

IN THE MATTER OF:) **AN ARBITRATION BETWEEN:**
) **DAUPHIN OCHRE SCHOOL AREA NO. 1**
) (hereinafter called the "Employer")
) **- and -**
) **THE CANADIAN UNION OF PUBLIC**
) **EMPLOYEES, LOCAL 3305**
) (hereinafter called the "Union")
) **- and -**
) **WALTER CHAYKOWSKI**
) (hereinafter called the "Grievor")

ARBITRATION AWARD

The hearing in this matter took place in Dauphin, Manitoba on September 24th, 1992. Jack M. Chapman, Q.C. had been appointed to act as sole arbitrator.

Mr. R. Simpson appeared as counsel on behalf of the Employer and Mr. W. Sumerlus appeared on behalf of the Union and the Grievor.

At the commencement of the hearing, the parties confirmed the arbitrator had jurisdiction to deal with the matter and that there were no preliminary objections. It was agreed that witnesses would be excluded and it was also agreed that there were no other individuals who required notice of the hearing.

Mr. Sumerlus and Mr. Simpson confirmed that the issue of compensation, if any was determined to be due to the Grievor, would be resolved by the parties. In the event of any dispute, the matter would be referred back to the arbitrator who agreed to retain jurisdiction for that purpose.

The parties are subject to a Collective Agreement which covered the period from January 1st, 1991 to December 31st, 1991 which was filed as Exhibit 1. Counsel agreed that the Collective Agreement was still in force for the purposes of this arbitration.

Filed as Exhibit was the grievance which was dated May 5th, 1992. The relevant portions read as follows:

I the undersigned claim that the Employer's decision to terminate my employment was made without just cause in violation of the collective agreement and the Manitoba Labour Relations Act (Sec. 79 (2) and Sec. 80 (2).

Therefore I request that I be reinstated to my position with full retroactivity including lost wages, benefits, seniority plus interest on monies owing based on current Bank of Canada rates effective my last

paid day of employment, that being on or about April 15th, 1992."

The grievance arose as a result of a letter sent to the Grievor by the Employer on April 28th, 1992. This letter was filed as Exhibit 3 and the relevant portions read as follows:

"Dear Mr. Chaykowski:

As it's Committee of the Whole Meeting of April 27, 1992, the Board of Trustees reviewed the status of your employment following the incident on April 4, 1992 wherein you drove to the school bus garage under the influence of alcohol to wash your school bus.

As a result of the incident, the subsequent impaired driving charge and your previous problems with alcoholism, this is to advise you that the Board passed the following motion:

That Walter Chaykowski be suspended from his bus driver/ mechanic's helper position without salary, effective April 6, 1992 and that his employment with the Dauphin Ochre School Area No. 1 be terminated effective April 28, 1992. "

The facts in this matter are not in dispute and accordingly, I only propose to review the evidence in a very summary fashion, pointing out, in my opinion, the more salient points.

Mr. David Jordan, a caretaker with the Employer, appeared under subpoena. Although presently employed as a Caretaker, he had been employed as a part-time Bus Driver for a number of years.

On April 4th, 1992, which was a Saturday, he was working at the Employer's premises and at approximately 12:45 he came in contact with the Grievor. His evidence may best be summarized by quoting the statement that he made to the Employer and which was filed as Exhibit 4:

"On Sat. April 4, 1992 at about 12:40 p. m. I was dropped off at the back of the school division office so I could finish some cleaning. When I arrived I noticed that a driver was washing his bus and I went over to see who it was. It was Walter Chaykowski and as I got closer to him I noticed that he was staggering and he had a strong smell of alcohol on him. I noticed that he had finished washing bus #8 and was going to park it. I right away went to phone Gerald Welborn but when I couldn't get ahold of him I went back to Walter to make sure he didn't drive the bus. When I got back to Walter I told him that I would park the bus and would drive him home but he refused to. I ask him for the keys and he then went to the bus got behind the driver seat started the bus and put the bus into reverse. I told Walter I couldn't let him do this reached over turned off the bus and took the keys. We had about a 5 minute conversation where I tried to get him to let me park the bus and drive him home. Walter started to get angry with me and swear at me. He then told me to get off the bus and as I did he followed me off. He then went to where the spare key were hung and took the spare keys. Again I told him I couldn't let him do this and took the spare keys from his hand. He

then grabbed my arm and twist it and forced one set of key out of my hand. When Walter noticed that these keys did have the gas key on it he grabbed the second set from my hand.

At this point I went and phoned the police. When I return to the garage Walter had already parked the bus and was locking it up.

He got out of the bus and about two minutes later the police arrived and arrested him for drunk driving.

Signed "Dave Jordan"

Received from David on April 8/92 11:34 a.m."

He noted that after the incident and having called the Royal Canadian Mounted Police, they attended at the premises and arrested the Grievor.

He had been requested by the Employer to make a statement.

During the cross-examination, he agreed that he normally didn't work Saturday and worked the day in question because it was immediately after the spring break. He also confirmed that it was not unusual for bus drivers to wash their buses on the Saturday. He agreed that the compound was not fenced and that the drivers would usually keep their buses in the same stall and when going to wash them would get as close to the wash stations as possible. He said that he was poor in estimating distances but acknowledged that it would only take the Grievor a matter of a minute or so to drive from the wash rack to the parking space. He also agreed that he had not observed the Grievor driving but did see him come out of the bus. Mr. Jordan was adamant that the Grievor was drunk.

Mr. Jack Hrehirchuk, the Secretary-Treasurer the Division, gave evidence. The Division had approximately 2,300 students of whom 800 were transported to and from schools. There were some 21 routes.

He reviewed the Grievor's employment history and stated that at the time of the termination the Grievor drove a full bus route plus provided other services between the time he finished his morning route and when he commenced his afternoon route. He referred to the Collective Agreement and noted that there were only four categories which applied to bus drivers. These were as follows:

- Bus Driver-Mechanic's Helper
- Bus Driver/Utility
- Mechanic
- Bus Drivers

There was also the category of Bus Driver (out of town trips) but this was usually assigned to drivers on a rotation basis. He reviewed the Grievor's duties and stated that the Grievor, in all respects, was a good and conscientious employee who had never been previously disciplined. The major problem with the Grievor was that he had an alcohol addiction. For the purposes of the record it might be noted that the Grievor was, effective July 2nd, 1990, appointed to the position of Mechanic's Helper, full time (Exhibit 5). However, at the end of July, 1990 the Grievor requested that he be transferred back to the position of a Bus Driver and part-time helper (Exhibit 6). His request was granted.

His first knowledge of the incident was when he received a call to meet with the Grievor at approximately 6:30 on Sunday, April 5th. The Grievor advised him what had happened the day previous and gave him a copy of the notice he had received from the R.C.M.P. suspending his driver's licence and reporting on his breathalyzer test. It showed that at 13:25 on the 4th day of April, 1992, the Grievor had a reading of .24 milligrams of alcohol and approximately 20 minutes later, at 13:45 on the same day the analysis showed he had a reading of .23 milligrams. It may be sufficient to note that the legal limit is .08. The Notice of Suspension and the Certificate of Analysis and the Undertaking to Appear was filed as Exhibit 7. On April 6th, 1992 a letter was sent to the Grievor (Exhibit 8) advising that the Grievor had been suspended pending further investigation and advising that the matter would be considered by the Board of the Employer on April 13th.

On April 14th a further letter was sent by the Employer to the Grievor advising that the suspension was extended until April 30th, at which time a decision would be made by the Board. This was filed as Exhibit 9.

Mr. Hrehirchuk was subsequently advised (quite recently) that the Grievor appeared in Court on April 14th and pleaded guilty to the offence of driving while impaired and was fined \$575.00 and his licence was suspended.

He reviewed, in some detail, the Grievor's lengthy problem with alcoholism and stated that the Employer had shown a great deal of compassion to the Grievor. On the one hand, the Grievor was a good and conscientious employee but on the other hand, the Employer had a responsibility to the children it transported. Over a period of years the Board had dealt with the Grievor's problems and on numerous occasions it had assigned the Grievor to other duties and had given him numerous chances to conquer his addiction. He noted that Exhibit 3 (supra) referred to the Grievor's "previous problem with alcoholism".

Filed as Exhibit 11 were the minutes of a meeting that the Employer had with the Grievor, which were signed by the Grievor and which took place on April 16th, 1985. Those minutes read as follows:

"Meeting with Walter Chaykowski - April 16, 1985, 9:45 a.m.

Present: Walter Chaykowski, Marge Chaykowski, Gerald Wellborn,
Jack Hrehirchuk

Discussion with Walter regarding his health and cause of sickness.

Gerald relayed discussion with Dr. Lysack regarding Walter's condition wherein Dr. Lysack indicated that Walter could come back to work as mechanic's helper in two to three weeks but that, until Walter indicated he needed help with his alcohol problem and got the help he needed, Dr. Lysack would not issue him a clean bill of health to drive a bus.

Jack Hrehirchuk informed Walter that the Dauphin-Ochre School Area No. 1 was prepared to assist Walter in solving his problem. This would mean that Walter could work in the Mechanic Shop until the end of June and when he shows that he has begun to solve his problem and received a clean bill of health from the doctor to drive a bus, he could start driving a bus in the fall term.

Marge indicated that Walter would not talk to her about his problem.

Walter indicated that he did not have a problem but would give up alcoholic beverages on his own completely.

Jack Hrehirchuk informed Walter that he wanted Walter and Marge to meet with Dr. Lysack and have a good discussion with the doctor concerning Walter's health and problem. Jack also informed Walter that he should discuss his problem openly with his wife. A meeting would then be set up with Walter, Marge, Gerald and Jack.

Jack informed Walter that he had the support of the DauphinOchre School Area No. 1 including Gerald and himself but that if Walter started to drink again, action would be taken to take Walter off the job to ensure the safety of the students.

Signed "J. W. Hrehirchuk"
Secretary-Treasurer

Signed "Walter Chaykowski"
May 28/85"

Filed as Exhibit 12 was a letter from the Grievor's physician which stated, in effect, that the Grievor was making progress and should be allowed back as a driver in September of 1985. Exhibit 13 was a further letter from Dr. A. Lysack in which he confirmed that the Grievor was fit to drive. This letter reads as follows:

"Re: Walter Chaykowski
R. R. # 3. Dauphin. MB.

I saw and examined Walter on August 1st. He appears to be healthy and has assured me that he is not drinking any alcoholic beverages at all. His general health appears to be good.

A complete physical was done including examination of hearing and his vision. He seems to be in good health and fit to drive a motor vehicle.

If indeed, he is not drinking, and I have reason to believe that he is telling the truth, then it seems reasonable that after the period of time that we have allowed that he could be allowed to drive the school bus again. However, should his drinking problem return, we will be obliged to have another look at this matter.

Thank you for your help in this matter.

Yours truly,
Signed "A. Lysack, M.D."

On August 20th, 1986, a further meeting with the Grievor took place (Exhibit 14) as a result of a comment made by the Grievor's wife. The minutes read as follows:

"Meeting with Walter Chaykowski, August 20, 1986 - 1:30 p. m.

Present: Walter Chaykowski, Gerald Wellborn, J. W. Hrehirchuk.

Re: Health Problem

J. Hrehirchuk informed Walter that he (J.W.H.) had met with Walter's wife, Marge, on August 8, 1986 and asked how Walter was doing. Marge told him to ask Walter himself and Marge appeared to be emotionally upset at the time.

J. Hrehirchuk asked Walter how he was doing and whether he was attending A.A. or not. Walter said he had not attended A.A. for quite a lengthy period because the cigarette smoke bothered him. Walter also said he had a few beers during the Ukrainian Festival.

J. Hrehirchuk informed Walter that he had changed Walter's appointment from Dr. Warrian to Dr. Lysack because Dr. Lysack had been Walter's doctor during his sickness last time."

In September of 1986 Dr. Lysack again wrote to the Employer (Exhibit 15) and the relevant portions read as follows:

"On interviewing Walter, I asked him directly if he was drinking alcohol and he assured me that he only had a few drinks around the time of Ukrainian Festival and that he has not had a drink since then. There is no way that I can be certain whether this is actually so, but personally I have very grave doubts about the validity of his statement.

I have a form filled out regarding his physical condition with regards to vision, hearing and general physical status. As you can see from the physical point of view, he could pass his Bus Driver's Physical. However, at this point in time, I cannot recommend to the Board that this man continue driving a school bus unless certain criteria are fulfilled on Mr. Chaykowski's part. First of all, I think he should show evidence of attending AA's as his past history clearly demonstrates to us that he is an alcoholic. Secondly, I think he should be asked to agree to spot checks of urine or blood to test for alcohol during weekdays and during unexpected times. This is the only way we can be certain that this man is not using alcohol during working days. Thirdly, it would be wise to get more collateral information from his wife and his family to substantiate the fact he is not drinking anymore. If there are any problems with any of the above three suggestions, then I think that he should not be allowed to drive a school bus. As you know, his bus driver's licence was removed for a period of time last year because of his drinking problem. Unless the criteria of the points which I have suggested are satisfied, I would not be prepared to sign a medical certificate and would not support his desire to continue driving a school bus. As we have discussed on the phone, we will await the advice of the Manitoba Association of School Trustees legal counsel before a final

decision is made; but it appears in the final analysis that the School Board and the Executive Officers of the school division will have to make the final decision. If there are any further questions; please feel free to contact me at any time.

Yours truly,
Signed "A. Lysack, M.D."

As a result of that letter, a further meeting was held with the Grievor on September 11th, 1986 (Exhibit 16). The minutes read as follows:

"Re: Walter Chaykowski
September 11, 1992

On Thursday, September 11, I received a letter from Dr. A. Lysack re the above.

Dr. Lysack indicated that although Walter had passed his medical examination, because of Walter's past record and circumstance, he (Dr. Lysack) was not prepared to sign Walter's medical to allow him to drive the school bus. Dr. Lysack outlined in his letter that Walter should agree to the following:

1. resume attending A.A. on a regular basis
2. agree to regular and/or spot checks of blood or urine tests for alcohol
3. agree to consultation by the Administration with his family to monitor his progress.

I contacted Ray Whiteway of M.A.S.T. for advice. I called Gerald Wellborn in and discussed this with him. We then met with Walter and informed him that he was removed from driving the bus, effective this afternoon. I showed him Dr. Lysack's letter. I informed Walter that if he agreed to Dr. Lysack's conditions, we would proceed to have him reinstated to drive a bus. If not, I would call the Union in and review the situation with them under the same conditions.

On Friday, September 12, 1986 Gerald and I met with Walter Chaykowski. Walter agreed to the terms of Dr. Lysack's letter in writing. I informed Walter that I would be talking to his wife regarding his behaviour. He asked how long he would be kept off the bus and was told that it would depend upon Dr. Lysack.

J.W. Hrehirchuk
September 12, 1986

I have read this report and agree with the information in it
Signed "Walter Chaykowski"

Further to that, the Grievor, in Exhibit 17 dated September 12, 1986, agreed as follows:

"I, Walter Chaykowski, agree to go by these conditions.

- A. to go to A.A.
- B. to spot checks to blood & urine
- C. to talk to wife

Walter Chaykowski,
September 12, 1986
1:55 p.m."

On December 5th, 1986, Dr. Lysack again wrote to the Division (Exhibit 18) and said as follows:

"Further to our recent telephone conversation regarding the above named school bus driver, I reviewed his records. It is to be noted that a spot blood alcohol level was done at the Dauphin Lab. & X-ray Unit on October 15th, 1986, at 1415 hours. This report states that no alcohols were detected. Because it appears that Mr. Chaykowski is attending AA's and is seemingly performing satisfactorily at his job, I would be willing to agree to his continuing to drive the school bus on the proviso that he will be continuing to attend AA's and to continue to fulfilling the requirements, such as having spot checks of blood alcohol if it appears that such is reasonably indicated.

I would, therefore, summarize by saying that this letter may be appended to my previous letter and it furthermore is an indication that Mr. Chaykowski may continue at his job as school bus driver. Should any further information be required, please feel free to make further enquiries. "

The Grievor evidently did not have any liquor problems for awhile and, in fact, in 1988 advised the Employer that he had stopped going to A.A. and that he had stopped going for counselling. Filed as Exhibit 19 was a memorandum completed by the Grievor and Mr. Hrehirchuk which reads as follows:

"Meeting with Walter Chaykowski
May 30, 1988 3:25 p. m.

Walter indicated that he stopped going to "AA" because of the smoke factor at the meetings and that he had stopped going for counselling.

Walter has a very occasional drink, however, he feels that this will not affect his job performance.

Signed 'J. W. Hrehirchuk'
Secretary Treasurer.

acknowledged by

signed 'Walter Chaykowski'

June 1, 1988

Time: 3:10 p. m. "

Mr. Hrehirchuk confirmed that representations had been made to return the Grievor to a position of a part-time Mechanic, and there was no request that he be reinstated as a bus driver. However, the Employer hired a full time Journeyman Mechanic and had already awarded the part-time Driver/Mechanic position to another employee. There was no position available for a part-time mechanic.

During cross-examination, the witness confirmed that the Grievor never missed work, was not late and had not been involved in any accidents. He agreed that his primary concern was that the Grievor had an alcohol problem and might drink during the week. He agreed that there was no evidence that the Grievor had ever consumed any alcohol during the week when he was driving the school bus. The Employer did not have a policy of no drinking, but it did have a policy that no one was to drive within eight hours of having consumed alcohol.

He agreed that if an employee drank on Friday evening or Saturday or even on Sunday he or she would not be disciplined. However any ultimate decision was up to the Board. If the Grievor did drink on a day off and this affected his driving on a work day he would certainly be disciplined. This had not previously happened. He also acknowledged that when the Grievor had his problem in check he was a good employee. He did not dispute that from 1986 until this incident the Grievor appeared to have it in check, however it was clear to him that the Grievor, as at April 5, 1992, had lost control. He also agreed that he knew that the Grievor had earlier stopped going to A.A. meetings and stopped going for counselling as established by Exhibit 19. Nevertheless, he allowed the Grievor to keep working but he noted that he had provided for some continuous spot check tests with the doctors.

Each of the "alcoholic" incidents were reviewed in some detail and he acknowledged that the Employer had been lenient. However, he emphasized that at no time had the Grievor, in his previous problems involving alcohol, driven a school bus. As far as the Employer was concerned, it did not matter whether the bus was driven on a Saturday. The Grievor drove a school bus on school property while seriously under the influence of alcohol and could have caused, at the very least, considerable damage to school property and possibly even to himself.

Mr. Hrehirchuk pointed out that he could not specifically recall the proposal made by the Union, but it was to the effect that the Grievor be reinstated or hired as a Mechanic's Helper. He "gathered" that the Union would consent. He also acknowledged that he had just recently found out that the Grievor had pleaded guilty to the impaired charge and that neither he nor the Board were aware of the conviction at the time of the decision to terminate the Grievor. However, at his meeting with the Grievor on April 6th, the Grievor had admitted that he was impaired and gave him Exhibit 7.

The Grievor gave evidence. He is 60 years of age and has been employed by the School Division for some 27 years. He candidly admitted his problems with alcohol as stated by Mr. Hrehirchuk. He claimed that he only drank on weekends and had never previously driven a school bus while under the influence of alcohol. Each of the periods were reviewed and I am satisfied that the Grievor was, to the best of his recollection, truthful in his statements. He periodically commenced to attend A. A. meetings or to go for counselling at the Alcoholic Foundation of Manitoba but then slowly would commence drinking again. However, he had not previously really faced the problem or acknowledged that he was an alcoholic.

In April of 1992, and in particular on the day in question, he advised that he went home from work the previous day (Friday) and he had not eaten that day but unfortunately commenced drinking. No one else was home and he decided to have a beer and this led to an evening of drinking. Although he wasn't scheduled to work on Saturday he decided to go and wash the bus. It usually was washed once or twice per month. He was not paid extra for that. He drove to the compound and then backed the bus up to the wash stand and washed it. His recollection of what transpired was not too clear but he acknowledged that Mr. Jordan approached him and told him he was not in any condition to drive. The situation with Mr. Jordan developed to the point where, eventually, there was a scuffle between them and he recalled parking the vehicle and being arrested. I believe him to be sincere in his apologies for the incident.

Subsequent to his dismissal he did not immediately quit drinking. Although his consumption was very substantially reduced, he recalled having a drink on his birthday on May 22nd and then again on Father's Day in June.

He acknowledged that his driver's licence was suspended for approximately six months. In April or May he went back to A. A. and also contacted the Alcoholic Foundation of Manitoba. He sought counselling from Mr. Bishop however he still refused to acknowledge that he was an alcoholic. He subsequently, in June, went to Mr. Bishop and asked to get him a room in the Monson House in Ste. Rose du Lac, which is a residential alcoholic treatment centre. He went in for the 21 days and was engaged in a very extensive program. When the program was completed he at first only went to open meetings of A.A. on Saturday or Sunday. He now goes two or three times per week to private meetings. He claims that he now knows that he can't have any alcohol and even if he took one drink that would - "be it". He never had that feeling previously. The program helps him and he feels better after each meeting. In his view, he has "bottomed out" and is on the road to recovery. He knows that he cannot even have one drink on such occasions as Christmas. He will never drink again and therefore should be reinstated. He plans to continue being an active member of A. A. and realizes that his family life, which is the last thing he has, might come to end if he continues to drink. He reviewed his employment record with the Employer and concluded his evidence by stating that he had finally learned his lesson and wanted to be reinstated.

He was subjected to considerable cross-examination with respect to his problems with alcohol. It is perhaps unnecessary to recite the details of the cross-examination but it may suffice to say that the Grievor does not dispute that he is, and was an alcoholic, and always will be. However, he believes that he now has his problems under complete control. He was adamant that this was the first time he has ever acknowledged that he had an alcohol addiction problem which he couldn't solve by himself.

He also acknowledged that he had a previous conviction for impaired driving in approximately 1959 and had been hospitalized for an alcohol related disease. It was also suggested to him, and he did not deny, that in 1983 he had certain problems with alcohol and started to attend A.A. for a period of time.

It was put to him that on each previous occasion when he had a problem he stated that he had learned his lesson and would not drink again. He did not deny that. It was suggested to him that the only reason that he went to A.A. and to the Alcoholic Foundation of Manitoba in June was that he wanted to get his driver's licence reinstated. He acknowledged that he did want to get his driver's licence but claimed that he went to A. A. and the Alcoholic Foundation of Manitoba to get help to stop drinking.

Mrs. Margaret Chaykowski, the Grievor's wife gave evidence. She reviewed the Grievor's drinking record and stated that between 1980 and 1992 the Grievor had never drunk excessively except that on some weekends he "had more than he should have had". However, he did not drive during those times.

When she came home on the evening of April 3rd, she saw that the Grievor had been drinking and she went out to see her sister. The following day she went out for coffee in the morning and the Grievor left

in her absence. She did not hear from him until that afternoon when she was called by the R.C.M.P. who advised that the Grievor had been picked up for driving while impaired.

It is obvious that Mrs. Chaykowski has had a difficult life because of the Grievor's drinking. However since he went to the Monson House she believes that he has finally realized that he is an alcoholic and cannot have any alcohol whatsoever. He seems to have made peace with himself and communicates much better. She is satisfied that she can believe him this time although he had made similar promises to her in the past. Her statement was that she just could not continue to live with him if he continued drinking. In her words - "for the first time since 1985 I can put my trust in him since the home in Ste. Rose". Not only has he lost his job but he doesn't want to lose his family or home.

During cross-examination she agreed that in 1985 and in 1986 the Grievor had promised to quit drinking and had failed. She also agreed that Mr. Hrehirchuk had been quite supportive of her and the Grievor and that the Board had given him numerous chances. She was familiar with the previous comments of Dr. Lysack and with the agreements negotiated and reached between the Grievor and the Division. She has also attended meetings of Al-Anon which is for the family of alcoholics and she feels that she and the Grievor have now learned how to handle the Grievor's addiction.

Mr. Wesley Holbrook, the Grievor's sponsor at A.A., gave evidence. He reviewed the program of A.A. and his involvement with the Grievor over a period of years. He had been asked to help the Grievor in 1985 and did so but then lost touch with the Grievor. The Grievor came back to him in 1992 and asked for assistance which he thought was a good step for anyone suffering from addiction. As long as the Grievor followed the program he would not drink. He thought that the Grievor was sincere but he stated that there never could be any "guarantees" that one would not drink. He himself had been dry for many, many years but still acknowledged that he was an alcoholic. If he ever denied that he could be back on the road to being drunk again.

During cross-examination, he stated that he was still a very regular attendee at A.A. meetings and went to meetings at least two or three times a week. He himself had not had a drink for over 20 years.

Mr. Gordon Bishop, a counsellor with the Alcohol Foundation of Manitoba, gave evidence. He reviewed the file of the A. F. M. involvement with the Grievor and noted that the Grievor had attended between 1986 and 1987 and then again in April of 1992. He reviewed a number of things and stated that in June of 1992 he did an assessment on the Grievor and felt that at that time the Grievor was not fit to drive because the Grievor felt he could cure himself without treatment. The Grievor was unhappy with his decision and various appeal procedures were stated to him, however, the Grievor ultimately did not appeal and came back and requested residential treatment. As far as the records indicate, the Grievor had been dry since June of 1992. Filed as Exhibit 21 was the report from Mr. Bilodeau, the Rehab Counsellor at Monson House in Ste. Rose du Lac.

He felt that the Grievor, having gone through the residential treatment program, had his problem under control. When the Grievor came to see him in September he found out that the Grievor was only attending open A.A. meetings. He instructed him to go to closed meetings and told him to be in touch with his A. A. sponsor. He then met with the Grievor on September 23rd and felt that the Grievor, who was looking better and was now going to A. A. meetings twice a week, seemed to have his problems under control.

During cross-examination, he agreed that the Grievor first contacted him some three months after his licence was suspended and that nothing could be done for the first three months. The second three months was the time when individuals whose licences were suspended usually sought to get their licence back. Although he agreed that he might have had some suspicions about the Grievor's motivation he nevertheless was convinced that the Grievor was sincere after completing the residential treatment

centre program. He accepted the Grievor's statements about going to A.A. meetings. He was adamant that, in his view, the Grievor had acknowledged his problem and that he would have no hesitation in recommending him for a driver's licence and, in fact, had done so.

In argument, Mr. Simpson reviewed the Grievor's records and pointed out that the Employer had given the Grievor a vast number of chances and had worked with him in every possible way. Although there was no position available for the Grievor under the schedule to the Collective Agreement it nevertheless had to be noted that even as a Part-Time Mechanic, the Grievor would be required to have a valid licence to drive and would have to drive the bus. He referred to school bus regulation 465/88 under The Public Schools Act and in particular, regulations 15 and 16 thereof. There is no need to repeat those regulations in this award, however, there is no question that the regulation stresses the responsibility of the driver to operate his vehicle in an absolutely safe condition and review of the entire regulation shows the great stress that is placed on the Division and the driver to operate vehicles in a proper manner considering the "cargo" being transported.

In his view, because of the responsibilities, the Employer had come to an absolutely proper decision. It could not, should not and would not assume the risk of allowing the Grievor to operate a bus. It had given the Grievor every opportunity and he again reviewed all of the Grievor's alcoholism problems since 1983. In each case the Grievor did manage to comply with his undertakings for a period of time and then "fell off". He had previously gone for counselling to the A.F.M. and to A.A. meetings and had complied briefly with his various undertakings but eventually he lapsed into drinking. The Grievor's "judgment" was deteriorating as in the latest incident he had operated a school bus.

He reviewed, in some detail, the incident which led to the discipline and stated that the Grievor, being in a drunken state, came to the School Board premises to carry out one of his duties. He drove school equipment and became abusive, both verbally and physically, to a co-employee. The quantity of alcohol reflected in the analysis showed the state of the Grievor's inebriation. He reviewed the Grievor's proposal to go back on a different basis, i.e. as a mechanic, but there was no such position and, in any event, the Board could not allow school buses to even be serviced by someone who had an alcohol problem.

He emphasized that even after the incident in April of 1992 the Grievor had acknowledged that he had not given up drinking in May and June. Mr. Simpson submitted that the only reason the Grievor went back to the A.F.M. in June was because he had to get his driver's licence back and knew that he could not get it during the first three months. In his view, although the Grievor may actually now believe that he has faced his problem, the coincidence was too much to believe that his actions were motivated by his trying to solve his problem. Although he went to the residence for the three week program, even after that he did not go to private A.A. meetings but only went to open meetings. He did not change that until such time as Mr. Bishop told him that he had to go to closed meetings in order to get back his licence. He noted that Mr. Bishop was initially concerned over the Grievor's motivation. In his view, the Employer was being asked to accept that the Grievor, sometime at the end of June, "saw the light and is a changed person". Even the Grievor's wife had said - "she thought she could believe him this time and that she could trust him". He reviewed the efforts made by the Division to work with the Grievor. In summary, the Grievor's history was so bad that it did not warrant that the Grievor could handle the trust that was implicit in being a school bus driver. The risk was simply too great. He also noted that only approximately one month had elapsed since Mr. Bishop said that he thought the Grievor had solved his problem.

In argument, Mr. Sumerlus stated that the Grievor's 27 years without a blemish could not be disregarded. He stressed that the incident happened on a weekend when the Grievor was on his own time. There was no accident and there was no allegation of dangerous driving. The distance driven was minimal and

access to the area was limited. He also emphasized that the Grievor brought the matter to the Employer's attention and acknowledged his wrongdoing.

He stressed that the Grievor had paid a large penalty, not only in the fine imposed but in having lost his employment. He noted that the Grievor, this time acted in a manner different than previously. He went into a residential treatment away from home and all of the professionals who dealt with him felt that he had conquered his problem. The Grievor now acknowledged he has a problem - which he previously denied. The Grievor admitted that he is an alcoholic, he is doing something about it and is now committed to sobriety. The Grievor also realizes that he can't do it alone.

He emphasized that in 1988, the Grievor had stopped attending A.A. meetings and was doing some minimal drinking. The Employer had countenanced that change and - "lived with it for some four years"

Both counsel referred to a number of arbitral decisions, some of which involved bus drivers and some of which involved alcoholism.

Mr. Simpson referred to the decisions of this arbitrator in a grievance involving River East School Division, the Union and Mr. Harold Kulbaba, as well as a decision involving the Portage La Prairie School Division, this Union and Mr. George Wilson. He also referred to the decision of Arbitrator Knopf in Re Corporation of Borough of East York and Canadian Union of Public Employees, Local 114 11 L.A.C. (4th) 133.

Mr. Sumerlus referred to the following decisions:

1. Re Miramichi Pulp & Paper and Canadian Paperworkers Union, Local 689 26 L.A.C. (3d) 222;
2. Re Cominco Ltd. and United Steelworkers, Local 651 30 L.A.C. (3d) 46;
3. Re Molson Brewery B.C. Ltd. and Brewery, Winery & Distillery Workers Union, Local 300 25 L.A.C. (3d) 82;
4. Re Nova Scotia Department of Transportation and Canadian Union of Public Employees, Local 1867 1 L.A.C. (4th) 285;
5. Re Corporation of City of Windsor and Canadian Union of Public Employees, Local 82 25 L.A.C. (3d) 22;
6. Re United Brewery Workers and Carling Breweries Ltd. 278;
and
7. Re Government of Province of Alberta (Department of Environment) and Alberta Union of Provincial Employees 17 L.A.C. (4th) 328.
8. The decision of A.R. McGregor, Q.C. in Red River School Division and Canadian Union of Public Employees.

I have reviewed and considered all of the above cases and there is, of course, much guidance to be found in them. However, I do not feel it necessary to review them in depth under the circumstances of this case.

There is absolutely no question that the onus rests with the Employer to prove just cause for imposing discipline. What I am faced with in this case is that we have a Grievor who has an exemplary record of driving a school bus and who in 27 years, notwithstanding his alcohol problems, had not been involved in any accidents or injuries. The fact remains, however, that in the latest incident, after remaining "more or less dry" for a number of years, the Grievor drove to the Employer's bus compound and then operated a school bus. Admittedly, the distance the bus was operated was not very far and no accident happened. His alcohol blood level was extremely high. He was not even "marginally" impaired but had a reading of over three times the legislated limit. There is no question that certain individuals can function, albeit at a less efficient level, with a blood alcohol level of more than .08. I have difficulty accepting that anyone can operate a vehicle efficiently at a reading of over .24. Even the Grievor admits that he cannot recall all of the incidents of that particular day.

I am satisfied that the Grievor sincerely believes that he has conquered his addiction to alcohol. This is substantiated, to some extent, by his testimony, the testimony of his wife and the testimony of Messrs. Holbrook and Bishop. However, it is only four months since the Grievor has been "dry" based on the A.F.M. "dry date" of June 14th. I am also faced with the fact that it was only in the early part of September that Mr. Bishop was prepared to acknowledge that the Grievor may have solved his problem.

The Grievor, over an extended period of years has had an alcohol problem and has made various promises and undertakings that he has stopped drinking. Although I appreciate the evidence of all of the "professionals", I do note that all of them were talking about the effort the Grievor was making and not about his having achieved a permanent state of sobriety. In fact, Mr. Holbrook stated that continued sobriety was an ongoing challenge. I have some considerable hesitation in concluding that after such a short period of time the Grievor has reached the state where his addiction problem can be considered as being under control.

A review of the cases quoted does not shed much light. The chairman's previous decisions do not deal with the situation of a school bus driver who has an alcohol addiction problem. The cases submitted that deal with alcohol addiction problems do not involve the driving of school buses.

I have no hesitation in concluding, in accordance with the well-established arbitral jurisprudence, that alcoholism is an illness and that, generally, employees should not be penalized for an illness. However, in some of the cases quoted, the issue of alcoholism is dealt with in considering aspects of absenteeism, dishonesty and even the operation of Employers' motor vehicles. Admittedly, some of those vehicles involve construction equipment but none of the cases deal with a school bus driver. Another factor which distinguishes the instant case from some of the others is that the Grievor had a good driving record, notwithstanding his alcoholism.

I note from the Corporation of the City of Windsor case that it had been agreed by the Union and the Corporation that the grievor should never be permitted to regain the classification of a truck driver. He was assigned other work. Arbitrator Brunner concurred with that agreement by stating at page 28:

"I concur with this as to do so would be to place not only him and other employees at significant risk, but also members of the public. "

In that case, the Grievor was given a job which did not involve driving. Such an option is not available in this case. It is not available for two reasons. Firstly, there is no position of "Mechanic's Helper" and secondly, the individual who serves as both a Driver/Helper was not notified of the hearing and it would be patently unfair to consider taking away his position as a part-time helper without giving him the opportunity to make representations. Such a decision cannot be made without notice to, and input from,

the Grievor. In any event, and notwithstanding my comments, there is no such position for a Mechanic's Helper independent of being a Bus Driver.

I also note from the Government of Province of Alberta case that there was evidence of the rehabilitative prospects being good as there had been a year long abstinence from alcohol. Additionally, in that case, the grievor was reinstated to a non-driving position. There is no non-driving position available with the Employer in this case and the Grievor's abstinence period is quite short.

I need not repeat my own comments in the previous decisions nor the comments of other arbitrators of the necessity for a school authority to ensure that it complies with its clear duty and heavy responsibility to provide the most safe transportation reasonably possible for students attending its schools. The objective of the legislation, as well as the demands of the public, are that children be transported safely.

Although I would have some concerns on even reinstating an employee who had only one lapse of a problem with alcohol, the situation is compounded to a very high degree by virtue of the Grievor's previous record.

After considering all of the evidence, I am of the view that the Employer has clearly shown just cause for imposing discipline. The sole question is whether the discipline imposed should be ameliorated. I have the power to do so under the relevant provisions of The Labour Relations Act.

Although I have a great deal of sympathy for the Grievor and his wife, I must state, with some reluctance, that the Grievor is the author of his own misfortune. Although I believe his efforts are sincere and I sincerely hope that he will continue on the path he has now chosen, I cannot conclude that this is a case where there should be an amelioration of penalty. I agree that the Grievor had not had any previous driving incidents while affected by alcohol but, in this particular case, his judgment was impaired to the extent that he operated a school bus, albeit in a confined place, while he was very seriously impaired. I do not know whether or not this is an indication of the deterioration in his ability to judge his own capabilities. I do not think that the Employer, in such circumstances, should be forced to take a chance on the Grievor again making a similar, or some other mistake in judgment. As I have previously stated, the ultimate objective of any school division has to be to ensure, as far as possible, that the students in its charge receive safe transportation.

I agree fully with the comments of Arbitrator McGregor in the Red River case where he said at page 2:

"This case once again deals with the concept of concern for the safe transport of school children from their homes to their school and their return to their homes. In order to properly carry forward with an educational system it is necessary for the Employer to provide transport for school children. No one can doubt the importance of this particular function, nor the stringent duties accordingly placed upon the Employer and its employees in this regard. This Board has considered this particular grievance with the concept that the safety of such school children is paramount and if that safety is placed in jeopardy in any fashion it must of necessity take precedence over the rights of an employee in any employment relationship. The safety of such school children is fundamental and this board has been guided by that proposition both throughout the hearing and throughout our deliberations.

While we must take the rights of an employee into account, wherever

those rights are in conflict with the provision of safe transport for school children, the latter concept will prevail. We accordingly approach a case of this nature with strict seriousness. This might lead one to concluded that we are putting extra onus on a person such as the Grievor, but such is not the case - the Grievor might feel that he must show a greater degree of "innocence" than in normal dismissal cases - such is not necessarily the case except to state that wherever the rights of school children conflict with the rights of an employee of a school division, we feel very strongly that any reconciliation must be levied in favour of the school children."

Based on the evidence before me, I am not satisfied that the Grievor has proven that he would be able to maintain that state of sobriety which is expected of every motor vehicle driver. The responsibility is even more onerous on someone charged with the transportation of infant children.

In view of all of the above, the grievance is disallowed.

I have come to my decision after careful deliberation. I express the sincere hope that the Grievor will continue to maintain sobriety, notwithstanding that the grievance is being disallowed.

I wish to thank Mr. Simpson and Mr. Sumerlus for their clear and concise presentation of the issues and the evidence and I wish to thank all of the witnesses for the candid and forthright manner in which they gave their evidence.

In accordance with the terms of the Collective Agreement, each of the parties will be responsible for one-half of my costs.

DATED at Winnipeg, Manitoba this 7th day of October 1992.

JACK M. CHAPMAN, Q.C.