "if Mr. Stina is allotted eight hours of work per day for e.g. inspections, he gets the job done, when he is on the floor doing repairs he shows having a hard time."

Mr. Stina replied in writing:

TO WHOM IT MAY CONCERN

MONDAY, NOVEMBER 24, 1997

I disagree with all the comments that have been on my Performance Review. I have always shown interest on the job and have been more than willing and eager to learn in all areas of my job. When I began this position in early 1996 I had no previous experience for this position. I had requested for some training and was trained in inspections and not on the floor. 90% of my work is on the floor. So to say that I lack confidence in the quality and correctness of my work performed is false. I like to make sure that the work I perform is done right. If I ask someone to check over some of my work, that would mean that I am still learning, as you are always learning on this job,

and that I am thorough. As far as quality of work goes, I make sure I do the most I can and the best I can. In rare cases it may take longer if it is something new to me or if it's a difficult job period. As for needing to improve in my mechanical ability, had I had some training in some of the more difficult areas of the job this would not even be an issue. The company has people to train me. If they could train me in inspections for one day then why not take a week or two to train me in mechanical work. I know that there is some confusion as to who isn't doing a very good job here. I also know that there is personal issues in which my supervisor has against me and instead of discussing what the problem might be professionally and maturely it is being taken out on me by ruining my reputation anyway possible, including in my reviews and by humiliating me. Although I do not understand why, because I have always been a good worker, work well with everybody and respect all my fellow employees.

Yours truly

cc Human Resources
Originating Department
Union Office

After he received the performance appraisal on October 23rd, 1996, the grievor had a meeting and again asked for training but was refused. He asked for a shop steward and tried to have the appraisal redone, but Mr. Zuccaro refused. The grievor maintained he did not receive any training which made him nervous doing any type of job.

When the grievor was given a performance appraisal in November by Mr. Hewitt, he broke down and claimed he didn't agree with the appraisal; he asked Mr. Hewitt to redo it. Mr. Hewitt refused.

The grievor left the meeting with Mr. Hewitt claiming he would provide written comments. The grievor testified that the situation had continued for a year and he felt useless, could not do anything right and could not "better himself". He stated, "I felt like I was a nobody". The grievor was of the view that Mr. Zuccaro had a personal vendetta against him and he didn't know why Mr. Zuccaro would not discuss it with him. In his opinion, Mr. Zuccaro was humiliating him, and other employees were aware off his circumstances. The grievor maintained the treatment continued until February of 1998, when he down-graded and bid on another job to get away from Malvern garage. He took a loss of pay to get out and went to Duncan shop to work as a steam jenny operator which was a Group 4 position. Before moving, the grievor had seen his doctor on a few occasions and received medication for his emotional condition. He testified the work situation affected him at home and he took it out on his wife and

children.

When the grievor went to Duncan shop the situation was very good, he had no problems with his co-workers and compared to Malvern shop it was "like night and day". The grievor felt more comfortable and there was no animosity or conflict on the job, and others did not try to avoid him. His dealings with the forepersons and other supervisors were excellent. On January 4th, 1999, the grievor received an evaluation from his foreperson which provided as follows: "Mr. Stina is a very good worker and employee with a perfect attendance record". In addition, the performance appraisal indicated Mr. Stina met the job requirements in every category and there was no indication in any of the categories that he required improvement. Mr. Stina signed that performance appraisal.

Mr. Stina bid again for a mechanical service person's job and was moved on June 14th, 1998, to a Group 7 position. He received his performance appraisal on January 4th, 1999. He received two weeks of training which he felt was excellent and he had more confidence in doing the job and didn't have to ask for assistance. The grievor worked with a mechanic on a regular basis and received what he claimed was a perfect evaluation, and was pleased. He got along with his co-workers, there were no complaints about his productivity, he did not lose any time and was happy in his job. On March 5th, 2000, the grievor received another performance appraisal from Mr. Joe Castanaro, the foreman, which stated: "Mr. Stina is a very good worker and employee" and which also indicated he met the job requirements in all categories. The grievor felt great about the appraisal and was finally part of a team. When the grievor moved to Duncan shop, he stopped taking medication which he had taken while at Malvern.

In June or July of the year 2000, Mr. Zuccaro was transferred to Duncan shop to replace Mr. Castanaro. After Mr. Zuccaro was there for a short period, he approached the grievor and said, according to the grievor, "let bygones be bygones and let's leave what happened at Malvern and try to

start a new slate". The grievor was shocked at first, but replied in the affirmative. As months past, Mr. Zuccaro tended to go back to his old ways. The grievor claimed Mr. Zuccaro would approach him in a negative way and tried to separate him from others, to the point where he was again being left alone. Mr. Zuccaro talked down to him and told him to go back to work in front of others. This usually took place at break time while others were present; Mr. Zuccaro only addressed the grievor. The grievor claimed that others who were on break did not have any limits and were never approached by Mr. Zuccaro and told to get back to work; nor were they ever told to separate from others. The grievor claimed that even when the break was over and there were other people with him, Mr. Zuccaro, in a loud manner, told the grievor to get back to work, but did not say anything to the others. This occurred on a continuous basis. It also occurred when other people came over to speak to him at his work location; on those occasions, Mr. Zuccaro told him to get back to work. Others away from their work stations were not told to get back to work.

The grievor asserted his negative situation continued to the point where Mr. Zuccaro maintained the grievor was non-productive. The grievor began feeling the same way as he had felt when he was at Duncan. He asked Mr. Zuccaro on numerous occasions what Mr. Zuccaro didn't like about him, but Mr. Zuccaro replied he didn't have a problem. The grievor felt he was slipping back into the emotional state that had arisen at Malvern, and felt Mr. Zuccaro was putting him down in an attempt to remove any of what he had accomplished.

The grievor claimed Mr. Zuccaro's treatment of him escalated and he began to kick things around. For example, on one occasion Mr. Zuccaro asked him how many sets of wheels he had completed. When the grievor, said he had done three, Mr. Zuccaro walked away and kicked a bench. The grievor testified there were other occasions when Mr. Zuccaro followed him to the washroom and while he was washing his hands, Mr. Zuccaro watched him. Mr. Zuccaro did not say anything to him, nor did the grievor say anything to Mr. Zuccaro. No one else was there, and there did not appear to be

any reason for Mr. Zuccaro to be present. He just stood there and watched the grievor.

A similar situation occurred approximately one week afterward. Again, Mr. Zuccaro watched the grievor washing up and no words were exchanged. However, the grievor felt uncomfortable; he didn't understand why he was being watched and walked away. The grievor maintained he has never had an experience like that with any other foreperson or supervisor.

There are other incidents concerning the use of the telephone. There is a telephone outside the foreman's office which the grievor claimed everyone used throughout the day. The telephone is approximately 15 feet from the grievor's work station. The grievor had used the telephone on different occasions when Mr. Castanaro was his foreman, but was uncomfortable using the phone during working hours when Mr. Zuccaro was the foreman, and, accordingly, used it only during breaks and at lunch. He maintained others used it throughout the day, during working hours. On one occasion, the grievor continued using the phone for approximately three or four minutes after his break had expired and was told by Mr. Zuccaro to get off the phone. According to the grievor, Mr. Zuccaro said it with an attitude, and he got off the phone. The grievor did not observe others being told to get off the phone, even during their working hours.

On another occasion, the grievor was talking to the shop steward about a problem concerning his work, when he was approached by Mr. Zuccaro and told to get back to work. The shop steward was not told to get back to work and there were five other mechanics in a group behind the grievor who were sitting around, but Mr. Zuccaro did not say anything to them. On yet another occasion, the grievor was talking to a mechanic, who had instructed him to take out a part, and when the grievor approached the mechanic with the part Mr. Zuccaro told the grievor to continue with his work and to let it go. The grievor maintained that Mr. Zuccaro did not deal with other bargaining unit members in the same way he dealt with him. He never disciplined them, nor did he ever send them back to work. He claimed

Mr. Zuccaro frequently told him to go back to work, while not speaking to others who had overstayed their break. The grievor claimed this occurred three or four times in a week.

On November 23rd, 2000, Mr. Zuccaro approached the grievor and asked him how many sets of tires he had done and the grievor replied that he had done three sets. Mr. Zuccaro asked him to come into the office and told him he was going to write him up for non-productivity. Mr. Zuccaro asked him to have a shop steward present and the grievor replied he didn't want representation, but he really wanted to rectify any problem Mr. Zuccaro had with him. Mr. Zuccaro indicated he would call the shop steward. The grievor stated he had been doing three sets of tires all along. Mr. Zuccaro didn't respond to the grievor's request to rectify the problem, but told him he would need representation, and when the steward did not arrive Mr. Zuccaro told him he would write him up for non-productivity the following morning.

The next morning, Henry Urban, a Union representative, was called by Mr. Zuccaro and went to Mr. Zuccaro's office along with the grievor. Mr. Zuccaro said the grievor had left a set of tires untouched at his work location. Mr. Zuccaro insisted that a set of tires was left and the grievor asked if Stuart MacDonald, another employee, could come into the office and clarify if there was a set left over. Mr. MacDonald advised Mr. Zuccaro it was impossible a set of tires was left over because he had completed the last set. However, Mr. Zuccaro responded that a set of tires was there. Mr. Urban said that they would go to Anne Pozywiak, the Superintendent's office to clarify the problem. A meeting was held with Anne Pozywiak and Dave Partington, another supervisor, indicated he would investigate the matter.

During that meeting, the grievor informed Ms. Pozywiak that Mr. Zuccaro was centering him out, and speaking to him negatively. He also told her about the incident with the telephone. Ms. Pozywiak said this was not a matter under the *Human Rights Code*, and the grievor said he would have to send

a letter to the Human Resources department about what had transpired. Mr. Zuccaro did not say very much other than to state he didn't care what other people were doing, he was just concerned about the grievor.

At the meeting, the grievor also advised Mr. Partington that Mr. Zuccaro was picking on him and centering him out; Mr. Partington responded this was not harassment under the *Human Rights Code*, nor did he believe Mr. Stina was being harassed. The grievor told Mr. Partington about the incident with the phone, but Mr. Partington felt Mr. Zuccaro was doing his job. The grievor also told Mr. Partington he was the only person selected out of groups of employees, who were not working, and told to get back to work, but Mr. Partington did not respond. The grievor became teary-eyed and mentioned he was starting to feel the same emotions he had felt when he was at Malvern. Mr. Partington said he would look into the grievor's treatment by Mr. Zuccaro and speak to him, but the grievor heard nothing further.

With respect to the contemplated disciplinary action, the grievor advised his Union representative, that he, and others in his position, received ten sets of wheels per day, which were divided among the three employees; the person who got the first set of tires would also get the fourth and they never had a problem. At a subsequent meeting to discuss the issue with Anne Pozywiak, the grievor stated no sets of tires had been left over, notwithstanding Mr. Zuccaro's assertion that there was. The grievor also maintained he had witnesses and Ms. Pozywiak replied it was not necessary. She said that she would support Mr. Zuccaro, and the grievor left the meeting feeling he was caught in a trap and was again emotional and teary-eyed.

The grievor also testified that when people were going on vacation the foreperson would usually let them go early. Others left at approximately 11.30 a.m. but when the grievor asked to leave at 2.00 p.m., Mr. Zuccaro said he could not go. When the grievor raised this at the meeting, Mr.

Zuccaro retorted he was not aware others were leaving early, and it would not happen again. However, the grievor maintained that many others left early during the period when Mr. Zuccaro was the supervisor. Ultimately, the contemplated disciplinary matter was resolved on the basis that the Commission had no evidence and, accordingly, the Commission did not proceed with any discipline.

In January of 2001, the grievor wrote to the Human Relations department requesting that it investigate the problem between him and Mr. Zuccaro. It was his attempt to reach out for help. It took the grievor approximately two and one-half (2½) weeks to write the letter, and he was in "poor shape and could not take it any more". The grievor maintained that Mr. Zuccaro persisted in dealing with him on the same basis, that is, he continued to send him back to work and set him apart from others to whom he was talking. This continued to build up as the days passed. After the grievor wrote to the Human Resources department, he received a letter indicating that the Human Resources department would not pursue the matter.

The grievor was devastated after receiving the letter, and did not know where to turn next. After receiving the letter, things escalated and the grievor claims that Mr. Zuccaro's tone of voice and attitude changed toward him to the point where he couldn't take it any more; accordingly, he booked off sick on February 16th, 2001.

The grievor stated between January 17th and February 15th, 2001, the frequency of negative interaction escalated and he was afraid of Mr. Zuccaro. He did not know what Mr. Zuccaro would do or what he was up to; he felt he was going downhill mentally and emotionally. Mr. Zuccaro continued to separate him from other workers. There was another incident where Mr. Zuccaro asked him to put stock away when he was done with his work and then to continue his work after the stock was put away. At the time, there were other employees who were not doing anything.

In another incident, Mr. Zuccaro yelled at him to get back to work while he was at his work

station. At that time someone had approached the grievor at his work station to talk to him, but nothing was said to the other employee. The grievor asked what about others, who were talking, whereupon Mr. Zuccaro went over to the other people and asked them to split up. This resulted in rumours that he was "a rat". On that occasion, Mr. Zuccaro walked out and kicked the door open. He had been yelling at the grievor to get back to work and had never yelled previously. The grievor did not feel comfortable in the work environment under Mr. Zuccaro's management. He couldn't rely on anyone, he had tried to obtain assistance, but didn't get any and he was in a terrible emotional state.

On February 15th, after Mr. Zuccaro had kicked the door, the grievor proceeded to put the stock away and went home. In his mind, he felt he had enough and couldn't handle the situation anymore. He was feeling distressed and could not handle Mr. Zuccaro's attitude toward him. He talked to his wife, and then went to see Dr. R. Dreckman, his family doctor, and explained the situation at work with Mr. Zuccaro. The grievor was emotional, and broke down and cried. According to the grievor, Dr. Dreckman indicated he should have come to see him earlier, and not let the situation go on for so long. The grievor claimed he was emotionally ruined and the doctor, who knew him, had never seen him in that state. The grievor was advised to stay at home and subsequently went to see a Dr. R. Edward, a psychiatrist, who gave him medication (Ativan) for his condition.

The grievor stated although Dr. Dreckman was his family doctor, he had never told him about the situation previously. He explained that as a result of his work situation, he was taking it out on his family, had trouble sleeping, had nightmares, woke up in a panic, lost his appetite and was vomiting. This occurred frequently. His difficulties began when Mr. Zuccaro came to Duncan shop and continued to abuse him. The grievor's condition progressed because Mr. Zuccaro was picking on him more and more every day.

The grievor called in to work at 5.30 a.m., the next day, prior to Mr. Zuccaro being there.

Because the grievor did not want to talk to Mr. Zuccaro, he advised he was not coming to work. He saw Dr. Dreckman, filled out a sick benefit form and mailed it to the Commission's administrator. The grievor was told he was being treated for situation anxiety. He continued to see Dr. Dreckman until he got an appointment with Dr. Edward in April.

Mr. Zuccaro called the grievor, while he was absent, but the grievor did not call Mr. Zuccaro back because he did not want to speak to him, but rather spoke to Joan Morant, the Commission Nurse, and told her the nature of his illness and explained why he did not want Mr. Zuccaro to phone him at home. Ms. Morant advised she would inform Mr. Zuccaro of the situation. The grievor stayed in contact with Ms. Morant on a weekly basis, until he saw Dr. Edward.

The grievor also testified that on February 15th, he made a desperate call to his Union representative and explained he couldn't take it any more. He was very emotional, and the Union representative replied he would look into the matter and rectify the problem if he could. Subsequently, the Union filed a grievance over the matter.

On April 3rd, 2001, the grievor saw Dr. Edward and received further medication. He continued to be an emotional wreck, and felt stress and anxiety. He was crying a lot, was sick to his stomach and was having family problems. His sleep was troubled, he had nightmares and would get up frequently at night in a cold sweat. He maintained this all resulted from the situation with Mr. Zuccaro. The grievor continued to see Dr. Edward every week or every two weeks, and also filed a W.S.I.B. claim which was rejected, because it did not cover this type of illness. During this time, the grievor also spoke to the Commission nurse and to his Union, and his return to work was discussed, but not in the same department. He was advised by his psychiatrist not to be in the same department, and accordingly, the grievor waited for a different job in a different department. In October 2001, the grievor bid for a different job in a different department which he received, and maintains that things are

now excellent - his health has been great, he does not have nightmares and is not vomiting.

The grievor claims when he wrote to Collie Salmon, at the Human Rights department, his letter was witnessed and signed by other employees, but those employees to the best of his knowledge, were not interviewed. As far as he was aware, people from the Commission spoke to Mr. Zuccaro, but did not take any further steps to investigate the complaint. The grievor maintains he cannot work with Mr. Zuccaro in the future.

When the grievor was cross-examined, he admitted he had received training and instruction to drive Commission vehicles and had driven them on the street. Also, on occasion, he had put a bus on a hoist, but prior to going to Malvern garage he had never raised a bus on a hoist. The grievor acknowledged when he bid from the Group 4 job it was on the basis of having qualified in the sense that he had one years experience working as a Group 4. He applied to better himself and to learn more and expected he would be trained. He had no knowledge as to the full range of duties on the job and no idea of the kind of work Group 7's performed. No one told him he would be trained, but he expected he would receive training. The grievor stated he had asked for training from day one, and had also asked for someone to show him around "workwise".

When Mr. Zuccaro asked him to raise the bus on a hoist, the grievor told him he had never raised a bus on a hoist before, and asked if someone could show him how to do it because he wanted to be certain the bus would not fall off the hoist. According to the grievor, Mr. Zuccaro said "bring it round and raise it" and when the grievor asked "what if it falls off?", Mr. Zuccaro said he would be fired. The grievor, in the past, had heard people had dropped a bus. The grievor asked a mechanic to help him. When Mr. Zuccaro came by, he asked what they were doing and the grievor responded the mechanic was showing him how to raise the bus on the hoist; Mr. Zuccaro was not too happy. When the mechanic left, Mr. Zuccaro told the grievor he was supposed to raise the bus on his own, as he

ought to have known what should be done. He told the grievor he was supposed to raise the bus on the hoist and not bother the mechanic. When the grievor told him he didn't know how to put the bus on the hoist and had therefore asked the mechanic, Mr. Zuccaro responded he didn't need the grievor to bother the mechanics since they had their work to do, and Mr. Zuccaro then left.

The grievor was frightened because of Mr. Zuccaro's comments and didn't know what to do. He testified he was interested in learning and did not want to be fired for something he didn't have a clue about. He stated Mr. Zuccaro talked to him in a negative manner and talked down to him.

The grievor testified he had first seen Dr. I. Goral, his family physician, in 1997, because of an anxiety disorder caused by Mr. Zuccaro; the doctor prescribed Ativan for him. The grievor did not have any problems with Calvin Hewitt, another foreperson at Malvern, who worked days. The grievor performed mechanical services and inspections, but indicated he was uncertain about the work he was performing. However, he felt he could learn the job. It was his view the Commission was obligated to train him. He acknowledged he could get training on the job, but most of the training he received was as if he was in hiding, because he had to sneak over to get people to show him how to do the work. He maintained Mr. Zuccaro did not want to train him. The grievor felt he was being singled out from day one, when Mr. Zuccaro said he'd be fired if the bus fell off the hoist. It did not make him feel welcome. He also felt that Mr. Zuccaro's refusal to train him was singling him out, and other mechanics who came in off the street were trained. The grievor tried to get his shop steward to deal with the issue of training, but when he did not receive any training, he asked the mechanics for help. The grievor did not ask Mr. Hewitt about the training, because Mr. Hewitt didn't leave his office very often; he was also in charge of Mr. Zuccaro. The grievor was told by his shop steward the Commission wasn't willing to train him. The grievor did not bid out of the job, because he felt if he were given the chance he could perform the work, but he was also of the view that others had to show him what to do.

The grievor maintained Mr. Zuccaro harassed him from his first day on the job. When he was talking to other employees, Mr. Zuccaro told him to go back to work, to the point where he didn't talk to others and didn't have any friends. When he was told by Mr. Zuccaro to go back to work, the other people, to whom he was talking, were not asked to return to their work. Mr. Zuccaro never gave the grievor a reason for picking on him, although he asked him numerous times if he had anything against him. Mr. Zuccaro replied he did not, but the grievor didn't believe him since he was not being treated equally with others. The grievor testified he had seen Mr. Zuccaro talking to other people and laughing with them, but he never treated him the same way. The grievor testified he was told by another employee not to stick his neck out, which meant "watch what you are doing and be careful". He stated Mr. Zuccaro continued to pick him out of a group, which resulted in his co-workers not talking to him, because he was attracting Mr. Zuccaro's attention.

The grievor was cross-examined about the situation when he removed a generator and again indicated he really didn't know how to do the job, but Mr. Langer, the afternoon foreman, and Mr. Zuccaro watched him struggle to fix the part. The grievor did not finish, but no one told him he was making a mistake until the next day, when he was confronted and told he "messed up the job" and a mechanic had to work extra hours to complete it. Also, there was a safety concern. The grievor testified Mr. Zuccaro and Mr. Langer watched him for two hours and didn't say a word to him.

The grievor admitted there was only an overlap of approximately twelve hours when both he and Mr. Zuccaro worked together. The grievor stated there was a difference between supervising and harassing, and harassment included picking on an individual out of a group. He acknowledged if everyone had been treated the same it would not be harassment. The grievor testified he wasn't happy about the first performance appraisal given to him by Calvin Hewitt in July of 1996, and called his shop steward. He was of the view Mr. Hewitt's appraisal was based on information he received from Mr. Zuccaro, since Mr. Zuccaro reported to Mr. Hewitt. The grievor acknowledged there were areas

where he needed to improve, but he did what he could at the time. He testified he wasn't given an opportunity to improve because Mr. Zuccaro refused to give him any training. The grievor refused to sign the performance appraisal, because it was unfair.

The grievor admitted the next performance appraisal given by Mr. Zucarro was better than the earlier performance appraisal given by Mr. Hewitt. The performance appraisal indicates the grievor is intimidated, but the grievor stated he was intimidated because Mr. Zuccaro was picking on him. Had he not been picked on and had he been given proper training, he would have done a better job. The grievor did not mention he was being picked on because he was gullible. He was also of the view his situation was discussed by his foreman and supervisors. He was desperate to get out of Malvern shop and bid on a number of jobs commencing in 1997. The grievor felt the supervisors conspired against him, but Mr. Zuccaro did the most damage. The grievor did not file a grievance about the training.

In 1998, the grievor, as a result of a master sign up, went to Malvern shop. He had been told, by his Union steward, Mr. Zuccaro was harassing him, and was advised by his Union to write a letter. As a result of the Union's advice, he wrote a letter. The grievor testified his fellow workers viewed him as a bad apple. The grievor did not have any problems before working at Malvern and after working at Duncan. The only problem he had at Duncan shop was with Mr. Zuccaro, but he got along with other supervisors.

When the grievor transferred to Duncan shop, he worked in the brake section and was trained for a week by another Group 7 employee. While he was at Duncan shop, Mr. Zuccaro was transferred there and Mr. Zuccaro said to him "let bygones be bygones". The grievor responded "a lot has happened since Malvern" and stated it was hard to let go of what had happened, whereupon Mr. Zuccaro turned around and kicked a bench and walked away from him. The grievor continued to distrust Mr. Zuccaro and felt there would be reprisals. He testified Mr. Zuccaro was setting him up.

There was a change in the work at Duncan shop and whereas the Group 7's had previously worked with mechanics on the bus, they were separated and could not work on the brakes. As a result, the mechanics took the tires off the bus, and the Group 7's would take the tires apart. Mr. Zuccaro was the foreperson for the brake section, comprising approximately 20 people. His office was approximately 10 feet away from the grievor's work station, which was readily observable from Mr. Zuccaro's office.

The grievor testified the harassment started approximately two weeks after Mr. Zuccaro was trained at Duncan shop. While working with a mechanic, Mr. Zuccaro approached him and told him to go back to work. According to the grievor, Mr. Zuccaro said "Vito would you like to go back to work, please". The grievor asked the mechanic about the bearings, and Mr. Zuccaro again said, "Vito go back to work". Mr. Zuccaro did not say anything to the mechanic, who was discussing the matter with the grievor. The grievor and the mechanic were between their respective workplaces, but only the grievor was told to return to work.

A couple of days later, when the grievor was on the phone, Mr. Zuccaro requested he get off the phone; the grievor hung up and returned to work. The phone is outside Mr. Zuccaro's office in plain sight and is a Commission phone. The grievor had been on the phone two or three minutes after his lunch break and had phoned home. He testified he had never had a problem before and everyone uses the phone throughout the day, at any time; the grievor felt he was being singled out again. The grievor stated all the employees make personal calls, when they should be working, but he was the only one told to get off the phone. The grievor testified most of the employees use the phone for personal calls and Mr. Zuccaro was aware of it. He had also used the phone previously for personal calls and did not have a problem.

The grievor stated Mr. Zuccaro's harassment of him escalated and continued on a daily basis with Mr. Zuccaro picking the grievor out, and telling him to go back to work. On one occasion, the grievor was talking to a shop steward about a problem, when he was told by Mr. Zuccaro to go back to work. On another occasion, another employee stopped to talk to him and again Mr. Zuccaro told him to go back to work, although there were four other people who were sitting around and not doing anything. The grievor testified many employees had extended breaks, but he was the only person who was spoken to. He admitted if others had been spoken to, it would have been all right to speak to him. The grievor asserted he was approached by Mr. Zuccaro on a daily basis and told to go back to work without regard to whom he was talking and whether other employees had come over to talk to him. The day after he was told to get off the phone, he was approached by another employee at his work location and Mr. Zuccaro told the grievor to get back to work, but said nothing to the other employee.

On another occasion, the grievor was in his work area and two employees came over to speak to him. Mr. Zuccaro told the grievor to get back to work, but said nothing to the other employees, who appeared to have finished their work for the day. They were not given any work, while the grievor was told to go back and do his work.

The next day the grievor was at lunch break and there were four other employees standing next to him having a coffee. Again Mr. Zuccaro approached him and told him to get back to work, but didn't say anything to the other employees. He claimed all the employees were on the same break. Mr. Zuccaro never told the mechanics when to do their work and very often they were standing around, and although they had finished their work, no one gave them more work. The grievor stated he was in a work location, where people continually passed by. When they spoke to him, he responded, but was continually told by Mr. Zuccaro to go back to work.

The grievor worked with Mr. Castanaro for approximately two years and shortly after Mr. Zuccaro came the system changed. The grievor had not been harassed in any way by Mr. Castanaro, who had been his foreman. When Mr. Zuccaro came to Duncan shop, he approached the grievor and said let bygones be bygones, and leave what happened at Malvern alone. He said nothing about turning over a new slate; the grievor was shocked by his comments, but said "OK". The grievor testified he was told by another employee that Mr. Zuccaro had told him the grievor was stirring up trouble.

The grievor was further cross-examined about the washroom incident and stated Mr. Zuccaro was waiting for him in the upstairs washroom while he was washing his hands. Mr. Zuccaro was standing there, but didn't say anything. Mr. Zuccaro was not there on his own initiative, because he had never used the upstairs washroom. The grievor testified he was followed to the washroom on more than one occasion, but others were not followed. He admitted he doesn't know what Mr. Zuccaro does all the time, but claimed Mr. Zuccaro had not been in that particular washroom, other than to follow him. He admitted it was possible Mr. Zuccaro might have followed others, who haven't said anything. The grievor asserted this was harassment, because Mr. Zuccaro had followed him and not followed other employees. The grievor acknowledged that another time another foreperson followed him to the washroom and that foreperson had never used that washroom either.

The grievor admitted he was interviewed for leaving early on May 31st, 2000, without authorization, but does not feel that this constituted harassment. He maintained others had also received a similar employee interview record.

The grievor testified on another occasion Mr. Zuccaro kicked the side door near his office after an incident in which he told the grievor to go back to work. The grievor had replied Mr. Zuccaro had walked by two other employees who were talking, and hadn't said anything to them, whereupon Mr.

Zuccaro turned and told the others to split up. When the grievor approached Mr. Zuccaro to speak to him, Mr. Zuccaro walked out the side and kicked the door open. The grievor stated no one else had ever done that. The grievor maintained he was not being treated equally, and others were not told to get back to work, whereas he was.

On yet another occasion, Mr. Zuccaro accused the grievor of leaving behind a set of tires, which the grievor denied. Mr. Zuccaro insisted the grievor had left the tires and informed him that he was going to provide him with a shop steward. Since no shop steward was readily available, Mr. Zuccaro informed the grievor he was going to call his Union representative in the morning and the grievor said that was "fine". The grievor was of the view Mr. Zuccaro was trying to discipline him in order to get rid of him; however, the discipline was later withdrawn. Another employee stated he had done the last set of tires, but Mr. Zuccaro did not believe him. The grievor admitted he was interviewed by Mr. Partington, Superintendent, about the tires and informed him that a set of wheels had not been left behind, while Mr. Zuccaro advised Anne Pozywiak that was not the case. The grievor also was prepared to have witnesses, but Anne Pozywiak did not want to bother. The grievor complained Mr. Zuccaro was picking on him. Mr. Zuccaro said he asked the same thing from all the employees. The grievor denied he had a productivity problem and stated he and his co-workers did their job and no wheels were left at the end of the day. The grievor testified he was not less productive. The grievor claimed during the discussion about the left over tires, Mr. Zuccaro would not admit he was wrong and refused to believe there were other witnesses who claimed there were no tires left.

The grievor testified when he was told to get back to work, he would often say "what about the others?" Mr. Zuccaro told him not to worry about the others, who were usually mechanics. As a result of referring to others, who were not ordered back to work, the grievor was called "a fink", and one of the employees wouldn't talk to him. The grievor testified Mr. Zuccaro harassed him by centering him out and other employees were "frightened" of being around him because he attracted the attention of

the foreman. The grievor admitted Mr. Zuccaro never touched him, nor threatened him. The grievor complained he always felt uncomfortable and nervous and was concerned about his safety. He did not know what to expect from Mr. Zuccaro and, more particularly, did not know why Mr. Zuccaro came to the washroom. When his Union representative interviewed the mechanics, he was told that the grievor was a good worker and Mr. Zuccaro was out to get him.

The grievor acknowledged he was waiting at a bus stop one day when Mr. Zuccaro offered him a ride to work, but he refused and took the bus.

The grievor testified when he was told to go back to work, Mr. Zuccaro yelled at him most of the time, and had raised his voice to the point where he made him "feel low". He maintained a better way to deal with the situation was by mutual conversation. The grievor stated he was afraid of Mr. Zuccaro and never told him to speak to him in a softer voice. He was afraid because he didn't want to be fired, nor did he want to be disciplined.

Also, Mr. Zuccaro threatened him, indicating he would require quotas and if the grievor didn't perform he would relieve him of his duties. The grievor testified he shouldn't have been told about being disciplined if he was not doing anything wrong. At the time of the conversation the grievor was doing his quota, but again Mr. Zuccaro picked on him.

The grievor claimed Mr. Zuccaro allowed other employees to take extended breaks but he was the only one told to get back to work. The grievor stopped taking extended breaks after he was told by Mr. Zuccaro to get back to work, while others continued to extend their breaks.

Mr. Steve Anthony, a Union official, testified he received a call from Mr. Stina in January of 2001. Mr. Stina informed him of his problems at Duncan Shop, and said he was encountering the same problems at Malvern garage from the same foreman and he was being harassed. He told Mr.

Anthony he had been followed to the washroom and when he spoke to other employees, Mr. Zuccaro came out of his office and asked why he wasn't at his work location. Mr. Anthony suggested Mr. Stina go to Collie Salmon, the head of the Human Rights department, because he felt Mr. Stina was being harassed.

Mr. Anthony also spoke to other employees in the same wage group and became concerned Mr. Stina was being harassed and, accordingly, Mr. Anthony spoke to a lawyer and filed a workplace harassment grievance.

Mr. Anthony, on one occasion, had observed Mr. Zuccaro come out of his office and speak to Mr. Stina, who was conversing with three other employees, and saw Mr. Stina return to his work station, while the others remained speaking to one another. Mr. Anthony did not overhear any conversation. On another occasion, Mr. Anthony observed a similar situation, when he saw Mr. Stina talking to four mechanics. Mr. Zuccaro came out of his office, spoke to the group, and Mr. Stina returned to his work location, but the others continued their conversation. When Mr. Anthony spoke to the other employees, he was advised they would talk to one another during work hours, and there were no rules concerning mechanics talking to other employees.

Mr. Anthony stated the telephone is used by employees at random and there are no rules governing the use of telephones. He also testified employees leave early on their annual holidays, on the working day when their holiday commences.

When cross-examined, Mr. Anthony confirmed his observations. He admitted he didn't know what the conversation was about, nor could he estimate the length of time it took place. He said the conversation had gone on for approximately ten to fifteen minutes when Mr. Zuccaro approached the employees. Mr. Zuccaro paused for approximately thirty seconds and returned to his office while Mr. Stina returned to his work location. The other employees continued to converse for about four or five

minutes before returning to work. Mr. Anthony testified the same situation had occurred on a second occasion. Again, he observed the grievor talking to some mechanics, and then saw Mr. Zuccaro approach the group, talk to Mr. Stina, and then saw Mr. Stina return to his work location, while the others continued with their conversation. Mr. Anthony determined from his observations that Mr. Stina was being harassed. He had observed Mr. Zuccaro face to face with Mr. Stina, but there was no other evidence of harassment.

Mr. Anthony also confirmed employees leave early on the day before their annual leave. He also maintained employees usually ask to use the phone because the phone is in the foreman's office.

Mr. Jose Mendez is a licenced mechanic who has worked at Malvern and Duncan shops and knows the grievor. His relationship is that of a co-worker and he does not socialize with the grievor. He worked with Mr. Stina in the brake section. Mr. Mendez also knows Mr. Zuccaro, the foreman at Duncan shops in the brakes section, and has played baseball with Mr. Zuccaro. Other than that he does not socialize with him. Mr. Mendez testified he has never had a problem with Mr. Zuccaro. Mr. Mendez worked at Duncan shop when Mr. Castanaro was the foreman and floated from hoist to hoist, and, as a result, worked with Mr. Stina from time to time, as well as with other Group 7's. He testified that Mr. Stina was a good worker and he never had to check his work, although he did check the work of other Group 7 employees. When he worked with Mr. Stina, they never missed a bus and always did the work that was required.

When Mr. Zuccaro became the foreman, the Group 7's were not able to work directly on a bus and the program changed as a result of new legislation. The Group 7 employees moved to locations other than the bus, and built tires at their stations. Mr. Mendez said the process remained the same, except the Group 7's did not work on the bus.

Mr. Stina was assigned a work location outside Mr. Zuccaro's office. The Group 7's were to do three sets of tires. Since Mr. Stina was at the front he would always get tires to work on and sometimes Mr. Stina would be working on two sets of tires while the Group 7 employee at the back did not have any tires. Mr. Zuccaro determined who would get the tires. Mr. Mendez talked to other mechanics about who would get the tires and ninety percent of the time Mr. Stina would get the tires. Mr. Zuccaro would order them dropped off at Mr. Stina's work location, while other Group 7 employees would be waiting for tires.

Mr. Mendez testified other Group 7's worked together, but Mr. Stina was not allowed to work with a partner; Mr. Zuccaro had told Mr. Stina he was not allowed to work with another Group 7. Mr. Zuccaro told Mr. Stina he didn't want him talking to others and this occurred even when Mr. Mendez went over to speak to Mr. Stina. Mr. Mendez was allowed to talk to other Group 7 employees and the mechanics. On a number of occasions, Mr. Zuccaro told Mr. Stina not to talk to anyone and sent him back to his work location, but did not say anything to the people to whom Mr. Stina was talking. On those occasions Mr. Stina would go back to his work location. This usually occurred after lunch. Mr. Mendez also testified on other occasions there were Group 7 employees present when Mr. Zuccaro told Mr. Stina to return to his work location, but the others were permitted to remain and finish their discussion.

When asked how Mr. Stina was treated compared to others, Mr. Mendez stated "it was excessive most of the time". If Vito wanted to ask a question, even if it was work related, Mr. Zuccaro would come and say "go back to your work location"; Frank never bothered with the other Group 7's. Mr. Mendez claimed the relationship between Mr. Stina and Mr. Zuccaro ".....was bad, Frank did not like Vito, that's all" and "the way he treated him was different."

Mr. Mendez was in Mr. Zuccaro's office when an emergency phone call was made to Mr. Stina.

Mr. Zuccaro told Mr. Stina there was a phone call for him and when Mr. Stina answered, Mr. Zuccaro walked over to him and stood right beside him. Mr. Mendez felt Mr. Zuccaro was trying to listen to the conversation and thought it was odd. The phone was just outside the office. Mr. Mendez left the office and told Mr. Zuccaro he shouldn't be standing there, because it was a private conversation. At that point, Mr. Zuccaro returned to the office with Mr. Mendez and finished their work discussion. Mr. Mendez testified the phone is used by all the employees during working hours but Mr. Stina was allowed to use the phone only during break time.

Mr. Mendez testified when Mr. Stina went to the washroom he was followed by Mr. Zuccaro and on one occasion by the afternoon foreman, Mike Pugliese. He claimed Mr. Stina was followed because the foremen never went to that particular washroom. Mr. Mendez stated they were keeping notes and were going to dismiss Mr. Stina for going to the washroom. Mr. Mendez saw the papers that had been drawn up, and when the two forepersons left the office he saw them going to the washroom they did not usually use. Mr. Mendez remained in the office and looked at the papers, which indicated they were going to dismiss Mr. Stina, and that's why Mr. Zuccaro wanted Mr. Pugliese as a witness.

Mr. Mendez also testified Mr. Stina had to be back at his work location immediately after his breaks and immediately after lunch, while others were not so required.

Mr. Mendez stated Mr. Zuccaro claimed that Mr. Stina was over-changing certain parts. Accordingly, Mr. Stina asked Mr. Mendez to check the parts so Mr. Zuccaro would not be upset with him. Mr. Mendez maintained Mr. Zuccaro complained about Mr. Stina's work even when Mr. Stina did the right thing. Mr. Mendez testified Mr. Stina's productivity was comparable to others and some times Mr. Stina would do three sets of tires while others did two sets or even one.

When cross-examined, Mr. Mendez repeated Mr. Stina would always get the first set of tires and when he was done he would get the next set. He also stated while Mr. Stina always had tires,

other Group 7's went to Mr. Zuccaro to ask for tires because they hadn't received a set. Mr. Mendez was of the view Mr. Stina did more tires than the others, but admitted he didn't keep productivity records. He observed Mr. Stina doing more than three sets a day on at least two occasions, but does not remember anyone else doing more than three sets of tires. Mr. Mendez was of the opinion Mr. Stina knew his job pretty well, and knew when to change and not to change parts. He did not have to check Mr. Stina's work, and when he checked he found no problem with Mr. Stina's work. He claimed there were no problems between Mr. Castanaro and Mr. Stina.

Mr. Mendez testified he has never had a problem with Mr. Zuccaro. He also stated that Mr. Stina asked him to check his work and Mr. Stina never spoke to him about any personal problems with Mr. Zuccaro. He asserted Mr. Zuccaro was a friend of his, but when Mr. Stina came to him with a statement outlining his complaints, he signed it.

Mr. Mendez repeated that on the occasion when Mr. Zuccaro stood beside Mr. Stina during the phone call, he had told Mr. Zuccaro if he was on a private call, he wouldn't let anyone stand around. He also confirmed he went out of the office to talk to Mr. Zuccaro about it. Mr. Mendez testified the incident with the telephone bothered him, and although Mr. Zuccaro was his friend, he told him he was intruding on Mr. Stina. When he signed a document confirming what had occurred, he read the document prepared by Mr. Stina and there was no further conversation between them. Mr. Mendez repeated he was in the office on the occasion Mr. Stina was followed to the washroom, and saw the papers indicating an intent to dismiss Mr. Stina; Mr. Zuccaro and Mr. Pugliese intended to catch Mr. Stina in the washroom.

On another occasion, Mr. Zuccaro criticized Mr. Stina for removing a part. Mr. Zuccaro maintained it was a good part, but Mr. Stina said it was bad and eventually Mr. Mendez showed Mr. Zuccaro there was a hole in the part. Mr. Zuccaro claimed he didn't see the hole. Mr. Mendez

testified Mr. Zuccaro picked on Mr. Stina and did not do the same to the other employees. He did not check other people's work the way he checked Mr. Stina's. Mr. Zuccaro also checked parts that Mr. Stina dropped in the garbage, and told Mr. Mendez that Mr. Stina was changing too many parts, but Mr. Zuccaro was in error. Mr. Mendez repeated that Mr. Zuccaro would check Mr. Stina's work, but not other peoples'. He maintained Mr. Stina knew when the parts had to be changed, and Mr. Stina had never had a problem with Mr. Castanaro, but had a problem with Mr. Zuccaro.

From time to time, Mr. Stina asked Mr. Mendez to check his work because he was aware Mr. Zuccaro would check it. On occasion, Mr. Mendez told Mr. Stina to change the part, and on some of those occasions Mr. Zuccaro would pick the part out of the garbage and check it. Mr. Mendez found it odd that Mr. Zuccaro would check the parts in the garbage. On at least one occasion, Mr. Zuccaro maintained the part was good, but Mr. Mendez was of the view that it was bad. Mr. Mendez testified Mr. Zuccaro did not check the parts that had been placed in the garbage by others. When questioned whether it was appropriate for Mr. Zuccaro to check the parts, Mr. Mendez responded it was appropriate if everyone was checked, but Mr. Zuccaro should not have picked on Mr. Stina. He claimed Mr. Stina's work was checked all the time.

Mr. Mendez testified Mr. Zuccaro picked on Mr. Stina by calling him or paging him. He claimed most of the time others were not paged, but if he had paged everyone that would be all right. He felt Mr. Zuccaro was selecting Mr. Stina all the time and did not do it with others. The paging requested Mr. Stina return to his work location and Mr. Stina was called "quite a bit", but no one else was called. Mr. Stina was the only one paged and was paged even when there were no tires to work on; Mr. Mendez maintained he was never paged.

Mr. Mendez testified he has never seen Mr. Zuccaro pick on other people. He also stated Mr. Zuccaro is a friend of his and he has no problem with him. He also claimed: "I don't want to be here".

When cross-examined about the washroom incident, Mr. Mendez testified he saw Mr. Stina go to the washroom and then saw Mr. Zuccaro and Mr. Pugliese follow him. They waited for a few minutes before they went upstairs, and, in his opinion, they were waiting to see if Mr. Stina was changing to go home. Instead, Mr. Stina used the facilities and the forepersons were not able to do anything. Had Mr. Stina been out of uniform, he would have been sent home. Mr. Mendez overheard them saying, "we are going to get him this time, wait until he goes up and starts changing", and they were writing it down. Mr. Zuccaro stated Mr. Stina was changing early, and "we have to write this down" and Mr. Zuccaro also said "we are going to release Mr. Stina for changing early". He stated, Mr. Zuccaro had asked Mr. Pugliese to be present as a witness. They noticed Mr. Mendez was there, but, notwithstanding, they asserted they were going to get Mr. Stina. Mr. Mendez signed a document prepared by Mr. Stina to that effect. He testified the forepersons use other washrooms.

Mr. Mendez testified Mr. Zuccaro did not like Mr. Stina and, on occasion, he ignored him and on other occasions he picked on him. Mr. Mendez claimed he had not talked to Mr. Stina about his evidence.

When re-examined, Mr. Mendez confirmed Mr. Stina asked him to check his work because he knew Mr. Zuccaro would eventually check it. Again, he confirmed Mr. Stina knew when to replace parts and he gave him his opinion about the parts.

Mr. Philip Horgan has been employed by the Commission since 1984 and has worked in a number of positions. He has also been a Union member and a shop steward. He knows both Mr. Stina and Mr. Zuccaro and testified he had a very good working relationship with Mr. Zuccaro. He was the Union steward in the brake shop, and claimed Mr. Stina informed him he was being harassed by Mr. Zuccaro. Mr. Stina claimed Mr. Zuccaro was picking on him, telling him to get back to work, and

telling him to get off the phone. Mr. Horgan spoke to Mr. Zuccaro about Mr. Stina, but testified Mr. Zuccaro was not open to discussing that issue. However, he told him he had had dealings with Mr. Stina at Malvern garage.

Mr. Horgan said that on a number of occasions a group would be talking and Mr. Zuccaro came out of the office and told Mr. Stina to get back to work, but didn't say anything to anyone else. Mr. Horgan claimed the other employees found this to be "kind of odd". Mr. Horgan felt it was strange Mr. Zuccaro told Mr. Stina to get back to work, but didn't say anything to anyone else. Mr. Horgan was out of the section, but was present in order to help work out some of the problems resulting from the change in the legislation. He stated Mr. Zuccaro never questioned him about being out of his section or talking to other employees. He testified Mr. Zuccaro's exchanges with Mr. Stina occurred on numerous occasions and only Mr. Stina was singled out. Mr. Horgan and the others were never told to go back to work, and he never saw Mr. Zuccaro tell others to get back to work. Mr. Horgan maintained there was no explanation for Mr. Zuccaro to single out one person, and he found it very strange.

Mr. Horgan testified, on one occasion, Mr. Zuccaro stated that there was only one problem in the brake section, and pointed to Mr. Stina. He told Mr. Horgan about working with Mr. Stina at Malvern shop and said he found Mr. Stina to be uncooperative.

On another occasion, Mr. Stina's co-workers complained Mr. Stina was changing parts unnecessarily, but when Mr. Horgan investigated he concluded the parts that Mr. Stina changed had to be changed. Mr. Horgan testified Mr. Stina came to his house on two occasions. On the first occasion, Mr. Stina was distraught and told him how upset he was about the way he was being treated by Mr. Zuccaro. Mr. Stina couldn't sleep, his nerves were in trouble and he asked Mr. Horgan for advice. Mr. Horgan advised Mr. Stina to write everything down and take it to the Ontario Human Rights Commission. According to Mr. Horgan, Mr. Stina started crying while talking to him, which

surprised Mr. Horgan. Mr. Horgan realized all of these incidents had a profound effect on Mr. Stina.

Approximately two weeks later, Mr. Stina came to his home with a document, which he signed. Mr. Stina advised him the Human Rights Commission told him to deal with it internally and he had agreed. Mr. Horgan claimed he has never dealt with anyone as distraught as the grievor.

When cross-examined, Mr. Horgan admitted there were two occasions when he accused supervisors of harassment, but it was found that there were no grounds. When Mr. Horgan discussed the situation with Frank Zuccaro, Mr. Zuccaro told him he knew Mr. Stina from Malvern, and they had dealings with each other before; he wasn't bothering Mr. Stina and was not prepared to discuss the issue further. According to Mr. Horgan, Mr. Zuccaro seemed standoffish. Mr. Horgan thought it was a personality conflict and things would "cool off". In a subsequent discussion with Mr. Zuccaro, Mr. Horgan confirmed Mr. Zuccaro told him he had one problem in the brake section and pointed to Mr. Stina, and said "there's my problem". Mr. Horgan did nothing about the remark, nor did he make any notes about the conversation. He claimed he was surprised by Mr. Zuccaro's comments, because they had been talking about a totally different issue and not about anyone's behaviour or any disciplinary matters. Previously, Mr. Zuccaro had told him Mr. Stina had been uncooperative.

There was a further incident when there was a discussion in the brake section, and Mr. Zuccaro told Mr. Stina to get back to his work when other employees were present. A similar incident occurred within a short period after that, and again Mr. Stina was told to get back to work and nothing was said to anyone else. Mr. Horgan remembers other incidents of this nature, but not specifically. According to Mr. Horgan, Mr. Zuccaro didn't tell anyone else to go to work and it appeared he was "transfixed on Vito, like he didn't see anyone else". Mr. Horgan testified Mr. Zuccaro came out of his office and walked right up to Mr. Stina and told him to go back to work, but he didn't look at anyone else or say anything else, and then turned around and went back to his office.

Mr. Horgan conceded there was another occasion when Mr. Stina's co-workers complained and Mr. Zuccaro told him Mr. Stina had changed parts unnecessarily. Mr. Horgan agreed that it would be a waste of time and money. He also indicated it was not unusual for co-workers to complain about other workers. When Mr. Horgan investigated the matter, he looked at the scrap parts, but claimed he too would have changed those parts and discussed it with Mr. Zuccaro. He informed Mr. Zuccaro of his opinion, which ended the matter. Mr. Horgan also stated he wasn't critical of Mr. Zuccaro with respect to that incident.

Mr. Horgan also agreed he had signed a written document prepared by Mr. Stina; he read it over and signed it as a witness, and the document was exact as to the occurrence.

Mr. Vishram Ramlochan was employed as a repair mechanic, and worked at Duncan shop in the brake section, when Mr. Stina worked there. He does not socialize with Mr. Stina outside of work. He stated Mr. Stina did his job and got the buses out. Mr. Ramlochan also knows Mr. Zuccaro and observed his dealings with Mr. Stina. He stated "mostly I remember him asking Vito to get back to his work location and get back to work". He stated he was in the next bay approximately five feet away, and, on occasion, when Mr. Stina took a break he spoke to Mr. Ramlochan. Mr. Ramlochan testified Mr. Zuccaro told Mr. Stina to get back to work at least once a week. At times, there were other Group 7 employees sitting around, and Mr. Zuccaro did not speak to the other employees. He claimed the other Group 7 employees were just talking and not working. When others took a break along with him, nothing occurred and others would be reading or talking, but Mr. Zuccaro told Mr. Stina to get back to work. Mr. Zuccaro did not speak to the other employees. He admitted Mr. Stina was concerned about being singled out, and was not happy and raised the issue. Mr. Ramlochan also confirmed the employees used the phone outside the office at any time.

When cross-examined, Mr. Ramlochan asserted Mr. Zuccaro never had a problem with anyone

using the phone, but the employees had to use their own discretion and couldn't be on the phone for twenty minutes at a time. He agreed the policy was to use the phone at break time, but people did use the phone outside break time. He said there was no trouble if the employees made a quick call. He agreed if an employee talked on the phone every day for ten minutes, that employee would be in trouble.

He testified Mr. Zuccaro's instructions to Mr. Stina to return to work occurred once or twice a week over several months, while others sat around or read. When Mr. Stina was asked to go back to work he did, and, at times, he was only taking a breather.

Dr. Raouf Edwards, who is a medical doctor and received a Fellowship in Psychiatry, testified Mr. Stina was his patient and he saw him on a number of occasions and took notes. Mr. Stina had been referred to him because of an anxiety diagnosis, and Dr. Edwards assessed him and followed that with treatment. Dr. Edwards claimed the main stressor for the grievor was the problem with his foreman, which Mr. Stina referred to as harassment. Dr. Edwards testified the grievor suffered from a major depressive disorder. He was in a depressed mood, lacked interest in things he used to enjoy, had low energy level, poor concentration, poor sleep and a negative self-concept.

Dr. Edwards stated Mr. Stina was overwhelmed, tearful, and sad. At times he had tears. On other occasions, he came to see him without an appointment; Mr. Stina cried, was anxious internally and externally, was shaking and had poor concentration. Dr. Edwards prescribed an anti-depressant. Dr. Edwards ruled out that the grievor was suffering from an adjustment disorder and concluded the grievor suffered from major depression. The grievor suffered from stress and there were no other significant stressors. When depression is treated the improvement is gradual and it improves in an oscillating way; the patient has some good days and ultimately, the frequency of the good days increases and the healing process starts.

Dr. Edwards increased the grievor's prescription and the grievor appeared to be returning to normal, but was anxious when he faced the reality of his situation. He discussed the limits of psychiatry and couldn't do anything more, but continued to add anti-depressants. Dr. Edwards concluded the grievor was not suicidal, nor was he homicidal. In approximately June 2001, he concluded the grievor's major depression had resolved. Dr. Edwards stated that even though the patient returned to normal, treatment continued in order to avoid relapse or recurrence. He also concluded the grievor could not continue to work under harassing foremen, and if he returned to work for that foreman he would be at risk of relapse. Stress occurred when the grievor thought about the situation. By September, the Doctor determined the grievor was not psychotic and he augmented the prescription with Remeron, which is another anti-depressant.

In September of 2001, the grievor had moved his work to another foreman, but was concerned, because he believed this foreman had received information from Mr. Zuccaro. Dr. Edwards felt that the grievor's concerns extended beyond depression, and he was getting false ideas someone was treating him badly, although the reality may not have been the case. Dr. Edwards referred to this as being delusional and then prescribed another medication. As of October, Dr. Edwards was concerned the grievor was becoming paranoid. In his opinion, a person not adequately treated for depression might develop a psychosis in the context of depression. There is an ability for psychotic manifestation when the stressors are not removed, and, accordingly, the vulnerability keeps showing. The grievor felt he was being picked on and rules were not being enforced with respect to others.

Dr. Edwards was also of the view if rules were enforced against the grievor and not others, and the grievor was told he couldn't complain under the Commission's Human Rights rules, and witnesses were not interviewed with respect to prior complaints, that being involved in the litigation process could move a person from major depression to psychotic, particularly where a person has a vulnerability to psychosis. If a person does not have a vulnerability, that person may react differently. Dr. Edwards

also indicated a stressor could occur when there are circumstances which a person could not change, but if the problem was solved there would be no stress. When the grievor was given a further drug, this touch of psychosis improved to the point where stress medication was stopped. Dr. Edwards testified he had given the grievor medication, which he increased and decreased from time to time.

Dr. Edwards said the stressor for the grievor's original major depression was the uncomfortable situation at work, and being picked on by the foreman over two periods; that it was a cause and effect, and when the foreman, in issue, was out of the picture, the grievor was all right. He testified given the length of time the situation occurred the stress had become chronic, which set the stage for the grievor's paranoid thinking to develop. That was a psychosis where some portion of reality was taken out of proportion. In Mr. Stina's case, the abuse and mistreatment over a length of time, coupled with some vulnerability on his part, caused him to begin with something real (major depression), and then became something that was not real (paranoia).

When cross-examined, Dr. Edwards provided some background as to his approach to patients and confirmed he had diagnosed Mr. Stina with major depression. In his opinion, his diagnosis was validated over time. He indicated that depression could evolve over time and develop into a psychosis, such as paranoia. He ruled out such a disorder as the cause of Mr. Stina's difficulty. Dr. Edwards testified Mr. Stina was depressed in 1997, but when he moved his work location in 1998 he did well. However, since he came in contact with his previous foreman, Mr. Zuccaro, the depression returned.

Dr. Edwards admitted his knowledge of Mr. Stina derived from what Mr. Stina told him. Dr. Edwards did not obtain previous psychiatric records, because he was satisfied from the information he received from Mr. Stina. He acknowledged Mr. Stina was "vulnerable to some extent". Dr. Edwards confirmed that initially he had diagnosed the grievor with having major depression and was confident as to his diagnosis, and over time it was verified. Dr. Edwards was of the opinion the depression arose as a result of the foreman harassing the grievor, and the foreman was important to his

diagnosis.

He further indicated there was some indication of paranoia when the grievor reported the foremen were talking to each other. Mr. Stina reported he was being treated differently from other employees; Dr. Edwards' information about Mr. Stina's treatment by his foreman resulted from information he received from Mr. Stina. Dr. Edwards knew for certain Mr. Stina thought he was being harassed, but he had no substantial proof other than what Mr. Stina told him. He also indicated he was concerned with what the patient thinks, not what is objectively real.

Dr. Edwards testified in his opinion there was a responsibility on a supervisor to maintain a cohesive team and to consider the differences in people. A supervisor cannot exercise absolute authority without regard to the recipients of his authority. Dr. Edwards called the grievor's workplace, but was unable to determine whether Mr. Stina's foreman made an effort to work out the conflict. No one returned his message. Dr. Edwards maintained he was seeking to resolve the conflict between Mr. Stina and the foreman by trying to ensure people were civil with each other.

Dr. Edwards was of the opinion Mr. Stina's signs of paranoia occurred because Mr. Stina felt his new foreman was talking to his former foreman. Dr. Edwards' role was not to be a lawyer or a judge, but to help Mr. Stina adjust to what was going on in the workplace, to enlist assistance and to work as a team with both the employer and the employee.

On June 26th, 2001, Dr. Edwards informed the Commission Mr. Stina could return to work, but not with the same foreman, and suggested he be transferred to another department. He stated the paranoia emerged after treating Mr. Stina for some time, and occurred when Mr. Stina started to complain about his second foreman. He felt Mr. Stina was reacting in a paranoid manner; it was clinically relevant that Mr. Stina felt there were three supervisors conspiring against him. The paranoia arose because the "real triggered the unreal". Dr. Edwards gave the grievor medication for what he

perceived to be a delusional disorder. Dr. Edwards indicated Mr. Stina had an underlying susceptibility to stressors and when real events occurred in the workplace, it would affect him over time, particularly if the relationship with his foreman deteriorated. The development of paranoia was not his initial response. The earlier manifestations of difficulty were depression, which later manifested itself in paranoia. In his opinion, the factors in Mr. Stina's illness resulted from something wrong at work, i.e. he was being mistreated, the length of time over which the mistreatment occurred and Mr. Stina's vulnerability.

When re-examined, Dr. Edwards testified he saw the grievor in April 2001 and did not start to think about paranoia until late in September of 2001. He prescribed medication for the paranoiac aspect of the grievor's condition, and the grievor responded to the medication which Dr. Edwards adjusted from time to time. Dr. Edwards maintained if the grievor returned to work without the same foreman, it would remove the stress from the grievor. He felt the problem could be worked out by skilful management. Mr. Stina felt threatened the foreman would again become his supervisor, because it had happened previously after he had transferred.

Dr. Robert Dreckmann, a general practitioner, treated Mr. Stina for anxiety in February of 2001. He testified Mr. Stina came to his office and was very upset and distraught, and indicated he was having difficulty with the foreman with whom he had previous difficulties in 1996. Mr. Stina indicated if a group of employees came together he would be singled out and told to get back to work.

Mr. Stina was desperate because there was nothing being done to improve the situation; he felt the Union was not helpful, nor was the Commission's Human Rights department helpful. Mr. Stina was afraid of being fired and was afraid to go back to work. He was tearful when he described the events, and appeared desperate and did not know where to turn or what to do.

Dr. Dreckmann tried to reassure the grievor, and felt he could be classified as a person with a

situational anxiety, which he defined as anxiety brought on by a stressor that a person would not normally have to deal with. Dr. Dreckmann prescribed medication designed to remove the grievor's anxiety and asked the grievor to return in one week. Mr. Stina came back the next day claiming the medication did not work; he was unable to go back to work, and Dr. Dreckmann suggested he stay off work, which was the source of his problem. The grievor did not indicate he had any other problems. The grievor returned in approximately one week, and indicated there was some slight improvement. Dr. Dreckmann suggested he consult Dr. Edwards, a psychiatrist. He wanted a specialist to confirm his diagnosis that the grievor's difficulty was anxiety related to work. He also wanted to see if psychotherapy was appropriate and whether different medication might help.

Dr. Dreckmann saw the grievor at the beginning of March and the grievor continued to have anxiety although the medication was helping and he was able to cope. The grievor was not successful in making changes at work and was unable to return to his work environment. The grievor specifically complained his foreman was giving him a hard time. Dr. Dreckmann continued to see the grievor and felt the grievor was unable to work as a result of the difficulties he was encountering. In his opinion, the grievor's difficulty was "definitely work-related" and he started to fill out W.S.I.B. forms in April, to assist Mr. Stina with receiving benefits.

When the grievor started seeing Dr. Edwards, Dr. Dreckmann's involvement was limited to being updated, because Dr. Edwards was providing primary care. Dr. Dreckmann was of the opinion that a person faced with the situation the grievor faced, i.e. being singled out, not having his complaints dealt with, not having other witnesses/employees interviewed by the employer, and the employer taking no action, would trigger a situational anxiety or depression. Dr. Dreckmann also maintained if the employer were to take steps to correct the situation and the grievor felt that people were taking him seriously and attempting to make the work situation better, it would alleviate his anxiety.

When cross-examined, Dr. Dreckmann stated Mr. Stina had been his patient since December 5th, 1997. Prior to February 15th, 2001, Mr. Stina had never raised any problems at work or mental health issues, including situational anxiety or depression. In addition, during that period there were no marital problems. His information was derived from what Mr. Stina told him. However, Dr. Dreckmann objectively observed that Mr. Stina appeared upset and agitated. He denied the levels of anxiety experienced by Mr. Stina and the degree to which he was upset could be caused by a co-worker calling him a 'fink'. It would require more than that to explain the level of his upset.

Dr. Dreckmann believed Mr. Stina had tried to deal with the situation on his own for a long time, became frustrated by the lack of interest in his efforts to have the problem resolved and had reached his limit. In his opinion, when Mr. Stina came to see him on February 15th, 2001, it was out of desperation, because he did not know where to turn or what else to do. Mr. Stina maintained there was one particular individual he was having problems with, and did not indicate he was having problems with other people. Dr. Dreckmann concluded the grievor was anxious, based on his observations on February 15th, 2001, and bearing in mind Mr. Stina had been his patient since December of 1997, and he had never seen him in such a state or anything close to that state. He had seen the grievor on a number of occasions in 2000 and earlier in 2001 and claimed Mr. Stina did not have any difficulty in articulating his problems.

Dr. Dreckmann believed Mr. Stina was physically capable of working, but could not return to work because of a particular person, who was the source of his problem. He was of the view that a change in the grievor's work location or department would be beneficial to him, particularly, if the person who was causing the problem was no longer involved with Mr. Stina; that would go a long way to remedy the situation and put Mr. Stina in a frame of mind where he could work.

When re-examined, Dr. Dreckmann confirmed Mr. Stina had never complained to him about mental health issues prior to February 15th, 2001, and was of the opinion Mr. Stina would not necessarily tell him about the harassment prior to that date. He was of the view that people sometimes suppressed their symptoms or feelings; they feel they are able to deal with them on their own, and Mr. Stina may not have felt there was a medical issue to raise.

Dr. Dreckmann did not believe it would alleviate Mr. Stina's situation if he was moved to another position in the same department, where the foreman might be in a position to supervise him. That would not be a fair resolution of the problem, unless Mr. Stina was reassured he would have no involvement with the particular foreman, could concentrate on his job and need not worry about future harassment and reprisals from the foreman.

Mr. Kelvin Hewitt, the senior repair foreperson at Malvern garage in 1996 and 1997, testified he was the repair foreperson and Mr. Zuccaro was also a repair foreperson, and a floor planner. Mr. Zuccaro worked a 12 hour shift on weekends and two days during the week. The floor planner assisted the foreperson and if a mechanic had a problem the floor planner would assist that person. Also, the floor planner would supervise on weekends, when Mr. Hewitt was absent. Mr. Hewitt was Mr. Stina's supervisor.

Mr. Hewitt testified he had discussions with Mr. Stina about his work, his productivity and his mechanical knowledge. Mr. Stina was a Group 7 employee who did minor repairs when he did not have inspections to perform. Mr. Stina had received training for inspections. Mr. Hewitt testified if someone was uncertain about performing repair work, he would assign him to a mechanic to obtain the knowledge and experience by working on the job. Mr. Hewitt testified most Group 7's have a knowledge of repairs and what to do, and a person would be provided with training if he did not know how to do the job or lacked experience.

Mr. Hewitt completed a job appraisal of Mr. Stina, and felt he always needed help as he did not know how to perform the repairs; Mr. Stina seemed to be a carefree person who preferred to be elsewhere. In his opinion, Mr. Stina did not have self-confidence, and it took him a long time to do the work. He also felt that Mr. Stina did not come to him to look for work. Mr. Hewitt felt Mr. Stina's productivity was poor and he needed to apply himself and to improve his self-confidence, and that he lacked initiative and wasn't a self-starter. He felt overall Mr. Stina needed improvement, and when asked if he would rehire Mr. Stina, he said "No, he didn't appear to be an employee who was willing to work." When Mr. Hewitt discussed this appraisal with Mr. Stina, Mr. Stina indicated he did not like the appraisal and refused to sign it. Mr. Hewitt told Mr. Stina he could write down his remarks, and Mr. Stina wrote a letter.

Mr. Hewitt completed another performance appraisal which indicated Mr. Stina had shown a little improvement since the first appraisal. He was able to perform the inspections, but needed assistance where mechanical ability was required. He also felt the job seemed difficult for Mr. Stina and he took the mechanics from their job, although the mechanics had no problem helping him.

Mr. Stina asked for training and was given training. Mr. Hewitt denied there were any problems between him and Mr. Stina. Mr. Hewitt denied he had ever ruined Mr. Stina's reputation, humiliated him or harassed him, nor did Mr. Stina complain to him about Mr. Zuccaro. He felt the mechanical work performed by the Group 7's was simple. Mr. Hewitt also maintained he had to find Mr. Stina to give him more work, and this occurred quite often.

When cross-examined, Mr. Hewitt acknowledged he was unaware of the job performed by Mr. Stina prior to coming to Malvern garage. He admitted a Group 4 service person did minor repairs, such as changing wiper blades and head lights. Mr. Stina had worked at the Lakeshore garage, but Mr. Hewitt had never worked at that location. Mr. Hewitt claimed Mr. Stina was obliged to

have some knowledge of Group 7 activities, although he had no knowledge as to what Mr. Stina had previously done. At Malvern, Mr. Stina's work involved minor repairs, and Mr. Hewitt had no idea whether Mr. Stina had performed any of those operations previously.

Mr. Hewitt admitted Mr. Stina had trained in inspections as a result of having requested training. He testified Mr. Zuccaro would assist the mechanics during the week. He also acknowledged if Mr. Stina did not know how to put a bus on a hoist he should be shown how to do it. He also stated if there were employees who did not know how to perform certain functions, they would be shown. He admitted it would not be appropriate to tell him to put a bus on a hoist and if the bus fell off he would be fired. Mr. Hewitt stated that putting a bus on a hoist is safety related, and all safety precautions should be taken.

Mr. Hewitt testified a Group 7 employee should be mechanically inclined and is placed with another mechanic to do the work. If a person claimed he hasn't done the job previously, Mr. Hewitt would put someone with him to show him how to do the work. He maintained Group 7's learn to do the repair work by working on the job with other persons such as a mechanic, but some people require more assistance than others. He assigned a mechanic to work with Mr. Stina, but can't remember which mechanic it was. He also stated Mr. Stina was not disciplined and after Mr. Stina was trained to do inspections, he never had a problem with inspections.

Mr. Hewitt testified Mr. Stina had a problem with self-confidence and the only training Mr. Stina requested was training on inspections. He also felt Mr. Stina should have been able to do the job he was assigned, given the amount of time he was on the job. He was unaware Mr. Stina had asked for training with respect to repairs. After Mr. Stina was evaluated in October, Mr. Hewitt does not recall any requests for training.

Mr. Hewitt agreed that after the November evaluation, Mr. Stina wrote a letter and training was provided. After Mr. Stina's letter, Mr. Hewitt never checked to see how often Mr. Stina did repairs and how often he did inspections. He claimed Mr. Stina had received training by working with the mechanics. However, when he received Mr. Stina's letter he did not discuss it with him. He said if Mr. Stina went to a mechanic for assistance it would detract from the mechanic doing his job. Mr. Hewitt was unaware of any specific instance when he explained the job to Mr. Stina, and testified Mr. Stina would try to do the job a few times, but had difficulty and had asked for help.

He testified that there was no analysis done to compare Mr. Stina's productivity with other Group 7s, but maintained a foreperson knows from day to day who is producing and who is not. He claimed he had an idea of what was being done, although he did not do an analysis. Mr. Hewitt cannot remember any specific jobs where Mr. Stina took longer than normal, nor does he recall whether he took any action or whether there was any discussion about the matter.

Mr. Paul J. Kelly, a foreperson, testified he had worked in Duncan shop between 1996 and 2002, and in February of 2003 was promoted to foreperson in the brake section. He was employed in the brake section when Mr. Castanaro was in charge and maintained Mr. Castanaro was laid back and relaxed. Mr. Kelly outlined the work performed in the brake section by both the mechanics and the Group 7s. He worked with Mr. Stina and there was nothing that was noteworthy about their experience.

After the law was changed, Group 7s were not allowed to work on the buses and were provided with work stations. In Mr. Kelly's experience, Mr. Stina did not have trouble with the work. Mr. Kelly maintained, from time to time, under the new system he had to ask for wheels so that he could get his work done and in so doing relied on the forklift operators and the Group 7s. If he did not receive the wheels from the forklift operator, he spoke to Mr. Zuccaro. He claimed Mr. Zuccaro was different from Mr. Castanaro. Mr. Castanaro was more laid back, but Mr. Zuccaro wanted to know what everyone was doing and kept tabs on everyone. Mr. Kelly maintained Mr. Zuccaro was trying to implement the

changes brought about by the new law.

Mr. Kelly stated the use of the phone was a widespread problem because employees were using it for both emergency and non-emergency personal calls. Employees were told to get off the phone by their co-workers and Mr. Zuccaro. He maintained there was one set of rules for everyone.

Mr. Kelly testified at Duncan shop the supervisors were concerned about people leaving early and took names, and from time to time cracked down.

When cross-examined, Mr. Kelly agreed people left early and that included him. He maintained supervisors would wait outside and write down names of people who left early, although he never got caught. He agreed he used the washroom on the second floor, but Mr. Zuccaro had never followed him or watched him, and he never observed Mr. Zuccaro following anyone to the change room. He also agreed employees use the phone outside the foreman's office for non-emergency personal calls. Mr. Kelly admitted he used it for emergency calls, but not on a regular basis.

Mr. Mike Pugliese was the afternoon shift foreman at Duncan shop from 1998 until April 2002. He testified he never followed Mr. Stina to the change room, but he did look for employees leaving early. He agreed on one occasion he observed Mr. Stina in the change room, but when he went back to his office he saw Mr. Stina back on the shop floor. Mr. Pugliese also stated that employees leaving early was an ongoing issue, and he had received instructions to record the names and badge numbers of individuals leaving the premises early.

When cross-examined, Mr. Pugliese stated he looked for people going in and out of the change room all of the time. He acknowledged seeing people in the change room early, on an ongoing basis. He did not recall any discussions with Mr. Zuccaro about Mr. Stina, but claimed he told Mr. Zuccaro he

had seen Mr. Stina in the change room. There were other employees there and he took no note as to who they were. He was not involved in "writing up" Mr. Stina.

Mr. David Partington, the senior superintendent at Duncan shop, stated that Duncan shop supports the operating garages and is the main overhauling shop. He testified a person in wage Group 4, who bids into wage Group 7 would do so on the basis they could perform the duties of the wage Group 7. There is a binder in each garage with the current and updated job descriptions. Employees who bid into a job do not get trained. The mechanical service person is three wage groups higher than a Group 4 service person, and is required to complete a higher level of maintenance on the buses. The Collective Agreement and seniority regulations refer to a trial period of 70 to 90 days and allows the employer to see if a person can perform the work adequately and on time. An employee, who is of the opinion he/she cannot do the job, can invoke the 70 to 80 day clause, as well.

If things do not work out the employee would return to a resultant vacancy, but has no guarantee to return to the job the employee posted from.

Mr. Partington testified he didn't believe a person should put himself in a position where he/she was not going to succeed; employees have access to the job descriptions and, if they work in the maintenance facility, they are able to see the work performed by the mechanical service persons. He claimed there should be some expectation an employee could do the essence of the job for which he/she is bidding.

Mr. Partington testified when the changes were introduced, there was tension and anxiety among the Group 7 employees because of the concern there was not a clear need for them to do brake relining. He indicated that none of the employees liked the possibility of change. The Commission worked with the Union to maintain the Group 7 positions, and in September of 2000, implemented the new system, which permitted the Group 7s to do work off the bus.

Mr. Partington stated the expectations were that each Group 7 would do four sets or eight pairs of wheels per day, but because there were three or four Group 7s there was not enough supply of wheels to keep them equally busy, and, accordingly, some did three sets. Initially, the Commission attempted to keep the Group 7s busy all day, which was a big adjustment because the Group 7s were out in the open and getting work all day compared to the previous situation where they worked with the mechanic between or behind buses and were not as busy. The situation was stressful for both forepersons and employees and it took a while for the standards and expectations to evolve.

In November of 2000, there was a productivity problem with the grievor; Mr. Zuccaro believed there was a fourth set of wheels for Mr. Stina to do that did not get done and wanted to pursue it as a productivity issue. The Group 7 employees had been doing three or four sets of wheels per day. Mr. Partington was called into the picture because the other superintendent was away and he was told by Mr. Stina that Mr. Zuccaro was mistaken. Because it was difficult to discipline for productivity, Mr. Partington asked Mr. Zuccaro to confirm there was a fourth set of wheels. After reviewing the time sheets and records available, they could not definitely say there was a fourth set. Mr. Partington does not believe Mr. Zuccaro was mistaken, but could not prove what Mr. Zuccaro said or saw and so discipline was not pursued.

With respect to the phones, Mr. Partington said the use of phones had been an issue for some time, and the phones were not for personal use, but are so used, at times. The matter has been frequently discussed with the Union, and members of supervision are encouraged to deal with phone usage problems. This is done verbally and directives with respect to the phones come from above.

He also stated the supervisory people are directed to monitor who is leaving early. Leaving early is an issue which is constantly abused by employees and supervisors periodically check.

Foreman are positioned at the exits and watch for people leaving.

Mr. Partington testified that Anne Pozywiak dealt with Mr. Stina's harassment complaint, and left the employer in May of 2001, but not on good terms. Mr. Partington stated he had some discussion with Mr. Stina, who had been an unsuccessful applicant for an apprenticeship program, and Mr. Stina failed the mechanical aptitude and mathematics portion of the test. Mr. Stina was of the view he should still be in the program and became very upset and emotional and left his office. He did not want Mr. Zuccaro to be a reference and felt Mr. Castanaro would be a better reference.

When cross-examined, Mr. Partington said in order to have a "C" licence an employee must drive a bus onto a hoist. He acknowledged he was not privy to any training for Mr. Stina and he is unable to contradict Mr. Stina, if Mr. Stina claims he received no training.

Mr. Partington was unaware as to how the grievor was deployed at other facilities and is not aware of what work he performed. In 1996, the normal progression was for Group 4s to bid into a Group 7 position. It is possible some of the Group 4s had never performed certain aspects of the job. Mr. Partington maintained there was no training for Group 7s prior to the law being changed. Usually, Group 7s work with a mechanic to learn and become familiar with the work to be done. The training is hands on training. He maintained employees work at the same time as they become familiar with the work.

With respect to the potential discipline for Mr. Stina, Mr. Partington is unaware whether Mr. Zuccaro spoke to other employees concerning a fourth set of wheels. Mr. Partington did not speak to other individuals since the issue arose in a section he did not supervise, and he took a clinical view of the matter. He checked to see if the wheels were there or not, then turned the investigation over to Anne Pozywiak who completed the investigation, and no discipline ensued.

Mr. Francesco Zuccaro had been the operating floor person at Malvern shops since 1995. He was a direct supervisor on weekends, but did not supervise employees on Mondays or Fridays, which were the other days he worked. He replaced Mr. Hewitt when Mr. Hewitt was absent. Mr. Zuccaro does not remember speaking to Mr. Stina on the first day at Malvern. He maintained Mr. Hewitt handed out the work and he didn't direct Mr. Stina. Training was given for inspections or safety, but the Group 7s are paired with another person for repairs. Generally, Group 7s have some experience in doing repairs.

Mr. Zuccaro denied Mr. Stina asked him to show him how to get the bus on the hoist; he denied asking Mr. Stina to try his best and denied Mr. Stina asked what would happen if the bus fell off the hoist. Mr. Zuccaro denied saying Mr. Stina would be fired and sent home. He claimed he has demonstrated to others how to use the hoist and when other employees ask he assists them. He had not met Mr. Stina prior to working with him at Malvern.

Mr. Zuccaro acknowledged there was an unwritten policy that when employees go on vacation they leave early and Mr. Stina was permitted to leave early on one occasion, but the second time he demanded to leave early and his request was denied. Mr. Stina pointed out that other people were leaving early, and Mr. Zuccaro asked who they were, but Mr. Stina would not give him the names.

Mr. Zuccaro said that in the course of his duties he never harassed Mr. Stina, never singled him out for special treatment and always acted appropriately as his supervisor.

When cross-examined, Mr. Zuccaro said after the incident about whether Mr. Stina had left the fourth set of wheels, the Commission instituted a solution by requiring tags to be filled out. Previously, there was no way of checking what employees did, and they used an honour system. It had been impossible to check by records who had worked on a particular set of tires, and he cannot remember whether he asked the employees each day, or every other day, what work they had done. However, in

February of 2001, there was a record of how many sets of wheels each Group 7 had done.

Mr. Zuccaro said there was not much interaction with Mr. Stina at Malvern. He was not aware to what extent Mr. Stina did inspections and to what extent he did repairs. He cannot recall any interaction with Mr. Stina at Malvern. Mr. Zuccaro shared an office with Mr. Percival and on Mondays he spent approximately one-quarter ($\frac{1}{4}$) of a day in the office, and on Fridays approximately one-half ($\frac{1}{2}$) day scheduling weekend work. The rest of the time he did quality checks. Mr. Hewitt tended to be on the floor and on occasion he handed out work for Mr. Hewitt. He does not recall Mr. Stina raising an issue with him about training, and if he had raised an issue it would have stood out in his mind.

Mr. Zuccaro acknowledged there was a training program for safety, and Mr. Stina had raised the issue of training in his performance appraisal. He does not remember Mr. Stina raising the issue, and he does not recall what went on with the performance appraisal in 1996. He stated that in 1996, Mr. Stina's wasn't the only evaluation he performed. He performed Mr. Stina's evaluation by going back into the file to look at the quality checks to see if he had made any mistakes, looked at his attendance, and that was all.

He does not remember anything about the reference to intimidation in the performance appraisal and he had no knowledge of Mr. Stina's repair abilities in 1996. He does not remember the performance appraisal from 1996 and it was possible Mr. Stina was struggling with mechanical duties. He just simply doesn't know and doesn't remember, and looking at the performance appraisal does not refresh his memory. The superintendent signed off the appraisal. Mr. Zuccaro does not remember doing anything about proper training.

Mr. Zuccaro believes it was mandatory when someone was doing inspections or safety checks that a trainer would show them the procedures. As to Mr. Stina's claim that he did not receive training,

Mr. Zuccaro does not know whether he did or not. Mr. Zuccaro maintains a person should be trained before he does the job so he knows what to look for. He is not aware whether Mr. Lewis, who does the training, came to Malvern to train Mr. Stina.

He acknowledged if a Group 7 employee asked for help to put a bus on a hoist it would be appropriate to show him how to do it, and it would be inappropriate to state if the bus fell off he would be fired. Mr. Zuccaro is unaware of anyone who would say anything like that, nor did he say it to Mr. Stina.

Mr. Zucarro said before the law changed, the Group 7 employees stripped the wheels and after the law changed they also stripped the wheels, but not on the bus. The mechanics took the wheels off the buses and the Group 7s then stripped them. The stripping occurred at different locations. The Group 7s' workload was the same before and after the change. After the law changed, twelve (12) sets of wheels would be the maximum required.

Mr. Zucarro testified green tags were completed by each Group 7 employee who did a set of wheels; the tag system was instituted on November 16th, 2000. The procedure was instituted to see the quantity of wheels being produced each day, and not to match the cars with the wheels that were built. The system kept track of the wheels built, but Mr. Zuccaro did not look to see who built what or how many wheels each person built. Mr. Zuccaro said he would count the tags each day and file them away, but hadn't reviewed the tags prior to giving evidence. Mr. Zuccaro admitted he was involved in preparing an analysis of the work Mr. Stina had done, and, in November and February, when Mr. Stina left, there were eight or nine Group 7s on the day shift and two or three were doing wheels. At times, the employees forgot to give him tags, but he might get them the following morning, and on other days he forgot to collect them. He stated Mr. Stina declined to work overtime, but others continued to work into the afternoon shift.

Mr. Zuccaro admitted the requirement for the number of wheels to be done on any given day could change; the tags suggest since January Mr. Stina was doing one and one-half to two sets of wheels per day. On the occasion when Mr. Zuccaro attempted to discipline Mr. Stina about not doing a fourth set of wheels, Mr. Stina indicated there were other Group 7s to confirm his version, but Mr. Zuccaro does not recall interviewing them. There was no other occasion he recalls when Mr. Stina was disciplined for lack of productivity.

He has no recollection of writing anything up until February 15th. He wrote Mr. Stina up on February 15th, but he didn't meet with Mr. Stina on that day and never interviewed him about that document. The document indicated he was going to discipline Mr. Stina, but Mr. Zuccaro did not know what he was going to do until after he interviewed Mr. Stina; the document contained standard language. He maintains he generally writes out his intended action ahead of time, notwithstanding he has not interviewed the employee.

Mr. Zuccaro denied he created a document concerning Mr. Stina going to the change room and leaving early and claimed, when Mr. Mendez said he saw such a document, Mr. Mendez was lying. When he has relieved other employees from duty, he has never written it up ahead of time, but has written it up after meeting with employees. Mr. Zuccaro denied following Mr. Stina to the change room, and stated Mr. Mendez was wrong when he testified he had followed Mr. Stina. He has never gone to the change room to see if someone is leaving early, and he has never asked anyone to do it for him; no one had told him they saw Mr. Stina changing.

Mr. Zuccaro does not dispute the tags that were filed by Mr. Stina. He stated, in his view, Mr. Stina changed too many parts (races) but was never disciplined for it, nor was he disciplined for being incapable of doing the job. Mr. Zuccaro acknowledged that, at times, Mr. Stina was told to replace

bearings or races, but he does not recall whether he ever overruled Mr. Mendez. He had no recollection of the number of occasions Mr. Stina was told to replace parts. However, he claimed Mr. Stina took longer to replace a set of wheels because he was changing races. Also, Mr. Zuccaro cannot remember occasions when Mr. Stina identified tire separation problems.

With respect to the February 15th incident, Mr. Zuccaro does not dispute Mr. Stina received his first set of wheels at 10.00 a.m. There is nothing in the write up of the incident to show the bus did not go out on time. Mr. Zuccaro acknowledged Mr. Stina was adamant he was being picked on and mentioned it frequently. He told Mr. Stina to get back to work three or four times in total. Mr. Zuccaro testified he asked everybody to get back to work. Mr. Zuccaro disagreed with Mr. Mendez, who testified Mr. Zuccaro had been picking on Mr. Stina. He stated, contrary to Mr. Mendez and others, there was no situation where he told Mr. Stina to go back to work and not others. Mr. Zuccaro also stated, contrary to Mr. Mendez and others, there were no circumstances when Mr. Mendez and Mr. Stina were talking when he told Mr. Stina to go back to work, but said nothing to Mr. Mendez. Mr. Zuccaro testified if Mr. Stina went to a mechanic about replacing the parts it wouldn't bother him.

Mr. Zuccaro performed quality checks at Malvern to see whether anything had been missed in the safety or inspection checks. He based his appraisal on what he had seen by checking. He was unable to remember the amount of inspection work performed compared to the amount of repair work done by Mr. Stina, and he has no memory of meeting with him concerning the performance appraisal. He acknowledged he had been directed by Mr. Hewitt or Mr. Percival to have a trainer come to Malvern to show Mr. Stina how to do inspections, but recalls nothing else about training for Mr. Stina. Mr. Zuccaro remembers nothing further about Mr. Stina at Malvern nor does he remember when Mr. Stina left the Malvern shop. Mr. Zuccaro was at Malvern until February 2000, when he commenced work at Duncan shop as a foreperson in the brake section, taking over from Mr. Joe Castanaro. When he came to Duncan shop, he went around introducing himself, and saw Mr. Stina and asked how it was

going. Mr. Stina replied "you remember Malvern?", and Mr. Zuccaro responded he did not. Mr. Zuccaro went on to say, "whatever happened at Malvern should stay at Malvern - you are at Duncan and I'm at Duncan".

Mr. Zuccaro testified he could not say what happened between him and Mr. Stina; he spoke to him as much as he spoke to anyone else, and his dealings with him were no different from others.

When there was a change in the law and the Group 7s were moved to locations other than the buses to perform work, the employees picked their work locations by seniority. After the change, the Group 7s were expected to complete three sets of wheels each day and some of the Group 7s were above average. Mr. Zuccaro maintained Mr. Stina completed two sets or a set and a half each day and the odd time he did three sets. One of the other employees performed five sets per day.

Mr. Zuccaro stated he had discussions with Group 7s about their productivity, and a Union steward was present. Mr. Zuccaro asked the shop steward to talk to Mr. Stina about his productivity, and the steward and Mr. Stina had a discussion on a bus, but Mr. Zuccaro wasn't present. He maintained the other employees were complaining about Mr. Stina's productivity and that's why he requested the steward to speak to Mr. Stina. He testified Mr. Stina was a problem, and the way the work was being shared was making the other employees unhappy. Mr. Zuccaro again asked Mr. Stina to improve his productivity. This was around November of 2000, but the discussions did not result in an improvement.

Mr. Zuccaro testified the Group 7 employees replaced bearings, and he gave all the Group 7s literature so they wouldn't replace bearings and races unnecessarily. He claimed Mr. Stina was replacing more than others, which was slowing down his work, so that he was only producing two sets of wheels per day. Mr. Zuccaro asked the Union steward to speak to the employees about the issue, but doesn't remember whether he did. Mr. Zuccaro felt some of the bearings Mr. Stina replaced did

not need replacing.

He also had a discussion with Mr. Stina and a Union representative with respect to productivity in late November, or the first week in December in the superintendent's office, and gave Mr. Stina a verbal warning about his productivity. Mr. Zuccaro maintained he had dropped off some wheels at Mr. Stina's work location at approximately 2.30 p.m., and he asked Mr. Stina why they weren't completed. Mr. Stina replied there were no wheels to be completed, but the wheels were still there and Mr. Zuccaro had the afternoon shift complete the wheels. He asked Mr. Stina about the wheels, but Mr. Stina was speaking to another employee. Mr. Zuccaro cannot remember who the other employee was. According to Mr. Zuccaro, Mr. Stina maintained there were no wheels to complete and Mr. Zuccaro said the wheels had been sitting there since the forklift operator dropped them off. Mr. Zuccaro doesn't remember what happened next. He doesn't remember whether Mr. Stina started the wheels, but maintains Mr. Stina didn't do the work. Mr. Stina was not disciplined. He testified this was the occasion when he had a meeting with Mr. Stina, Anne Pozywiak and the Union representative.

In February 2001, Mr. Zuccaro asked Mr. Stina, who was talking to other employees, why the wheels weren't completed. Mr. Stina responded that others were talking and why was he being picked on. Mr. Zuccaro asked Mr. Stina to complete the wheels and he would speak to the others. He then asked a mechanic to go back to his work station and the mechanic saw where Mr. Zuccaro "was coming from" and then said he'd "fix Vito". Mr. Zuccaro claims he intended to discipline Mr. Stina for lack of productivity and completed an interview form, but Mr. Stina booked off sick and wasn't confronted about the situation.

Mr. Zuccaro maintained he was not Mr. Stina's foreperson at Malvern, and he denied watching Mr. Stina removing a generator from a bus. Mr. Zuccaro also denied he had any vendetta against Mr. Stina. He testified when employees were using the phone, he asked them to get off; the employees

had been abusing the use of the phone. He stated Mr. Stina used the phone like “clockwork” at 12.05 p.m., when he returned from lunch and he would look at Mr. Zuccaro, turn his back to him and use the phone for 20-25 minutes. He testified he approached Mr. Stina about getting off the phone just as often as he approached others, and he did not treat the employees differently.

Mr. Zuccaro claimed he never followed Mr. Stina to the change room and does not know anyone else who did. He also stated he had never told Mr. Stina to go back to work.

On one occasion, Mr. Stina and Mr. Horgan were having a conversation and he asked them both to get back to work. He has also asked a number of other employees to go back to work and indicated he asked Mr. Stina to get back to work three or four times, which was the same as other employees. He denied Mr. Stina had asked why Mr. Zuccaro didn't like him, and he denied kicking a bench or door near Mr. Stina. He testified Mr. Stina was not doing three sets of wheels per day. He denied telling Mr. Horgan there was an employee who wasn't working, and he denied hovering about the phone when Mr. Stina was on the phone. He also denied talking to Mr. Horgan about Malvern garage and Mr. Stina, and he denied approaching Mr. Stina with a negative attitude.

Mr. Zuccaro admitted he may have possibly talked to Mr. Stina about the number of wheels he had done, but can't recall the occasion of November 21st, 2000. Mr. Zuccaro maintained on the occasion when he was going to discipline Mr. Stina, there was a fourth set of wheels that were there, but Mr. Stina denied it. He does not recall asking Mr. Stina to have a Union representative present.

Mr. Zuccaro indicated employees overstayed their lunch period and were told to get back to work. He did not treat Mr. Stina differently from other employees. He denied telling Mr. Stina not to talk to anyone, and denied refusing Mr. Stina permission to work with a partner, and he further denied he told anyone not to talk to Mr. Stina. He admitted paging Mr. Stina, on occasion, if there was a

telephone call, or if someone was looking for him.

Mr. Zuccaro claimed he found bearings thrown out that shouldn't be thrown out and that's why the Group 7 employees were given brochures. He was of the opinion, contrary to Mr. Mendez' evidence, that Mr. Stina had replaced bearings when they shouldn't have been replaced. He does not remember how many times it occurred.

Mr. Zuccaro stated he had told others to go back to work notwithstanding Mr. Horgan's evidence to the contrary, and further denied this occurred when Mr. Horgan was present. He stated there was only one incident when Mr. Horgan and Mr. Stina were talking to each other and he told them both to get back to work. He also denied Mr. Anthony's evidence to the same effect. He further denied Mr. Mendez' evidence that he listened to Mr. Stina's conversation on the phone, nor did he stand near Mr. Stina while Mr. Stina was on the phone. Mr. Zuccaro further claimed Mr. Horgan's evidence about Mr. Stina being singled out and his evidence stating that Mr. Zuccaro said he had issues with Mr. Stina at Malvern was a "total lie". He also denied telling Mr. Horgan there was only one problem in the shop, indicating Mr. Stina.

Mr. Zuccaro recalls saying to Mr. Stina words to the effect, that what happened at Malvern was at Malvern. He said he had very little to do with Mr. Stina at Malvern and when Mr. Stina made the remark, in his mind, Mr. Zuccaro was puzzled, but did not want to clear up the misunderstanding. There was nothing he could think of that had occurred.

When asked about giving Mr. Stina a hard time on the phone, Mr. Zuccaro replied he gave everyone a hard time and denied Mr. Mendez' evidence that he told Mr. Stina to get back to work and not others. Mr. Zuccaro claimed he would tell everyone to get back to work. He denied Mr. Ramlochan's evidence that he gave Mr. Stina more work than other Group 7 employees. He stated

other Group 7s worked as a team, but he can't recall Mr. Stina working that way. He also denied telling Mr. Mendez not to talk to Mr. Stina and he claimed if Mr. Mendez said it, "it's a lie and I dispute it". Mr. Zuccaro admitted Mr. Stina complained he was picking on him. He responded by telling Mr. Stina he was not picking on him. He never convened a meeting with Mr. Stina and the shop steward, but the shop stewards had meetings with the employees and asked Mr. Zuccaro not be present. M Zuccaro can't recall if he discussed the situation with the shop steward when Mr. Stina claimed Mr. Zuccaro was picking on him. He testified it was his practice to go to a shop steward to ask for assistance if an issue escalated.

Insofar as the November incident was concerned, Mr. Zuccaro told Anne Pozywiak he wanted Mr. Stina to do the work. Mr. Zuccaro does not remember Anne Pozywiak asking for his version of the incident, nor can he remember when he found out there was a grievance. Nor does he remember if he was questioned about the allegations in Mr. Stina's letter. Mr. Zuccaro indicated it was not possible he and Mr. Stina had a personality conflict or didn't get along.

When re-examined, Mr. Zuccaro said the tires Mr. Stina worked on were no different from other Group 7s. He testified the grievor had commenced work at Malvern on March 11th, 1996, and received inspection training on March 18th, 1996.

Mr. Ronald Baird, the Superintendent at Malvern, testified that during his career he has done extensive analytical work, including analyses of productivity. He reviewed documents provided by Mr. Stina on which he recorded his productivity. He was also provided the Commission's green tag data. Mr. Baird compared the data and concluded Mr. Stina's productivity was lower than that of other employees.

When cross-examined, Mr. Baird admitted he never observed anyone working in the brake section before Mr. Stina booked off ill. He had no idea how long people took to perform tasks prior to

August 13, 2001, when he commenced working with the Commission. His only knowledge is through analysis. He maintained he gave all the employees the same weighting and Mr. Stina was consistently below the level of two other employees. He based his interpretation on the information he received from Mr. Zuccaro, but was not able to say how the employees specifically completed their tasks. Mr. Baird did not know from direct observation the amount of time Mr. Stina might have taken for stripping.

He felt there was ample time for employees to do three buses, but he did not take into consideration the number of races that were replaced or whether Mr. Stina replaced more races than other employees. Mr. Baird was also unaware of the number of wheels that were given to an individual. Mr. Baird conceded he was just reviewing and analysing Mr. Stina's productivity and was not requested to look at other employees. It was not part of his analysis to review other employees. However, it does appear he reviewed the productivity of three employees. Mr. Baird also conceded he had no formal training with respect to analysis.

When re-examined, he indicated that replacing the bearings and races is a minor activity and was weighted in his graph and the statistics were inconsequential. He testified the data and green tags were found in the foreperson's office.

Mr. Stina was called in reply and testified he kept notes daily and commenced making notes on November 6th, which was the changeover time under the new legislation, when he was not permitted to work on the bus. Prior to the change, the mechanic would fill out sheets indicating which mechanical service person was working as his helper. Mr. Stina then referred more precisely to the work that he claims to have done. He testified no one ever questioned the green tags he had submitted.

When cross-examined, Mr. Stina testified he kept his records at work and added entries on a daily basis. Mr. Stina also referred to the process and testified about certain work on specific days. He also stated stripping was not included on the green tags.

ARGUMENT

The Union submitted Mr. Stina was harassed by his foreman, but the Commission did not take appropriate steps to deal with the allegations. The Union maintained Mr. Stina's evidence was corroborated by Mr. Mendez and others. Mr. Stina had been employed since 1988 and had no problems until 1998, when he came into contact with Mr. Zuccaro. Also, his health was good. The first negative contact was when he was asked to lift a bus on a hoist; subsequently Mr. Zuccaro talked to him in a negative way. The Union claimed Mr. Stina requested assistance and did not get any, and Mr. Zuccaro isolated him so that Mr. Stina felt no one would speak to him. When the employment appraisals indicated Mr. Stina was lacking in self-confidence, nothing was done to assist him. The grievor left the Malvern facility in June of 1998, and subsequently had no problems, and his performance was fine. While working for Mr. Castanaro, he had job appraisals indicating he was doing a good job and was considered to be a good worker.

Mr. Zuccaro moved to Duncan shop as a foreperson in June of 2000, and the grievor commenced having problems again. On meeting Mr. Zuccaro, he alleges Mr. Zuccaro said, "let bygones be bygones," however, Mr. Zuccaro testified it was Mr. Stina who brought up the situation at Malvern. The Union submitted, if, as Mr. Zuccaro claimed, he did not have a great deal to do with Mr. Stina at Malvern, his version of events is not credible. The Union argued the evidence indicated Mr. Zuccaro resumed his negative relationship with Mr. Stina, talked down to him, and isolated him from his co-workers. He told him on a continuous basis to get back to work, while others were not told to return to their work stations. When Mr. Stina asked Mr. Zuccaro why he didn't like him, Mr. Zuccaro responded he didn't have any problems with him. The Union maintained Mr. Zuccaro followed Mr. Stina to the washroom on two separate occasions, and subjected him to different rules from others with respect to the use of the telephone, and on one occasion listened to his conversation. The Union maintained Mr. Zuccaro attempted to discipline Mr. Stina about a fourth set of wheels, which was the

only attempt to discipline him for lack of productivity and that attempt fell flat. Mr. Stina produced witnesses and when the paperwork was checked the Commission could not verify Mr. Zuccaro's allegations. Also, while Mr. Zuccaro alleges that Mr. Stina's productivity was below average and he was changing races on the basis of six to one compared to others, Mr. Zuccaro did not discipline Mr. Stina.

The Union submitted Mr. Stina was singled out by Mr. Zuccaro, and while Mr. Zuccaro denied it, there is evidence from numerous witnesses that corroborate Mr. Stina's version of events. The Union asserted the overwhelming preponderance of evidence demonstrated Mr. Zuccaro singled out Mr. Stina for adverse treatment and when Mr. Stina indicated others, who were not doing anything, these employees called him a "fink". Mr. Zuccaro did nothing about it, which further isolated Mr. Stina.

The Union further submitted when others left early on their holidays, Mr. Stina was not permitted the same privilege. Also, while Mr. Zuccaro criticized Mr. Stina for changing the bearings inappropriately, Mr. Mendez who worked with Mr. Stina, confirmed Mr. Stina was productive and was not inappropriate.

The Union submitted the Commission's productivity evidence does not actively quantify what employees were doing at the time in question, and the charges presented were inaccurate and misleading while Mr. Stina's records were contemporaneous and accurate. The Union claimed Mr. Stina's documents were sufficiently consistent with the tags and were not fabricated. The Union argued Mr. Zuccaro did not testify he treated Mr. Stina differently because Mr. Stina was unproductive.

And, if Mr. Stina's productivity was really an issue, Mr. Stina should have been disciplined. Since there was no discipline, it is reasonable to infer productivity was not a problem at the time. Also, the Union claimed there was no evidence as to what work was assigned, and whether Mr. Stina failed to meet the work standards. The Union argued since Mr. Zuccaro was prepared to write up Mr. Stina in February of 2000, the failure to produce documentary evidence of Mr. Stina being written up on other

occasions indicates his productivity was satisfactory.

In addition, the Union submitted the pre-writing of the attempted discipline in February 2001, was consistent with Mr. Mendez' evidence concerning the washroom incident, when Mr. Mendez stated Mr. Zuccaro had pre-written documents indicating he was going to either discipline or discharge Mr. Stina for going to the washroom early. Mr. Zuccaro had indicated Mr. Mendez was mistaken, but the February incident is consistent with Mr. Mendez' evidence and Mr. Mendez was a credible witness.

The Union argued Mr. Stina attempted to convey his concerns to the Commission. He spoke to Ms. Pozywiak and Mr. Partington, and Ms. Pozywiak indicated she would stand by her foreman. When Mr. Stina attempted to complain to the Human Rights department, he was told there were insufficient grounds and his grievance was not arbitrable. The Union maintained Mr. Stina attempted to bring Mr. Zuccaro's treatment of him to his superior's attention but nothing was done.

The Union further argued as a result of the harassment and mistreatment it was foreseeable Mr. Stina would become ill. Mr. Stina did not want to go to work, he was physically ill and was vomiting. He couldn't sleep, was distressed and took it out on his wife and children. In addition, Mr. Zuccaro told other employees Mr. Stina had complained they were not being ordered to go back to work, which caused the other employees to isolate Mr. Stina. Finally, the Union submitted that the medical evidence indicated Mr. Stina suffered from major depression and was out of work from February 15th, 2001, to October of 2001. The doctors confirmed his condition resulted from stress at work and Mr. Zuccaro's mistreatment. That mistreatment was likely to have consequences, but Mr. Zuccaro was not concerned about Mr. Stina and was attempting to get rid of him. The Union maintained if Mr. Stina had been disciplined, it could have been challenged, but Mr. Zuccaro's *modus operandi* insulated him from challenge and he continued to make Mr. Stina's life miserable.

The Union argued that the Commission did not take the position it was not vicariously liable. The Union maintained it is the obligation of the Commission under the *Occupational Health and Safety Legislation* to ensure a safe work environment.

The Union argued harassment constitutes conduct which treats an individual employee differently and is vexatious and includes speaking to employees in a negative way. The Union further argued since Mr. Zuccaro has denied harassing Mr. Stina, it is not open for the Commission to say that anything done by Mr. Zuccaro was work related. The Union further claimed Mr. Stina was isolated and fearful and suffered damage, including lost wages and sick leave, and Mr. Zuccaro's conduct was intentional.

The Union maintained there is authority under the Collective Agreement to provide a remedy, and Mr. Zuccaro's conduct was flagrant and extreme, and repeated over a significant period of time which was corroborated by other bargaining unit employees. The Union argued substantial damages should be awarded to Mr. Stina because of the mental stress he suffered which caused him to be ill, to lose confidence, to be unable to sleep and to ultimately receive medical care for his condition. The Union also seeks a remedial order to protect Mr. Stina from the type of conduct exhibited by Mr. Zuccaro. The Union particularly claims any order should reduce the likelihood of further harm from Mr. Zuccaro. And, finally, the Union submitted the Commission should ensure that forepersons are not a danger to others.

The Commission does not submit Mr. Stina consistently fabricated his testimony but maintains Mr. Stina's perception of events was affected by his views of Mr. Zuccaro to such an extent, he blamed Mr. Zuccaro for his situation. The Commission further claimed Mr. Mendez was motivated by a sense of loyalty to Mr. Stina, and a Board of Arbitration should be cautious when allegations are made against a supervisor because of their vulnerability. The Commission asserted that the evidence was driven by perception, and Mr. Zuccaro's conduct was motivated by a legitimate work and business purpose.

The Commission submitted Mr. Zuccaro was not Mr. Stina's supervisor at Malvern shop. Since Mr. Zuccaro had very little to do with Mr. Stina, his recollection of Mr. Stina was relatively slight when he was confronted by Mr. Stina some years later. The Commission maintained Mr. Stina misperceived his relationship with Mr. Zuccaro at Malvern and his perception continued at Duncan shop. The Commission admitted Mr. Zuccaro was a supervisor with flaws, but those flaws do not constitute harassment.

The Commission stated Mr. Stina was not qualified when he was at Malvern as shown by Mr. Hewitt's performance appraisal. The Commission asserted Mr. Stina blamed Mr. Zuccaro for not being trained at Malvern. However, at Malvern, the Union told Mr. Stina that he was not entitled to receive training and, accordingly, Mr. Stina had not forgiven Mr. Zuccaro for his lack of training. The Commission argued Mr. Zuccaro did not have any problems with Mr. Stina at Malvern and did not interact with him.

The Commission submitted Mr. Stina received a second appraisal at Malvern from Mr. Zuccaro, which was superior to Mr. Hewitt's first appraisal. Mr. Zuccaro, unlike Mr. Hewitt, did not say he would not hire Mr. Stina. However, the Commission claimed Mr. Stina blamed Mr. Zuccaro for not receiving mechanical training at Malvern and blamed Mr. Zuccaro for having a vendetta against him. The Commission argued there is objective evidence Mr. Zuccaro was wrongly attacked by Mr. Stina, including uncontradicted evidence that Mr. Zuccaro spoke to different Union officials about productivity problems with Mr. Stina. The Commission maintained Mr. Zuccaro was not unfair, and had issues with Mr. Stina's productivity from October onwards. The Commission submitted Mr. Zuccaro was not a problem at Malvern, but if there was a problem, it would have been Mr. Hewitt who was his supervisor. The Commission further maintained the allegations concerning Mr. Zuccaro at Malvern are contradicted by the documentary evidence of the performance appraisal.

The Commission maintained its evidence contradicts Mr. Stina's evidence of productivity and also shows other bargaining unit employees complained about Mr. Stina's productivity. Since they were not called, an inference should be drawn against Mr. Stina's evidence with respect to his productivity. The Commission argued under the new system Mr. Stina's co-workers complained about his productivity.

The Commission maintained the evidence demonstrates many people were told to get off the phone and it was a problem in the department. The Commission also asserted Mr. Zuccaro was not aware of employees leaving early for vacation and when told stated it wouldn't happen again, which was an appropriate answer and does not constitute harassment. The Commission claimed Mr. Stina's view of the washroom incident flows from his misperception of Mr. Zuccaro.

The Commission stated Mr. Stina has no problem advocating for himself, and if he had been harassed earlier as he indicated, he did nothing about it. The Commission claimed Mr. Stina's evidence concerning Malvern shop resulted from insecurity. According to the Commission, Mr. Stina told Mr. Zuccaro let bygones be bygones and then indicated Mr. Zuccaro couldn't be trusted.

The Commission argued the Group 7 employees at Duncan shop were more structured than mechanics and while Mr. Stina believed the rules should be the same for all employees, the different treatment of mechanics did not constitute harassment. The Commission claimed Mr. Stina's expectations were coloured by his view as to how mechanics should be treated.

The Commission asserted Mr. Stina did not complain Mr. Zuccaro harassed him under the old system that was in place at Duncan shop when Mr. Stina was working with a mechanic. When the change came, the Group 7 employees worked without mechanics and were more directly supervised;

Mr. Stina's work became more visible to supervisors and the Commission claimed Mr. Stina equated the supervision with harassment.

The Commission further argued Union officials were not called to testify as well as co-workers, who might have given evidence on Mr. Stina's behalf, and an inference should be drawn that their evidence would not have been helpful to Mr. Stina. The Commission argued the evidence did not support Mr. Stina's allegations of harassment. The Commission claimed Mr. Anthony's evidence was not sufficient to support the allegations and Mr. Mendez' evidence was flawed, and his evidence concerning Mr. Stina's productivity was not supported by any of the other evidence. Also, Mr. Horgan indicated there had been complaints from Mr. Stina's co-workers and the Commission submitted Mr. Zuccaro simply agreed with the co-workers.

The Commission also maintained being called a "fink" by a co-worker was the cause of Mr. Stina leaving work in February of 2000, and he never advised his doctor of that incident. Nor did Mr. Stina tell his doctors that Mr. Zuccaro was not his supervisor at Malvern. Also, Mr. Hewitt, who was his supervisor, testified Mr. Stina had never complained to him about Mr. Zuccaro while he was at Malvern.

The Commission relied on Mr. Kelly's evidence. Mr. Kelly had been a bargaining unit employee and when the system changed the productivity issues were more visible under the new system. Since mechanics were waiting to receive their wheels, they asked the supervisors to do something about it. Accordingly, when there was a bottleneck, the mechanics became angry. The Commission asserted there were issues concerning the phone and Mr. Zuccaro had never kicked anything.

The Commission maintained Mr. Pugliese was concerned about employees leaving early and

saw Mr. Stina in the change room, but then observed he was back on the shop floor and took no action. However, there was an ongoing issue with employees leaving early.

The Commission argued Mr. Stina's perception created his medical problems and he was delusional, and there was some paranoia involved in his situation. The Commission also submitted Mr. Stina made no mention of Mr. Zuccaro when he made a written complaint at Malvern, and his failure to make a written complaint at that time does not support his allegations of harassment at Malvern.

According to the Commission, Mr. Zuccaro had very little to do with Mr. Stina at Malvern. He never directed him to perform repairs, he was not responsible for training, and he denied there was discussion with Mr. Stina about a bus falling off the hoist and being fired. The Commission maintained Mr. Zuccaro's conversation with Mr. Stina about Malvern, when he encountered him at Duncan shop, was consistent with the evidence of both Mr. Hewitt and the written evidence of Mr. Stina. The Commission submitted the only reasonable inference from the evidence is that Mr. Stina could not put Malvern behind him and blamed Mr. Zuccaro for what happened to him. Also other employees were told to get off the phone and they were enumerated by Mr. Zuccaro.

In summary, the Commission concluded that there was no harassment of Mr. Stina. The Commission argued the supervisors are required to act alone and the threshold ought to be high to sustain allegations of harassment, which is distinct from someone not being a good supervisor. The Commission claimed the evidence consists of a person with low productivity being told to get back to work, which is a legitimate work direction. The Commission maintained Mr. Stina objected to a number of supervisors and the consequence of harassment allegations are extremely serious. The Commission submitted Mr. Zuccaro was trying to remedy an unproductive employee, which did not constitute harassment. Mr. Zuccaro had talked to both the Union and Mr. Stina and the mere suggestion of discipline does not constitute harassment. The Commission claimed there was no corroboration of

harassment. The Union has not substantiated the harassment with relevant underlying facts; if Mr. Zuccaro told Mr. Stina to go back to work, it was for a legitimate purpose and did not constitute harassment. The Commission argued the Collective Agreement does not regulate every aspect of life in the workplace and the collective bargaining regime does not contemplate claims for damages for tortious misconduct will be dealt with in the grievance arbitration process. The Commission stated it did not consent to the Board's jurisdiction to deal with this tortious matter.

REASONS

Jurisdiction

I first turn to the Commission's jurisdictional objection. The decisions of the Supreme Court of Canada in Weber v. Ontario Hydro (1995) 125 D.L.R. (4th) 583 and the companion case of The Queen in right of New Brunswick v. O'Leary (1995) 125 D.L.R. (4th) 609 are the starting point in considering the Commission's position. In those cases the Court concluded that mandatory arbitration clauses, such as s45(1) of the *Ontario Labour Relations Act*, generally confer exclusive jurisdiction on labour tribunals to deal with disputes whose essential character arises expressly or inferentially from the collective agreement. In Weber, the Court concluded a contract based on tort alleging trespass, nuisance, deceit and invasion of privacy which arose in response to a claim for sick benefits under the collective agreement and the manner in which the Employer monitors entitlement to those benefits was part of the administration of the agreement and properly within the exclusive jurisdiction of the arbitrator.

In O'Leary, the Employer had brought an action against O'Leary alleging he drove its leased vehicle with a flat tire necessitating repairs amounting to \$2815.54. In concluding that the Courts lacked jurisdiction to entertain the claim because it arose out of the collective agreement and was governed by the arbitration decisions, McLachlan J. (as she then was) stated as follows at p611:

[5] The remaining question is whether the dispute between the parties in this case, viewed in its essential character, arises from the collective agreement. In my view, it does.

[6] The province's principal argument is that the collective agreement does not expressly deal with employee negligence to employer property and its consequences. However, as noted in *Weber*, a dispute will be held to arise out of the collective agreement if it falls under the agreement either expressly or inferentially. *Here the agreement does not expressly refer to employee negligence in the course of work. However, such negligence impliedly falls under the collective agreement.* Again, it must be underscored that it is the essential character of the difference between the parties, not the legal framework in which the dispute is case, which will be determinative of the appropriate forum for settlement of the issue.

(emphasis added)

What is significant about the O'Leary decision was that the Court implied a term concerning employee conduct in the workplace, notwithstanding there was no express provision in the collective agreement referring to employee negligence. That decision is consistent with the earlier decision of the Supreme Court of Canada in Polymer Corp. and Oil, Chemical and Atomic Workers' International Union, Local 16-14 (1962) 33 D.L.R. (2d) 124, where the Court confirmed the arbitration decision of Laskin B. Q.C. (as he then was), which awarded damages to the Company based on an implied obligation on the union, in the face of a no strike clause, to act promptly in the execution of reasonable efforts to bring an end to an unlawful strike. Re Polymer Corp Ltd. and Oil, Chemical and Atomic Workers' International Union (1958) 10 L.A.C. 31. Inherent in the Supreme Court's decision in the Polymer case is a recognition that the foundation for the decision of the Board of Arbitration to award damages was an implied term requiring the union to act reasonably to enforce the no strike provision of the collective agreement.

The Ontario Court of Appeal, in a more restrained manner, has more recently approached the more expansive view of the Supreme Court of Canada. In Municipality of Metropolitan Toronto v. Canadian Union of Public Employees, Local 43 (1990) 69 D.L.R. (4th) 268 (C.A.) Tarnopolsky J.A. for the Court, in referring to an earlier decision of the Court of Appeal stated at p285:

“In other words it is not patently unreasonable for an arbitrator to oblige management to exercise its discretion reasonably where to do so unreasonably would be to create a conflict with or undermine the rights conferred by some other provision in the collective agreement”.

Also, in referring to the management rights clause, Tarnopolsky J.A. stated at p286:

“However it does not seem patently unreasonable to view the collective agreement in a holistic manner, where even management’s rights may be circumscribed in order to avoid negating or unduly controlling the scope of other provisions”

And, finally, in response to the union’s argument concerning the notion of reasonable contract administration, Tarnopolsky J.A. stated as follows at p286:

“The final argument that should be noted is based on a notion of reasonable contract administration. The Union relies on the decision of this court in *Greenberg v. Meffert* (1985), 18 D.L.R. (4th) 548, 50 O.R. (2d) 755, 7 C.C.E.L. 152. This was a case involving a contract of employment between a real estate agent and her employer. The contract provided the employer with the “sole discretion” to disburse commissions to the agent in the event her employment was terminated. Speaking on behalf of the court, Robins J.A. held that the employer’s discretion had to be exercised reasonably, honestly, and in good faith. He stated, at p. 554, that:

.... the nature of this contract and the subject-matter of the discretion are such that the company’s decision should be construed as being controlled by objective standards.....

In contracts in which the matter to be decided or approved is not readily susceptible of objective measurement - matters involving taste, sensibility, personal compatibility or judgment of the party for whose benefit the authority was given - such provisions are more likely construed as imposing only a subjective standard. On the other hand, in contracts relating to such matters as operative fitness, structural completion, mechanical utility or marketability, these provisions are generally construed as imposing an objective standard of reasonableness....

In the absence of explicit language or a clear indication from the tenor of the contract or the nature of the subject-matter, the tendency of the cases is to require the discretion or the dissatisfaction to be reasonable: *Minster Trust, Ltd. v. Traps Tractors, Ltd. et al.*, [1954] 3 All E.R. 136 at p. 145.

Like the analogy with respect to standing, it is difficult to apply this case in the context of collective bargaining. None the less, it is true that a collective agreement is an intricate contract, which attempts to reflect the outcome of bargaining on a myriad of issues. It is also true that parties intent on reaching a settlement do not always have the time, the incentive, or the resources to consider the full implications of each and every phrase. *There is, therefore, a place for some creativity, some recourse to arbitral principles, and some overall notion of reasonableness: see, for example, David Beatty, "The Role of the Arbitrator: A Liberal Version" (1984), 34 U.T.L.J. 136. The presence of an implied principle or term of reasonable contract administration was also acknowledged by Craig J. in Wardair, supra, a pp.668-9.*

(emphasis added)

A reading of both the decisions of the Supreme Court of Canada and the decision of Tarnopolsky J.A. suggests there is both a "place for arbitral creativity" and also "some overall notion of reasonableness" with respect to implying a "term of reasonable contract administration." The decision in the Municipality of Metropolitan Toronto v. Canadian Union of Public Employees, Local 43 supra, appears to modify or supersede the earlier decision of the Ontario Court of Appeal in Re Metropolitan Toronto Board of Com'rs of Police and Metropolitan Toronto Police Ass'n (1981), 124 D.L.R. (3d) 684, 33 O.R. (2d) 476, which restricted the imposition of implied terms in the management rights clause. but see, Re Sisters of St. Joseph of the Diocese of London and Service Employees Union, Local 210 (1997), 155 D.L.R. (4th) 674 (Ont. Ct. App.). Moreover, for reasons which are explored below, I am unable to conclude that there are substantive reasons for prohibiting the implication of normative terms to a management rights clause, while at the same time allowing implied conditions to be imposed on the union (Polymer) and the employees (O'Leary). In that respect, I feel bound by the approach taken by the Supreme Court of Canada.

Having regard to the foregoing, it is my view, that there are a number of alternate grounds for rejecting the Commission's objection to jurisdiction. First, and at the very least, if management is not required to exercise its responsibilities reasonably, it must not abuse its authority and act in a manner that constitutes abuse or harassment of employees. Following O'Leary, even absent an express

provision referring to managerial abuse or harassment, and apart from the management rights provision, I determine it is an implied term of the collective agreement that the work of a supervisor must be exercised in a non-abusive, non-harassing manner.

Second, adopting the approach of Tarnopolsky J.A. to consider the agreement in a holistic way, I now turn to consider the collective agreement. Section 39 of the collective agreement provides for the establishment of a Joint Health and Safety Committee (JHSC) under the *Occupational Health and Safety Act*, and the parties under that section have agreed to guidelines for the composition, practices and procedures of the JHSC. Such a committee is empowered under Section 9 of the *Act*, inter alia, to recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers.

Section 39 also provides as follows:

“Consult your union representative or OHS representative if you have questions or concerns pertaining to safety.”

After reading the collective agreement in the manner suggested by Tarnopolsky J.A., I determine that Section 39, establishing a Joint Health and Safety Committee to monitor and ensure the safety of employees, coupled with the further proviso suggesting employees consult their union or O.H.S. representative if they have concerns pertaining to safety, implies the management rights clause be exercised with a view to the safety of employees. I further determine that the use of the word “safety” in the collective agreement embraces both an employee’s physical, as well as the employee’s psychological safety. Accordingly, I determine that a supervisor who abuses his/her authority is acting contrary to an implied term in the management rights clause that requires the supervisor to ensure the safety of the employee.

I also determine that Section 39, standing alone, implies a concern by the Commission and the Union for the safety of the employees, which again includes psychological safety. Accordingly, a supervisor who acts in a manner that jeopardizes the psychological safety of the employee is acting contrary to the collective agreement.

Third, the *Occupational Health and Safety Act* R.S.O. 1990 c.0.1. provides as follows:

Section 25:

- (2) Without limiting the strict duty imposed by subsection (1), an employer shall,
- (a) provide information, instruction and ***supervision to a worker to protect the health or safety of the worker;***
(emphasis added)
 - (c) when appointing a supervisor, appoint a competent person;
 - (e) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;
 - (h) take every precaution reasonable in the circumstances for the protection of a worker;
 - (j) prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy;

Section 26

- (1) In addition to the duties imposed by section 25, an employer shall,
- (l) carry out such training programs for workers, ***supervisors*** and committee members as may be prescribed. R.S.O. 1980, c. 321, s. 15(1); 1990, c.7, s. 15(2)
(emphasis added)

Section 27:

- (2) Without limiting the duty imposed by subsection (1), a supervisor shall,
- (c) ***take every precaution reasonable in the circumstances for the protection of a worker,*** R.S.O. 1980, c. 321, s. 16.
(emphasis added)

In my view, the *Occupational Health and Safety Act*, being a matter of public policy, requires the Commission to exercise its managerial functions in accordance with the legislation and particularly

Section 27(2)(l) of the *Act*, which requires a supervisor to take “every reasonable precaution. . . for the protection of a worker.” In effect, a supervisor’s managerial authority is circumscribed by operation of the legislation. Accordingly, I determine when a supervisor exercises his/her authority under the collective agreement, it is an implied term that the supervisor do so in a manner that is consistent with the legislation.

Fourth, as I have indicated earlier, it is my respectful view that the decision of Tarnopolsky J.A. either modifies or supersedes the earlier decision of Holden J.A. in the 1981 Metropolitan Toronto Board of Comr’s of Police case, *supra*. There are a number of reasons for arriving at that conclusion. First, Tarnopolsky J.A. has acknowledged a place for creativity and an overall notion of reasonableness and has determined there is an implied term of reasonable contract administration. Since most of management’s functions and responsibilities derive from the management rights clause, any notion of reasonable contract administration would have minimal relevance if it did not apply to the management rights provision.

Second, the nature of management’s exclusive function does not appear to have been argued in the earlier Court of Appeal decision in Metropolitan Toronto Board of Comr’s of Police, *supra*. The management rights clause simply delineates the area of management’s functions and responsibilities. It is usual to find the word exclusive prefacing the management rights clause. That adjective is inserted, out of an abundance of caution, to ensure the employer’s jurisdiction to manage its operations and the workforce, and prevents the union’s and employees’ encroachment in areas of concern to management, unless there is specific language to the contrary. In effect, the term exclusive is a jurisdictional term which delineates management’s functions and outlines the “where” of management’s responsibilities. With the greatest of respect, I am unable to conclude that a management rights clause in collective agreements generally, or in this collective agreement specifically, substantively defines “how” management is to exercise its functions, and I determine that normative terms may be implied to

management's functions under the management rights clause. More particularly, I determine the direction of the workforce must be exercised in a reasonable manner or alternatively in a non-abusive and non-harassing manner.

Third, the decisions of the Supreme Court of Canada in Weber and O'Leary specifically instruct an arbitrator to determine whether a dispute arises under the collective agreement either expressly or inferentially. That approach permits an arbitrator to imply terms as the Court did in O'Leary. Also, a closer examination of the decision in The Metropolitan Toronto Board of Commissioners of Police supra, reveals the specific issue was whether the Arbitrator should "imply a term in the collective agreement that the management rights clause would be applied ***"fairly and without discrimination."*** The Court dealt with that issue as follows at p687 D.L.R.:

"The collective agreement is a detailed document covering some 40 pages. Having regard to the nature of the agreement, and to its provisions, we see no necessity in this case to imply a term that the management rights clause will be applied fairly and without discrimination. If such a term were to be implied, it would mean that every decision of management made under the exclusive authority of the management rights clause would be liable to challenge on the grounds that it was exercised unfairly or discriminatively. In our opinion, this would be contrary to the spirit and intent of the collective agreement."

(emphasis added)

In my respectful view, the Court's decision turned on the particular facts of that case and some restraint should be exercised in considering remarks which do not appear necessary for the Court's decision.

Similarly, in Sisters of St. Joseph the Court of Appeal rejected the decision of the majority of the Board of Arbitration, which implied that the exercise of the management right must be ***"cogent"*** and ***"convincing"***. The Court stated as follows at p679 D.L.R.:

"The terms of the management rights clause are clear and strong. I see nothing

further in the agreement which would permit the Board, in interpreting that clause, to add the “cogent” and “convincing” tests which it did.”

(emphasis added)

The Court concluded that, given no allegation of bad faith, the Board of Arbitration should not have made its own management decisions and imposed them on the hospital.

It is apparent from reading both of those cases, the arbitrators implied terms that were excessive or of too high a standard given the specific management rights clause. More specifically implied terms of “fairly and without discrimination” and “cogent” and “convincing” appeared to be overreaching by the arbitrators. However, those cases do not detract from the more moderate standard of reasonable contract administration, both referred to by Tarnopolsky J.A. and also inherent in the Polymer decision of the Supreme Court of Canada. On that basis, I determine that a supervisor who abuses his/her authority and abuses and harasses an employee is not administering the management rights clause in a reasonable manner and is in violation of the collective agreement.

And finally, I am of the view that a supervisor who abuses or harasses employees is acting in bad faith, or its equivalent, contrary to the management rights clause in this case, which gives the Commission jurisdiction to direct the workforce. Re Sisters of St. Joseph of the Diocese of London and Service Employees Union, Local 210, supra.

I further determine that workplace abuse and harassment are matters that are properly the subject matter of arbitration between employers and unions; more specifically workplace harassment has been the proper subject of arbitration between these two parties. Re Toronto Transit Commission and Amalgamated Transit Union, Local 113 (2004), L.A.C. (4th) 353 (O.B. Shime, Q.C.). There is no reason to deny jurisdiction simply because the harasser is a managerial employee.

And finally, despite the able argument of counsel for the Commission, it is my view, that the

facts, conduct, and circumstances of this case are distinguishable from the cases relied upon by the Commission. For all of these reasons, I determine that I have jurisdiction to deal with the grievance and the issues of managerial abuse and harassment.

Abuse and Harassment Defined

Abusive conduct includes physical or mental maltreatment and the improper use of power. It also includes a departure from reasonable conduct.

Harassment includes words, gestures and actions which tend to annoy, harm, abuse, torment, pester, persecute, bother and embarrass another person, as well as subjecting someone to vexatious attacks, questions, demands or other unpleasantness. A single act, which has a harmful effect, may also constitute harassment.

Evidence : Generally

I now turn to consider the evidence in light of the applicable legal principles and definitions. At the outset, I have no doubt whatsoever that Mr. Zuccaro abused his authority and harassed Mr. Stina over a period of time, which humiliated him, frightened him, isolated him from his fellow employees and ultimately caused him to seek medical assistance and leave the workplace for a lengthy period of time because of a depressive medical condition.

I would just like to comment first about the evidence in general. After considering all of the testimony and more particularly Mr. Zuccaro's evidence, I determine from his testimony and demeanour that Mr. Zuccaro was not a credible witness. He was often evasive, forgetful, but with a selective memory, and much of his evidence was not supported by the facts. Mr. Zuccaro's evidence was not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in the circumstances of this case. Faryna v. Chorny [1952] 2 D.L.R.

354 (B.C. Ct. App).

Second, and by way of comparison, I determine the evidence of the Union witnesses to be extremely credible. I particularly found the evidence of Mr. Mendez to be honest, straightforward, and exemplary. Mr. Mendez does not have a social relationship with Mr. Zuccaro or Mr. Stina and his evidence was based on his workplace knowledge of the two men. If anything, his testimony tilted towards having a closer workplace relationship with Mr. Zuccaro. When cross-examined, he readily conceded some of the suggestions made by Commission Counsel and was also quick to make distinctions where they were required. For example, he readily conceded a foreman has a right to require employees to return to work, but was quick to add that Mr. Zuccaro's treatment of Mr. Stina in that regard was inappropriate and improper. Notwithstanding Mr. Mendez was called by the Union, he gave his testimony in a manner that was tantamount to being an independent witness. In a number of important instances he corroborated Mr. Stina's testimony. His testimony was given without any fear or favour and withstood a rigorous cross-examination. He was fully supportive of Mr. Stina's testimony, which indicated an abuse of authority and continuous harassment. I further determine the other witnesses called by the Union were credible and testified in an honest and straightforward manner.

Third, Counsel for the Commission has raised the spectre that managers, supervisors and foremen may be subject to legal attack by disgruntled or unhappy employees who resent their direction. I reject that notion in the circumstances of this case for two reasons. First, Mr. Stina's behaviour and conduct demonstrate an attempt to bring about a peaceful and non-litigious resolution of any differences or dispute that existed between him and Mr. Zuccaro; he tried to talk to Mr. Zuccaro, he tried to talk to Mr. Zuccaro's supervisors and to deal with the matter through the Human Rights department, and, in all instances, he was met with either an insensitive response or stonewalled until he was finally forced to resort to the grievance arbitration process. Indeed, resort to the grievance process was suggested by the General Superintendent, David Dixon, in a memo dated April 23, 2001.

There also appears to be a failure by management to fully investigate the matter by talking to other employees who were familiar with Mr. Stina's situation.

Second, contrary to the Commission's submissions, there is not a tittle of evidence to suggest any circumstances or situation indicating the Union witnesses were improperly motivated against Mr. Zuccaro, and there is no basis whatsoever for suggesting they fabricated their testimony so as to favour Mr. Stina over Mr. Zuccaro. Moreover, there is not the slightest evidence that the witnesses for the Union conspired, or combined or in any way communicated with one another for the purpose of discrediting Mr. Zuccaro. The only evidence to support that view, as suggested by Commission Counsel, is that of Mr. Horgan, who is a Union official, and who in the past complained about other foremen. However, there is nothing to suggest he was ill-motivated against Mr. Zuccaro. Indeed, Mr. Horgan testified he was friendly with Mr. Zuccaro and, further, there was nothing in his testimony to suggest he conspired or combined with any of the other witnesses to bear false testimony against Mr. Zuccaro.

Fourth, the Commission suggested Mr. Stina's evidence was more rooted in perception than in reality. Mr. Stina testified on his own behalf. His evidence, in my view, was consistent throughout, although the pain and emotion of reliving the harassment, humiliation and depression he had suffered was palpable. He was often teary-eyed, but was not in any doubt about the treatment he received from Mr. Zuccaro. Also, Mr. Stina's evidence is substantially corroborated by other employees. Accordingly, it is my view, after considering the totality of the evidence, including the corroborative evidence of the other Union witnesses, and the inconsistency of Mr. Zuccaro's evidence concerning Mr. Stina, I accept Mr. Stina's evidence as to how he was treated by Mr. Zuccaro. There is no misperception in this case.

Evidence : Specifically

Mr. Stina had been employed by the Commission for approximately twelve years before he

encountered Mr. Zuccaro at Malvern. His work record was uneventful; there is no evidence he was a poor or unproductive employee until he arrived at Malvern. Moreover, he was an employee who aggressively sought to improve himself by seeking further training at Malvern. Between the times he came in contact with Mr. Zuccaro, at Malvern and at Duncan, his foreman was Mr. Castanaro. The work he performed under Mr. Castanaro's auspices was virtually the same as under Mr. Zuccaro - albeit in a different location. It is significant that Mr. Castanaro, who evaluated him, made the following comments in his performance appraisal of January 4, 1999, "Mr. Stina is a very good worker and employee with a perfect attendance record." In addition to those remarks, Mr. Stina was rated as meeting the job requirements in all categories except attendance and punctuality, where he was rated as exceeding the job requirements, by not having lost time and never being late. A similar performance appraisal in March of 2000, commented that "Mr. Stina is a very good worker and employee", and again, Mr. Stina met the job requirements in all categories, including quality and quantity of work. Mr. Castanaro was not called as a witness and his appraisals remain uncontradicted. Moreover, Mr. Kelly, a foreman, called by the Commission, testified that he worked with Mr. Stina and Mr. Stina did not have trouble with the work.

It is against that background that negative suggestions regarding Mr. Stina's productivity must be assessed. It is important to note that Section 8 of the Collective Agreement contains the following:

"Where an employee's general record or general performance is not satisfactory to the employee's supervisor, the details of the case and the proposed discipline will be reviewed with the appropriate Union representative in advance of disciplinary action being taken."

There was a single attempt to discipline Mr. Stina, in November of 2000, for not meeting the production standards for building wheel sets. Mr. Stina challenged the attempt and stated his colleagues would verify there were no wheel sets in the area. Mr. Stina also complained Mr. Zuccaro was picking on him unnecessarily, which Mr. Zuccaro denied. A supervisor, Mr. Partington, was asked to investigate the

matter. The Commission claimed records were not complete and the interview/discipline record was removed from Mr. Stina's file. There were no other attempts to discipline Mr. Stina, and there was no other action taken by Mr. Zuccaro, pursuant to Section 8 of the Collective Agreement. It is noteworthy that no attempt was made by management to interview other employees whom Mr. Stina said could substantiate his position.

Counsel for the Commission submitted that on two occasions Mr. Zuccaro spoke to Union representatives about Mr. Stina's productivity. However, it does not appear that Mr. Zuccaro followed up on these conversations or pursued the matter. There does not appear to have been any discussion or counselling by Mr. Zuccaro and certainly Mr. Stina was not disciplined, nor does Mr. Zuccaro assert that on these occasions he was about to take disciplinary action against Mr. Stina, pursuant to Section 8 of the collective agreement.

What is startling is after the aborted disciplinary attempt in November, the Commission instituted a green tag process, which recorded the daily productivity of employees. Mr. Zuccaro in his testimony clearly stated he did not look at those tags. Surely, if Mr. Zuccaro was concerned about Mr. Stina, there was a contemporaneous written green tag record on hand to serve as a basis for discipline or any concern about lack of productivity. That he did not consult the written records again confirms that Mr. Zuccaro was not unduly concerned about Mr. Stina's productivity.

Well into the hearing, and in response to Mr. Stina's delay in producing written notes which he kept of his productivity, the Commission analysed Mr. Stina's productivity, based on the green tags. Mr. Baird, who had only been employed by the Commission for one month, analysed the green tags and produced a negative analysis of Mr. Stina's productivity. However, the ease of this late analysis throws into relief the failure by Mr. Zuccaro, if Mr. Stina's productivity was a concern, to analyse personally the green tags at the relevant time.

And further, given that Mr. Baird was unfamiliar with the work - for example, he was not aware of the extent of stripping required, and relied on Mr. Zuccaro as the prime source for his information in reviewing the tags, I am not prepared to credit that evidence for the purpose of supporting the Commission's assertion that low productivity by Mr. Stina was a factor in the way he was treated by Mr. Zuccaro. On balance, I prefer Mr. Stina's contemporaneous notes of his productivity.

Also, Mr. Zuccaro testified he told Mr. Stina to get back to work on only three or four occasions, treating him no differently from other employees. Certainly, if Mr. Stina's productivity was an issue, Mr. Zuccaro would likely have insisted he return to work with greater frequency and more so than with other employees.

And finally, there was an occasion in February of 2001, when Mr. Zuccaro considered disciplining Mr. Stina, but Mr. Stina left work because of his mental state and any intended discipline was not pursued, nor was there an opportunity to challenge the intended discipline. In these circumstances, I am not prepared to give any weight to the intended discipline and the circumstances surrounding it.

In the result, I conclude that the Commission's allegations concerning Mr. Stina's productivity are an ex post facto attempt to justify Mr. Zuccaro's treatment of Mr. Stina. It is simply an attempt to dredge up Mr. Stina's work performance as a defensive position to explain Mr. Zuccaro's conduct. That low productivity was a factor in the relationship and treatment of Mr. Stina is not supported by Mr. Zuccaro's conduct and behaviour toward Mr. Stina, nor is it supported by the totality of the evidence. Mr. Castanaro's evaluation of Mr. Stina's performance doing similar work as a backdrop to the allegations in this case of unsatisfactory performance coupled with the failure to utilize the managerial tools available to Mr. Zuccaro, if unsatisfactory performance was a factor, completely negate the

allegations and submissions in this case that low productivity was the reason for the way Mr. Zuccaro treated Mr. Stina. There is also a complete failure to discuss the matter with Mr. Stina or to counsel or discipline him by the use of warnings or suspensions. If Mr. Stina's productivity was as poor as it is now argued, surely there would have been more evidence of management intervention. The only evidence is that of Mr. Zuccaro who says he spoke to union officers. But those discussions do not appear to have been pursued as they should have been if there was a real problem. Further, even if Mr. Stina's productivity was low, it is no excuse for the treatment afforded to him by Mr. Zuccaro.

I now turn to the allegations of mistreatment. Mr. Zuccaro maintained he had very little to do with Mr. Stina at Malvern shop because their schedules only slightly overlapped and he did not have any direct responsibility for Mr. Stina as a foreperson. Mr. Stina maintained Mr. Zuccaro treated him differently from others, talked down to him and put him down. Mr. Zuccaro's treatment of him left him isolated and he felt trapped. When he transferred to Duncan shop he had a positive experience. The grievor testified when Mr. Zuccaro came to Duncan shop, after a short period, he spoke to Mr. Stina and said "let bygones be bygones and let's leave what happened at Malvern and try to start a new slate."

Mr. Zuccaro's version of that incident differs from Mr. Stina's. According to Mr. Zuccaro he asked Mr. Stina how it was going. Mr. Stina replied, "you remember Malvern". According to Mr. Zuccaro, he responded to Mr. Stina saying he did not remember Malvern, but went on to say "whatever happened at Malvern should stay at Malvern - you are at Duncan and I am at Duncan."

When cross-examined, Mr. Zuccaro recalled saying to Mr. Stina "leave what happened at Malvern at Malvern". He also said "whatever happened - happened; leave it behind me". He again testified he had very little to do with Mr. Stina at Malvern. When asked if he was puzzled, Mr. Zuccaro testified, "In my mind I was", but there was nothing that he thought of. He was next asked, "Did you not want to clear up the misunderstanding?" Mr. Zuccaro responded "No".

I find Mr. Zuccaro's evidence to be highly unusual. If nothing had occurred at Malvern why did he state "whatever happened - happened; leave it behind me," and why give Mr. Stina's comments any credibility by saying, "leave it behind me". What was there to leave behind? Also, from Mr. Stina's comments, it was reasonable to infer that something negative had occurred at Malvern, therefore why not seek to clarify Mr. Stina's comments and why not seek to disavow any negative misunderstanding as to what had occurred at Malvern. In the result, after considering Mr. Zuccaro's testimony with respect to that issue and his demeanour in the witness box, I find, to have left Mr. Stina's remarks without clarifying the situation, notwithstanding he found the remarks puzzling, to be lacking in credibility. If nothing had happened he should have so stated, and if he was puzzled and there was a misunderstanding, it is highly unusual that he did not attempt to clarify what Mr. Stina meant. Since he was Mr. Stina's foreman why would he not want to clear the air and establish a proper working relationship with Mr. Stina. Moreover, Mr. Zuccaro's admitted remarks are more consistent with a negative relationship at Malvern and thus more consistent with Mr. Stina's version of events. In the result, I accept Mr. Stina's version of the conversation over that of Mr. Zuccaro and I find the conversation between them reflects a negative situation at Malvern, contrary to Mr. Zuccaro's evidence.

I also find, contrary to Mr. Zuccaro's testimony, that Mr. Horgan's evidence confirmed that Mr. Zuccaro recalled working with Mr. Stina at Malvern, and he had found Mr. Stina to be unco-operative. There was no reason for Mr. Horgan to fabricate such testimony. Again, I accept Mr. Horgan's testimony about what Mr. Zuccaro said to him about Mr. Stina. Therefore, I determine that there was a negative situation between Mr. Stina and Mr. Zuccaro at Malvern. Accordingly, where there is any conflict between Mr. Stina and Mr. Zuccaro concerning the nature of their relationship at Malvern, I prefer the evidence of Mr. Stina and Mr. Horgan to that of Mr. Zuccaro.

The next issue concerns Mr. Zuccaro's general treatment of Mr. Stina in the workplace and, particularly, being continually told by Mr. Zuccaro to get back to work in front of others, while other employees were not so told. According to Mr. Stina, this occurred even when other employees came over to speak to him. Mr. Stina's evidence was confirmed by other Union witnesses. Mr. Mendez confirmed that Mr. Zuccaro told Mr. Stina not to talk to anyone and sent him back to his work location, but said nothing to others who were talking to Mr. Stina. Mr. Mendez described Mr. Zuccaro's treatment of Mr. Stina as excessive, and testified Mr. Zuccaro did not like Mr. Stina and treated him differently. Also, Mr. Stina was required to go back to his work location immediately after breaks, while others were not so required. Mr. Mendez stated Mr. Zuccaro complained about Mr. Stina's work even when Mr. Stina did the right thing. Mr. Mendez also checked Mr. Stina's work from time to time and found no problems with it. Mr. Mendez also testified Mr. Zuccaro picked on Mr. Stina and did not check other people's work the way he checked Mr. Stina's work.

The singling out of Mr. Stina by Mr. Zuccaro to get back to work on numerous occasions was also corroborated by Mr. Horgan and Mr. V. Ramlochan. Mr. Ramlochan, who worked in the next bay to Mr. Stina, which was about five feet away from him, confirmed Mr. Stina was singled out and told to go back to work while others were sitting around and reading.

Mr. Zuccaro testified he asked Mr. Stina to go back to work only three or four times and did not treat him differently from others.

With respect to this particular issue, I find the preponderance of evidence favours Mr. Stina. There are three witnesses who corroborate Mr. Stina's version of these incidents - Mr. Perez, Mr. Horgan and Mr. Ramlochan. None of their evidence is contradicted in any way, nor is there any evidence to suggest they were ill-motivated against Mr. Zuccaro or conspired against him. Mr. Perez and Mr. Ramlochan worked with or near Mr. Stina and had ample opportunity to observe the goings on

at the workplace. Mr. Horgan, who testified he liked Mr. Zuccaro, had some opportunity to observe the situation and his testimony corroborates and is consistent with the other witnesses. Accordingly, on this issue, I find Mr. Zuccaro singled out Mr. Stina for vexatious treatment and harassed him within the meaning of that term. He singled him out in order to humiliate and embarrass him and for no legitimate purpose. Had Mr. Zuccaro disciplined Mr. Stina, Mr. Stina would have been able to challenge him through the grievance arbitration process. By not disciplining Mr. Stina, or using any other managerial tool to deal with him which might have provoked a challenge, I find Mr. Zuccaro's actions were subtly intended to drive Mr. Stina out of the workplace.

I further find the evidence concerning telephone usage favours Mr. Stina. Mr. Kelly, a foreman testified "the phone was a widespread problem because employees were using it for both emergency and non-emergency personal calls". Mr. Partington, a supervisor, also testified the use of phones had been an issue for some time and while the phones were not for personal use they were so used, at times. Apparently, it was enough of a problem that it was discussed with the Union.

Mr. Stina testified other employees used the phone throughout the day during working hours. Because of his discomfort with Mr. Zuccaro, the grievor used the phone during his breaks and at lunch. On one occasion when his telephone conversation continued past the break, he was told by Mr. Zuccaro to get off the phone. Mr. Anthony corroborated Mr. Stina's testimony with respect to the random use of the telephone by employees. Mr. Ramlochan also confirmed that employees used the phone outside of break time, but they had to use their discretion and "couldn't be on the phone for twenty minutes at a time."

Mr. Mendez confirmed other employees used the phone during working hours, but Mr. Stina was not allowed to use the phone during working hours. He stated on one occasion when Mr. Stina received an emergency phone call, Mr. Zuccaro walked over and stood right beside him. Mr. Mendez

followed Mr. Zuccaro to the phone and told him he shouldn't be standing there because it was a private conversation, whereupon Mr. Zuccaro and Mr. Mendez returned to the office to finish their discussion. When cross-examined, Mr. Mendez testified he was bothered by the telephone incident and although Mr. Zuccaro was his friend, he told him he was intruding on Mr. Stina and if he was on a private call he wouldn't let anyone stand around.

Mr. Zuccaro claims employees were abusing the use of the phone and he told them to get off and did not treat Mr. Stina any differently. He also denied Mr. Mendez' evidence that he stood by Mr. Stina and listened to his phone conversation, but offered no reason why Mr. Mendez would fabricate his testimony.

After considering the evidence with respect to the phone issue, I find that the use of the phone by employees was a problem and was not well managed, and employees used the phone during their breaks and during working hours. I further find Mr. Zuccaro restricted Mr. Stina's use of the phone, but did not do so with other employees, thereby discriminating against him. Further, I accept Mr. Mendez' evidence that Mr. Zuccaro attempted to intimidate Mr. Stina on at least one occasion, while Mr. Stina was using the phone, and his conduct in that regard was consistent with a pattern of treating Mr. Stina differently and harassing him.

Mr. Stina also testified Mr. Zuccaro had followed him to the upstairs washroom on two occasions and just stood there and watched him. No words were exchanged. When cross-examined, Mr. Stina stated Mr. Zuccaro had never used the upstairs washroom. He was also candid to admit he did not know what Mr. Zuccaro does all the time. There was also another foreperson who had followed him.

Mr. Mendez corroborated Mr. Stina's evidence. He testified Mr. Zuccaro followed Mr. Stina to

the washroom and Mr. Zuccaro never used that washroom. Mr. Stina was also followed by Mr. Pugliese, the afternoon foreman, who also never used that washroom. Mr. Mendez provided detailed testimony about one such occasion. He was in the office and the foremen made notes showing they intended to dismiss Mr. Stina for going to the washroom. When they left, he looked at their papers, which indicated they were going to dismiss Mr. Stina; Mr. Zuccaro wanted Mr. Pugliese as a witness. According to Mr. Mendez, the foremen were waiting to see if Mr. Stina was changing to go home. Since Mr. Stina simply used the facilities and returned to work, their plan was stymied.

When cross-examined, Mr. Mendez confirmed he was in the office and heard the foremen saying they were “going to get him this time, wait until he goes up and starts changing.” Mr. Zuccaro stated they had written down that they were going to release Mr. Stina for changing early. Mr. Mendez was present in the office and overheard the conversation, but apparently they ignored him.

Mr. Zuccaro and Mr. Pugliese each denied following Mr. Stina. Mr. Pugliese admitted to observing Mr. Stina in the change room, but later saw Mr. Stina back on the shop floor. He denied being involved in “writing up Mr. Stina”. Mr. Zuccaro denied following Mr. Stina to the change room, and stated Mr. Mendez was wrong when he testified he had followed Mr. Stina. He also claimed Mr. Mendez’ testimony that he saw a document intending to dismiss Mr. Stina for changing and leaving early, was a lie. He testified when he relieved other employees from duty he has never written it up ahead of time.

In assessing the evidence with respect to the washroom incident, there are two matters to consider. First, Mr. Mendez provided a detailed description as to what had occurred with no apparent motive for lying. Indeed, Mr. Mendez indicated in his evidence he was friendly with Mr. Zuccaro and Mr. Zuccaro offered no explanation as to why Mr. Mendez would lie and make up such a detailed account about what had transpired. Mr. Zuccaro also stated with respect to other evidence that Mr.

Horgan was lying, without any plausible explanation as to why a lie was told and without any indication as to the motivation for lying. His defence to these allegations was the bald assertion these other witnesses were lying, without any explanation whatsoever as to why they would lie, which makes his testimony suspect.

Second, Mr. Zuccaro claimed when he relieved employees from duty he has never written it up ahead of time, but has done so after meeting with the employee concerned. However, Mr. Zuccaro intended to discipline Mr. Stina on February 15, 2001, and prepared a document to that effect prior to meeting Mr. Stina. Because Mr. Stina fell ill and did not return to work, Mr. Zuccaro's disciplinary intent was not pursued. What is important is that Mr. Zuccaro admitted on cross-examination, notwithstanding he did not know what he was going to do until he interviewed Mr. Stina on February 15, 2001, that he prepared a written document ahead of time. He testified he generally writes out his intended action ahead of time, before interviewing the employee. That evidence as to his method of operation completely contradicts the evidence he gave about the washroom incident, when he claimed Mr. Mendez was lying and when he stated he has never written up an employee ahead of time, but only after meeting with the employee.

Again, with respect to the washroom evidence, I prefer the evidence of Mr. Stina and Mr. Mendez to that of Mr. Zuccaro and Mr. Pugliese. Mr. Mendez clearly had no motive for providing such detailed evidence and his evidence is tantamount to that of an independent bystander. Mr. Zuccaro's evidence on the other hand is lacking in consistency. His mode of operation on February 15, 2001, is consistent with the mode of operation attributed to him and overheard by Mr. Mendez in the office. Mr. Pugliese admitted he told Mr. Zuccaro that Mr. Stina was in the change room. Since he saw Mr. Stina back on the shop floor, presumably Mr. Stina had done nothing wrong. Why, therefore, would Mr. Pugliese report to Mr. Zuccaro that he had seen Mr. Stina in the change room? Why have such a conversation at all, unless Mr. Zuccaro had told Mr. Pugliese that he was concerned about Mr. Stina?

Mr. Pugliese also testified there were other employees in the washroom, but he took no note as to who they were. This focussing on Mr. Stina suggests some prior discussion with Mr. Zuccaro about Mr. Stina, contrary to Mr. Pugliese's evidence that he does not recall any discussions with Mr. Zuccaro about Mr. Stina. In the result, I determine Mr. Mendez was a more independent witness than Mr. Pugliese. On balance, after considering all of the evidence with respect to this incident, I find Mr. Zuccaro was attempting to catch Mr. Stina leaving early so as to either discipline him or discharge him and followed him to the washroom for that purpose.

The incident of November 2000, is in a similar vein. Mr. Zuccaro, at that time, attempted to discipline Mr. Stina and Mr. Stina objected. When the matter was investigated by Mr. Partington, the Commission ultimately concluded the records were incomplete and could not conclusively prove there was a fourth set of wheels. What is disturbing is that Mr. Stina claimed there were other employees who could verify there was not a fourth set of wheels in the area, but neither Mr. Zuccaro nor Ms. Pozywiak, nor Mr. Partington spoke to the other employees. Mr. Stina's claim to other witnesses is acknowledged in a memorandum to him from Ms. Pozywiak, dated January 4, 2001. That memo, although it cleanses Mr. Stina's record, does not completely absolve Mr. Stina, but simply indicates that since the records are incomplete the Commission could not "conclusively prove" there was a fourth set of wheels.

Given that Mr. Stina claimed his colleagues could verify his claim and given he also claimed Mr. Zuccaro was picking on him unnecessarily, which is also acknowledged in Ms. Pozywiak's memo, I find the Commission did not pursue these related claims vigorously by questioning the other employees. Had they done so they might have been able to conclusively prove there was no other set of wheels to be worked on. Also, if Mr. Stina's allegations had been pursued, the Commission might have gained some insight into Mr. Zuccaro's treatment of Mr. Stina. Mr. Stina claimed Ms. Pozywiak told him that she would support her foreman, and I accept his evidence in that regard.

Further, the Commission's investigation into the matter, notwithstanding that it ultimately withdrew the discipline, was flawed. Also, the Commission is to be faulted for failure to interview the other employees whom Mr. Stina claimed would verify his claim there was not a fourth set of wheels. This investigation might also have resulted in uncovering Mr. Zuccaro's harassment of the grievor. In my view, it is reasonable to infer from the circumstances of this incident and the washroom incident that Mr. Zuccaro was attempting to set up Mr. Stina or to unduly discipline him.

In summary, I accept Mr. Stina's version as to how he was treated by Mr. Zuccaro. Mr. Stina's version of events is corroborated, in a large part, by other employees. There is no evidence these employees were wrongfully motivated to give evidence against Mr. Zuccaro. Indeed, the evidence indicated Mr. Mendez and Mr. Horgan were favourably disposed to Mr. Zuccaro. In addition, there is not a scintilla of evidence these corroborating witnesses conspired against Mr. Zuccaro. Mr. Mendez even indicated that he was reluctant to testify at all. He "didn't want to be here." Mr. Zuccaro, on the other hand, was evasive and forgetful, except where it suited him. His evidence was contradictory in some parts and blustering in other parts, particularly when he was confronted by contrary testimony, which caused him to accuse Mr. Mendez and Mr. Horgan of lying without any basis whatsoever for his claim.

There are also certain incidents that I have not explored in depth such as the incident with the hoist and the overbearing attitude by Mr. Zuccaro to Mr. Stina's work performance, which Mr. Mendez corroborated. With respect to all these matters, I prefer Mr. Stina's evidence to that of Mr. Zuccaro .

All in all, after considering the evidence, I conclude Mr. Zuccaro abused his authority and harassed Mr. Stina by publicly ordering him back to work when others were not so ordered, by unjustifiably complaining about his work, by restricting his use of the phone when others were not so

restricted, by refusing to allow him to leave early for his vacation when others were so allowed, by attempting to discipline him when it wasn't warranted and by making demands on him with respect to his work performance which were not demanded of others. Mr. Zuccaro both abused his authority, and abused and harassed Mr. Stina, which caused Mr. Stina great distress and harm both inside and outside the workplace. I now turn to consider the impact of Mr. Zuccaro's abuse and harassing mistreatment of Mr. Stina.

Impact of Abuse and Harassment

The malignant impact of the abuse and harassment, coupled with the failure by members of supervision to consider and investigate Mr. Stina's complaints is borne out by the medical testimony. Dr. Dreckmann, Mr. Stina's general practitioner, treated him for situational anxiety arising from his treatment at work. Dr. Dreckmann felt Mr. Stina's condition was "definitely work related," prescribed medication and referred Mr. Stina to a psychiatrist.

When cross-examined, Dr. Dreckmann testified Mr. Stina had never raised any problems concerning his work and had not displayed any mental health issues prior to February 15, 2001, which was the day he left work. Dr. Dreckmann testified Mr. Stina had attempted to deal with the situation on his own and his efforts to resolve the problem had reached their limit. Mr. Stina had suppressed his symptoms and finally came to see him out of desperation. Prior to that time, Dr. Dreckmann, although he had seen the grievor on a number of occasions in 2000 and earlier in 2001, had never seen the grievor in such a state.

Dr. Raouf Edwards, the psychiatrist to whom Mr. Stina was referred, confirmed Dr. Dreckmann's testimony that the grievor's medical state was work related. Dr. Edwards testified the main stressor for the grievor was harassment by the foreman, and stated the grievor suffered from a major depressive disorder. Mr. Stina was in a depressed mood, lacked interest in things he used to enjoy, had low energy, poor concentration, poor sleep and a negative self-concept. He was overwhelmed, tearful and

sad, was crying, was anxious internally and externally and was shaking. He concluded the grievor suffered from major depression. The grievor suffered from stress and there were no other stressors.

Dr. Edwards treated the grievor with medication and by June his major depression had resolved, but Dr. Edwards continued treatment in order to avoid relapse or recurrence. Dr. Edwards concluded if the grievor returned to work with Mr. Zuccaro, he would be at the risk of relapse. The stressor for Mr. Stina's major depression was the situation at work, where he was being picked on by the foreman. When that problem was out of the picture, the grievor was all right; the harassment and major depression were a cause and effect.

Dr. Edwards testified in September 2001, Mr. Stina's concerns extended beyond depression and he was becoming delusional, in the sense he was getting false ideas about his work situation that were not real. Dr. Edwards was concerned the grievor was becoming paranoid and prescribed further medication. Dr. Edwards maintained if a person is not adequately treated for depression, that person might develop a psychosis in the context of depression. However, the prescribed medication improved the grievor's condition and medication was stopped eventually.

Counsel for the Commission, in argument, suggested Mr. Stina's problems resulted from his perception of the situation and seized on Dr. Edwards testimony as to the grievor's paranoia as confirmation of the grievor's susceptibility to perceived behaviour. However, I reject that conclusion. It is not supported by the totality of the testimony, which confirms abusive behaviour and harassment of Mr. Stina. Moreover, the medical testimony clearly confirms the paranoia was a subsequent by-product or flowed from the major depression which was caused by the grievor's mistreatment. Paranoia played no part whatsoever in the grievor's resultant medical condition and neither did perception. The grievor's medical condition and the other symptoms he described were caused by his actual treatment at the hands of Mr. Zuccaro and did not result from either perception or the subsequent paranoia,

which occurred some time after the initial diagnosis of major depression, and was a by-product of that major depression and not at all a cause. Paranoia was not the cause of Mr. Stina's medical difficulties, nor was misperception.

REMEDY

And finally I turn to the question of remedy. Workplace harassment is a pernicious activity with the capacity to severely affect persons who are harassed. Employees such as Mr. Stina, who may be unskilled or semi-skilled, are loathe to leave a unionized situation where they have acquired benefits, such as medical plans, pension rights and seniority. Moreover, comparable work situations are not readily available to them. They are thus extremely vulnerable and captive to their harassers.

Where the harassment emanates from foremen or supervisors, it is exacerbated by the harasser's status, because that status carries with it the power to discipline, discharge and to seriously impact an employee's working conditions. The impact of harassment by a supervisor is amply demonstrated in this case. Mr. Stina was not only subject to harassment, but was rightfully concerned he would be terminated. As a result of the harassment and fear of losing his job, Mr. Stina had trouble sleeping, had nightmares, woke up in a panic, lost his appetite, vomited and took it out on his family. He became depressed and was medically treated for major depression.

In *Reference Re Public Service Employee Relations Act (Alta)*, [1987] 1 S.C.R. 313, Dickson C.J., noted at p. 368.

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

There is another significant aspect to this matter that is related to a person's work. For many people,

apart from family, workplace relationships are the most meaningful relationships in their lives. The abuse and harassment in this case not only publicly humiliated Mr. Stina but also isolated him from his co-workers; Mr. Stina was perceived as a lightning rod for trouble and therefore his co-workers stayed away from him. Also, when he complained that he was being singled out, it is apparent Mr. Zuccaro spoke to other employees. I accept Mr. Stina's evidence that this resulted in other employees referring to him as a "rat" and as a "fink". When Mr. Zuccaro was not his foreman the grievor "got along with his co-workers, did not lose any time and was happy in his job."

I determine Mr. Stina was publicly humiliated on a regular and continual basis. This form of humiliation was akin to placing him in the public stocks. It isolated him from his co-workers, humiliated him publicly and stripped him of his dignity to the point where he felt "like I was a nobody". The treatment by Mr. Zuccaro also negatively affected his relationship with other employees and negatively affected his sense of identity, self worth and his health, including his emotional and psychological well-being.

I further conclude both Mr. Zuccaro and the Commission are responsible for the manner in which the grievor was treated. Mr. Zuccaro attempted to resolve the matter with Mr. Zuccaro, as well as various supervisors and the Commission's Human Rights department. He filed a written statement in January 2001, with the Human Rights department which referred to a number of incidents with Mr. Zuccaro, which he repeated in his testimony. The statement contained references to witnesses, and Mr. Stina took the unusual step of having some of the witnesses initial parts of the statement referring to the incidents they had observed. The step was unusual because in so doing, the witnesses risked the possibility of retaliation which in itself should have prompted the Commission to investigate.

The statement also indicated "this mental harassment is totally unacceptable" and that Mr. Stina found ". . . such behaviour intimidating, hurtful, humiliating, degrading. I'm afraid to go to work because of Frank's harassment towards me and only me". Copies of the statement were sent to the

senior superintendent and to Anne Pozywiak. Mr. Stina received no reasonable response from anyone in authority. Nor does it appear that the Commission took any steps to investigate the matter. Management was callously indifferent to his plight. He was completely stonewalled, which further frustrated him and aggravated his mental condition. I find it completely incomprehensible that no one in authority took the time to respond to this well documented and witnessed statement.

Clearly, the negative impact of the abuse of authority and harassment were foreseeable by both Mr. Zuccaro and the Commission's supervisory staff. Moreover, Mr. Stina's direct complaints to Mr. Zuccaro and persons in authority made it abundantly clear that Mr. Zuccaro's actions were having a negative impact on Mr. Stina. I therefore conclude both Mr. Zuccaro and the Commission are responsible for the negative impact on Mr. Stina, which resulted from Mr. Zuccaro's abuse of his authority and his abuse and harassment of the grievor. Accordingly, for all these reasons, I determine the following order is appropriate.

- a)
 - i) All of Mr. Stina's sick leave credits that were used by him between February 15, 2001, and the date he returned to work, in the Fall of 2001, shall be restored to him.
 - ii) Any difference between what he received by way of sick pay and his regular salary during that time shall be paid to him with interest at the regular bank rate.
- b)
 - i) Mr. Zuccaro and the Commission shall pay the grievor the sum of \$25,000.00 by way of general damages for which they are jointly and severally liable.
- c) The grievance seeks, inter alia, the removal of Mr. Zuccaro from Duncan shop. I doubt that my jurisdiction extends to taking action against Mr. Zuccaro, since he is not a member of the bargaining unit. However, I propose to deal to deal with the issue of supervision as follows:

- i) The Commission shall ensure that Mr. Stina has a harassment free workplace and, more particularly, that Mr. Zuccaro have no communication whatsoever with Mr. Stina either verbally or by gesture.

- ii) Very often in harassment cases the victim is moved. I do not propose to move the grievor in this case. Rather, I determine that Mr. Stina shall be able to move freely among the Commission's various workplaces. If he should bid or be transferred into an area where Mr. Zuccaro is present, the Commission is directed to move Mr. Zuccaro into an area where Mr. Stina is not present. In effect, Mr. Stina is to have workplace immunity from Mr. Zuccaro.

- iii) Mr. Stina shall also be provided with the opportunity to transfer back to the brake section at Duncan forthwith, if he so desires.

- d) I further determine that the Commission shall institute an anti-abuse and anti-harassment training for all of its managerial staff within a reasonable period and shall provide the Union and Mr. Stina with proof of the implementation of such training.

- e) Should any problems arise in the implementation of this award I shall remain seized.

For all the foregoing reasons this grievance is allowed.

DATED AT TORONTO THIS 6th DAY OF OCTOBER, 2004.

Owen B. Shime, Q.C.