EXAMPLES OF CONDUCT CONSIDERED BY ARBITRATORS TO CONSTITUTE PERSONAL HARASSMENT

1. RE EASTCAN BOTTLING LTD. AND SOFT DRINK WORKERS JOINT LOCAL EXECUTIVE BOARD, LOC. 387W (1990) 13 LAC (4TH) 180 (BENDAL)

Conduct (Arguing, Horseplay, Practical Jokes, Interrupting Work)

A 27-year-old part-time general labourer who worked on a bottle sorting line was found to have made racial slurs and “teased” a new employee by hassling and ridiculing him, engaging in practical jokes, and on one occasion removing gloves needed by other workers, thus delaying work and causing a safety problem. While there were credibility issues with both the alleged harassor and the alleged harasssee, the Board was satisfied that the grievor engaged in harassment including racial slurs. The grievor in this case had been disciplined for arguing with fellow workers, interrupting work, and verbally warned about his work attitude and attitude towards a co-worker while in engaging in horseplay with no work purpose. He was creating a work disturbance on the line. However, the award does not review the many specific allegations or make specific findings of fact with respect to each of them.

Contract Language And/Or Policy Definition Used

At no time did the Board define personal harassment; no contract language was referenced, but the Ontario Human Rights Code was used with respect to the racial slurs.

Remedy/Discipline

Termination upheld, given that the grievor had been disciplined 6 times including verbal warnings, a 1-day suspension and a 3-day suspension.

2. KAMI HOLDINGS LTD. AND HOTEL, RESTAURANT AND CULINARY EMPLOYEES AND BARTENDERS UNION, LOC.40, MAY 29TH, 1996, (UNREPORTED ARBITRATION AWARD OF BC ARBITRATOR MARGUERITE JACKSON)

Conduct (Slander And Threats Toward A Worker)

The grievor claimed that her shifts were being improperly rescheduled without proper notice; her work days reduced; junior employees given more hours than she was; and that her manager was harassing her. That grievance was resolved, and the following events occurred thereafter. Her manager left her a note implying that she would be
reported for having an illegal suite; left a note forcing her to use the door that went through the lounge (causing her to have to see the strippers) without explanation; and left a note saying that she was a thief and warning employees to watch their personal belongings.

On her return to work from sick leave, the grievor was assigned the night shift, contrary to the grievance settlement, and was not allowed to work on the till. She filed a second grievance claiming that her manager harassed her (a) by calling her a thief and telling her that she would be under constant surveillance; (b) allowed her job description to include only beer-stacking tasks; (c) requiring her sign-out signature to be witnessed, unlike every other employee. She went on a second sick leave.

On her (second) return to work, the grievor’s doctor recommended that she not work night shifts; she was so assigned anyway.

The arbitrator found that the grievor was treated in an unfair manner when (a) she was accused of being a thief; (b) was required to have a witness to her sign-outs; and (c) her duties were limited to cooler work.

The arbitrator also found that the Employer failed to accommodate her medical disability of fibromyalgia, by ignoring the first settlement agreement and causing her to work full-time in the freezer, which exacerbated her disability.

**Contract Language And/Or Policy Definition Used**

6.01 Managerial Rights clause, at (b)…the Employer will not treat any employee in an unfair and discriminatory manner “…”. Although she claimed “harassment” on grievance form, no finding was made re harassment; only contract language (above) was used.

**Remedy/Discipline**

1. Declaration of violation of the Memorandum of Agreement.
2. Declaration of continuing violation.
3. Cease and desist order.
4. Declaration that Memorandum of Agreement is binding.
5. Assign grievor the day shift with no loss of seniority.
6. Lost wages, benefits, interest.
7. Declaration of failure to accommodate.


**Conduct (Pounding On A Steel Tank)**
The conduct complained of included engaging in unnecessary and deliberate pounding with a hammer on a steel tank over a 2-day period, whenever the harassed employee entered the workplace, causing noise so loud that fellow employees could not perform their duties.

**Contract Language And/Or Policy Definition Used**

None; the only use of the word “harassment” was that the grievor was said to have …"committed an employment offence by hammering…with the intent of harassing a fellow welder…” (p.344)

**Remedy/Discipline**

Termination upheld since the grievor had a disciplinary record…”which indicated a lack of co-operation with his fellow employees and management, as well as previous incidents of abuse of other employees, including a 3-month old incident where the grievor was suspended for 3 months for physically attacking the same person. His termination was upheld.


**Conduct (Physically Pushing A Worker On The Chest/Assault)**

A foreman, during a grievance meeting, physically assaulted the grievor by pushing him on the chest with enough force that he was sent flying against a wall; the assault was part of a pattern of conduct that included a menacing and intimidating approach by a supervisor which demeaned employees, including referring to employees as a kindergarten bunch with no brains and other abuses, as well as swearing.

**Contract Language And/Or Policy Definition Used**

The board found that the conduct breached the grievance procedure clause which required the parties to negotiate “…with the object of peaceably and amicably settling any differences…”, and held at p. 324: “…we are of the view that any conduct that is intended or has the effect of intimidating employees with respect to the exercise of their rights under the collective agreement is potentially a breach of its terms. That is so whether or not such conduct is expressly prohibited in the collective agreement, on the same reasoning that holds that gross acts of misconduct on the part of employees, such as insubordination or the assaulting of supervisors, are deemed to be breaches of the collective agreement obligations of employees, whether or not such conduct is expressly prohibited under the agreement.”

No “harassment” language used.
Remedy/Discipline

Declaration of breach of collective agreement was granted. With respect to the Union’s request for damages, the board found that the employer could not be held liable for damages as it had not condoned the conduct in question (no damages, no discipline of harassor, no apology).

5.  RE FOYER VALADE INC. AND MANITOBA GOVERNMENT EMPLOYERS ASSOCIATION (1991) 24 LAC (4TH) 32 (CHAPMAN)

Conduct (Calling A Co-Worker A Name, Locking Her In A Closet)

The grievor, a male housekeeping aide, was found to have a) told female co-worker P that he might “smack” female co-worker R; b) in response to a query by a co-worker about how he was feeling, he made a threatening statement “I know where you live”; c) he wrote “mushroom” on co-worker R’s property and called her a mushroom, making it clear that that was a derogatory comment on her physical appearance; and d) locked co-worker R in a storage room. He apologized with respect to the first incident.

Contract Language And/Or Policy Definition Used

None.

Remedy/Discipline

Termination upheld, with the arbitrator indicating that this was not an appropriate case to apply progressive discipline.

6.  RE TORONTO HYDRO ELECTRIC SYSTEM AND CUPE LOC.1 (1998) 2 LAC (4TH) 169 (DAVIS)

Conduct (Usurping Management’s Role)

The grievor had been given a 2-day suspension for harassment when he made a frivolous complaint about the conduct and language of a co-worker and issued him a formal letter of “discipline”. He was then discharged for sexual harassment involving a pattern of conduct toward a female co-worker over a 2-year period. The board found that the grievor’s “…conduct in ignoring the appropriate channels and taking it upon himself to declare his colleague’s conduct unacceptable, and issue him a formal warning notice, was himself engaging in unacceptable conduct since that authority is vested in management… To permit individual employees to purport to assume that authority can only be disruptive to the organization as a whole and to generate resentment and ill feeling on the part of other employees. I must conclude that M’s action in actively intruding himself into this management area constituted disciplinable conduct”, and upheld the 2-day penalty.
M's alleged sexual harassment consisted of bringing unwanted flowers to his co-worker, asking her out for social invitations after she made it known that they were unwelcome; staring at her; making comments about her to other workers; speaking to her in Polish, in spite of being asked to stop doing so; rooting through drawings on her desk and copying one of the work-related drawings; insisting on talking about communism, which upset her; and following her home.

**Contract Language And/Or Policy Definition Used**

The Board did not consider any contract language, but used the Ontario Human Rights Code definition of sexual harassment, and the dictionary definition, agreeing with arbitrator Swan’s comments in the *Re Canada Post* case that: “…harassment may justify discipline even where the basis for the harassment is not a prohibited ground”.

**Remedy/Discipline**

The grievor had had 3 letters of discipline, with 2 of them noting that future misconduct could result in termination, such that his termination was upheld.


**Conduct**

Making racist comments to a co-worker, moving a co-worker’s chair, shouting in a threatening tone of a voice to a co-worker. This was the third violation of the Harassment Policy; grievor had received written warning and 5-day suspension for harvesting and intimidating conduct.

**Contract Language And/Or Policy Definition Used**

Not indicated, though he was found to have violated the harassment policy.

**Remedy/Discipline**

Termination upheld because no mitigating circumstances justifying a lesser penalty.

8. **UNIVERSITY OF VICTORIA AND CUPE LOC.951, (UNREPORTED AWARD OF ARBITRATOR MERVIN CHERTKOW, JUNE 7TH, 1995)**

**Conduct (Coercing Co-Worker To Disobey Management Directives, Intimidating And Coercing 2 Co-Workers; Derogatory Comments To Grievor About Her And Other Employees)**
Contract Language And/Or Policy Definition Used

Art. 4.02 “The University and the Union do not condone personal harassment in the form of verbal abuse or sexual harassment... when... such conduct has the purpose or effect of substantially or unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive work environment.”

Remedy/Discipline

3-month suspension substituted for termination, after grievor found guilty of 2 offences of personal harassment toward 2 separate co-workers.


Conduct (Swearing, Name-Calling, Threatening To Make Life Difficult)

The male grievor, a head bartender, singled out the female complainant, a waitress, and swore at her, called her names, threatened to make her life difficult, and generally made the performance of her job difficult. She had questioned whether the bartendor was favouring another employee with whom he was having a relationship, and this questioning appears to have provoked the grievor’s response.

Contract Language And/Or Policy Definition Used

Investigator McEwen held: “A broad definition of ‘personal harassment’, generally accepted in collective bargaining relationships in British Columbia, is as follows: ‘Objectionable conduct or comment directed towards a specified person(s) which serves no legitimate work purpose, and has the effect of creating an intimidating, humiliating, hostile or offensive work environment.”

Remedy/Discipline

The “final warning letter” put in the grievor’s record was upheld.

10. RE GUILDFORD REGENCY CARE HOME AND CUPE LOC. 3495-08 (1995) 50 LAC (4TH) 398 (BLUMAN)

Conduct (Usurping Management’s Role; Scolding A Co-Worker)

A shop steward, the grievor, was offensive and demeaning to an employee when she rudely scolded her for not speaking English, saying that that was contrary to the employer’s policy. The arbitrator found that the shop steward took on an unauthorized management role, with no understanding that her conduct had the potential to undermine morale and with no understanding of its inappropriateness, which constituted
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personal harassment. It was the second time that the grievor, rather than report an infraction, took it upon herself to discipline or direct a fellow employee.

**Contract Language And/Or Policy Definition Used**

None, decided as regular discipline case.

**Remedy/Discipline**

Letter of warning upheld.


**Conduct**

The grievor became over-zealous in making changes in his department which he thought would be improvements, but which were made without supervision and which alienated his co-workers by his attitude, including posting a sexual harassment notice on grinders operated by female colleagues, and scaring them.

**Contract Language And/Or Policy Definition Used**

Used Ontario Human Rights Code definition of harassment, even though not harassment on a prohibited ground, and said at p.381 “I find those facts constitute harassment within the prohibition of the Human Rights Code, 1981, not on a sexual basis in this case, but in the general sense of undermining the well-being of another person with an intent to cause some sort of distress, either mentally or physically, for that person in the work place.

He also relied on the Brewers Warehousing case which said “…While working in an industrial endeavour is not a tea-party and a certain amount of give and take among employees can be tolerated, the standard of behaviour which can be expected by an employer of an employee is a performance of the duties and responsibilities for which the employee has been hired in a responsible manner and to generally co-operate with other employees having regard to the employer’s occupational requirements”.

**Remedy/Discipline**

Termination upheld, since the grievor had a written warning that any further offensive behaviour, or behaviour which causes a disruption, would be cause for discipline.

12. **UNIVERSITY COLLEGE OF THE CARIBOU AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOC. 900 (2003) BCDLA 500.93.00.00-02 (KERAS)**
**Conduct (Angry And Inappropriate Criticism)**

The arbitrator found that, particularly with respect to one exchange the alleged harassor had with the grievor, when he dealt with her in a manner where he was very angry, and where his anger affected his conduct, it had the effect of creating an intimidating work environment and constituted a misuse of his authority. While the alleged harassor had legitimate concerns regarding the grievor’s performance, he criticized her in an inappropriate manner, often with the criticism occurring at weekly meetings in front of another employee, which was demeaning.

**Contract Language And/Or Policy Definition Used**

Arbitrator Keras said at p. 35:

“The plain reading of Part III of the UCC Harassment Prevention Policy, supports the employer’s interpretation. For a finding that harassment has occurred there is a requirement that there was ‘abusive, unfair or demeaning treatment of the person…’. In addition, for that treatment to be found to be harassment it must have had the ‘effect or purpose of unreasonable interfering with a person’s…status or performance or creating a hostile or intimidating working…environment’. Also for a conclusion that certain “treatment” is harassment under the policy it must fit one or more of the criteria listed in Part III, item 2 of the Policy:

a. such treatment abuses the power that one person holds over another or misuses authority; or

b. such treatment has the effect or purpose of offending or demeaning a person or group of persons on the basis of race, colour, ancestry, place of origin, nationality, religion, family or marital status, physical or mental disability, age, sex, or sexual orientation, or conviction for a criminal offence; or

c. such treatment that has the effect or purpose of seriously threatening or intimidating a person…

Reference to the UCC Policy is contained in the Collective Agreement. The Collective Agreement provision regarding personal harassment is more general.”

**Remedy/Discipline**

The Board concluded that the victim had been personally harassed, contrary to the collective agreement and the policy; ordered the expunging of a letter; restitution for any losses incurred as a result of having to obtain a new lower-rated position including restoration of vacation and sick leave time used; the issue of wage loss being referred to the parties. Did not order an apology, and no tort damages, as the facts did not support it.
13. WELDWOOD OF CANADA V. INDUSTRIAL WOOD AND ALLIED WORKERS OF CANADA, LOC.1-424 (BUSSINEAU GRIEVANCE) (2005) BCDLA 500.15.40.98-02 (GORDON)

Conduct (Off-Duty Harassment And Intimidation Of A Supervisor Involved In A 10-Day Suspension)

Grievor followed his 2 supervisors in a car, came up close to their car; his 2 supervisors, familiar with past incidents of harassment and intimidation by the grievor against other staff, became fearful for their safety. He used his vehicle to harass and intimidate, and heightened that by tailgating them for an extended time.

Past conduct directed toward supervisors and co-workers included uttering profanities, threats, intimidation, reprisals, and other forms of insubordination and resulted in warnings, as well as a 5-day suspension for harasing a fellow employee.

Contract Language And/Or Policy Definition Used

None.

Remedy/Discipline

1. 10-day suspension for safety infraction upheld.
2. Termination upheld.


Conduct (Written, Semi-Public Defamation By Innuendo)

In this case, there had been a harassment grievance filed when the grievor obtained consent to leave work 1 hour early each Friday and make up the time during the work week, to allow her to go to another job. Employees expressed increasing resentment at the fact that she was able to work an adjusted schedule, but they were not. They made it clear that the grievor was being watched, talked about behind her back, and complained to management that she should be put on standard hours. The dispute was settled when an arrangement was made that her adjusted hours would be continued, only until after the grievor got her Nexus card, which would allow her to cross the border quickly enough that she would no longer need the adjusted hours.

The matter would have ended but for the fact that it took much longer than anticipated for the grievor to obtain her Nexus card. The grievor’s colleagues complained again. One in particular, Ms. G, wrote an email to a manager asserting that most Nexus card applications were processed within weeks and suggesting that there must have been 

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something in the grievor’s background (an innuendo of smuggling) to cause her not to receive a Nexus card. That worker did not intend for her email to be made public, but did not do anything to ensure confidentiality. The grievor claimed that Ms. Goldie’s email renewed the original harassment and was defamatory by innuendo.

This matter was settled by Ms. G, delivering a letter of apology to the grievor; the grievor releasing G from any claim she may have against her; that other claims for remedies were withdrawn; that the terms of the letter of apology be held in confidence; that the parties would publish a notice indicating that the grievance had been settled; that the settlement be without prejudice.

**Contract Language And/Or Policy Definition Used**

None

**Remedy/Discipline**

15. **CANADIAN FOREST PRODUCTS LTD V. INTERNATIONAL WOODWORKERS OF CANADA, LOCAL 1-424 (MANHAS) (2003) BCDLA, 500.93.00.00 – 01 (MCPHILLIPS)**

**Conduct**

The grievor alleged that the supervisor’s comment that the grievor should be careful when he returned to work following his suspension, and that any further such conduct would lead to termination was harassment. The board found that the comment, made without any pejorative or improper comments, was a proper exercise of managerial authority.

Similarly, a comment by the supervisor that if the grievor hit the parking lot, he should keep on going, was merely a statement of frustration, which was made in reaction to the grievor implying that management was acting in a racist manner.

A second manager’s comment to the first manager “Send the fucking asshole home” was also held to be not serious enough to constitute harassment by creating an intimidating, hostile or offensive working environment. At p.13: “…This was not “bad faith” behaviour, it was not abusive, unfair or demeaning treatment of an employee or group of employees. There was no intentional or needless disrespect for the rights of Mr. M. or consistent and persistent behaviour of this nature occurring…” The arbitrator cited Arbitrator Laing’s GEU decision.

**Contract Language And/Or Policy Definition Used**

The policy, defined at p.8 of award said: “Harassment is defined as conduct or comment, verbal or written, which may likely cause offence or humiliation to an
employee and includes any unwelcome conduct (verbal, physical or by innuendo) that:

1. has the purpose or likely effect of interfering with work performance or the work environment; or
2. creates an intimidating, hostile or offensive working environment; or
3. is reasonable perceived by an employee as having adverse job-related consequences: placing a condition on employment, opportunities for training or promotion, or any term or condition of employment.

Harassment usually involves, but is not limited to, one person exercising perceived power over others. However, harassment does not include the legitimate exercise of an individual’s normal supervisory authority.”


*Conduct (Violent And Threatening Statement)*

Grievor, who had two written disciplinary warnings, said that he would “break the legs” of a co-worker. The Union argued that his conduct was a result of his mental disability but on the evidence, the board concluded that this was a hybrid case, but that the grievor’s conduct was largely due to his anger, not his disability.

*Contract Language And/Or Policy Definition Used*

No language; dealt with as straightforward discipline case. “Violent and threatening statements about co-workers at work are not appropriate at the workplace, regardless of the audience.” (p.4)

*Remedy/Discipline*

Upheld 5-day suspension.

17. **RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOC.254 V. CALGARY (CITY OF) (UNREPORTED AWARD OF ALBERTA ARBITRATOR P. SMITH DATED MARCH 11, 2004)**

*Conduct (Shunning And Forcing A Co-worker Out Of Her Job)*

After making a sexual harassment complaint against her manager, which was ultimately validated, the grievor’s co-workers shunned her, made snide remarks and negative comments, and forced her out of her job through harassing her.
The anti-discrimination clause in the collective agreement and Alberta human rights legislation were both referenced.

**Remedy/Discipline**

1. $7500 “general damages” for sexual harassment, retaliation by co-workers and City’s failure to recognize harassment.
2. 18 months salary for having to take a lower-paying job as a result of the harassment.

**MANITOBA GOVERNMENT AND GENERAL EMPLOYEES UNION V. THE PROVINCE OF MANITOBA (UNREPORTED ARBITRATION AWARD OF L. SPIVAK, DATED SEPTEMBER 30, 2004)**

**Conduct (Inappropriate Management Style)**

A unit supervisor at a youth detention centre (a) “ranted and raved” to a subordinate who ate a bag of chips intended for a resident, even though she had permission to do so; (b) sent a number of co-workers to see if another subordinate smelled like alcohol, when that subordinate did not even drink; (c) demanded that another subordinate resign because she was having an affair with one of the grievor’s other subordinates.

An investigator concluded that there was NO harassment, but that the grievor had an “inappropriate/questionable management style”.

**Contract Language And/Or Policy Definition Used**

Not referenced.

**Remedy/Discipline**

Warning letter substituted for 1-day suspension and letter of reprimand.

**PUBLIC SERVICE ALLIANCE OF CANADA V. NUNAVUT 2006 C.L.A.D. #190 (Q.L.) MAY 16, 2006 DECISION OF ARBITRATOR P. KNOPF**

**Conduct (Failure To Protect Employee From Community Harassment)**

The residents of the small community where the grievor, a nurse-in-charge worked, petitioned for her removal, making allegations which were found by an investigator to be untrue.
When a local politician continued to complain about her, the Ministry launched a second investigation. Rather than clear her name, the Ministry asked community members whether she behaved strangely.

Arbitrator found that second investigation and questions directed toward grievor, amounted to harassment.

**Contract Language And/Or Policy Definition Used**

Art. 45.01 “The employer is committed to promoting a work environment which is free from sexual and personal harassment…and will not tolerate sexual and personal harassment in the workplace”.

**Remedy/Discipline**

$12,500 for general damages and $1,500 for psychotherapy costs.


**Conduct (Demeaning Employees; Creating Vulgar, Negative Work Environment)**

An assistant manager of a grocery store who was fired for treating the employees under his supervisor “in a demeaning and belittling manner and, in particular, that he rarely, if ever, commented positively on their job performance, that he directed vulgar and profane remarks at them personally; that he embarrassed them in front of fellow employees by yelling at them and criticizing them publicly; and that he assigned tasks unfairly”.

**Contract Language And/Or Policy Definition Used**

The award says that the managers concluded that the plaintiff had “likely” breached the company’s harassment policy, but it was not referenced.

**Remedy/Discipline**

Termination upheld.


**Conduct (Cumulative On-Going Harassment)**

The grievor was subject to remarks inferring that she was faking an injury; forced to take lunch breaks she had previously been allowed to work through; criticized for making
personal calls when that was a wide-spread practice in the workplace; denied a course that she had been promised; had her job re-organized; denied overtime pay; cut off from free lunches; had her break times changed, etc.

**Contract Language And/Or Policy Definition Used**

**Remedy/Discipline**

Wage loss from grievor’s last day of employment to date of arbitration award, and 6 months salary for tort damages.


**Conduct (Yelling, Swearing, And Critical Supervision)**

A new hotel manager introduced new stricter cleanliness standards, which the grievor had resisted. The manager inspected a room the grievor had cleaned, and pointed out several deficiencies, sending her home after criticizing her loudly and advising her that he could have her fired if he wanted to. The grievor was so upset she went to the local ER for sedatives and was off sick for 3 weeks.

**Contract Language And/Or Policy Definition Used**

**Remedy/Discipline**

$400 for tort damages.