

In The Matter of the Labour Relations Code of British Columbia
and
In the Matter of an Arbitration

Between

Victoria Times Colonist
A Division of CanWest Mediaworks
("the Employer")

And

Victoria-Vancouver Island Newspaper Guild, Local 223 of the Newspaper Guild
("the Union")

Re: McClintick Grievance

(C.A.A.B. No. 56714/07R)

**British Columbia
Collective Agreement Arbitration**

John M. Orr, Arbitrator

Heard in Victoria, B.C.: August 27 and 28, 2007
Award: September 10, 2007

Appearances:

N. David McInnes, Counsel for the Union

Michael H. Korbin, Counsel for the Employer

AWARD

1 In this matter the Union grieves a permanent job reassignment that was as an aspect of the discipline imposed upon Carol McClintick (the grievor) after it was discovered that she stole some Almond Roca chocolates at the workplace.

2 I was appointed on August 9, 2007 by the Collective Agreement Arbitration Bureau as sole arbitrator pursuant to section 104(4) of the *Labour Relations Code* (“the Code”). The parties agree that I have been properly appointed with jurisdiction to hear this dispute

OVERVIEW

3 Carol McClintick is 59 years old. She has worked for the Employer for 22 years. She worked at the front counter of the Times Colonist Newspaper offices in Victoria for the past 10 years. On July 10th, 2007, she opened a FEDEX courier package that was not addressed to her and stole a tin of Almond Roca belonging to a third party. When the theft was investigated Ms. McClintick denied the theft and lied several times to her supervisor. She also engaged in an attempt to cover up the theft with the assistance of another employee. When it was determined that Ms. McClintick had indeed stolen the chocolates she admitted the theft. Because she was a long term employee with no prior discipline she was not dismissed. However, she was suspended for four weeks and re-assigned to work at a different location from the front counter. The Union admits there was an act warranting discipline and agree that the suspension was appropriate but grieves the re-assignment aspect of the discipline.

THE INCIDENT

4 Although this grievance only relates to the disciplinary re-assignment it is necessary to review the circumstances giving rise to the discipline. Most of the following facts were not disputed except where I refer to conflicts in the evidence.

5 The background to the theft is that another female employee at the Times Colonist had arranged with her boyfriend for a tin of Almond Roca to be shipped from Seattle to her at work by FEDEX courier. Given subsequent events, it was unfortunate that the package was mistakenly shipped using the boyfriend’s name – “G. Benard”. Almond Roca is the trademark for a caramel almond chocolate that is marketed in the United States in an iconic pink tin. The value of the item itself was not in evidence but there was evidence that a replacement Canadian version in a box (not the famous tin) cost less than \$10.00 dollars.

6 On Tuesday July 10, 2007 the FEDEX package addressed to “G. Benard” was delivered to the Times Colonist. The package came to Carol McClintick at the front counter. It was a normal that she would receive incoming packages of all sorts and then pass the items on to the proper employee or department. Sometimes packages would only be addressed to “The Times Colonist”. In such cases, Ms. McClintick might open the package to look for information about the intended recipient. There are many unsolicited items sent to the

newspaper, ranging from soaps to books. These items are given to or sold for charities.

7 Ms. McClintick testified that when she received the FEDEX package addressed to G. Benard she checked her employee list and was unable to find an employee by that name. She says she called the telemarketing department because there were many temporary staff who may not have been on her lists. She says she was told that there was no G. Benard working there. Ms. McClintick then sent the package to the Editorial Department because she remembered that there had been a former employee there with the last name Benard. The package was returned to her unclaimed by anyone in the Editorial Department.

8 It is clear and acknowledged by Ms. McClintick that she had two proper options at that point. She could, and probably should, have contacted FEDEX for instructions as the package was addressed to a specific individual. She agreed that in other instances of misdirected packages she would phone the company and have them picked-up. Her other option would have been to consult with a supervisor for directions. Instead, Ms. McClintick decided to open the courier package. She explained her action by saying that she thought there might be more information about the intended recipient inside the courier package. There was no further information inside but the tin of Almond Roca was discovered.

9 For the balance of the workday the tin of Almond Roca remained at the front desk unclaimed. At the end of the day Ms. McClintick put the tin of chocolates in her bag and took them home. She admitted at the hearing that she knew it was wrong. She conceded that she knew it was a very serious act of misconduct and knew that she could be fired. Her only explanation was that because it was a food item probably nobody would know. Ms. McClintick took the Almond Roca to a friend's house that evening.

10 The next day, Wednesday July 11th, the Director of Human Resources, Cindi Robertson, was informed that the employee who had been expecting the FEDEX package had raised a concern that the package had been delivered to the Times Colonist but had gone missing. The employee asked if there was surveillance that might reveal what had happened to her package.

11 Ms. Robertson went to the front counter to talk to Ms. McClintick who acknowledged that she had seen the package come in. When asked if she knew where it was Ms. McClintick lied and said, "No". She told Ms. Robertson about sending it to Editorial the previous day. Ms. Robertson checked further and discovered that it had been returned to the front desk. Ms. McClintick again lied saying that she had left the package on the front counter when she left work the previous day. Ms. McClintick did not confess that she had taken the tin of chocolates home.

12 Ms. Robertson then made arrangements for someone to check if the security surveillance might be able to show what happened after the chocolates were returned to the front desk.

13 That evening Ms. McClintick decided to try to cover-up the theft. Having given away the original tin of Almond Roca, she purchased a box of Almond Roca. She was unable to find the chocolates in a tin but testified that she thought that if she gave the employee a box of chocolates "it would end".

14 The next morning, Thursday July 12th Carol McClintick tried to give the replacement box of chocolates to Cindi Robertson when they met in a hallway. Ms. McClintick proffered it to Ms. Robertson asking her to give it to the employee who was upset about losing her chocolates. Ms. Robertson noticed that the box being offered was a box of Almond Roca but at that stage did not "put two and two together". Ms. Robertson declined to accept the chocolates and told Ms. McClintick that it was not appropriate because management was investigating the missing package and checking the security video. Again, Ms. McClintick did not volunteer that she had stolen the chocolates and that she was trying to replace them.

15 Later that morning Ms. Robertson was advised that the missing Almond Roca had been found. It had been turned over to management by another employee, Sandra Kraft. When Ms. Robertson saw the "found" box of chocolates it looked exactly like the chocolates proffered that morning by Ms. McClintick. Ms. Robertson was getting suspicious but went again to speak to the grievor. She asked the grievor directly if the "found" box of chocolates was the same box that had been proffered that morning. Ms. McClintick twice absolutely denied the connection and said that her box of chocolates was in her purse and pointed at her bag. Ms. Robertson specifically asked the grievor if she was being honest about the chocolates and again the grievor failed to disclose the theft but rather said the chocolates were in her purse and that she was taking them home with her.

16 In reality, Ms. McClintick had revealed that morning to her friend and co-worker Sandra Kraft that she had taken the chocolates home and had tried to replace them. Ms. Kraft offered to help by delivering the replacement box as the original and saying that the chocolates had been found. Ms. McClintick went along with this plan and to continue the attempted cover-up. The plan went wrong because Ms. Kraft could not find the employee and gave the box to a supervisor to pass on to the employee. The supervisor notified Ms. Robertson. As noted above, when confronted by Ms. Robertson the grievor lied saying that her box of chocolates was in her purse.

17 Ms. McClintick now found that she had another problem to cover-up. She was worried that Ms. Robertson might ask to inspect her purse. She discussed this new problem with Sandra Kraft and it was decided to purchase yet another box of chocolates to be the one in the purse. Sandra Kraft was not called as a witness by either party and Ms. McClintick testified that this additional cover-up was Sandra's idea. Apparently, Ms. Kraft has since come forward and told management that it was her idea to purchase the second replacement box. In my opinion it matters little who came up with the idea. Carol McClintick was a party to this additional deception in the hopes of avoiding the discovery of the theft. Ms. McClintick gave Sandra Kraft \$10.00 to buy the chocolates. As Ms. McClintick had a dentist's appointment it was arranged that Sandra Kraft would purchase this second box of Almond Roca at lunch time.

18 According to the evidence before me, Ms. Kraft bought the second replacement box of Almond Roca and then went through an elaborate and public pretence of taking the chocolates out of Ms. McClintick's purse and placing them on the front counter for all to share. The presence of the Almond Roca at the front counter was soon reported to Ms. Robertson who attended again to the front counter and confirmed that the box of chocolates was there. She also discovered that Ms. McClintick was at the dentist.

19 Ms. Robertson called Sandra Kraft into her office. Kraft initially tried to maintain the cover up but finally disclosed her part in trying to deliver the replacement box and in purchasing another box to put in Ms. McClintick's purse. It was pretty clear to management at that point what had happened.

20 That evening Sandra Kraft telephoned Carol McClintick and let her know that she had confessed her part in the cover-up. Ms. McClintick testified that Sandra told her that Ms. Robertson had said there would be no discipline if Carol came clean about what happened. Ms. Robertson denied suggesting any such thing and Ms. Kraft did not testify. At any rate, the Union is not suggesting there was any promise made in this regard. Given the seriousness of the incident I doubt that Ms. Robertson made any such promise.

21 On Friday July 13th there was a telephone conversation between Carol McClintick and Ms. Robertson, a meeting was arranged and Ms. McClintick was advised to have Union representation present. There is some dispute about who initiated the telephone call. Ms. McClintick testified that she initiated the call because she wanted to confess to the theft. Ms. Robertson claims that she made the call first thing in the morning to arrange an investigative meeting based on the information she had already received from Sandra Kraft. I do not find this difference in the evidence to be of particular relevance because at that stage any unsolicited confession was too late to be a significant mitigating factor. If required, I would have accepted Ms. Robertson's evidence on this point given the grievor's lack of honesty up to that point.

22 At the investigative meeting Carol McClintick admitted to stealing the Almond Roca and to buying the first replacement box of chocolates. She admitted that she had lied to Ms. Robertson about the second box of chocolates being in her purse. However, she was still not completely honest as she told Ms. Robertson that she did not know who had bought the second replacement box. She did not disclose that she had given Ms. Kraft the money to buy the chocolates.

23 At a follow-up meeting on Monday morning July 16th Cindi Robertson read a discipline letter to Carol McClintick that stated in part:

Theft and dishonesty are two very serious forms of misconduct and leads management to believe that you cannot be in a position of trust. You were given opportunities to tell the truth but you chose to continue to lie. The only reason you confessed on Friday was because you knew you were caught. Yet, you continued to try cover-up your actions by implicating a third party. Your behaviour is egregious and unacceptable.

You are therefore suspended without pay for four weeks commencing immediately. Upon return to work you will be removed from the CSR position at the front counter on a permanent basis and placed into another full time CSR position. You will also apologize to G. Benard in writing prior to coming back to work.

24 Ms. McClintick testified that she apologized to those in attendance at the meeting and left the building. She subsequently wrote a letter of apology to G. Benard and also to the publisher of the newspaper. She served her 4 week suspension.

25 Since her return to work Ms. McClintick has been working at a different location in the Times Colonist offices. She is no longer working at the front counter. Her relocation has not resulted in a change of job classification, reduction in pay, loss of benefits or loss of seniority. Nevertheless, she personally perceives her relocation as being a severe form of discipline as she felt the front counter work was more desirable than her new duties. She also points out that her absence from the front counter is a very visible and daily reminder to her and everyone else in the workplace of her having been disciplined.

THE UNION POSITION

26 The Union stipulates that neither the grievor nor the Guild disputes or challenges in any way that what the grievor did was wrong. They agree that the Employer had just cause for discipline to the extent necessary to bring home to the grievor and even other employees that such behaviour will not be tolerated. However, the Union submits that such purposes have been met by the four week suspension.

27 The Union submits that there are two principles underlying what constitutes appropriate discipline. Firstly, discipline is required to be corrective in nature and not punitive and, secondly, that the principle of progressive discipline should be followed. It is suggested that my observation of the grievor testifying at the hearing should reveal that she has been embarrassed and humiliated in the eyes of her employer, her Union and her co-workers and that the seriousness of her misconduct has been brought home to her.

28 The Union characterizes the job re-assignment as a demotion and submits that a disciplinary demotion is generally not acceptable outside of paramilitary organizations such as firefighters: *Vancouver (City) v. Vancouver Firefighters' Union, Local 18, (Newmark Grievance)* [2004] B.C.C.A.A.A. No. 309 (Devine); *North Vancouver (Corp) v. District of North Vancouver Firefighters' Union, Local 1181 (Spence Grievance)*, [2006] B.C.C.A.A.A. No. 33. The Union also relies on the award of Arbitrator V. L. Ready in: *Emergency Health Services Commission and Ambulance Paramedics of British Columbia, CUPE Local 873 (Chan Grievance)* [1998] B.C.C.A.A.A. No. 121 in which he adopted the following definition of demotion:

The transfer of an employee to a job involving reduced pay or lower rank or to a job that is less responsible, prestigious or desirable.