

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.

29 The Union further submits that a permanent transfer, even if not strictly a demotion, may have such significant features as to be improper discipline: *Re: Alberta (Department of Justice) and A.U.P.E.*, (2003) C.L.A.S.J. 25266. It is submitted that the purpose of discipline is to effect correction and that an employee should be given the opportunity to effect correction while performing the same job under the same working conditions rather than being transferred: *Re: Campbellford Memorial Hospital and C.U.P.E., Local 2247*, (1990) 19 C.L.A.S. 518.

30 The Union refers to a letter dated November 18, 1999 from the Union to Ms. Robertson confirming that as a result of a negotiated work re-organization the position of telephone operator was being eliminated and the duties incorporated into a Front Counter (Circulation) position to be paid at the same rate as the Circulation Customer Service Representative ("CCSR") classification. As Carol McClintick was the telephone operator whose position was being eliminated it was agreed that she would be placed in the new Front Counter position and would not have to rotate through the other CCSR work schedules.

31 As it happened, the round of bargaining in progress and the subsequent collective agreement did not result in the Front Counter (Circulation) position being confirmed. The front counter position simply became another CCSR position. However, the Union submits that the fact that Carol McClintick maintained her role at that location for another 8 years demonstrates that the position had some special status that she has lost by her transfer to another location. Ms. McClintick perceives her new duties to be less desirable and less prestigious. She further notes 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.

32 Apart from the issue of whether the transfer constitutes a demotion the Union submits that the relocation is discipline that is excessive and that the four week suspension was sufficient discipline to effect correction. It is submitted that the grievor should be given the opportunity to prove herself by being returned to her duties at the front counter.

THE EMPLOYER POSITION

33 The Employer categorizes this matter as a serious case of theft, deceit and dishonesty. It is pointed out that the grievor knew that what she was doing was wrong but made a deliberate decision to steal the candy. It is pointed out that arbitral jurisprudence demonstrates that the value of the item stolen is not the issue but the dishonesty itself. It is also considered an employment offence even where the property stolen at the workplace belongs to a third party: *Purolator Courier and Teamsters, Local 938*, (1999) 58 C.L.A.S. 95; *Canada Safeway Ltd. and United Food and Commercial Workers' Union, Local 1518* [1997] B.C.C.A.A.A. No. 754 (*inter alia*).

34 It is submitted that in this case it was not an impulsive act as the grievor had lots of time to consider her decision. The grievor knew it was a serious act of misconduct that could result in dismissal.

35 The misconduct is characterized as a significant breach of trust because the front counter position involves the handling of mail and packages for the company and employees. It also involves the handling of cash and prizes that are distributed to readers as well as the receipt of unsolicited items such as books, make-up items and food products.

36 The Employer submits that the arbitrator should take into account the actions of the grievor following the theft. Was there demonstrated remorse and contrition? In this case the Employer submits that there was not but rather there was a pattern of lies and attempts to cover-up the theft. The grievor also allowed another employee to become involved in her attempts to cover-up the theft. The Employer submits that these actions demonstrate that the Employer is justified in not placing the grievor in a position of trust such as the front counter.

37 The Employer submitted that there were at least five outright lies over the course of the three days and several opportunities for the grievor to have come-clean about the theft and show remorse and to apologize. It is submitted that she did not do so until she was caught and even at the investigative meeting the grievor was not completely forthright.

38 The Employer submits that in light of the theft and dishonesty, both of which are serious employment offences, the Employer could have terminated Ms. McClintick's employment. The Employer submits that the suspension and removal from the front counter do not constitute double punishment but two aspects of the discipline. The issue of double punishment was not argued by the Union. The Employer submits that removal from the front counter is necessary and reasonable because the work at the front counter is unsupervised and involves access to packages, money and a wide range of items of varying value that arrive unsolicited. The Employer says the grievor has more than demonstrated that she cannot be trusted in that capacity.

39 The Employer argues that as the jurisprudence supports a dismissal in these circumstances then surely being removed from the front counter duties is a much less severe consequence of her behaviour and is in all respects a balanced and reasonable response to the incident. I am referred to the section on workplace theft in *Canadian Labour Arbitration* by Brown, Beatty and Deacon (April 2007) section 7:3300. I will not review all of the extensive authorities on this subject as the Union does not dispute that the incident was a serious employment offence. Suffice it to say that barring some exceptions dismissal is well supported by the case law.

DECISION

40 Usually in disciplinary matters the first task for the arbitrator is to determine whether the grievor's action have given sufficient cause for the imposition of some form of discipline: *Wm. Scott & Co. Ltd and Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 Can L.R.B.R.1. In this case I am not required to undertake that analysis because the parties agree that some form of discipline is fitting in these circumstances. However, the parties disagree significantly about the degree of discipline that is warranted. It seems to me that, in large measure, the reason for that dispute is because the parties characterize the incident differently.

41 As noted, the Union is not disputing that the theft of the Almond Roca was a serious matter and is not disputing the four week suspension which has already been served but characterize the incident as a one time momentary lapse in judgment by a long term, discipline free, employee. The Employer, on the other hand, perceives the situation as a deliberate and conscious breach of trust compounded by a series of lies and deceit over a three day period.

42 The Union also characterizes the act of moving the grievor to work elsewhere than the front counter as a disciplinary demotion but the Employer sees it as a necessary relocation that is a reasonable response to the loss of trust arising from the incident. Given the considerable jurisprudence surrounding the issue of disciplinary and non-disciplinary (sometimes referred to as "pure") demotions it is first necessary to decide whether or not the move constituted a "demotion".

43 The evidence before me is that the grievor has been moved from the front counter to work at another location on another floor in the Times Colonist offices. She is working in close proximity to other CCSR staff. The work is different in that she no longer has in-person contact with the public but she still spends much of her time on the telephone as before dealing directly with customers. The grievor certainly perceives the move as a demotion and humiliating. This is especially true because she has held the front counter location for some 10 years even through reorganization.

44 On the other hand, the evidence is that the work now being done by the grievor does not involve any change in job classification. Importantly, there is no loss of seniority rights. It does not mean any lower rank (as in the Firefighter cases). There is no change in the hours of work. There is no change in pay scale or loss of overtime or benefits. There is no impact on personal life such as additional travel time or cost. The evidence indicated that co-workers in the new location are being very supportive. Apart from the personal feelings of the grievor there is no evidence that the other CCSR jobs are perceived by others as less desirable or less prestigious.

45 In my opinion, while I have compassion for Carol McClintick's embarrassment, I cannot find that objectively speaking the reassignment can be characterized as a demotion. Although arbitrator Ready in the Chan Grievance¹ *supra* equates the term "transfer" with demotion it seems to me that interpretation only applies if the transfer has the same impact or effect as an actual demotion. Arbitrator Ready found that Chan was being moved into a temporary position on a "trial" basis with a significant loss of job security and a limited ability to apply for other positions. There was also no question that when Chan was transferred his pay was reduced to the extent that he did not receive the overtime that he did previously. Arbitrator Ready also found that the move "effectively removes the grievor's ability to exercise his former EMD classification seniority rights"².

¹ Emergency Health Services Commission and Ambulance Paramedics of British Columbia, CUPE Local 873 (Chan Grievance) [1998] BCCA No. 121

² *Supra* paragraph 36.

46 In this case, even if the move could be considered a transfer, it did not impact the grievor's current financial situation or future earning power nor did it involve any change in job classification, loss of job security or seniority rights. In my opinion the change in work location is not demotional in nature or effect even if the grievor finds the location less desirable.

47 I am not persuaded that the letter of November 18, 1999 created any proprietary right for the grievor in the front desk position. I read that letter as a transitional arrangement stemming from the elimination of the grievor's previous position as the telephone operator. It was superceded by the subsequent collective agreement that also eliminated the transitional Front Counter (Circulation) position.

48 In *Horizon Operations (Canada) Ltd. And C.E.P.U., Local 2000* [2000] 93 L.A.C. (4th) 47 Arbitrator Coleman noted that arbitrators have consistently ruled that, subject to the collective agreement, there is no proprietary right to a particular bundle of duties, and that as a rule, management has the right to reorganize assignments within existing classifications: *Corporation of City of Victoria and CUPE Local 50* (1982) 2 L.A.C. (3d) 368:

The movement of an employee from one job to another within the same classification is an issue which has often been arbitrated. The predominant view which emerges from the case law is that an employee has no claim to any particular job within a classification, in the absence of explicit contractual language creating such a right.

The parties stated that there was no language in the collective agreement in effect at the time that was relevant to this situation.

49 Given that I have concluded that the change of job location within the workplace is not a demotion or demotional transfer the remaining issue is whether the discipline imposed was excessive in all of the circumstances. Was the four week suspension sufficient discipline to effect correction and should the grievor be given the opportunity to prove herself by being returned to her duties at the front counte?

50 As noted, the Union is not disputing that the theft of the Almond Roca was a serious matter and is not disputing the four week suspension which has already been served but characterize the incident as a one time momentary lapse in judgment by a long term, discipline free, employee. The Employer, on the other hand, perceives the situation as a deliberate and conscious breach of trust compounded by a series of lies and deceit over a three day period.

51 In my opinion this incident cannot properly be characterized as a momentary lapse in judgment. In this case the grievor is indeed a long term employee who had worked in a position of trust with little or no supervision for over ten years. She had the experience and knowledge to know that she was trusted and to know that theft of property at the workplace was a serious employment offence. She knew she could face dismissal. She knew that even opening a FEDEX courier package addressed to a specific individual was wrong. She knew she should have called FEDEX to notify them of the misdirection yet she chose to wrongfully open the package. The opening of the package was the start of a deliberate pattern of deceit that continued for three days.

52 It could be that the wrongful opening of the package belonging to a third party could have been later considered a momentary lapse of judgment if that was all that happened. However, the grievor discovered the tin of Almond Roca and rather than report the situation or seek advice from a supervisor she consciously and with some forethought, which involved getting rid of the packaging, stole the property by putting it in her bag and removing it from the premises. She thought the matter through sufficiently to believe that because it was a food item it would not be noticed and she would "get away with it".

53 The aggravating factors in this case are the deliberateness of the theft itself combined with the lies and the attempted cover-up thereafter. The Employer identified five direct and face-to-face lies told to management over the next two days. In each case the grievor had the opportunity to demonstrate some remorse or contrition for her act by disclosing the truth of what happened. Throughout, the grievor showed no inclination to assist her employer in resolving the issue for the victim of the theft. In fact, the grievor compounded the issue by allowing another employee to become involved in her attempts to avoid discovery. This other employee now also faces discipline because of the grievor's actions. The grievor only finally admitted the theft when her deceit was already discovered. Even then, she was not fully disclosive and honest with her Employer. There has been no explanation offered for the theft nor any extenuating personal circumstances that might explain the grievor's actions.

54 The mitigating factors in this case are that the grievor has worked for the Employer for some 22 years. She has worked at the front counter in a position of trust with little or no supervision for over ten years. There is no record of previous discipline. Being caught in this act of theft has had a significant personal impact, including creating difficulties at home. She has felt embarrassed and humiliated at work. She expressed remorse at the hearing. She has served a four week suspension and has written letters of apology to G. Benard and to the publisher.

55 While the Union is correct that discipline should normally be corrective and progressive in nature there are exceptions. Arbitral jurisprudence demonstrates that theft and other forms of dishonesty are considered serious forms of misconduct that can result in heavy sanctions including discharge. As the learned authors Brown and Beatty put it:

Such behaviour is seen as antithetical to the trust that is an essential part of all viable and productive employment relationships. In the words of one arbitrator, "If employees must be constantly watched to insure that they honestly report their comings and

goings, or to ensure that valuable tools, materials and equipment are not stolen, the industrial enterprise will soon be operated on the model of a penal institution.³

56 Despite the very serious nature of the theft and deceit in this case the Employer did not impose the ultimate penalty of discharge but took into account the mitigating circumstances of this particular employee. It is abundantly clear to me on the evidence in this case that the grievor's behaviour is antithetical to the degree of trust required of an employee working at the front counter, where a significant amount of trust is involved given the wide variety of transactions that occur at that location involving money, goods and prizes. If I were to return the grievor to that location the Employer would be forced into that very state of constant watchfulness that is the antithesis of a positive work relationship or environment.

57 In my opinion the Employer's response to the grievor's behaviour has been measured, just and extremely reasonable given all of the circumstances surrounding the incident and the grievor's personal background and employment history. I can see no reason to interfere with the discipline imposed or to apply my remedial authority provided in Section 89 of the Code.

Accordingly, for the reasons expressed above, the grievance is denied.

Dated at Victoria, British Columbia this 10th day of September, 2007

John M. Orr

John M. Orr, Arbitrator

³ Canadian Labour Arbitration (Fourth Edition), Canada Law Book, April 2007, p.7-50, para.7:3310