

LABOUR RELATIONS CODE
(Section 104 Appointment)
ARBITRATION AWARD

COMMUNICATIONS, ENERGY AND PAPERWORKERS
OF CANADA, LOCAL 2000

UNION

VICTORIA TIMES COLONIST, A DIVISION OF CANWEST MEDIAWORKS
PUBLICATIONS INC.

EMPLOYER

(Re: Keith Sannes Dismissal)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	E. Casey McCabe
Representing the Employer:	Michael H. Korbin
Dates of Hearing:	March 5, 14, 15 and 16; July 31; August 1, 2007
Date of Decision:	August 22, 2007

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1. Dismissal, Grievance and Jurisdiction

At 9:00 a.m. on Thursday, September 28, 2007, the employer began printing the tabloid *TV Times* to be inserted with the daily newspaper on Friday using plates made by Keith Sannes. The presses stopped at 9:10 a.m. when it was noticed there were three lines of large font type overwriting in the middle of the grid on page 16 that held the TV schedule for Sunday, October 1st. The overwriting was:

SUNGRID4
6 X 122.00
SUNDAY PT GRID

The presses resumed printing at 10:11 a.m. after Mr. Sannes made replacement plates. Two sets of plates are used to print two copies of the *TV Times* in the one run. There were 797 kilograms of waste paper that day. Prepress Manager Bill Laurin is fairly certain it was the result of spoils from the run with the defective plate. The delay did not cause a delay in the printing of the daily newspaper or a need for overtime.

By letter dated October 23, 2006, the employer dismissed Mr. Sannes for the culminating incident of making the defective plates. The central paragraphs of the dismissal letter state:

Through formal channels of discipline you have received letters of warning outlining problems and errors you have made. A pattern of not checking your work and following procedures continues to be a problem. Ample opportunities have been given to you, yet poor performance

continues.

Through your continual disregard to follow procedures and the number of errors you continue to make you have been derelict in your duties as a Platemaker. We have lost faith in your ability to do this job. Through your actions and your failure to improve you have shown that you are incompetent to perform in the role of Platemaker and you leave us with no choice but to terminate your employment effective immediately.

The letter was signed by bargaining unit General Foreman Bob Stuart, who under the collective agreement discharges platemakers (Article 14.01). Mr. Stuart first learned about the employer decision to dismiss Mr. Sannes when he was called by Mr. Laurin to come to the work at 6:30 p.m. on a regularly scheduled day off in his weekly schedule. Mr. Stuart met with Mr. Laurin and the Directors of Production and Human Relations. He was shown and signed the letter.

Mr. Stuart was not aware of the purpose of the meeting and had not been asked about the error in the plates that caused the interrupted run on September 28th before he was presented with the dismissal letter to sign. Although Mr. Stuart worked the evening of September 28th, he did not learn about the plating error that shift and was unsure if he had had heard about it prior to being asked to sign the dismissal letter. In his capacity as foreman, he had not spoken to Mr. Sannes about the error.

Mr. Laurin did not speak to Mr. Sannes on September 28th or any time before the dismissal about the error. He did not investigate how the error occurred or how it was corrected. He did not draft the dismissal letter and does not know why the employer delayed its dismissal decision over three weeks. He was not present when Mr. Stuart gave the letter to Mr. Sannes.

Mr. Laurin had reported the plate making error to the Production Director, who asked about the interruption in the press run. The Production Director receives daily press run reports and may have seen the presses stopped on September 28th. Mr. Laurin also reported the reason for the press run interruption to the Human Relations Director.

When Mr. Stuart delivered the dismissal letter to Mr. Sannes in the presence of a shop steward and the Human Relations Director, the employer's decision to dismiss him came as a surprise to Mr. Sannes. He had not been

interviewed by anyone about the plate making error that caused the interrupted run on September 28th. There was no discussion about the content of the letter. The events of the week of September 25th were first canvassed in detail during this arbitration.

The union grieved and decided in January 2007 to proceed to arbitration. The union applied and I was appointed under section 104 of the *Labour Relations Code* on February 19, 2007 to arbitrate this dispute. Extended efforts, before and during the hearing, to settle the grievance were unsuccessful. A visit to the plate room and explanation of the plate making process in the presence of counsel and Messrs Sannes, Stuart and Laurin was part of the hearing process.

2. Employment History and Production Context

Mr. Sannes is a forty-five year old single parent who was employed by the employer for fifteen years. The first year of his employment he worked as a compositor. The remaining time he worked as a platemaker.

The employer has approximately 75,000 readers of its daily newspaper. Its approximately 190 unionized employees are grouped into five bargaining units represented by two unions. This union represents two bargaining units of compositors and platemakers. The compositors build advertisements, lay out obituaries and insert advertisements in the daily and weekly *TV Times*.

The daily newspaper industry has, and continues to, experience constant and dramatic technological and organizational change. Over the years, technological change has reduced the number of platemaking employees by 75%. In September 2006, the employer had three platemaker positions. Messrs Stuart and Sannes were full time employees. The third platemaker, Karl Brust, worked part-time.

The platemaker's daily routine is to start the computer stations, ovens and processor and check the level of required chemicals. With copy from the Editorial Department and advertisements from the compositors, the platemakers assemble the laid out pages in computer files and make, punch and bend plates passed on to the pressroom. The assembly of the content for each single or double page plate is managed by software. The process to inscribe, harden and

clean the image on each plate is automated and includes bending and punching the plates for attaching to the presses.

In the production of the daily newspaper and tabloid inserts, such as the *TV Times*, the platemaker is the last set of eyes to see the final image of the product before it comes off the press. An integral part of the platemaker's quality control responsibility is to proof pages for problems, without being responsible for editorial or advertising content. The platemaker watches and checks for obvious problems and checks date lines, margins, dropped lines, colour, etc.

The proofing happens at a platemaker computer station dedicated to proofing and again at the platemaker's final inspection of each plate at the end of the processing line, where the plates are jogged to ensure the punched holes and bends for attachment to the presses are properly aligned. Poorly punched plates will have to be discarded and new plates made to ensure the plates fit and lock on the presses. The platemaker writes the page numbers and colour designation on the back of each plate and leaves them in designated places for the press crew.

After the plates are made and left for the press crew, the platemaker sends the final electronic image files used to make the plates to suppliers of electronic editions of the newspaper and sources where advertisers and others can access and view the advertisements and classifieds.

Platemakers work independently and are a critical link in the production chain, in which each work unit is to check for errors that may have escaped notice in earlier units or emerged between units. The elusive perfect product is the daily goal, with no one expected to be happy with shoddy work or product. It is not uncommon for employees to express appreciation to platemakers who catch errors overlooked by the editorial or composing departments. An undated note of thanks from a night shift editor sent to Mr. Sannes in the fall of 2006 was introduced as an example.

The changing nature of the processes and technology require continuous updating. Mr. Laurin has written and distributed a list of daily procedures in platemaking that he updated and reviewed with Mr. Sannes. In 2003, Mr.

Sannes was away from the computers for a period. Before his return he received training from Mr. Stuart for eight shifts over two weeks in September. As small changes and issues arose, Mr. Stuart would instruct, correct and direct Mr. Sannes.

As required and when significant changes in software, equipment or processes happen, Mr. Laurin gives instruction or supplier training is provided. For example, in 2004 when there were software and hardware upgrades to work with a new computer operating system, a third party provider was retained to provide training for the platemakers.

In February 2001, when Mr. Sannes was experiencing some problems at work, Messrs. Laurin and Stuart held a meeting with him to review and reinforce his full job description, daily duties and the employer's expectations. Mr. Laurin sees Mr. Sannes on days he reports to work at 5:00 p.m. and Mr. Stuart regularly shared most of each shift with him three days a week.

3. Discipline Record - November 21, 2003 to August 2006

The employer says Mr. Sannes' careless delivery of faulty plates to the pressroom is grounds to dismiss him because this is a culminating incident in an overall record of poor performance that did not improve after cautions and progressive discipline.

A. Ruling on admissible prior record

At the commencement of the hearing, there was a difference over what could properly be considered as part of Mr. Sannes' prior record.

The union objected to including in Mr. Sannes' record any discipline prior to November 21, 2003. Specifically, it objected to four documents from 2001 that the employer intended to include. The union relied on Article 28.01 of the collective agreement and *University of British Columbia* [2000] B.C.L.R.B.D. No. 431 (QL) and *Doctor's Hospital* (1997), 65 LAC (4th) 4 (Newman). Article 28.01 states:

Letters of dissatisfaction, written records of reprimand and warnings shall be removed from the employee's personnel file and destroyed 18 months from the date of issue of the document. Records of suspension shall be removed from the employee's personnel file and destroyed 24 months

from date of issue. The foregoing provisions apply provided no further disciplinary action has occurred within the above referenced time periods.

The employer sought to include disciplinary suspensions of January 9, 2001 and May 17, 2001 and further discipline in April and May 2001 to establish there was further discipline within twenty-four months. The employer's position was that a record of suspension remains on an employee's personnel file if there is further disciplinary action within twenty four months even if the subsequent discipline is removed because of the passage of the agreed time without further disciplinary action.

I found the language of Article 28.01 was susceptible to both interpretations advanced by the union and employer. Progressive discipline is intended to make an employee aware of and modify unacceptable behaviour. A sunset clause like Article 28.01 is intended to reward an employee who takes the discipline seriously and demonstrates its corrective effect by performing for an agreed period with no further misconduct attracting discipline. If the employee does, then the employee's record is purged and he or she is given a fresh start. If there is a later disciplinary event, it is approached without the shadow of past discipline that preceded the period of discipline free service that earns destruction of the record.

The combined purposes of progressive discipline and sunset clauses favours the interpretation advanced by the union and this is the interpretation that I concluded was intended. This interpretation also avoids the anomalous result of the employer's interpretation that a record of older discipline is intended to survive forever while a record of more recent discipline will be destroyed and leave no basis to establish that the record of the older discipline is to remain forever.

I upheld the union's objection and ruled inadmissible the record of discipline the employer sought to adduce because it should have been destroyed in accordance with Article 28.01.

B. November 21, 2003 - Letter of dissatisfaction and warning

Mr. Sannes was given a letter of dissatisfaction by Mr. Stuart dated November 21, 2003.

I have spoken to you on numerous occasions concerning your performance. Once again I am reminding you that you are to follow procedures in place in the platemaking department. These procedures, whether working with the computers, film, the Lith-V, or coding plates for the pressroom, are to be followed without deviation. This also includes cooperating with fellow staff members at all times in the completion of all tasks assigned the department.

I am reminding you that the company views your refusal or inability to follow procedure as unacceptable. You are required to be more diligent and respectful of the over-all task at hand in carrying out your duties in the future.

Any future instances may result in disciplinary action up to and including dismissal. This letter will be placed on your personal file.

Mr. Sannes did not recall this letter. It was not memorable for him. He testified all the letters began "I have spoken to you on numerous occasions..."

C. November 26, 2003 - Five day suspension

Five days later, Mr. Sannes was suspended without pay for five shifts.

The letter states:

On numerous occasions we have disciplined you for not following company policy etc. These disciplines have included verbal and written warnings as well as discipline up to suspension. Most recently you were disciplined by letter for not following procedures and not co-operating with fellow employees.

It has come to our attention that you have placed ads, specifically in the University of Victoria Off Campus housing registry using a company phone number. This is contrary to company policy by using company phones for your personal interests. This policy Personal VS. Business Matters specifically outlines use of company equipment. The following policy is in place to guard against abuses.

"Company phones, facsimile machines, photocopiers and all other equipment/vehicles owned or leased by the company are for business use and are not to be used for matters of a personal nature without the approval of your manager."

It is obvious that you have complete disregard for company policy, procedures and equipment. Using company paid time, or company property, or company owned or leased equipment for matters of a personal nature without the approval of your manager is tantamount to theft. You are to have the company phone number removed immediately from any personal ads.

You will be suspended with out pay for five shifts starting November 26, 2003.

This letter will be placed on your personal file, any further incidents will lead to discipline up to and including termination.

The "Personal vs. Business Matters" policy had been circulated and posted by Mr. Laurin in 1997. Mr. Sannes testified he was not aware of the policy in November 2003. He testified he immediately obtained a cellular telephone. The suspension was not grieved.