

IN THE MATTER OF AN ARBITRATION

BETWEEN:

COLLEGE PRINTERS LTD.

(the "Employer")

AND:

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

(the "Union")

[Andy Ancheta Grievance]

ARBITRATOR:

Vincent L. Ready

COUNSEL:

Michael Korbin and  
David Borins  
for the Employer

Timothy Pettit  
for the Union

HEARING:

March 12, 14, 15 and  
16, 2001  
Vancouver, B.C.

WRITTEN SUBMISSIONS:

June 29, July 19 and  
July 31, 2001

PUBLISHED:

October 4, 2001

The parties agreed I was properly constituted as an arbitrator with jurisdiction to hear and determine the matter in dispute.

This arbitration arises out of the termination of the grievor, Mr. Andres Ancheta, by the following letter dated December 10, 1999:

This letter will confirm that you are terminated effective December 7, 1999.

On the evening of November 3, 1999, you made reference to causing deadly violence to other employees and to yourself.

Out of our concern that your continued presence in the workplace may have caused a risk to the safety and health of our employees and possibly yourself, we suspended you with pay effective November 4, 1999. We provided you with an opportunity to give us by December 6, 1999, a full and detailed written explanation for your conduct in the workplace on November 3, 1999. You declined the opportunity and instead the lawyers for your Union responded and attached a medical report without any submission that provided an excuse for your conduct.

We directed you to attend a psychiatric assessment and you failed to attend.

You have provided us with no justification for your conduct in the workplace on the evening of November 3, 1999. The only medical documentation that we have received suggests that you were not suffering from any psychosis or medical health condition which would justify your totally unacceptable conduct. Your decision to not attend at the scheduled appointment with the psychiatrist has only compounded matters.

Based on your recent conduct and our interview with you on November 4, 1999, it is clear to us that you are a disgruntled and frustrated man. It is also clear to us

that you chose a most alarming and frightening way to express your frustration. You threatened to kill your co-workers and you have provided no justification for this extreme misconduct. Given the gravity of your conduct we have no choice but to terminate your employment for cause effective immediately.

Yours truly,  
"Ken Nelson"  
Ken Nelson,  
General Manager

"Sam Joe"  
Sam Joe,  
President

## **FACTS**

Over a number of days of hearing, the parties presented considerable evidence regarding the events leading up to November 3, 1999 as well as the incident itself. The Employer called eleven witnesses. Three witnesses, including the grievor, appeared for the Union. From this evidence I am able to summarize the facts of the case as follows.

Except for a short period in the early 1980's, the grievor had worked continuously for the Employer for over 19 years prior to his suspension and subsequent termination. During that time, the grievor had a very good work record.

In early 1998, the grievor filed a series of grievances. The first, on February 1, 1998, related to work jurisdiction. Specifically, the grievor did not feel he, as Book Binder I, should be required to "feed the pockets" on the Mueller machine on a regular basis. The second grievance, filed on March 2, 1998, related to an alleged threat by his foreman to terminate him "if he didn't

do his job." The Union did not proceed with these grievances and, as a result of this combined with further events at the workplace that do not appear to have resulted in formal grievances, the grievor began to develop a feeling that he was being harassed and targeted for dismissal by both the Employer and the Union. On May 11, 1998, the Union wrote the grievor the following letter:

This is in reply to your letter of April 21<sup>st</sup>, 1998. As you are well aware, we have had a number of meetings to address your complaints about alleged incidents at College Printers Limited. You and I have met together and the shop steward and other employees have also been involved in some of those meetings.

You also know clearly what our position is, and that we feel very strongly it would not be in your best interest, nor the union's best interest to pursue the issues you feel are problematic. As you also know, your main problem concerns something that you created yourself by allowing it to happen for a number of years. It is only recently you decided you no longer want to continue.

I don't know if you are hell-bent on placing your employment in jeopardy, whether you're receiving advice from someone who only has part of the information, or someone who has no idea what they are advising you about.

If you wish to meet again, and bring the individual who is assisting you, contact me and we will arrange to meet. If not, based on our investigation into the issues you have raised, we consider this matter closed.

In Solidarity,  
"Robert Jennings"  
R. Jennings  
President  
GCIU Local 525-M

In June, 1998, the grievor stepped down as chargehand over a further issue – the fact that employees junior to him were being used to fill in as foremen, which attracts a higher rate of pay.

On October 7, 1998, the grievor was involved in an incident with the Shop Steward, Mr. Rudy Cervantes. Mr. Cervantes is also a long-time friend and godson of the grievor. On October 7, the grievor became concerned that someone had improperly adjusted his machine. Upon his questioning a number of co-workers, a heated exchange with Mr. Cervantes resulted. The grievor claimed psychological trauma as a result of this incident and sought Workers' Compensation benefits. He also commenced a civil lawsuit against Mr. Cervantes. The Statement of Claim, dated January 9, 1999, reads in part:

3. On or about October 7, 1998, the Plaintiff and the Defendant were working at College Printers Ltd. at 865 Terminal Avenue, Vancouver, in the Province of British Columbia.
4. After a break the Plaintiff returned to operate an inserter machine and noticed that a setting had been changed.
5. The Plaintiff inquired of his co-workers including the defendant to ascertain who had adjusted the machine. The Plaintiff told the Defendant any adjustments to the machine should be authorized by management.
6. The Defendant approached the Plaintiff in aggressive manner and assaulted the Plaintiff by

raising his arm and pointing his fingers into the Plaintiff's eyes shouting offensive language. The Plaintiff feared for his physical safety.

7. As a result of the said assault on the Plaintiff by the Defendant the Plaintiff has suffered loss and damage.
8. The Defendant also falsely and maliciously spoke and published of and concerning the Plaintiff and of him in the way his profession as a printer to the Plaintiff's co-workers, including Sam Khan, the following word: "You (meaning thereby the Plaintiff) are always creating problems. You are too hard on me. You are crazy."
9. The said words in their natural and ordinary meaning meant and were understood to mean:
  - (a) The Plaintiff was a troublemaker in the workplace;
  - (b) That the Plaintiff was incompetent in carrying out his work;
  - (c) That the Plaintiff was mentally deranged and unsuitable to be trusted or employed in a supervisory position in the workplace.

By way of this lawsuit, the grievor (Plaintiff) is asserting injury to his "credit, character and reputation" as well as stress, depression and psychological injury resulting in his inability to return to work. He is also claiming lost wages, general, specific and punitive damages, costs and special costs from the Defendant, Mr. Cervantes. This lawsuit was ongoing at the time of this hearing.

The grievor was on stress leave from October 7, 1998 to January 31, 1999. During this period, the grievor attended at his physician, Dr. Bueno, as

well as a psychologist, Dr. Lanius. He sought Workers' Compensation benefits for this absence, returning to work on February 1, 1999.

Throughout 1998 and 1999, the grievor kept a diary, notes from which were submitted to me during the hearing. From this material as well as the evidence of the grievor, it is clear that he became increasingly frustrated at work through April, May, June and July of 1999. He was convinced that his co-workers, Union and the Employer were against him.

On June 1, 1999, the grievor was involved in an incident with a Book Binder II named Mary. Apparently the grievor started the machine without checking to ensure all hands were clear, resulting in a near accident. Although this incident was reported and responded to by management, no discipline was issued.

On July 26, 1999, the grievor filed a Section 12 complaint with the Labour Relations Board alleging the Union had failed in its duty of fair representation. Specifically, the grievor claimed, in part:

Because I complained about the extra job I was required to do (feed the pockets) and my filing of grievances, I have been subjected to threat of dismissal and harassment on the job. My Union did not protect my individual right of employment and did nothing (no action) on my grievances...

Since last year, under threat of dismissal I tried to discharge faithfully my duties and responsibilities as Bookbinder I and ignore the continued harassment. But lately, there was an increased harassment and to date I am still required to feed the pockets full time.

I have no recourse this time but to submit this complaint to the Labour Relations Board and hope for a hearing and favourable ruling on my complaint.  
(sic)

At the hearing, the grievor downplayed the significance of his feeling that he had been mistreated by the Union, despite evidence to the contrary.

The grievor's frustrations at work regarding jurisdiction, junior employees working as foreman, and general harassment from his co-workers continued and the grievor continued to see his physician regarding the stress this caused.

On September 7, 1999, the grievor commenced counseling with Wayne Nickel through his wife's Employee Assistance Plan. He also saw Dr. Bordalba, his family physician. At the latter appointment the grievor was crying and the doctor felt it was necessary to inquire whether he had suicidal feelings. Although the grievor responded that he did not, Dr. Bordalba determined he suffered from "depression with some obsessive features and mood adjustment disorder." She prescribed anti-depressant medication for the grievor.

It should be noted that the evidence establishes that none of these professionals felt the grievor posed a threat to either himself or others at any time leading up to the November 3, 1999 incident. However, Dr. Bordalba and Mr. Nickel both provided evidence as to the grievor's frustration and anxiety stemming from his situation at work.

On October 5, 1999, the Workers' Compensation Board denied the grievor benefits relating to his stress leave. The grievor appealed on October 9, 1999.

On October 15, 1999, the grievor was called into a meeting by the Employer to investigate two issues – his leaving work early and his delay of production. The meeting was deemed "non-disciplinary," but upset the grievor, reinforcing his belief that the Employer, the Union and his co-workers were "out to get him." The evidence suggests that the grievor was "very emotional" at this meeting. On October 22, 1999, the grievor again saw Mr. Nickel who recognized the grievor was frustrated about work.

On October 25, 1999, the grievor met with Mr. Cervantes and legal counsel regarding the lawsuit. Settlement discussions broke down. Around the same time, the Labour Relations Board issued its decision dismissing the grievor's Section 12 complaint based on unreasonable delay in making the claim. At the hearing, the grievor testified he was merely "disappointed" by this

decision, however, it is clear from the evidence that both of these events on or around October 25 caused the grievor further anxiety, which was, in fact, diagnosed by his family physician.

On October 27, 1999, a further incident occurred in which the grievor started the machine, almost injuring a co-worker. This was reported on October 29, 1999, but did not result in any discipline. However, sometime between the date the incident was reported and November 2, the grievor was called into a meeting regarding the safe operation of equipment. The evidence suggests that he was agitated and angry at this meeting.

On November 1, 1999, the grievor appealed the decision of the Labour Relations Board on his Section 12 complaint, writing as follows:

M.A. Hickling  
Vice Chairman  
LABOUR RELATIONS BOARD  
900-360 West Georgia Street  
Vancouver, BC V6B 6B2

Re: Leave for Reconsideration of BCLRB No.  
8432/99

Dear Sir:

Please be informed that the acts of injustice I am complaining about are happening right at the very moment. It did not only happen some 14½ months back but it started to happen 14½ months ago. I started filing complaints about this matter to persons and agencies I know could help me since early 1998 when I started to feel prejudiced but no one dared to

put a finger and with the Board's decision (BCLRB No. 8432/99) it seems that there is no way I can have the acts of injustice being done against my person stopped.

Assuming, without admitting, that the acts of injustice happened only in the early part of 1998 and it stopped there, the fact that I have been going all around seeking for the preservation of my right as I have mentioned in my letter dated August 23, 1999, the same should have been considered as a valid reason for the Board to take action. As far as I know, the period upon which complainant is to file his grievance is designed for one who sits on his right. Hence, there is no definite time frame specified in the rule because it is left to the good discretion of the Board. In all instances, the interest of Justice should prevail because that is the very reason for the rule of law.

I am not asking for a reopening of old sores because the sores are still there. They are old sores but don't heal and remain fresh because the reasons behind the old sores are still there. Unless measures are made to stop the acts of injustice, the old sores will never be old.

Am I to suffer for my unfamiliarity with the Labour Relations Board's policy? Am I to bear the agony of suffering the continuing acts of injustice being done to me until now? Can I not have the acts of injustice be stopped by anyone? Where can I find justice if I can not have it in your hands?

I am hoping and praying that you will reconsider your decision.

In the interest of justice.

I remain

Very truly yours,  
"Andres M. Ancheta"  
ANDRES M. ANCHETA  
Complainant

On November 2, 1999, a Xerox employee in Honolulu shot and killed seven co-workers. The next day, a disgruntled employee in Seattle killed two co-workers in a workplace shooting. In the evening of November 3, 1999, the grievor attended at work, discussed the newspaper article about the killings with a number of co-workers and made suggestions that he might do the same. He also posted the newspaper article on his locker in the workplace.

The grievor could not explain why he posted the article on his locker, only saying that he did it "like a normal person would." When asked if he felt this was the right thing to do, he responded, "I don't know, because everybody does silly things."

One of the persons the grievor approached on November 3 was Marilyn Quong. He showed her the article and said something to the effect of "that could be me next, I could come in here with a gun and start shooting people and then shoot myself." Ms. Quong replied that he should start with himself and leave innocent people alone, to which the grievor responded that he was serious and going to do it. He pointed his finger like a gun toward the Mueller line and then at his temple.

The grievor also discussed the shootings with Linda Thibert. To Ms. Thibert he said, "Americans are crazy. If I go crazy, I'd shoot everyone and then myself."