

THE MATTER OF:

AN ARBITRATION BETWEEN:

-) **THE KELSEY SCHOOL DIVISION NO. 45.**
-) (hereinafter called the "Division"),
-)
-) - and –
-)
-) **THE KELSEY TEACHERS'**
-) **ASSOCIATION NO. 45 OF THE**
-) **MANITOBA TEACHERS' SOCIETY**
-) (hereinafter called the "*Association*")
-)
-) - and –
-)
-) **TERRENCE F. DUGAN**
-) (hereinafter called the "Grievor").

ARBITRATION AWARD

The arbitration hearings took place in The Pas, Manitoba, on June 5th, 1990 and in Winnipeg on September 5th, 1990. Mr. D. Kells, Barrister, was the nominee of the Division and Mr. D. Shrom, was the nominee of the Association. Jack M. Chapman, Q.C., was appointed to act as Chairperson.

Mr. Myers, Q.C., appeared as counsel on behalf of the Association and the Grievor and Mr. R. Simpson appeared as counsel on behalf of the Division. At the commencement of the hearings the parties confirmed that there were no preliminary objections to the matter proceeding, that the Arbitration Board was properly constituted and had jurisdiction to hear the matter in dispute and that there was no other person who required notice of the proceedings. The exclusion of witnesses was ordered.

The parties are subject to a Collective Agreement (Exhibit "1") and Article 16 of that Agreement deals with imposition of discipline. In essence, it provides that no teacher shall be disciplined without just and reasonable cause. Article 14 provides that matters in dispute be referred to arbitration and Article 16(d) gives the Board of Arbitration the power to uphold the discipline, rescind, vary or modify the discipline, order the Board to pay all or any part of the loss of pay and/or benefits and/or any combination of those powers.

There are two grievances filed in this matter. Exhibit 3 was filed by the Grievor on the 23rd of October, 1989 and the relevant portion reads as follows:

"TERRENCE F. DUGAN grieves that there is a dispute between himself and the Kelsey School Division No. 45 (hereinafter referred to as "the Division" in respect to the meaning, application and/or violation of the collective agreement between the Division and the Kelsey Teachers' Association of The Manitoba Teachers' Society. He grieves that the decision of the division on September 25, 1989 to issue to him a written reprimand regarding his handling of the housing of The Pas Pre-School in the Kelsey Elementary School was a disciplinary action against him for which there was not just and reasonable cause and is therefore a violation of Article 16 of the collective agreement.

Terrence F. Dugan requests:

1. That the Division acknowledge that it disciplined him without just and reasonable cause.
2. That the Division withdraw the letter of reprimand and clear his personnel file of any reference to discipline relating to this matter."

A grievance was filed by the Association on the same date (Exhibit 4)

and reads as follows:

THE KELSEY TEACHERS' ASSOCIATION of The Manitoba Teachers' Society (hereinafter referred to as "the Association") grieves that there is a dispute between the Association and the Kelsey School Division No. 45 (hereinafter referred to as "the Division" in respect to the meaning application and/or violation of the collective agreement between the Association and the Division. The Association grieves that the decision of the Division on September 25, 1989 to issue to Terrence F. Dugan a written reprimand regarding his handling of the housing of The Pas Pre-School in the Kelsey Elementary School was a disciplinary action against him for which there was not just and reasonable cause and is therefore a violation of Article 16 of the collective agreement.

The Association requests:

1. That the Division acknowledge that it disciplined Terrence F. Dugan without just and reasonable cause,

and

2. That the Division withdraw the letter of reprimand that it issued to Terrence F. Dugan and clear his personnel file of any reference to discipline relating to this matter."

The grievances arose as a result of the Division imposing a written reprimand on the Grievor. There is no substantial dispute as to the facts which gave rise to the reprimand. Accordingly we will only review the evidence in a very cursory manner.

Filed as Exhibit 2 was a letter dated September 26th, 1989 from the Division to the Grievor. In view of the significance of this document we are reciting same in full.

"September 26th, 1989

Mr. Terry Dugan Principal
Kelsey Elementary School

Dear Mr. Dugan:

At last night's board meeting, the Board of Trustees questioned the contents and the intent of the letter you distributed on Friday, September 22nd regarding The Pas Preschool being allowed space in the Kelsey Elementary School

As a result of all of the discussions at last night's board meeting, the following motion was passed:

That a letter of reprimand be sent immediately by the Superintendent to Mr. Dugan regarding his handling of the situation of the housing of pre-school in the Kelsey Elementary.

The Board of Trustees felt the letter was an unnecessary piece of correspondence which only aggravated an already volatile situation rather than a responsible act designed to calm the fears of teachers, parents and students. Mr. Isfeld's involvement in the correspondence is irrelevant as he was not party to any discussion or meetings relating to the issue. This was known and recognized by yourself.

The Board of Trustees and I felt this was a culmination of a series of irresponsible actions taken by yourself since the directive was issued to you on September 12th. Through my lengthy discussions with you, the Board's and my position was made abundantly clear to you. This was done so that there would be no misconception as to the intent of the directive.

The Board of Trustees feel that you were insubordinate in following the directions of the Superintendent of Schools and displayed a complete disregard for the Board of Trustees, the Division Office and the Staff. It is clearly part of your mandate as Principal to maintain the confidence of the Board and is a further requirement that all administrative decisions be followed through as required. It is felt that had you followed the directive sent and explained to you, it would have curtailed or at least reduced the animosity that was created and now exists between the Board, the teachers, The Pas Preschool and the administration.

Needless to say, the Board, nor I are not happy with your actions and we find the prolonging of this situation both

unnecessary, disconcerting and extremely exasperating. The Board and I are not pleased at all as to your handling of this situation and we sincerely believe that had another more supportive avenue been taken by yourself to meet the requirements of the directive, the controversy would never have arisen.

Any further instances of this nature cannot nor will be tolerated by the Board of Trustees and the Administration.

Please be informed that a copy of this letter will be contained in your personal file.

Yours truly,

(sgd)

Yaskiw

Superintendent of Schools"

Both grievances were denied by the Division (Exhibits 5 and 6). Mr. Al Yaskiw, the Superintendent of Schools in the Division gave evidence. At all relevant times the Grievor was the principal of the Kelsey Elementary School which had a teaching staff of approximately 27 and had a student enrollment of approximately 490. Enrollment had dropped from a few years ago when it was approximately 720 students. In 1988 approaches were made to the Division to permit a Pre-School Activity Center (the "Center",) in the Kelsey Elementary School (the "School"). The Center had negotiations with the Division and in June of 1989 the Division agreed to provide it space in the School by January 1st, 1990 or sooner. In the spring of 1989 Mr. Yaskiw had discussions with the Grievor respecting the area in which the Center would be located. When the school was originally built it was designed with "open-space classrooms" and was ultimately changed to separate classrooms. On September 11th (Exhibit 7) a memorandum was sent to the Grievor by Mr. Yaskiw together with a sketch plan showing where the Center would be located. Without reviewing all the specific details, it will suffice to say that the Center would be located in a classroom (room 16) and that the staff and students from that classroom would be relocated into a room to be constructed in the open or library area (room 2S). We do not feel it necessary to review the specifics of the construction or the merits of whether the Center should have been located in room 16. These are matters within the jurisdiction of the Board. Mr. Yaskiw advised that the Grievor had been told, in general terms, where the Center would be located in the spring of 1989, and further discussions took place in the latter part of August. In his view, the Grievor did not agree with the proposed location of the Center and expressed some opposition to the relocation of the class from room 16. He felt that Center should be located in the area identified as room 25. Ms. Knoll had been assigned to room 16 for the fall of 1989 and had previously worked in the open area. However Mr. Yaskiw instructed the Grievor as to what was to be done and left the implementation of the staff move to him. His usual procedure was to meet with the Principal, discuss the Division's instructions and leave it up to the Principal to implement and to accomplish the objectives of the Board. Although he did not usually write a memorandum, in this case he felt that he should and accordingly wrote Exhibit 7. He had been advised of the apprehensions of some of the staff. He was authorized by the Division Board to send the memorandum and was instructed to carry out its instructions immediately.

On September 12th he went to the school and advised the Grievor that there was no further question as to where the Center was to be located. The simple fact was that the Grievor – "was supposed to do it".

Evidently the Grievor was upset with the directive and Mr. Yaskiw simply told him – "that's the way it is and I'd like you to comply".

Within a short period of time he received a call from one of the teachers requesting a meeting. He agreed to the meeting at which time it was requested by some of the staff that he prevail upon the Board to change the Center's location. He pointed out that the matter was not negotiable and that the move was to go ahead. Subsequently the teachers requested a hearing in front of the Board. Accordingly a special meeting was called on September 20th. At that meeting Ms. Knoll made a verbal presentation and filed a written brief and as well, showed a videotape (which had been filmed by the Grievor). Subsequent to the delegation leaving, the Division confirmed its earlier decision respecting the location of the Center. He communicated the Board's decision to the Grievor and told him to proceed with the matter immediately as the Center would be commencing to operate at the School on October 1st.

On the 21st of September he was away from The Pas and did not return to his office until the morning of Monday, September 25th. On his return he received a note from Mr. Robert Isfeld, the Assistant Superintendent of the Division, with a letter attached. The letter, filed as Exhibit 8, had been sent by the Grievor to all of the parents of students in room 16 at the School. It reads as follows:

"Dear Parents;

You are receiving this letter as parents of students in Room 16. Room 16 is a room which will become occupied by The Pas Preschool Activity Center on October 2, 1989. Their occupation of room 16 will require that Ms. Knoll's class relocate to station 25 of the Open Area.

We apologize for any disruption your child may experience but we will do everything in our power to assure a smooth change.

The full details of the agreement between the Board of the Kelsey School Division and The Pas Preschool Activity Center are unknown to we, the staff. It is with this in mind that I request that any inquiries regarding the details or timing of the move be directed to your school trustee or the superintendent, Al Yaskiw.

Yours truly,

(sgd)

T.F. Dugan

Principal"

Mr. Yaskiw advised that Mr. Isfeld knew "virtually nothing" about the matter although he had discussed it with him casually, and pointed out that Mr. Isfeld had not been at the special Board meeting. However it had been discussed "back and forth between them" but Mr. Isfeld had no direct involvement in the matter or any real knowledge of the facts.

On September 25th after he returned to work he read the note and immediately discussed the matter with Mr. Isfeld. He was advised that the Grievor had contacted Mr. Isfeld shortly after 3:00 p.m. Friday afternoon and stated that he contemplated sending a letter to all of the parents of students in room 16 as he had a number of upset students and staff. The Grievor told Mr. Isfeld that he felt it was an "emergency".

Mr. Yaskiw was upset by the letter. He found no problems with the first two paragraphs of Exhibit 8 but was of the view that the final paragraph was untrue, irrelevant and would aggravate the situation. He prepared a letter (Exhibit 13) which he took with him and went to have a meeting with the Grievor at the School. He met with the Grievor and expressed his displeasure over the letter but the Grievor claimed that he had received permission from Mr. Isfeld to send it. As a result he did not deliver Exhibit 13 but went back to review the matter with Mr. Isfeld again. He then met with the Board and filed as Exhibit 14 was an extract from the Minutes of the Board meeting held on September 25th, 1989 at which the following motion was passed and carried:

That a letter of reprimand be sent immediately by the Superintendent to Mr. Dugan regarding his handling of the situation of the housing of The Pas Pre-school in Kelsey Elementary School."

He then prepared the letter of September 26th (Exhibit 2) and delivered it to the Grievor. He advised that he had told the Grievor on the morning of September 25th that he would check out the Grievor's allegation that Mr. Isfeld had authorized the sending of the letter. He acknowledged that if the Grievor had, in fact, received authorization then the matter would be viewed in a different light. He acknowledged that the Grievor had told him that Mr. Isfeld, after hearing the first draft of the letter, had recommended a change to it by the insertion of the words – "or the Superintendent Al Yaskiw". He acknowledged that Mr. Isfeld had not claimed that specific instructions were given to the Grievor not to send the letter and in fact had suggested the change to it. It was suggested to him that Mr. Isfeld had told the Grievor that he had no objection to the letter being sent. Mr. Yaskiw stated that Mr. Isfeld had told him that he hadn't approved of the letter. It was suggested to him that Mr. Isfeld had participated in writing the letter, but Mr. Yaskiw was of the view that Mr. Isfeld had only – "listened to it". He did not dispute that the Grievor initially called the Board office on Friday, September 22nd, to speak to him and only spoke to Mr. Isfeld because of his absence from The Pas. When he was away, the person entitled to speak for the Division was the Assistant Superintendent and Mr. Isfeld was the official designated. He did not dispute that Mr. Isfeld was the person in authority.

The contents of Exhibit 8 were reviewed in detail. In his view, the matter raised a number of issues that were not particularly relevant and created the impression that the staff was unaware of what was transpiring. In his opinion, inquiries should not have been directed to the Board or to himself and preferably no letter should have been sent. The Grievor should have been prepared to answer any questions as he was fully aware of the Board's decisions and instructions. It was suggested to him that the purpose of the letter was simply to protect teachers from any calls. Mr. Yaskiw disputed this and felt that its purpose was to put the Division in a bad light. If in fact the purpose was to protect teachers from calls, then the Grievor could have accomplished that objective in other ways. He simply could have had any queries directed to himself. He also noted that the move was not taking place until October 1st and that as no work was being done over the weekend the matter could have waited for his return on Monday. He was of the strong opinion that the letter showed extremely poor judgment on the part of the Grievor.

Mr. Robert Isfeld gave evidence. He had very little involvement with the decision to allow the Center in the School, although he had peripheral knowledge. It had been discussed with Mr. Yaskiw. Mr. Yaskiw left The Pas on Thursday the 21st of September and was away on Friday the 22nd. Shortly after 3:00 p.m. on Friday, the 22nd, he received a call from the Grievor who asked him to "hear a letter". The Grievor acknowledged to him that he knew that Mr. Isfeld had not been involved in any of the discussions, but nevertheless he wanted to read him a letter that he proposed sending to the parents of the students in room 16. Mr. Isfeld informed the Grievor that Mr. Yaskiw was away until Monday and asked if - "could he not wait?" Mr. Isfeld noted that it was not uncommon for principals to send letters to parents, although it was uncommon to have the letters approved by the Administration unless the letter

was going to the press or if there was some doubt as to its propriety. However, the Grievor read the letter to him and asked - "do you hear anything wrong?" Mr. Isfeld said "yes" - it tells me between the lines, not word for word that you are opposed - are you sure you want that?" The Grievor evidently said - "Bob - I have teachers in tears - students are asking teachers why they have to move - teachers are very upset". He then said to the Grievor - "why is Mr. Yaskiw's name not in the letter if you are asking parents to call the trustees?" The Grievor evidently said - "I will put his name on the letter".

Mr. Isfeld stated that although the Grievor wanted him to hear the letter, no request was made for approval nor did he give permission to send it. After the conversation, he wrote a note to Mr. Yaskiw "recapping the situation" and - "the more he wrote, the more uncomfortable he became" - he looked at his watch and saw that it was approximately 3:35 p.m. and he telephoned the Grievor and asked if the letter had been sent and the Grievor said "yes". The time frame between the two telephone calls was approximately 10 minutes. He told the Grievor he was having trouble with the letter and asked if the Grievor was trying to stir matters up. The Grievor said "no - I'll read it to you again", which he did. Mr. Isfeld stated to the Grievor that he wondered how many calls the Board of Trustees or Mr. Yaskiw would get. The Grievor responded that he had no idea but stated that he'd bring a copy to Mr. Yaskiw's desk so it would be available for Monday morning. On Monday morning, September 25th, Mr. Yaskiw read the letter and the note and was very displeased. Mr. Yaskiw then went to see the Grievor and on his return he asked Mr. Isfeld if he had granted permission for the letter to be sent. Mr. Isfeld replied that he hadn't.

During cross-examination he confirmed that his role as Assistant Superintendent was to be in charge of Kindergarten to Grade 6, and to act as person in charge when Mr. Yaskiw was absent. Although he acted as a person in charge, there were certain things that were not within his jurisdiction. He acknowledged that prior to his call from the Grievor he had some discussion with Mr. Yaskiw about the location of the Center.

Mr. Isfeld was of the view that the Grievor only wanted his opinion of the letter and not his approval to send it. He was only a "sounding board". He asked the Grievor why it couldn't wait until Monday and the Grievor stated that - "he had teachers in tears and it couldn't wait till Monday". In Mr. Isfeld's view, the reason for sending the letter was tied in to the Grievor deflecting any questions from the teachers or himself to the trustees and/or Mr. Yaskiw. He acknowledged that he had not specifically told the Grievor not to send the letter, although he had the authority to do so. It was not common practice for letters to be pre-approved and, in his opinion, the purpose of the Grievor's call was not to get permission to send it but simply to get an opinion. However, he acknowledged that he did not stop the letter from being sent.

The Grievor gave evidence. His evidence is substantially in accordance with the facts as set forth above. He related, in some detail, how upset some of the teachers were but stated that he was prepared to go ahead and implement the instructions of the Division. It was at the teachers' request that the meeting was held with Mr. Yaskiw and with the Board. He simply acted as "coordinator" in arranging the meetings but he did not have any direct involvement in them. He acknowledged that he did use his video recorder at the request of the teachers so that a visual presentation could be made.

He reviewed the reactions of the staff to the proposed location of the Center and stated that on Friday afternoon he had - "staff and students who were in tears" and teachers were distraught and concerned about the calls they anticipated receiving from parents. As some of the staff were emotional he felt he had to do something to deflect the questions from them. As a result, he drafted the letter and called Mr. Yaskiw for approval. As Mr. Yaskiw was out of town he asked for Mr. Isfeld. He told Mr. Isfeld that he had written the letter for the purpose of deflecting the questions from the teachers. After some conversation, Mr. Isfeld suggested to him that the letter should be amended so that inquiries could possibly be directed to the Superintendent as well as the Trustees. This conversation took place around 3:15 p.m. to 3:20 p.m. He had the letters typed and put in envelopes. No objection was made by Mr.

Isfeld and on his suggestion he added the last five words, i.e. "or the Superintendent, Al Yaskiw". Mr. Isfeld was his immediate superior and he had followed instructions. He then received another phone call at approximately 3:35 p.m. and was asked if it was his intention to – "rile up parents".

The Grievor said "no" and read the letter to Mr. Isfeld again and the buzzer signaling the end of classes that day sounded. He alleged that he asked Mr. Isfeld if "the letter was alright and offered to get it back". He received no response although he was of the view that Mr. Isfeld might have said – "let it go". He told Mr. Isfeld that he would deliver a copy of the letter to the Board office so that Mr. Yaskiw would have it available early Monday morning. In his opinion the letter stated the "simple facts" and if the parents wanted full reasons for the Board's decision any such questions should be directed to the Trustees or the Superintendent as the staff in the School had not made the decision. He acknowledged that, in hindsight, he might not have sent the letter directing questions to the Trustees and/or the Superintendent and may have directed any questions to himself. However, the purpose of the letter was not to embarrass or challenge anyone in authority but simply to have questions directed to the individuals who made the decision. In his view, he fully complied with any of his responsibilities to have the matter checked with the person in authority. He stated that if Mr. Isfeld had told him not to send the letter, or to wait, he would have done so.

All of the comments in Exhibit 2 were reviewed in some detail. He denied that he, in any way, acted irresponsibly, or did anything which aggravated the situation or was insubordinate or created animosity. He felt that he had properly handled a difficult situation by writing the letter and getting it approved.

Under cross-examination he confirmed that he had been aware of the Board's decision respecting the Center in the spring of 1989. He disputed that he was opposed to the Center being located in room 16 and maintained that he was fully prepared to, and in fact, had cooperated with the Division and Mr. Yaskiw. It was the teachers that were upset and it was his responsibility to act as a liaison between them and the Board. He did not take any active role in the teachers' actions. He had made it clear to the staff that he couldn't interfere with the Board's decision. It was suggested to him that the whole situation would have been alleviated if he had stated that he supported the Board's decision. The Grievor did not really respond to that suggestion, but stated that he simply "explained that I had been told to do it". He agreed that he was the Chief Administrator of the School and had the responsibility to carry out the Board's directions and instructions with the least disruption. He was of the view that he had carried out his responsibility. He acknowledged being at the staff meeting but stated that he just - "sat there silent" and only answered one question.

He agreed that Mr. Isfeld had not attended at the special Board meeting on the 20th of September and that he had not had any prior discussion with Mr. Isfeld relating to the matter. He was asked whether he had considered the option of waiting until Monday. His response was that if Mr. Isfeld had told him to wait or not to send the letter he would have complied. Mr. Isfeld had no difficulty with the letter but only with respect to adding Mr. Yaskiw's name. He agreed that he usually did not request prior approval of his letters to parents but, in this case, although he felt that the letter was proper he was concerned with the general situation. It was suggested to him that he made a "mountain out of a molehill" but the Grievor stated that from his perspective he had "serious problems" and it was a difficult letter for him to write. He was adamant that his intention was simply to deflect the calls from the teachers and that the letter was being sent at their request as they were extremely upset over the situation. There was some considerable cross-examination devoted to whether he basically approved of the decision of the Board. He acknowledged that he knew the basic reasons, i.e. that room 16 was chosen because it was close to street access and there would be minimal interference with the other students. Without reviewing all of that evidence in detail it may be sufficient to say that the Grievor acknowledged that he knew the reason for the choice and that he did not try to explain or justify the Board's decision to the entire staff, but did explain it to the three teachers who had been in Rooms 15, 16 and 17. He was adamant that he did not know the Background" of why the Center had to move to the School.

The contents of Exhibit 8 were reviewed in some detail and he was questioned as to what he was - "really trying to tell the parents". His response was that he was simply directing them to take any questions they may have had to the people who made the decision. It was also suggested to him that the whole purpose of the letter was to invite parents to protest, but he adamantly disputed that allegation. It was also put to him that if he hadn't known "something was wrong with the letter" he wouldn't have phoned for approval. He responded that he did not feel anything was wrong with the letter and only phoned because it was a "sensitive situation". He was not aware of Mr. Isfeld feeling "uneasy" about the letter after the first telephone call, however he realized that after the second call. It was suggested to him that he had put Mr. Isfeld on the "spot" but he disputed that allegation saying he had read the letter to Mr. Isfeld, had received a suggestion, had implemented that suggestion and he had received approval to send the letter. He maintained that even at the time of the second call he could have retrieved the letter back had he been instructed to do so.

We also received evidence from Ms. Lemieux, one of the affected teachers. It is not necessary for us to review her evidence except to state that she obviously did not approve of the decision to move the students out of room 16. She confirmed that the Grievor had not taken any part in the staff meeting and had advised the staff that the move was going ahead and that he was told to implement same.

As mentioned earlier, the facts are not in dispute. It seems fair to conclude that the Board, absolutely within its authority, made a decision to locate the Center into one of the classrooms and to move that classroom to the open area. It may be an understatement to say that some of the staff were unhappy with that decision. They communicated their unhappiness, not only to the Principal and the Superintendent, but to the Board. Notwithstanding, the Board decided to go ahead with the move as planned. On Friday, September 22nd, Exhibit 8 was sent to the parents of the students in room 16 advising of the move to take place on October 2nd. It is clear that the matter had, for real or imagined reasons, become quite sensitive. Due to the nature of the situation the Grievor called for authorization to send the letter. In the absence of the Superintendent he reviewed the letter with the Acting Superintendent who was the person in authority. He read the letter and Mr. Isfeld did not instruct the Grievor to cancel it or to hold same up but did suggest a certain amendment. Although Mr. Isfeld may not have specifically been asked for permission to send the letter, it is clear that he did not order the Grievor to stop the letter from being sent or to hold it for Mr. Yaskiw's return. In due course the Center did move into the area designated by the Division. There is no evidence that the Grievor deliberately hindered the efforts of the Division, but it is equally clear that he did not "enthusiastically" support the decision of the Division.

The letter of reprimand sent to the Grievor refers to the Grievor's "handling of the situation". Reference is made to the letter as "an unnecessary piece of correspondence which only aggravated an already volatile situation rather than a responsible act designed to calm fears of the teachers, parents and students". We are satisfied that whether or not the letter was unnecessary and whether or not it aggravated the situation is not the issue before this Board of Arbitration. The issue is whether the Grievor was disciplined without just and reasonable cause. There is no question that the essence of the complaint against the Grievor was the letter he sent on Friday, September 22nd. This is substantiated in Exhibit 2, in the second line which stated "the contents and intent of the letter you distributed on Friday, September 22nd". Reference is made in the final paragraph on the first page to "the letter was an unnecessary piece of correspondence" and "Mr. Isfeld's involvement in the correspondence is irrelevant".

The question before the Board is whether the Grievor, by sending Exhibit 8, committed any act which merited discipline. Without commenting on his motives for sending the letter or even whether he acted prudently, the fact remains that he first reviewed the letter with his superior i.e. Mr. Isfeld. Mr. Isfeld had the authority to order the Grievor not to send it or to postpone it being sent. Although Mr. Isfeld may not formally have been asked for approval, the letter was read to him and he suggested an amendment which was made. Mr. Isfeld then called back about the letter and expressed some further

concern but did not, even at that stage, attempt to have the letter recalled. We fully appreciate that he may not have had detailed knowledge as to all of the issues, however it certainly would have been more prudent to have directed the Grievor not to send the letter or to wait until Mr. Yaskiw returned on Monday. The School was not accommodating the Center until October 2nd and the matter certainly could have waited until Monday, September 25th. There is no doubt that Mr. Isfeld was the person in authority. We hasten to add that we do not fault Mr. Isfeld for not taking a more active role in view of all of the circumstances, however, he was the person in authority and, in our view his actions had the effect of approving the letter. Under those circumstances, we find it hard to conclude that the Grievor committed an act which merited discipline being imposed.

In coming to our conclusion. and in analyzing the essence of the grievance, we also bear in mind the statement of Mr. Yaskiw that if the Grievor, in Act, authority to send the letter then it would have been viewed in a "different light".

We have carefully reviewed the cases submitted by counsel. These cases were as follows:

1. Be Canadian Broadcasting Corporation and Canadian Union of Public Employees, Local 675 6 L.A.C. (3d) 415.
2. Re Treasury Board (Revenue Canada - Customs & Excise) and Almeida & Capizzo 3 L.A.C. (4th) 316.
3. Re Simon Fraser University and Association of University and College Employees. Local 2 18 L.A.C. (3d) 361.
4. Re Fraser and Public Service Staff Relations Board 23 D.L.R. (4th) 122.

These cases clearly establish that the sending of documents critical to an employer can result in discipline being imposed. We stress that we have not made any decision as to whether or not the document (Exhibit 8) was critical of the employer. However a reading of those cases does not reveal that prior approval for the letter being sent was either requested or granted. That is the essential distinction between those cases and the instant case. The issue for us to consider is what is the effect of an employee committing an act with authority of his superior. Very few cases offer guidance on this point. The only one that we have been able to find is the decision of Arbitrator Weatherill in Re Durham Board of Education and Ontario Secondary School Teachers Federation. District 17, 19 L.A.C. (2d) 427. In that particular case an outing at a race track had been planned for some time as the school staff annual "year end celebration". Similar year end outings (but sometimes of a different nature), had been arranged by staff in previous years. The grievor did not attend at the school for one-half day in order to take part in the celebration with other members of the staff. The celebration took place at the Woodbine Race Track. The principal of the school in that case, did not attend that "celebration", although she had attended year end celebrations previously. She was aware of the plans the staff made and had not opposed them. In fact, the principal was clearly aware of where the staff would be having their year-end celebration and in a letter to the staff, thanked the staff for their work throughout the year and graduation and concluded by wishing them a happy day and adding "may the best horse win". The principal was censured and the grievor and a number of the teachers had their salaries reduced for that afternoon. There was some considerable newspaper publicity about teachers having taken advantage of a "professional activity day" to go to the races. There were a number of issues under the School Board and Teachers Collective Negotiations Act of Ontario but those particular issues were not before that Board nor was the issue of the principal's censure. Although the case is not directly on point, Arbitrator

Weatherill considered the situation where a superior officer approves, expressly or impliedly, a particular act. At page 431 Arbitrator Weatherill noted as follows;

The grievor, quite clearly, believed that his "absence" from the school that afternoon was not contrary to any board ruling nor was it contrary to the view of the principal. He would be entitled to believe that he had whatever permission was necessary. The fact that the principal may have had no such authorization from the board to approve such leave is not material. The Grievor, we find, was not in violation of any rule or regulation nor was any leave of absence as such required for which the permission of the supervisory officer would be necessary".

As stated, the facts in that case were different, however, the principle is the same. The Grievor, in sending out the letter respecting what he perceived to be a "sensitive" situation sought and received approval. In view of his having received that approval we do not feel that there was just cause for the Division to impose discipline for his having sent the letter.

In coming to our conclusion we wish to stress that the issue of whether or not the Grievor acted with propriety, or prudence, or even wisdom in sending the letter is not before us. Accordingly we make no findings with respect to same.

Although the discipline imposed was very minimal, i.e. a written reprimand, we are of the view and hold that same should not have been imposed and accordingly direct that it be deleted from his record. Accordingly the grievances are allowed. In view of our decision it is not necessary for us to deal with the grievance filed by the Association. There may be some question as to whether or not the Association had the right to file the "policy grievance" with respect to this incident. We make no ruling on that point. We also note that the Grievor has requested that the Division acknowledge that it disciplined him without just and reasonable cause. Our award should suffice for that purpose. The letter of reprimand should be removed from his file.

We wish to thank Mr. Myers and Mr. Simpson for their (as usual) full and complete arguments which were of great assistance to us.

DATED at the City of Winnipeg, this 18 day of December, 1990

JACK M. CHAPMAN, Q.C. - Chairman