IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE ST. BONIFACE SCHOOL DIVISION NO. 4

(hereinafter called the "Employer"),

- and -

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL No. 730

(hereinafter called the "Union")

Board of Arbitration:	**Paul S. Teskey,** **Chairperson of Board of Arbitration**
	D.H. Kells, **Nominee of the Employer**
	C. Trigwell, **Nominee of the Union**
Date of Hearing:	**February 4, 1991**
Place of Hearing:	**Winnipeg, Manitoba**
Appearances:	**R.A. Simpson,** **Counsel to the Employer**
	W. Summerlus, **Counsel to the Union**
	J. Boissonneault, **Grievor**

AWARD

The grievance, dated January 8, 1990 and filed as Exhibit 3, alleges that Mr. Boissonneault has been unjustly disciplined by a suspension without pay for one day of work on December 21, 1989 and a letter of discipline with respect to same. The remedy requested is rescission of the discipline imposed and recovery of any lost wages or benefits.

At the commencement of the hearing, the parties agreed that the Board was properly constituted and had jurisdiction to hear and determine the matter in question. It was further agreed that the Grievor was an employee at all material times and covered by the Collective Agreement (Exhibit 1), and that the suspension was disciplinary in nature.

The letter of discipline and suspension dated December 21, 1989 (Exhibit 2) was written by Mr. J. Parsons, the Maintenance Supervisor of the Division. It reads as follows:

> As discussed at 4:20 p.m. on December 20, 1989 this is to confirm your suspension from work, without pay, for one working day effective December 21, 1989.
>
> This follows three previous verbal warnings in recent months concerning your early arrival in the afternoon at the Maintenance Shop, visiting other work stations and conversing with other employees while you should effectively still have been working. As mentioned, I do not mind you coming back to the Shop before 4:20 p.m. if your time is spent doing your paper work, work orders or discussing work with others on a particular problem you may be having. This has not always been the case.
>
> When I walked up to your work station yesterday at 4:15 p.m., I saw you reading The Winnipeg Sun. This confirmed that you are in breach of contract whereby you disregarded the hours of work agreed to. Any further such disregard on your part will require more severe disciplinary action.

The Grievor is employed in the classification of "Maintenance Person B.1" or "Personnel performing trade work and head of trade". His trade is that of electrician. He has been employed in that capacity since March 18, 1983 (according to the Division's records) or since September of 1982 (according to his own record). However, that discrepancy is not material to our deliberations. Other than the matters referred to in Exhibit 2, he appears to have a clear previous disciplinary record.

The only witness called by Mr. Simpson in support of the suspension was Mr. Parsons. He has been with the Division since 1984 and has been the Maintenance Supervisor for some three and a half years. His role is to supervise the maintenance and custodial staff within the Division, which is comprised of some sixteen schools, an Administrative Office and the Maintenance Shop at 901 Maginot. His own office is at the Maginot building which is also where the home base of the grievor is although a large portion of the grievor's duties are performed in the various buildings and schools operated by the Division. There are approximately thirteen maintenance people and fifteen custodial staff employed by the Division although the numbers vary during the course of the year. Mr. Parsons is Mr. Boissonneault’s supervisor.

The job description of the grievor was tendered as Exhibit 6. However, in general terms his job consists of upkeep of electrical components and construction and new installation of electrical systems required by the Division. There was some dispute as to whether or not the grievor had previously refused to perform certain duties as listed on the job description but, again, this is not a matter relevant to our considerations.

Customarily, employees at the Maintenance Shop are expected to report to work at 8:00 a.m. at the Maginot location. There, they are provided with stock vans with which to travel from location to location as required during their working day. Each employee has a work station or base at the Maintenance Shop itself.

The Maintenance staff are assigned work orders which are placed in their mail box either in the evening or morning for pick-up at either time. It was commonly acknowledged that there was considerable work at all times to be performed within the Division and generally there was a backlog of work orders.

Generally, the maintenance staff has the discretion to priorize the work orders as to importance and the order in which they are to be performed.

The hours of work as set forth in article 13 of the Collective Agreement are five consecutive days of eight hours per day. Employees are allowed two rest periods of fifteen minutes each and a one-half hour lunch break. To some extent, the timing of the breaks is within the employee's discretion. Normally the maintenance staff work from 8:00 a.m. to 4:30 p.m.

Mr. Parsons testified that the employees generally leave the Maginot location shortly after 8:00 a.m. to perform their daily duties. At the close of the day, the van would be returned generally some time between 4:00 arid 4:30 p.m.

The time between the return to Maginot and 4:30 p.m. was to be used for paper work, reporting or discussing problems with either himself or other employees. Mr. Parsons attempts to make himself available between 4:00 and 4:30 for that purpose. As well, occasionally the vans need to be restocked during that time. As well, parts are sometimes brought back to work upon at the shop itself or completed work orders are filed prior to 4:30.

Employees are allowed to commence washing-up at approximately 4:25 p.m. or a few minutes earlier in order to be able to leave at 4:30. It was Mr. Parson's expectation that until the time for wash-up came, employees would be working or doing something that was work related. Mr. Parsons also agreed that it was not unusual for some employees to be waiting to leave at the door several minutes prior to 4:30.

In direct examination, Mr. Parsons indicated that he had developed a concern as to employees "grouping up" which involved employees visiting work stations other than their own and engaging in non-work related conversation after they had returned to the Maginot shop. He had asked the employees not to do that and explained to them that it was not a time for non-related work discussions.

The grievor's work station is on the Mezzanine floor and is located behind the staff room. All the other work stations are on the main floor. The grievor's station is further isolated and somewhat more private because there is shelving around it.

Exhibit 2 refers to three earlier verbal warnings. Although he was not precise as to the exact dates upon which dates those occurred, Mr. Parsons testified that the first was in approximately October of 1989 when he observed a few employees conversing at one station on the main floor. The grievor was one of the three people involved. Parsons came up to them and spoke to them and they simply "dispersed".

The second incident occurred approximately early November at the same work station. This incident involved the grievor and one other individual. Parsons told both the grievor and the other employee not to "group up at the end of the day". Boissonneault left and went back to his own station on the Mezzanine floor.

Approximately three weeks prior to Exhibit 2, the grievor was again at someone else's work station at approximately 4:15. It was a different work station than the earlier two incidents. Mr. Parsons testified that he asked the grievor to come into his office and a lengthy discussion ensued. Parsons indicated to the grievor that he had seen him returning early to the shop and not working and told him that he did not wish him to return to the shop unless he was working. He felt that Boissonneault was disturbing other employees and explained that the time between 4:00 arid 4:30 p.m. was valuable time to do work and that there could be disciplinary consequences for the grievor if such conduct continued or there could be bad consequences for the whole group if Parsons decided not to allow them to come back early. The grievor was told not to do it again in the future and, according to Parsons, Boissonneault said at the end of the conversation that he understood the explanation and that the conduct would not happen again.

Parsons did not follow up the discussion with a written reprimand or warning because he felt that the situation had been made clear and that the grievor's comments indicated that he understood what was expected.

The incident giving rise to the suspension occurred on December 20. At approximately 4:15 p.m., Mr. Parsons went to an area where he could observe the grievor's work station. The grievor had returned to the shop at approximately 4:06 or 4:07 p.m. He observed the grievor seated at his work station reading the Winnipeg Sun. In direct examination, he testified that the grievor first read one page, then turned the page to read another. Mr. Parsons was taken aback and surprised because of their earlier discussion. His first reaction was to consider ignoring the situation entirely to avoid confrontation but he felt that he had to deal with the situation. He took Mr. Boissonneault to his office and asked him why he was reading the paper. Mr. Boissonneault had no response. Parsons told him that they had talked about the problem in the past. It was clear that the grievor should not have been reading the paper. He was not sure if Mr. Boissonneault said anything in return. He told the grievor that he felt he had no choice but to suspend him for one day without pay. According to Parsons, Mr. Boissonneault simply said "O.K." and left. Parsons had no doubt that the grievor knew he was doing something wrong. Subsequently, Mr. Parsons wrote Exhibit 2 on December 21.

In cross examination, Mr. Parsons agreed with Mr. Sunmerlus that the maintenance employees had a certain amount of discretion as to scheduling their own work and as to when to take their breaks. Although, when the work orders are turned in they do indicate the amount of time spent on the task is indicated, there is no close monitoring of the entire work day.

He also agreed that the time for washing up varied between employees and that he had not specifically told the employees when they were to wash up or when they were not to wash up. Some employees washed up prior to 4:20 but more often it occurred between 4:20 and 4:25. While he agreed that employees did occasionally stand by the door prior to 4:30 after they had washed up, he had also upon a few occasions told them not to do so. If that occurred prior to a minute or two before 4:30 he would say something to them.

He also agreed that he did not make any written notes or record of what he had said to the employees on the first two incidents mentioned in Exhibit 2. Those incidents occurred at the work station location adjacent to the washroom where employees cleaned up. Eleven maintenance staff and the occasional bus mechanic or bus driver might be using the clean up area at the end of the day. There is only one sink in the washroom area and he had, on occasion, seen several people either in or around the washroom.

He also did not make any notes of the third incident although he did recall that the work station where it occurred was the furthest possible away from the grievor's own in the welding department. He did not actually overhear the conversations during any of the three incidents and could not say what the employees were discussing. However, he noted that it was seldom that there would be more than two employees discussing a problem although discussing a work related problem would not be what he considered "grouping". Neither did he ask the employees what they were talking about except on the third occasion when he spoke to Boissonneault in his office. There was no indication from the grievor that the conversation was, in fact, work related.

The course of the discussion at the third incident was basically Mr. Parsons speaking rather than a "back and forth" conversation. He agreed that he had never told Boissonneault not to come back to the shop prior to 4:15 p. m. and had also never told him when he was to wash up at the end of the day. However, he remained firm that at the end of the conversation the grievor was aware that the time back at the maintenance shop was for work related activities.

He did not consider the third incident serious enough to formalize.

With respect to the incident on December 20, he recalled seeing Mr. Boissonneault's van arrive at the shop but did not recall whether or not the grievor said hello to him on his way into the shop. At the time, Parson was out in the reception area. He then returned to his office and could not see the grievor's work station from there. However, he went to the second floor to look at some blueprints and then saw the grievor. He was approximately fifteen feet away. He recalled walking up and asking the grievor to come back with him to his office. He told the grievor what time it was and noted that his office clock read 4:17. He recalled saying to the grievor "look at the clock - what are you doing reading the paper?". He did not say anything at the work station because that was not the place to have such a discussion.

When he originally asked Mr. Boissonneault to return to his office he had not yet decided to suspend him but decided that during the course of their conversation.

He agreed with Mr. Sumrnerlus that there were other forms of discipline available to him under article 4.01 of the Collective Agreement other than suspension. He was not exact as to how much a day's pay represented to the grievor but agreed that a $130.00 was "pretty close".

It was further agreed that December 20 was the first incident of the grievor being found reading a paper during work hours.

Other than simply telling them to disburse he had not disciplined other employees for "grouping". The grievor was the first employee to be more severely disciplined.

On December 20, the grievor made little response but Mr. Parsons agreed that Mr. Boissonneault was not attempting to conceal the newspaper at his work station.

In re-examination, Mr. Parsons indicated that the other employees who had been told to disburse did so and that there was no reoccurrence such as happened with the grievor. As well, it was more often the case that the other employees involved in the incident were at their own work stations when the grievor approached them.

Mr. Sunmerlus produced two witness, the grievor and Mr. Dennis Jackson.

In his evidence, Mr. Boissonneault testified that normally he would return to the shop at approximately 4:15 although that could vary depending upon what was to be done. His normal. procedure was to park the truck, enter the shop and pass by the work orders to see if there were new ones to be done.

If required, he would go to his own station to complete work orders that he had finished during the day. Approximately 4:20 or 4:25 he would wash his hands and then leave at 4:30 or a few minutes before.

Most days, he would have one to three work orders to complete which would require listing the material used, the price of the material and the approximate time spent on the job and noting that the order was complete and then handing it in.

In his direct examination, with reference to the three incidents prior to December 20, he recalled Mr. Parsons once or twice mentioning that he didn't like to see the employees grouping up and, when something was said, the employees would disburse. On one occasion, Mr. Parson's took him into the office and told him that he didn't like to see the grievor grouping since it didn't look good if Mr. Parsons' supervisor were to appear. Mr. Boissonneault agreed with Mr. Parsons as to that. The grievor did riot recall any discussions about discipline although he did understand that he was not to stand around with more than one or two people and also understood that he was to do as much work as possible at his own work station. It was not uncommon that there would be several employees standing around the work station beside the bathroom at the end of the day waiting to use the facilities.

On December 20, Mr. Boissonneault estimated that he returned to the shop at approximately 4:13 to 4:15 p.m. He plugged in the truck and entered through the mechanics' area, went through the welding area, then through the hallway and up the stairs. On his way upstairs, he saw a copy of the Winnipeg Sun sitting on a table and took it. He walked to his own area. According to Mr. Boissonneault, Mr. Parson's was then standing by the blueprints. The grievor walked by Parsons and said "hi". The newspaper was either in his land or under his arm. He sat down at his work station, plugged in his radio and looked at the horoscope and movie sections for a moment. He heard Mr. Parsons say "John" and "it's twenty after four".

The two then retired to Mr. Parsons office although, initially Mr. Boissonneault was not sure if it was in the office or upstairs, when Mr. Parsons said "don't come in tomorrow". The grievor's only response was to say "very well" and his only thought was to contact his Union Representative.

When he had initially returned to the shop it had been his intention to check if there were any work orders to pick up and then wash up since essentially the day was over. Only "once in a blue moon" would he be in the habit of reading the newspaper and only do so for a minute. He acknowledged that his responsibility to the Division was from 8:00 a.m. to 4:30 p.m.

In cross-examination, there was a great deal of discussion about the washing facilities both at the shop and at the various schools throughout the Division.

With respect to the early incidents of "grouping up", the grievor had only a vague recollection of what exactly had taken place and could not recall if the conversations at those times were or were not concerning work. He confirmed to Mr. Simpson that there was "always something to do" and that there were a good number of work orders. He agreed that there was "no question" that he was supposed to be working between 4:00 and 4:30 p.m.

The third occasion when Mr. Parsons spoke directly to him did not occur near the washroom but occurred near the welding area. Again, he could not recall the precise conversation that took place between he and Parsons but understood the essence of same to be that there was a concern about talking or grouping and not doing the work that was to be done.

The grievor was fully aware that he was not supposed to be reading the newspaper during the work day and that he was not paid to do that. The newspaper in question was on the table in the cafeteria on the second floor right beside the stairs. He took the paper on impulse. He agreed that his work area was somewhat concealed from view from the main floor. Even on the second floor, someone would have to come around the shelving to see him. He could not recall whether or not there were other copies of the Sun in his garbage can or on his desk.

He was certain that Mr. Parsons mentioned the time as being 4:20, not 4:15, but he agreed that the conduct was improper at whichever time it took place. He also agreed that he had acknowledged to the School Board that he had been warned before December 20 about grouping.

The grievor also indicated that although he might occasionally read a newspaper during his lunch break, this was the first time that he had read a paper during work hours. His initial reaction to talk to his Union Representative was because he had been told not to come into work the next day and "didn't know what to think about it".

The last witness called was Dennis Jackson whose work station is nearest the washroom. He confirmed that there was often a line-up of employees at the end of the day waiting to wash their hands. He also confirmed that it was not uncommon for the staff to be waiting at the back door a few minutes prior to

4:30. It was his recollection that no one had ever been disciplined previously for standing at the back door or for washing-up early although he also agreed that he was paid to work from 8:00 to 4:30.

That concluded the evidence.

In final argument., Mr. Simpson suggested that the matter was not a complicated one and that there was clearly no dispute that the working hours required were between 8:00 a.m. and 4:30 p.m. He also noted that the grievor had admitted reading the newspaper during working hours and that he was fully aware that such conduct was not allowed.

With respect to the discrepancies that did exist in the testimony, he suggested that Mr. Parsons' version of events was more accurate and reliable. Both Mr. Parsons and exhibit 2 indicated that the December 20 incident took place at 4:15 rather there 4:20.

Counsel also suggested that the previous warnings given to the grievor were essentially that he was not to waste working time.

The only issue that remained was whether or not the penalty imposed was appropriate. Given the previous incidents of warnings concerning "grouping", it was strongly argued that, the level of discipline was appropriate. Although there was no formal written warning on file, it should be remembered that previously Mr. Boissonneault had been specifically called into Mr. Parsons office and spoken to. The requirement to work until the end of the day had been explained rationally to the grievor, as well as the possible consequences that might ensue if there were further problems.

The incident on December 20 displayed a clear breach of the same type of conduct and warranted the discipline imposed which was not imposed for such reasons as waiting in line, waiting to use the washroom, or standing at the exit prior to 4:30.

It was also noted that the grievor had provided no response to Mr. Parsons when he was taken to the office, and that Mr. Parsons had been left, with the conclusion that there had to be more significant discipline than the previous warnings.

The position of the Division was that the Board of Arbitration should not substitute its opinion and "manage by arbitration" and that there was also no appropriate lesser penalty available since that had already been attempted.

In his closing argument, Mr. Summerlus suggested that this was the first time that the grievor had been disciplined for reading the newspaper at his work station. Neither could his conduct be considered as insubordinate as had been suggested by Mr. Simpson.

It was also suggested that the evidence did not disclose any attempt upon the part of the grievor to conceal his conduct, nor did he deny his wrongdoing at any time. Rather, it had been an impulsive action which did not warrant a suspension.

Mr. Sunmerlus characterized the previous disciplinary episodes as being unclear and of a different nature. The "jump" from verbal warnings to suspension was too severe and other lesser forms of discipline would have brought home to the grievor that his conduct was unacceptable and that the rules would be enforced.

It was also suggested that the actual conduct in question was almost de minimus and that Mr. Parsons had suspended the grievor for something that his initial reaction was simply to ignore.

As well, it was argued that the discipline imposed did not fit the offence and that the evidence in its totality indicated that the Division had been inconsistent in enforcing the rules and policy.

Given that discipline should be rehabilitative in nature and not retributive, and given that a previous written warning could clearly have impressed upon the grievor the seriousness of the misconduct, a suspension was not warranted. This was particularly so in light of the fact that the grievor was a relatively long term employee with a reasonably good record.

In reply, Mr. Simpson characterized the inconsistent enforcement argument as "incredulous" and submitted that the grievor was well aware of the requirement to work until the end of the day and, according to Mr. Parsons' evidence, had already promised previously that it would not happen again. The grievor himself, had indicated in his testimony that he understood that requirement. It was important for the Division to be able to trust the employees since they operated in a largely unsupervised manner. Given the "clear warning" that had been provided, the minimal suspension given was appropriate in the circumstances.

In addition to references to Brown and Beatty, Canadian Labour Arbitration (3rd Edition), we were also referred to various authorities which are as follows:

> Re Esso Petroleum Canada and Energy & Chemical Workers Union, Local 614, (1989) 9 L.A.C.(4th) 390 (Chertkow)
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> Re Hoston Forest Products Co. and International Woodworkers of America, Local 1-424, (1984) 17 L.A.C.(3d) 211 (Germaine).
>
> Re Etobicoke General Hospital and Ontario Nurses Union, (1977) 15 L.A.C.(2d) 172 (Brandt).
>
> Re Teamsters Int'l Union, Local 880, and Thibodeau Express Lt., (1966) 18 L.A.C. 28 (Wilson).
>
> Re United Automobile Workers, Local 458 and Massey-Ferguson Ltd., (1964) 15 L.A.C. 284 (Cross, C.C.J.).
>
> Re Greyhound Lines of Canada Ltd. and Amalgamated Transit; Union, Local. 1374, (1989) 4 L.A.C(4th) 288 (Beattie, Q.C.).
>
> Re Okanagan Beverages Ltd. and Teamsters' Union, Local 213, (1975) 8 L.A.C.(2d) 105 (Monroe).

DECISION

There appears to be little dispute that the grievor's conduct on December 20, 1989 was inappropriate and blameworthy. All concerned, including Mr. Boissonneault, agree that the obligation of the employee to the Division is to provide the required service during the scheduled hours of work.

The only issue truly in dispute is that of the appropriateness of the level of discipline imposed and whether or not the Board should exercise its discretion pursuant to S.121(3) of the Labour Relations Act to substitute a different penalty or remedy than that imposed by the Division.

We might make two prefatory comments. The first is that, while the conduct of Mr. Boissonneault could certainly not be characterized as the most heinous of industrial offences imaginable, neither do we

accept the Union's argument that it should be treated as de minimus or trivial. While the evidence did not disclose any indication that the grievor's conduct was other than impulsive, neither can it be said that his conduct (particularly in light of the previous warnings as to "grouping") displays a fulfillment of the very basic obligation of an employee to work during paid hours.

Should the evidence have indicated that the conduct in question was only a momentary aberration in an otherwise blameless history of fulfilling that obligation, we might well have been disposed to have considered that a verbal reprimand would have been more than sufficient in those circumstance.

Unfortunately, those are not the circumstances before us. However, it might also be fairly said that this type of misconduct is of the nature that would generally fall within the normal precepts of progressive discipline and rehabilitative correction of such misconduct.

The learned authors Brown arid Beatty at, pp. 7 - 151 , 7-152 note as follows:

> "A second context in which an arbitrator may undertake a review of a disciplinary sanction imposed by an employer on a member of its workforce arises under those statutes which specifically provide for a broad power of arbitral review as to the appropriate discipline to be imposed. In this context, however, arbitrators have expressed significantly differing views as to the legitimate scope of their review of the propriety of a disciplinary penalty. On the one hand, some arbitrators have envisaged their jurisdiction as including a broad and significant power of review, almost in the nature of second guessing, to determine whether the discipline imposed was just and reasonable. The premise upon which this power of review is based has been stated as follows:
>
> > `None of these reasons [for a limited scope of review] are present in the area of disciplinary decisions made by management. The parties and the Legislature have explicitly provided for arbitral review. Disciplinary decision-making is not an expert function but, rather a true question of fact in light of legal rules. And finally, a standard of deference carries very serious implications for an employee who has been wrongly disciplined but not disciplined in an arbitrary, unreasonable or manifestly unjust fashion.'
>
> However, a second group of arbitrators, analogizing with the standard of arbitral review invoked in promotion grievances, have suggested that their review should not be equaled with the power to second guess and ought not to be exercised unless the disciplinary action is "arbitrary, discriminatory, manifestly unjust or unreasonable". This view is justified on the grounds that:
>
> > `The power conferred on an arbitrator by this section of the Labour Relations Act is wide and consequently it ought to be used cautiously and judiciously. It is hardly necessary to say that honest opinions do vary on the question of what is precisely just and reasonable in any given set of circumstances. The section ought not to be construed as an acknowledgement of an overriding omniscience on the part of arbitrators in matters of discipline. It would seem to me that unless the penalty imposed is, viewed objectively, manifestly unjust or unreasonable in all the circumstances, no sub stitution of penalty ought to be made.'
>
> A third standard, which can be seen as a variation of the first, would resolve the

> determination of whether the measure of discipline was just, not by whether the penalty imposed would be the one selected by the arbitrator herself, but rather on the basis of whether it "fell" within the range of reasonable disciplinary responses to the situation."

We perceive the real issue in this instance to be whether the discipline imposed fell within an appropriate range of response to the conduct in question. We are fully aware that the penalty represents the very lowest end of the suspensionary scale but the issue is really whether any suspension was warranted in these circumstances or whether a written warning would fall more within the appropriate range of discipline.

In this respect, there are certain factors which are material. We found the grievor to reasonably forthright albeit his recollection of events was not such as to be entirely satisfactory. However, while we felt the majority of Mr. Parsons' evidence to be more accurate, neither was he entirely satisfactory in his recollection. This is particularly significant with respect to the final discussion that took place after the last incident of "groping up" which apparently occurred within a month prior to the suspension (neither the grievor or Mr. Parsons was entirely clear as to when it took place) and the incident in question. While Mr. Parsons may have felt that the situation "had been made clear" (see page 5 herein), we are not fully satisfied that the grievor was clearly aware that a suspension would follow for any diversion from the principle of time on task. Although we do not question Mr. Parsons motivation or the reasons he provided us for not giving the grievor a written warning that time, we might note that the purpose of such written warning is to clearly and explicitly detail the nature of the conduct to be avoided and the consequences of further reoccurrence. The elevation of a disciplinary response from a verbal warning to a written warning is significant and not without importance both in the disciplinary chain of progression for this type of misconduct and to satisfy the requirement of a clear warning being provided to the employee as to the type of misconduct to be avoided and as to the consequences to be faced if not. As was noted by arbitrator Brandt in Re Etobicoke General Hospital (supra) at p.178:

> "However for the reasons given above we believe that the employee's interest in knowing precisely what his disciplinary record is requires that the framework for recording and expressing that record be formalized."

It also appears to us that, if the deviation from time on task at the end of the day is a significant factor in the work place and of concern to Mr. Parsons, a consistent application of the proper gradation of penalties ought to be provided to remedy that situation and to bring to the attention of the employees the fact that the time for merely "talking" is now over. However, such an approach, if still necessary, should be achieved within the normal framework of progressive discipline.

In consideration of all of the circumstances before us, we are prepared to exercise our jurisdiction to substitute penalty and to order rescission of the one day suspension and to substitute in its place, a written warning to be placed on the grievor's file. Accordingly, the grievor shall be compensated for the one day of lost wages. We shall retain jurisdiction should the parties encounter any difficulty in implementing this Award.

The grievance is, therefore, allowed to the extent indicated above.

The Board wishes to thank both Mr. Simpson and Mr. Summerlus for their usual able presentations which were of great assistance to us.

DATED this 18th day of April, 1991.

Paul S. Teskey, Chairperson

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IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE ST. BONIFACE SCHOOL DIVISION N0. 4

- and -

THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL NO. 730

J. BOISSONNEAULT, GRIEVOR

DISSENT OF D. H. KELLS

DISSENT

I agree with the Board's conclusion that the Grievor's conduct on December 20, 1989 was inappropriate and blameworthy, and that it was worthy of discipline. I must however, disagree with the Board's decision to substitute a written warning for the one day suspension that had been imposed by the Division.

I believe that the Division's approach was consistent with the concept of progressive discipline.

One of the advantages of adopting a corrective disciplinary approach is to place an employee on notice that his behaviour is unacceptable, and that further occurrences of such behaviour will result in the imposition of more significant discipline. The employee is aware, after receiving a warning that he may receive a suspension, and ultimately be terminated, if the unacceptable behaviour is repeated.

The Grievor had been warned only three weeks prior to the incident giving rise to the suspension. Mr. Parsons testified that he had at that time called the Grievor into his office and a lengthy discussion ensued. The Grievor was clearly told that he was to be working until the end of his work day, and he was warned at that meeting that he could face disciplinary consequences if he failed to do so. On cross-examination, the Grievor agreed that he had acknowledged to the Board of the St. Boniface School Division that he had been warned with regard to this matter.

The warning that was given to the Grievor was formalized, in the sense that the Grievor was called into Mr. Parsons' office and the concerns were discussed in some detail. The Grievor was clearly put on notice that his conduct was unacceptable and that he would be subject to discipline if there was a reoccurrence of that conduct.

Given this, there was no need for the Division to provide the Grievor with a further warning. He clearly knew that his conduct was unacceptable.

I believe that the penalty of a one day suspension was reasonable and appropriate. I would therefore have up-held the discipline.

Dated this 18th day of April, 1991.

D. Kells
Nominee of the Employer