

**IN THE MATTER OF:**

**AN ARBITRATION**

**BETWEEN:**

**ST. BONIFACE SCHOOL DIVISION O. 4**

**- AND -**

**CANADIAN UNION OF PUBLIC EMPLOYEES**

**RE: GRIEVANCE OF DENNIS JACKSON  
SUSPENSION FOR INSUBORDINATION**

**COUNSEL:** Mel Myers, Q.C. for the Union  
Rob Simpson for the School Division

**BOARD:** P.W. Schulman, Q.C. Chairman  
D.H. Kells Nominee of the School Division  
Rob Hilliard Nominee of the Union

### **AWARD**

The Grievor grieves against letter of discipline (exhibit 3) and a one day suspension for insubordination. This matter was heard before us in Winnipeg on May 13, 1991. At the outset, the parties agreed that this Board is properly constituted and has jurisdiction to hear the grievance.

Three witnesses were called at the hearing. Counsel for the School Division called as witnesses Jim Parsons and Charles Robbert. Counsel for the Union called the Grievor, Dennis Jackson, as its sole witness.

On December 21, 1989, a meeting took place between Jim Parsons, a School Division Maintenance Supervisor and Dennis Jackson, a Welder/Mechanic employed in the School Division. The meeting took place in Mr. Parsons's office at 901 Maginot Street in Winnipeg. Mr. Parsons's office is located in an area near a receptionist's desk. After the meeting, Mr. Parsons had a letter prepared and delivered to Mr. Jackson which states the following:

"In a discussion we had this morning at 8:16 a.m. you made the comment to me 'fuck you'. This is to confirm your suspension for one day, without pay, effective immediately, which you were verbally told at that time.

If this comment would have been made in a joking way or after hours, I would not see it as a serious offense, but as it was made in a derogatory way I see it as very unprofessional." (Exhibit 3)

The accounts of Mr. Parsons and Mr. Jackson as to what took place at the meeting differ, but we are satisfied that each has done his best to accurately recall the event.

Mr. Parsons told us that he is in charge of the Maintenance staff throughout the School Division. Some months earlier, the School Division had deleted a position of Carpenter and as a result a man by the name of Belanger was laid off. Subsequently, on December 19, 1989 the School Division posted a new position of Utility Tradesman/Helper. In making that posting, Mr. Parsons gave no consideration to recalling Mr. Belanger and these events were the subject of the meeting which took place on December 21<sup>st</sup>.

Mr. Jackson was, to the knowledge of Mr. Parsons, a spokesman for the Union. There had been negotiations about a new collective agreement between Union and Management over a number of months. Mr. Parsons was on the Management negotiating team and Mr. Jackson was on the Union negotiating team. There had, as well, been a number of meetings between Mr. Parsons and Mr. Jackson on matters of concern to the Union, and although Mr. Parsons and Mr. Jackson had been friends for many years, relations between the two of them had become strained in the months preceding the event in question.

On December 21, 1989 at about 8:10 a.m., Mr. Parsons told us that Mr. Jackson came into his office. Without saying 'Good Morning', Mr. Jackson sat down in a chair in front of Mr. Parson's desk and an exchange to the following effect took place. Mr. Jackson said, "We have a problem." Mr. Jackson referred to the fact that Mr. Belanger had been laid off, that a new position had been posted and said that he felt that Mr. Belanger should have been recalled. Mr. Parsons pointed out that Mr. Belanger had held a different job classification than the one which was being posted and said that Mr. Belanger is welcome to apply for the position. Mr. Jackson said that Mr. Belanger would be making less money in the new position and Mr. Parsons confirmed that fact.

Mr. Jackson did not seem open to Mr. Parson's suggestion, stood up, stated "I thought we could talk it out."

Mr. Parsons replied, "We haven't talked in months." Mr. Jackson said in a raised voice, though not really loudly, "Fuck you."

Mr. Parsons stopped Mr. Jackson in the doorway, hoping to clear up the matter. He called Mr. Jackson's name.

Mr. Jackson said, "What?"

Mr. Parsons stated, "You know I could fire you for that comment."

Mr. Jackson replied, "What comment?"

Mr. Jackson looked at Mr. Parsons and said, "So, go ahead."

Mr. Parsons told us that he felt challenged by Mr. Jackson's outburst. He felt a little bit personally threatened by the words. He felt challenged to do something. He had heard swearing in shop talk, but no one had ever directed words like that at him. He felt that he had no choice but to suspend Mr. Jackson for one day and he did so. As a result he wrote Exhibit 3. The following morning, Mr. Jackson came up to Mr. Parsons and apologized for swearing saying, "I am quitting the Union." to which Mr. Parsons replied, "That's okay."

In Cross-Examination, Mr. Parsons stated that his impression was that Mr. Jackson wanted Mr. Belanger recalled to the position of Carpenter and he emphatically denied Mr. Myer's suggestion that Mr. Jackson had wanted Mr. Belanger recalled to the position of Utility Tradesman/Helper. Mr. Parsons denied that Mr. Jackson said words to the following effect, "What about Mr. Belanger's ability and qualifications?"

As previously indicated, Counsel for the School Division also called as a witness, Charles Robbert. Mr. Robbert works with Mr. Jackson on the Union negotiating-grievance committee. Mr. Robbert received a telephone call from Mr. Jackson on December 21, 1989 in which Mr. Jackson had related to him the events of the day. Mr. Jackson told Mr. Robbert what he had said to Mr. Parsons. Mr. Robbert told him that he had to straighten it out with Mr. Parsons and that he should apologize, to which Mr. Jackson replied "Yes I have to do that." Mr. Robbert told Mr. Parsons that the Union cannot work with that friction and that such language does not make for harmonious relations.

In Cross-Examination, Mr. Robbert stated that the account which was given to him by Mr. Jackson was that Mr. Jackson had made it clear that he wants Mr. Belanger recalled to the new position, not to the position which had been deleted. Further, that Mr. Jackson had raised the question of Mr. Belanger's qualifications and ability.

Mr. Jackson told us that he went to see Mr. Parsons in order to discuss Union business. The Union committee, of which he was a member, felt that Mr. Belanger should have been recalled to the new position. The committee instructed Mr. Jackson to go in and ask Mr. Parsons why Mr. Belanger had not received the recall. Mr. Jackson said that he sat down in Mr. Parson's office and an exchange to the following effect took place. He stated, "We have a problem."

Mr. Parsons said, "What?"

Mr. Jackson replied "Why did Belanger not receive a recall?"

Mr. Parsons said, "The position is out of his classification. It pays less money. He can apply for the position."

Mr. Jackson replied, "He is still on the seniority list. He has the ability and qualification. Why shouldn't he get recalled?" I thought we could talk about it.

Mr. Parsons said, "We haven't been communicating lately. Why should we start now?"

Mr. Jackson said that he felt insulted and humiliated. He was getting ready to leave. He didn't see any point in carrying on the conversation and he said the words in question.

Mr. Parsons said, "You can lose your job."

Mr. Jackson replied, "Come on Jim, are you going to fire me for swearing?"

When Mr. Jackson was at the door, Mr. Parsons said, "You are suspended for the rest of the day" and Mr. Jackson left.

Later that day, Mr. Jackson spoke to Mr. Robbert and told Mr. Robbert what had happened. The next day he apologized to Mr. Parsons.

In Cross-Examination, Mr. Jackson stated that he went to see Mr. Parsons as Union Representative. He knew that Mr. Parsons was the one who could make a decision in the matter. He went to ask why Mr. Belanger had not been recalled. He wanted an answer. He received what he described as a partial answer. When he apologized to Mr. Parsons the next day, he stated, "I am thinking about quitting the Union" and Mr. Parsons replied, "That is a decision that you have to make."

Counsel for the School Division urged that we should uphold the discipline on the grounds of insubordination and cited the following arbitral authorities:

Re Sauder Industries Ltd. and International Woodworkers of America, Local 1-217 (1985) 21 L.A.C. (3d), 245

Re Nacan Products Ltd. and Energy & Chemical Workers Union, Local 819 (1989) 7 L.A.C. (4<sup>th</sup>), 348

Re Aro Canada Inc. and International Association of Machinists (1988) 34 L.A.C. (3d), 255

Re Canadian Lukens Ltd. and United Steelworkers of America (1976) 12 L.A.C. (2d), 439

Re St. Lawrence Foods Ltd. and Teamsters Union, Local 419 (1983) 9 L.A.C. (3d), 187

Re Hiram Walker & Sons Ltd. and Distillery Workers, Local 61 (1973) 4 L.A.C. (2d) 291

Counsel for the Union asked us to allow the Grievance and delete the discipline on the basis that the Grievor had been provoked by Mr. Parsons, and further, that Mr. Jackson could not be disciplined because he was present at the meeting on Union business. He cited the following arbitral authorities:

Re Newmont Mines Ltd. and Canadian Association of Industrial, Mechanical and Allied Workers, Local 22 (1982) 3 L.A.C. (3d), 396

Re Aro Canada Inc. and International Association of Machinists (1988) 34 L.A.C. (3d) 255

Re Industries SMI Canada Ltd. and Canadian Autoworkers, Local 1579 (1987) 30 L.A.C. (3d) 161

Re Int'l Union of Electrical Workers, Local 526, and Automatic Electric (Canada) Ltd. (1961) 30 L.A.C. (3d), 139

Re Ford Motor Co. of Canada Ltd. and United Automobile Workers, Local 707 (1976) 12 L.A.C. (2d), 334

Re Robertshaw Controls Canada Inc. and United Electrical, Radio and Machine Workers of America, Local 512 (1982) 5 L.A.C., 142

Re Burns Meats and Canadian Food & Allied Workers, Local P139 (1980) 26 L.A.C. (2d), 379

Re St. Lawrence Seaway Authority and Canadian Brotherhood of

Railway, Transport and General Workers (1978) 20 L.A.C. (2d), 24

Abusive Language by Union Official – Is it an offence? Jeffrey Sack and Howard Goldblatt, ed., December, 1978, vol. 14, no. 12 L.A.N., 1

Grievance Meetings are not "Tea Parties" Jeffrey Sack and Howard Goldblatt, ed., January, 1976, L.A.N., 7

Re Firestone Steel Products of Canada and United Automobile Workers, Local 27 (1975) 8 L.A.C. (2d) 164

Counsel for the School Division replied that although some leeway should be given to Union officers in considering their conduct at Union/Management meetings, the Grievor at the meeting in question, had greatly exceeded the bounds which could be tolerated.

We wish to make several observations. Firstly, the fact that Mr. Jackson had gone into Mr. Parson's office and sat down without saying 'Hello' is immaterial. Secondly, while Mr. Parsons apparently thought that Mr. Jackson was seeking recall of Mr. Belanger to the position which no longer existed, he was mistaken on this point. Mr. Jackson was seeking recall of Mr. Belanger to the newly-created position, notwithstanding the fact that it was a different position, a lesser position and a lower paying position. There was, as well, a disagreement between the parties as to the extent of Mr. Belanger's right of recall under Article 7 of Exhibit 1. Mr. Jackson was seeking to assert a right under paragraphs 7.01 and 7.05 (c) of Exhibit 1 which maintains seniority for an employee who has been laid off "for a period of up to one year" and provides, "employees shall be recalled in the order of their seniority." The Division's position was that the recall provisions relate only within the classification, because paragraph 7.05(b) of Exhibit 1 states,

"New employees shall not be hired until those laid off in that classification have been given an opportunity of recall, provided the employees on lay-off have the qualifications, experience and abilities required to perform the available work."

Despite the fact that Mr. Parsons misunderstood the basis of Mr. Jackson's request, we do not think that Mr. Parsons did or said anything which can be objectively viewed as an insult to Mr. Jackson. We think what happened here is that two friends had a mutual misunderstanding, caused in part by strain in their relationship, which strain was related to mutual business circumstances. Further, although Mr. Jackson did not apologize immediately, he did so at the first opportunity the next morning. Whatever were the precise words which accompanied the apology, it is clear from the account of both Mr. Parsons and Mr. Jackson that Mr. Jackson attributed the outburst to the pressure of Union business.

After a careful review of the evidence, we find that Mr. Parsons did nothing which could be construed as having provoked Mr. Jackson's outburst. On the other hand, we think that in imposing the discipline, Mr. Parsons may not have taken into consideration the fact that the outburst took place during the course of a meeting of Union and Management on legitimate mutual business. Further, we notice that although arbitrators normally uphold discipline where an employee swears at Management on the basis that such insubordination interferes with Management's right to operate the business, Mr. Parsons in Exhibit 3 did not assert that the outburst challenged his right to run the business. Rather, he described it as "I see it as very unprofessional."

The statement by arbitrator Brandt in Re Firestone Steel Products of Canada and United Automobile Workers Local 27 91975) 8 L.A.C. (2d), 164 at 168 as follows:

"...For, as Mr. Nickerson for the union put it, a committeeman is, while attempting to resolve grievances between employees and company personnel, always functioning on the boarder line of insubordination. His role is to challenge company decisions, to argue out company decisions and, in the discharge of that role he is to be exposed to the threat of discipline for insubordination, his ability to carry out his role will be substantially compromised. This is not to say that a committeeman has a carte blanche to ignore at will management instructions and it instruct others not to carry them out. His immunity, if it may be called that, is limited to acts or omissions committed in the discharge of his functions and to acts or omissions which may reasonably be regarded as legitimate exercise of that function. To put it succinctly, a committeeman is not entitled to punch a foreman in the nose as one of his means of attempting to bring about a settlement of a grievance.

Therefore, it is necessary in the instant case to determine whether or not the grievor was acting as a committeeman throughout the incident and secondly, if so whether his conduct was, in that context, legitimate."

has been quoted with approval in at least three subsequent awards. It is easy to conclude that the conduct of the Grievor in the instant case is less serious than the conduct of the grievor in the Firestone, Re St. Lawrence Seaway and The Canadian National Railway cases, in each of which cases it was held that the grievor's conduct was protected from discipline by the business of the moment. We distinguish the award in Re Sauder Industries Ltd. on the basis that the Plant Chairman's words in that case comprised "an attempt to publicly demean a representative of the Company," whereas the outburst in question here took place in apparent privacy.

In the instant case, no Grievance had been filed by Mr. Belanger, and in fact, none was ever filed by him. We view Mr. Belanger's situation, however, as being the proper subject of a meeting between Union and Management. Although Mr. Jackson said that he came to obtain information, obtained the information and did not like what he heard, we think that the meeting can be properly viewed as something more than a question-answer session. Although the business had been concluded and the outburst came as Mr. Jackson left the meeting, we do not think that arbitrators should be overly concerned about the precise timing of the event, if the Grievor was at a meeting with Management and the conduct in question formed part of his presentation.

Based on the authority which has been cited, we find that there is a limited immunity for Union personnel engaged in business dealings with Management. The Grievor's outburst was unacceptable, deserving of comment by Management and by the Union. Indeed such an outburst during a meeting would justify a chairman in terminating a meeting or excluding an employee from continued presence at the meeting. However, we find that conduct of the Grievor on the facts of his case was protected by the limited immunity and not properly the subject of discipline. A decision as to whether or not one exceed the bounds of the immunity involves a careful examination of the time, place, content and tone of the remarks. On the facts of this case, the outburst was brief, it took place in apparent privacy, it formed part of, although at the end of, a meeting concerning Union/Management business, at which a difference of opinion was voiced, and was followed by an early apology, which was intended to repair Union/Management relations. We therefore allow the Grievance, delete the discipline and direct that the Grievor be compensated for lost earnings.

At the conclusion of the hearing, we acknowledged the careful manner in which this difficult and interesting case had been conducted by Counsel for both parties. We have found their presentations very helpful in arriving at our conclusion.

Pursuant to Article 11.06 of Collective Agreement, each party shall pay the fees and expenses of its Appointee and one-half of the fees and expenses of the Chairman.

Dated: July 25, 1991

P.W. Schulman, Q.C., Chairman

D.H. Kells, Nominee of the School Division

Rob Hilliard, Nominee of the Union