

**CONSENT AWARD**

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**ALINEUTILITY LIMITED**

**and**

**LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183**

**Group Grievance (Harassment and Discrimination)**

**Before:** Jesse M. Nyman  
Sole Arbitrator

**Appearances:**

For the Union: Ryan McKeen (Counsel) and Kevin Sullivan

For the Employer: Cristina Tomaino (Counsel) and Lairn Allin

This grievance proceeded to a hearing by videoconference on May 4, 2021.

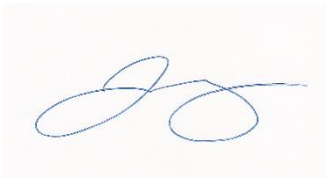
1. The employer, Alineutility Limited (the "Employer") and the union, Labourers' International Union of North America, Local 183 (the Union) are bound to the Collective Agreement between the Utility Contractors' Association of Ontario and the Labourers' International Union of North America, Ontario Provincial District Council and its Local Unions covering certain employees of the Employer (the "Collective Agreement")
2. This proceeding involves a verbal exchange that occurred in February 2021 between a Business Representative of the Union and a management employee of the Employer who will be identified in this Award as Mr. X. During a heated argument, Mr. X made a number of racist and disparaging comments including calling some of the employees the n-word and saying they worked like n-words.
3. The Union grieved that these statements violated the Collective Agreement, the *Occupational Health and Safety Act* (the "OHSA") and the *Human Rights Code* (the "Code"). That Grievance was referred to me.
4. The Employer did not deny or seek to justify or excuse Mr. X's behaviour in any way. To the contrary, the Employer recognized there was a problem in the

workplace and has consented to taking immediate steps to address it and ensure it never happens again. Its positive step in this regard should be recognized.

5. The comments made by Mr. X are vile and completely unacceptable. There is no place or excuse for those types of comments in any workplace, inside or outside the construction industry, by any person. The parties agree that Mr. X's conduct violates the Collective Agreement, the OHSA and the Code. The Employer accepts for the purposes of this Award only, that it is liable for the acts of its management employee set out in the factual findings above.
6. At the hearing the parties agreed to the issuance of this Consent Award. In accordance with the agreement of the parties, I make the following declarations and orders:
  - a) a Declaration that the conduct of Mr. X constitutes harassment and discrimination on behalf of the Employer contrary to the OHSA, the Code and the Collective Agreement.
  - b) An Order directing the Employer to mandate that all employees who are represented by Local 183 engage in appropriate training, for no less than four (4) hours on paid time and without financial loss to any participant, regarding workplace harassment and discrimination, with a focus on the prohibited grounds enumerated in the Code, at the Employer's expense. At the hearing, the Employer advised that it had already commenced the process of making harassment and violence training available to all of its' non-management employees through the Electrical Contractors Association. The Employer agreed to provide the training program to the Union to determine if it was sufficient and acceptable and agreed to discuss additional or other training if the Union has any concerns. The Employer is directed to provide these materials to the Union forthwith and comply with its representations regarding this training.
  - c) An Order directing the Employer to mandate that all management staff engage in appropriate training, for no less than four (4) hours regarding workplace harassment and discrimination, with a focus on the prohibited grounds enumerated in the Code and the legal obligations of all management to protect the rights of employees and to take every reasonable precaution to ensure the safety of the work force at the Employer's expense. This training is to be provided by outside counsel.
  - d) An Order directing that the Employer create a Prevention of Violence and Harassment Policy (the "Policy") which shall include a section on human rights. Specifically, the Policy will outline the Employer's commitment to upholding and enforcing the Code.

- e) An Order that the Employer shall continuously review and monitor its workforce (both bargaining unit members and otherwise) to ensure compliance with all Code and OHS requirements.
7. While in no way minimizing the egregious conduct of Mr. X, the parties' collaborative approach to the resolution of a difficult issue, and their joint commitment to improvement, is commendable. Their approach to the issue, including the admission of wrongdoing, saved considerable time and resources that would be expended by litigation and I am hopeful that approach will also lead to improved labour relations between them.
8. I remain seized to deal with any and all issues arising out of the administration, application, interpretation or enforcement of the terms and conditions set out in this Consent Award.

DATED at Toronto this 4th day of May, 2021.



Jesse Nyman  
Sole Arbitrator