AH656

IN THE MATTER OF A DISPUTE

B E T W E E N:

CANADIAN NATIONAL RAILWAY COMPANY
(The “Company” or “Employer”)

- and -

THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, SYSTEM COUNCIL NO. 11
(The “Union")

Discharge of S&C Technician Peter Charles on March 2, 2016

Arbitrator
Richard I. Hornung, Q.C.

For the Company:

Basil Laidlaw	- Manager Labour Relations
Michael Wilson	- Supervisor S&C
Brandon Lepp	- Senior Manager S&C
Mick Burrows	- Manager S&C

For the Union:

Robert Church	- Counsel
Lee Hooper	- General Chairman
Brad Betker	- Regional Represenative
Gurpal Badesha	- Local Represenative

Hearing Date:
May 11, 2017

Hearing Location:
Calgary, Alberta

Decision Date:
June 26, 2017

AWARD

Peter Charles, the Grievor, worked in the Employer's Signals and Communications Department (S&C) in Edmonton as an S&C Technician. At the time of his dismissal, he had been employed with CN for 18 years. On March 2, 2016, he was discharged for claiming standby pay without proper authorization (CN Tab. 2) for the period of July 2014 to January 2016.

The S&C Department is responsible for the operation and maintenance of electronic systems and equipment that govern the movement of trains. Each S&C employee is assigned a specific territory for which he/she is responsible. In addition, because of the critical nature of their work to the safe and efficient operation of the railway, S&C employees are required to provide 24/7 call coverage in order to respond to emergencies which may arise. This call coverage is referred to as "*Standby*".

The terms and conditions in the Collective Agreement that govern Standby are found in Article 4 which provides:

> ***4.1*** *In view of the intermittent character of the work of certain S & C Coordinators, S & C Technicians, S & C Leading Maintainers, S & C Leading Mechanics, S & C Maintainers, S & C Mechanics, S & C Assistants, S & C Apprentices and S & C Helpers, they will be paid in addition to their regular earnings for time actually worked, a stand-by allowance of 7.5 straight time hours per week at the applicable hourly rate of the job they occupy effective January 1, 2001. The provisions of Articles 4.2 to 4.16 inclusive, will apply to employees referred to in this Article.*

Employees are assigned a "call day" for Standby coverage on one of their rest days. Articles 4.4 and 4.5 and Appendix M describe the coverage requirements as follows:

> ***4.4*** *Employees shall be assigned one call day per week, either Saturday or Sunday, and one rest day per week, either Saturday or Sunday, except that, at those locations where more than one shift is required, such employees shall be assigned one call day per week and one rest day per week which shall be consecutive.*

4.5 *On call days and outside of regular hours, employees will protect calls on their own territory. They will be available for calls unless they make suitable arrangements with the S & C Supervisor for the protection of their territory without involving additional expense to the Company and so advise the proper authority. It is the responsibility of the S & C Supervisor to advise the employee, in writing, as to who the "proper authority" is at any given time.*

Note: Notwithstanding the provisions of this Article 4.5, in recognizing that the requirements of the service must be met under circumstances caused by the temporary absence of regular employees, the Company may require employees to protect calls on adjacent territories.

Appendix M provides, *inter alia:*

> *The Note to Article 4.5 allows the Company to require employees on stand-by to protect calls on adjacent territories in instances of temporary absence of regular employees. The mechanism provided under the Note to Article 4.5 is not intended to have employees on stand-by protect calls on adjacent territories in instances of extended temporary absences, subtracting the Company from its obligation to fill temporary vacancies in accordance with Article 9 of the Agreement.*
>
> *For purposes of clarification, it is understood that the temporary absences contemplated by this provision are, in the normal course, of relatively short duration, ranging from a few days to a few weeks and addresses instances where the regular employee cannot protect his or her assignment on account of bereavement leave, sickness, training, etc."*

In addition to the provisions enumerated above, S&C employees are also entitled to additional Standby pay when: they are protecting Standby on a general holiday (Article 4.11, 4.12 and 4.13); protecting Standby on additional territories when another employee is on their annual vacation (Appendix "M" - vacation coverage); and, on such other Standby arrangements as might be agreed to (Article 4.7).

Like other employees in the S&C Department, the Grievor submitted his own time claims into the payroll system including the date, hours worked and payroll codes along with any appropriate comments. The payroll system that applied to the Grievor is an honor system. Once he entered his information, his time claim was automatically approved in the system and paid out on the next payday. While the Company

periodically audits the payrolls, there is no preview or pre-authorization required before the time claims are paid to employees.

The Grievor bid and was awarded the Technician position in Edmonton on the May 2013 job bulletin (CN Tab 5) and was one of the technicians assigned in the Alberta zone. The position that the Grievor bid was based on 5 days on, one call day and one rest day in each 7 day period. In recognition of the fact that the schedule impacts on the quality of life outside of the regular working hours, the agreement allows for technicians to modify their work and call schedules as long as the 24/7 call coverage is maintained. In the Grievor's case, he alternated with another technician on the adjacent territory west of Edmonton, and they arranged the schedules so that each technician was on Standby coverage every second weekend on Saturday and Sunday.

In 2014, the Company created a new Technician position to cover the Wainwright territory and branch lines. The Grievor was required to provide Standby coverage for that territory as well.

The Grievor was of the mind, and took the position at the hearing, that under Article 4.5 and Appendix "M" employees who are assigned to cover additional territories are entitled to Standby allowance for **each** territory. In 2014, the Grievor was covering 2 additional territories where the S&C positions were vacant or the regular employees were absent. When the Grievor covered these "*additional*" territories, he would claim - in addition to his 80 hour bi-weekly pay period - a Standby allowance for those on-call territories.

During a review of the Grievor's payroll records, as part of an S&C payroll audit carried out in July 2014, it was noted that he was paid 83 hours of Standby allowance for the 2 week period from June 20 to July 3, 2014. On July 17, 2014, his Supervisor, Mike Wilson, sent the Grievor an email asking for an explanation of the Standby claims (CN

Tab. 6). On July 18, 2014 the Grievor responded (CN Tab. 7). In providing a breakdown of the additional charges, the Grievor explained:

> *"Please remember that my adjacent territory is Dave Luehr's territory and I cover for him.*
>
> *I charged the Valemont and Hinton call pay because there is no technician coverage for those territories at this time. I was called onto these territories for that weekend of June 27/28. The company is not paying anyone call pay for these territories at this time and these are not my adjacent territories. The same scenario is happening this weekend. I was called last night for the Obed HBD and called today for the Jackman OC3 fibre site today.*
>
> *I do not want these calls. The company has not filled these positions and is not paying a technician regular pay or call pay for any of these territories. If these territories need technician coverage then someone needs to get call pay for it. I don't mind covering these territories but I think the solution is to get the Wainwright and Valemont technicians in place for proper coverage.*
>
> *I don't want to overcharge for anything. I don't want to cheat the company. I charged (at least for the Wainwright side) the amount that Jeff Dyck and I had agreed upon until the technician position was filled. If I am not on call for these territories then have the call desk avoid calling me. If I am on call for these territories then I have the added responsibility and I think I should receive the call pay (which is not being payed to anyone at this time anyway). As Darrell said we should sit down with "the powers that be" and work this out. Again, I want to do the right thing and charge the correct amount. However, having the extra territory increases the likelihood of getting called out and I think it fair to be compensated for that."*

On July 25, 2014, Supervisor Wilson responded (CN, Tab 8):

> *"Upon review and interpretation of the agreement you are only entitled compensation for one payment of 8 hours of additional standby pay on the Stat holiday.*
>
> *There is no provision for compensating individuals additional penalty payments unless your covering on your regular rest day. The additional 32 hours charged for Valemont and Hinton are on top of the 10's charged for Wainwright and are not permitted.*
>
> ***Discussing with management the coverage time charged for Wainwright we agreed that you're entitled to charge for the 8+2 hours per calendar week as per Appendix 'S'. Any future agreements for additional compensation must be requested in writing to the supervisor and be approved by Senior management."***

Upon returning from vacation the techs and myself or another supervisor will have a discussion regarding Article 4.7 and appendix S. We will come up with an agreement in writing to submit to Senior Management to show what the Alberta zone call arrangements will be." (Emphasis added)

On July 28, 2014 (CN Tab. 9), the Grievor responded to Supervisor Wilson stating:

"I have never grieved anything while working for CN. And I will not start now even though everyone that I talk with are saying that I should grieve this. I will not grieve this at this time.

I think it very unfair that the company wants to increase the likelihood of me spending more time away from my family without any compensation. Over the past year I covered three territories (my own bulletined territory, Dave Luehr's and Bruce Cartman's) every second week, without compensation other than regular call pay. I am under the impression that I only have to cover my own bulletined territory and an adjacent. Now that the company got themselves in a fix by not filling jobs, I was expected to take on all this extra responsibility (Five territories covering from Biggar to Blue River and from Calgary to Hay River and Fort McMurray) for free. I think not. I will, however, give notice that when called for any other territory outside of my territory and my adjacent (Dave Luehr's) territory outside of regular hours I will refer them to the Supervisor. Again, I will refer all the calls for Wainwright tech, Hinton tech or Valemont tech territories to the supervisor even though I have covered them over the past number of weekends. I believe that Dave Luehr echoes the same sentiment.

This just baffles me that the company is paying no regular pay or call pay for the technician positions in Wainwright and Valemont and yet they do not want to pay the extra call pay. No matter who I explain this to, their comment is, "WOW!"

Following this email chain, and in keeping with the final paragraph of CN Tab. 8 (supra), Supervisor Wilson held a meeting with the four Edmonton area technicians on July 28, 2014 (the "Rainbow Room" meeting) to discuss the Standby call arrangements for the technicians with respect to the then unfilled Wainwright territory position in an attempt to reach an agreement on Standby coverage. It is clear that no agreement was reached at that meeting that altered the provisions of the Collective Agreement and that any additional standby pay would have to be approved by a supervisor (as referred to in CN Tab 8). This fact is made apparent by a post meeting email sent by Darrell Shivak, another S&C technician (CN Tab. 10), that:

"As of today any calls that I am asked to take after hours that are off my bulletined territory ***due to the need of getting written confirmation of payment of the long standing past practice of an extra 8 hours standby pay per day.*** *I will require an Email confirming payment from the on duty supervisor before I will respond.*

Brian..... You would think that after 90 years of existence the great IBEW would have resolved in simple written English the simple concept of compensating a worker for assuming another workers responsibilities." (Emphasis added)

In January 2016, through another payroll audit, it came to the Company's attention that the Grievor had claimed an extraordinary amount of additional Standby allowance, through the period January 2015 to January 2016, for on call weekends protecting Standby for the Wainwright territory. The Grievor claimed an additional Standby allowance for each Saturday and Sunday on his call weekends totaling 336 hours of additional Standby pay.

On January 21, 2016, Supervisor Wilson held a formal investigation meeting with the Grievor relating to his unauthorized additional standby allowances charged between January 2015 and January 2016 (CN Tab. 12). At the meeting, as reflected in Q. 9, the Grievor provided his explanation for why he claimed the additional Standby allowance. He states:

"CN was thought to be fair and equitable in their division of the share of the work for each individual employee, one employee should not be overburdened while another employee of the same status has a light workload.

I would like to add in regarding to the collective agreement article 4.5 -'Employees on call day and outside of regular hours employees will protect calls on their own territory, they will be available for calls unless they make suitable arrangements with the S&C supervisor for the protection of their territory without involving additional expense to the company and so advise the proper authority is the responsibility of the S&C supervisor to advise the employee in writing as to who the 'proper authority' is at any given time.

Note: notwithstanding - the provisions of this article 4.5 in recognizing that the requirements of the service must be met under circumstances caused by the temporary absence of regular employees. The company may require employees to protect calls on adjacent territories.

(See Appendix M)

In discussing this with the Wainwright S&C supervisor in May 2014, S&C Supervisor Jeff Dyck - he recognized that this was not a temporary absence of a regular employee and since 4.5 stated that I was to protect calls on my own territory that he said to enter the call pay in and charge it to his cost center.

I did speak with the current S&C supervisor Bruce Cartman and made him aware of the hours I was submitting as supervisor Jeff Dyck had instructed."

He also added the following explanation at the conclusion of his statement:

"I would like the company to know that the times I submitted were not submitted to trick anybody or to defraud the company but rather submitted for reasons I have explained for covering additional territory. Had I known that I would be covering from Fort McMurray to Calgary to Rocky Mountain House and also covering on call for territory Hay River to Edmonton to Leaman and then be required to cover from Shonts to Biggar and from St Paul Jct to North Battleford and to Flaxcombe, SK. I would have not bid the job. This size of coverage has a direct negative impact on my quality of life."

Following this meeting, the Company did a further review of the Grievor's payroll records, from July 2014 to December 2014, and noted that he made similar claims for additional Standby allowances during that period as well. As a result, a second investigatory meeting was held and a second employee statement taken from the Grievor on February 10, 2016 (CN Tab 14).

At Tab 14, Q. 9, the Grievor reiterated his explanation that he had discussed his additional Standby charges with the Wainwright S&C Supervisor, Jeff Dyck, and that he spoke with Bruce Cartman as well. He was asked the following specific questions and provided his answers:

Q. "Please reference the email from myself to you regarding charging additional stand-by allowance, it states that any future agreements for additional stand-by allowance after the date on the email must be submitted in writing to me and approved by the S&C senior manager, based on the charges posted after the July 25, 2014 email, why did you continue to do so?

A. I did so because you said in the email we would come up with an agreement in writing to submit to senior management to show what the Alberta zone call arrangements will be. Shortly after the email we had a meeting in the 'Rainbow room' with Dave Luehr, Darrell Shivak, Tim Chambers, myself and Mike Wilson. We as technicians gave two alternate solutions to the coverage issue and they were rejected and we were instructed by you to continue in the status quo. ***At the meeting everyone was aware that status quo meant that I was covering the extra territory and charging for it.*** *I did charge for it and continued to charge for it and it continued to be approved until January of 2016. (Emphasis added)*

Q. In the email between me and yourself on July 25, 2014 it was stated the there will be no additional stand-by allowance compensation permitted.

A. Yes I did understand, but did not agree with it."

Mr. Cartman, on whom the Grievor relied in defence of his position with respect to the additional Standby costs (TAB 12 Q. 10), allowed that he would likely have told the Grievor to continue with any agreement he had made with Mr. Dyck previously so as to ensure that the territory remained covered as there was no Wainwright technician at that time. This, according to Mr. Cartman, was his best guess. He did not recall the conversation but only the fact that he and the Grievor spoke. However, when the entire situation which culminated in the Grievor's ultimate dismissal came to light, Mr. Cartman recalled (CN Tab 15) a conversation with the Grievor at that time (i.e. July 2014):

> *"... and being told that* ***the only time he was claiming was if they were to call him to the territory*** *which I told him sounded fair to me but I wasn't sure how things would go after this email and things were brought into question. There was to be a meeting and a ruling made at that time. This was the last I recall about the situation until it came to light in the passed (sic) few weeks..."* (Emphasis added)

When Mr. Cartman's recollection, as quoted above, was put to the Grievor, he allowed that he recalled the conversation but could not recall the details. Further, notwithstanding his email of July 28, 2014 in which he said that he would refer all "outside of regular hour calls" to a S&C Supervisor, the Grievor could not recall calling any Supervisor in that respect.

Following the investigation the Grievor was dismissed on March 2, 2016. On March 22, 2016, the Union filed a grievance appealing that dismissal.

THE UNION'S POSITION

The Union contends that Supervisor Wilson was aware and approved the Grievor submitting the claims for the additional Standby allowance in that an understanding was reached at the "Rainbow Room" meeting of July 28, 2014 that the Grievor would continue to claim additional Standby allowances for covering the Wainwright territory.

This argument is based on the suggestion by the Grievor that, at the conclusion of the meeting since no agreement was reached, the parties were to continue with the "*status quo*" which, the Grievor contends, was for him to continue claiming Standby allowance as he had leading up to the meeting.

In addition, it argues that the Employer's investigation was not fair and impartial given that it was conducted by Mr. Wilson - the Company officer to whom the Grievor reported and who was involved in the "Rainbow Room" meeting with the Grievor and the other employees relative to the issue of Standby allowances.

DECISION

The Union's interpretation of *Article 4.5* and *Appendix M* is that employees who are assigned to cover additional territories to their own are entitled to a Stand-By Allowance for each territory (Union Brief para. 21). It being a payroll issue, the language to support that position must be clear. In my view, it is apparent that the terms of the Collective Agreement, as reflected in the provisions quoted here, do not provide for the kind of Standby charges made by the Grievor in the absence of a specific agreement to the contrary. For the reasons below, no such agreement was arrived at.

The Grievor believed that he was entitled to claim the excess Standby Allowance based either on his interpretation of the Collective Agreement or, alternatively, on his

interpretation of the outcome of the Rainbow Room meeting which he took as an "agreement" by the Company for him to continue to draw the excess payments.

I am unable to accept that the Rainbow Room meeting resulted in any agreement by the Company that the Grievor was entitled to charge the excess Standby Allowance based on a vague understanding that doing so represented the *status quo*. It is apparent, from the July 28, 2014 emails of Mr. Shivak (CN Tab 10) and the Grievor (CN Tab 9), that not only was no agreement arrived; the opposite was the case. The emails reflect a resolve by both employees not to attend to any calls outside of their territories without referring the matter to their respective Supervisors. Those emails were sent following the Rainbow Room meeting and Supervisor Wilson's prior email of July 25, 2014 (CN Tab 8), which specifically sets out the Company's position regarding the payment of Standby Allowances in the circumstances.

In light of the above, it is difficult to understand how the Grievor might see his charging the excess Standby Allowance amounts as a continuation of the *status quo.* His culpability in this regard is exacerbated by the fact that he collected Standby pay both in advance of the Rainbow Room meeting and for more than a year following the same.

I conclude that the Grievor's conduct in claiming Standby pay without proper authorization from the Company represented conduct deserving of discipline. The Company invoked dismissal as the appropriate discipline.

The Union argued that the Employer's discipline is rendered void *ab initio* on the basis that the investigation of the Grievor was not conducted in a fair and impartial manner. The basis for this argument is that the investigation was conducted by Supervisor Wilson who was therefore invested in its outcome in that he was both the Grievor's Supervisor as well as the person who conducted the Rainbow Room meeting on which the Grievor relied to support his position that his continuing with collecting the excess standby pay was simply a continuation of the *status quo.*

In **CROA 3221** the importance of a fair investigation which follows the proper procedures in the specialized CROA sphere are discussed:

> *For reasons elaborated in prior awards of this Office, the standards which the parties have themselves adopted to define the elements of a fair and impartial hearing are mandatory and substantive, and a failure to respect them must result in the ensuing discipline being declared null and void... . While those concerns may appear "technical", it must again be emphasized that the integrity of the investigation process is highly important as it bears directly on the integrity of the expedited form of arbitration utilized in this Office, whereby the record of disciplinary investigations constitutes a substantial part of the evidence before the Arbitrator, and where the testimony of witnesses at the arbitration hearing is minimized.*"

The broad benchmarks for essential elements of a fair and impartial investigation were earlier outlined in **CROA 2073**:

> *As previous awards of this Office have noted (e.g. CROA 1858), disciplinary investigations under the terms of a collective agreement containing provisions such as those appearing in Article 34 are not intended to elevate the investigation process to the formality of a full-blown civil trial or an arbitration. What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employee to know the accusation against him, the identity of his accusers, as well as the content of their evidence or statements, and to be given a fair opportunity to provide rebuttal evidence in his own defense. Those requirements, coupled with the requirement that the investigating officer meet minimal standards of impartiality, are the essential elements of the "fair and impartial hearing" to which the employee is entitled prior to the imposition of discipline.*

I have reviewed the cases submitted and conclude, based on the same, that the investigation here was conducted in a fair and impartial manner. This was not a case where any of the conclusions that needed to be reached were based solely on the evidence of Supervisor Wilson or that there was a credibility issue between Mr. Wilson and the Grievor. All evidentiary aspects are resolved by reference to the comments of the Grievor or the documents available.

The Grievor's right to representation was respected. There was no evidence to support a conclusion that Supervisor Wilson had a preferred opinion about the conduct of the Grievor which was not otherwise readily apparent from a review of the Standby Allowance payments and the emails exchanged. Or, that Supervisor Wilson was in an adversarial or antagonistic position with respect to the Grievor in so far as the factual content of the investigation was concerned. The investigation was based on objective evidence with respect to the Grievor's unauthorized charges. The Grievor did not deny those Standby charges. In fact, he explained that he was entitled to them based on his interpretation of the Collective Agreement. Nothing in the investigation conducted by Mr. Wilson colours the facts or tempers them.

The standards of a fair and impartial investigation were not violated in this case and the Union's objection cannot, therefore, succeed.

The Union also argues that, since the investigation involved issues that stretched from July 2014 to January 2016, the Company breached the Grievor's right to a timely investigation.

The audit conducted on the Grievor took place in early 2016 and his overbilling for Standby Allowances first became apparent then. When the Company discovered the excess payments it investigated the matter with diligence and dispatch. There was no evidence to suggest that anyone at the Company knew that the Grievor was drawing the excess payments as he did until the audit was undertaken. Or, that once the Grievor's excess payments were discovered, that the Company sat on its rights and did not pursue the issue with dispatch. With respect, in the circumstances here, it simply does not lie in the Grievor's mouth to say that he ought not to be disciplined because the Employer did not discover his conduct sooner.

Is the Discipline Appropriate

The only remaining issue is whether the Employer's discipline of dismissal is appropriate in all of the circumstances.

During the February 22, 2016, investigation (CN Tab 14, Question 22) the Grievor enunciated his concerns with regard to CN's position on Standby Allowances.

> *"Every second weekend, I cover four territories for three days and 15.5 hours. This is outside of the scope the position I bid and too much of an intrusion into home and family life without compensation. The Wainwright technician covers one territory for the same amount of compensation. This is in addition to my closing comments from question #38 of the previous statement from January 21, 2016."*

The Grievor's frustrations and concerns about the seeming unfairness of his having to provide standby coverage for territories outside of his area, without compensation, are perhaps understandable. That issue, however, is a matter to be raised in bargaining or as a separate grievance. However, having regard to the language in the Collective Agreement, he was clearly not entitled to collect the standby pay without the agreement of the Employer. Having been unable to achieve a resolution of his concerns, either through his discussions with his Supervisors or at the Rainbow Room meeting, it was incumbent on the Grievor to file a grievance in order to advance his claim. That was his appropriate recourse.

The Grievor is a seasoned employee who clearly knew his rights. As the following exchange reflects, he was aware that the Company did not agree with his interpretation of the Collective Agreement provisions on Standby Allowances. He was also aware of his right to file a grievance with respect to the same. He chose not to do so.

CN Tab 14:

> *Q. In the email between me and yourself on July 25, 2014 it was stated the there will be no additional stand-by allowance compensation permitted.*
> *A. Yes I did understand, but did not agree with it.*"

CN Tab 9:

> *"I have never grieved anything while working for CN. And I will not start now even though everyone that I talk with are saying that I should grieve this. I will not grieve this at this time.*

His refusal to grieve and instead simply claim Standby Allowances is made more egregious by the fact that his claim for Standby payments were facilitated through the honour system. The Grievor's conduct affects not only his relationship with the Employer but brings into focus the larger issue of the integrity of the honor system. In order for the honour system to continue to operate effectively, it is incumbent on employees to ensure that their time is justified and appropriately entered. It is not sufficient to simply disagree with the Employer regarding the hours they believe they are entitled to and then, as the Grievor did, claim them.

In my view, the discipline imposed on the Grievor must be significant in the sense that his conduct represents both a refusal to grieve his concerns (a basic tenet of labour law) and his breach of the honour system in submitting and receiving payment for his claims.

That said, while the Grievor took the excess wages, his intention and his state of mind while doing so are important mitigating factors to be considered. It is clear that his actions were deliberate; but it is equally clear that he lacked malicious intent. In his investigative interview he was candid and open and made it clear that:

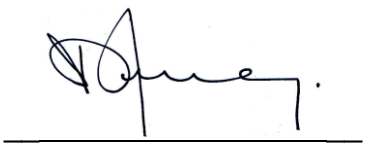
> *I would like the company to know that the times I submitted were not submitted to trick anybody or to defraud the company but rather submitted for reasons I have explained for covering additional territory. Had I known that I would be covering from Fort McMurray to Calgary to Rocky Mountain House and also covering on call for territory Hay River to Edmonton to Leaman and then be required to cover from Shonts to Biggar and from St Paul Jct to North Battleford and to Flaxcombe, SK. I would have not bid the job. This size of coverage has a direct negative impact on my quality of life.*" (CN Tab 12, Q. 38)

I accept that the Grievor's rationale was to bring the matter to the attention of the Employer and then to be, what he considered, justly compensated for his work. Unfortunately, while I accept that his statement accurately reflects his intentions it does not, and cannot, justify the Grievor claiming Standby Allowances which he knew the Company did not approve of. The amount that Grievor submitted for excess Standby Allowance over the period 2015 - 2016 was substantial (336 hours). My determination below has taken into consideration the fact that the Company is entitled to recoup those funds. The suspension is extended in this case so as to take that fact into consideration.

Given his 18 years' seniority; his previous record; the fact that he lacked any malicious intent; and, his candor and openness during the investigation stage, I am not convinced that the relationship between the Grievor and Company are irreparably damaged.

The grievance is allowed in part. The Grievor is to be reinstated, effective the date of this award, without loss of seniority but without payment of any funds to the Grievor.

Dated at the City of Calgary this 26th day of June, 2017.



Richard I. Hornung, Q.C.
Arbitrator