10-31-1997

Re Canada Post Corp and CUPW (Beal)

Innis Christie

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IN THE MATTER OF A FORMAL ARBITRATION

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS

(The Union)

and

CANADA POST CORPORATION

(The Employer)

RE: *Shawn Beal, Discharge* CUPW No. 078-95-00199

BEFORE: Innis Christie, Arbitrator

HEARING DATES: April 11 and August 7, 1997

AT: Moncton, New Brunswick

FINAL WRITTEN SUBMISSION: August 14, 1997

FOR THE UNION: Ed Johnson, Regional Union Representative
Wayne Mundle, National Director, Atlantic
Ron Paschal, Moncton Local President
Dave Tripp, Moncton Local 1st Vice-President

FOR THE EMPLOYER: Terry Roane, Counsel
Don McDonald, Labour Relations Officer
Joseph P. Doucette, Labour Relations Officer
Eugene Mitton, Superintendent Letter Carrier Depot #2, Moncton
Mike Deschamps Superintendent Letter Carrier Depot #1, Moncton
Wayne MacArthur, Supervisor

DATE OF AWARD: October 31, 1997

23

Union grievance dated November 13, 1996 alleging breach of the Collective Agreement between the parties bearing the date January 31, 1995, and in particular of Article 10.01 in that the Employer discharged the Grievor without just, reasonable and sufficient cause. On behalf of the Grievor the Union requests that he be reinstated and compensated for all lost rights, earnings and benefits, with interest. At the hearing the Union submitted that a suspension of six months, the period for which the Grievor had then been off work, be substituted.

At the outset of the hearing in this matter the parties agreed that I am properly seized of it, that I should remain seized after the issue of this award to deal with any matters arising from its application, and that all time limits, either pre- or post-hearing, are waived.

AWARD

The Grievor had been a temporary letter carrier for two years when he was discharged by letter dated October 25, 1996, from K. R. Mole, Manager of Mail Operations in Moncton. The substance of the letter is in the following passages:

> The purpose of this letter was to confirm your admitted unauthorized use of **2 COAN's** [Change of Address Notifications] which you submitted to Canada Post to have your personal mail redirected. You also admitted that you did not remit any of the appropriate fees for this service.
>
> ...
>
> As a result of your actions you have breached the fundamental bond of trust that must exist as an employee of Canada Post. You abused your position as a temporary letter carrier to gain a personal benefit. This action cannot be condoned.
>
> Therefore, effective October 25th, 1996 you are discharged from Canada Post Corporation; your name will be removed from the temporary list. ...

The Grievance in this matter was filed on November 13, 1996.

At the time of his discharge the Grievor had been a temporary Mail Service Courier and then a temporary Letter Carrier, working out of the Employer's Mark Avenue and Waterloo Depots. He was a temporary employee "covered by paragraph 44.01(a)" so, by virtue of Article 44.29, Article 10, with respect to discipline, suspension and discharge, applied to him (except article 10.10, which is not relevant here). There was no prior discipline on his record.

I have decided that, notwithstanding the fact that the Grievor committed a relatively minor fraud and notwithstanding my conclusion that a temporary employee under this Collective Agreement is not to be judged by the standards applicable to probationary employees in the general arbitral jurisprudence, this Grievance must be dismissed. In what follows I will first set out the facts as I have found them, with discussion of the evidence where it was conflicting on relevant points, then state the specific issues and give my reasons for reaching this decision.

The Facts. According to the letter of discharge the Grievor was discharged for improperly filling out and filing Change of Address Notification (COAN) forms. The established procedure where there is a change of address is for the customer whose address has changed to go to a postal outlet and fill in a three-copy COAN form, except for the shaded portions. The wicket clerk dealing with the customer then fills in the shaded portions, indicating, among other things the amount paid, initials it and gives the pink copy to the customer. Since January 1, 1996, the charge for the service involved in a change of address has been $30.00. There is no special procedure for employees.

The entire COAN form then goes to the Central redirect Labelling Module (CLAM) unit, which deals with all redirected mail. On the basis of the information on the COAN a letter carrier/clerk in the CLAM unit fills in a hand-written Redirection Card, which is sent to the letter carrier from whose walk the customer has moved, to be kept in the appropriate pigeon-hole. The clerk then sends the white copy of the COAN to Halifax, where it is the basis for the production of a typewritten Redirection Card and labels which the CLAM unit then uses to re-address the mail. The yellow copy of the COAN is filed in the CLAM unit.

I am satisfied on the evidence that, as a courtesy to a customer, it is not uncommon in Moncton for a letter carrier to hold mail on his or her unit at the request of a supervisor or of another letter carrier for up to two weeks, until the customer can get to a postal outlet to fill in and pay for a COAN. The same courtesy might well be extended to a letter carrier who is moving. These practices are proper where a supervisor is involved. It is not disputed that they are done, but the Employer does not regard them as proper procedure where no supervisor has given permission. Apparently, it has also happened that to expedite this a letter carriers have filled in Redirection Cards before the COAN has been processed.

The evidence is that there has never been a practice of letter carriers filling in COANs. According to the Grievor he got into the difficulties and did the things that led to his discharge because of "financial stress". He testified that he had paid for a COAN when he moved to an apartment on Frampton Lane on June 1, 1996, but shortly thereafter moved to an apartment on Regina Street, then to one on Queen Street and then to one on Railway Street with his common law partner. He testified that at the time he had

thought he could change the COAN on file as an "extension" of the COAN for the move to Frampton Lane, and had not realized until his disciplinary interview that he had to pay $30.00 each time he notified the Employer of a change of address.

Although there is no trace of the COAN the Grievor says he paid for at the Red Cap postal outlet at the Moncton Mall, for the move from Frampton Lane to Regina Street, for the purposes of this proceeding I am prepared to accept that he thought this had been done. His evidence was that a friend had done this for him. He had given the friend $20., because he thought the cost of a COAN was $19.50, and had never been given a receipt or been asked for more money. If this is true, probably the "friend" simply pocketed the $20.00.

The Grievor then filled in two COAN forms and filed the yellow copies in the CLAM unit, for his subsequent changes of address. Both yellow copies are in evidence. On both there is something that looks like "NL" in the space for the "initial" under the heading "accepting office". I find that that mark was put there by the Grievor. Those "yellows" show that $19.50 plus G.S.T. was paid. I note that this is consistent with the Grievor's testimony that he had failed to realize that the price had gone up to $30 on January 1, 1996. It was also, of course, both an indicator that the two COAN's had not been issued properly and tied them to the Grievor.

The Grievor admitted in cross-examination that he had taken the COAN forms in evidence, #'s 17793716 and 17, from a pad of forms at the Mark Avenue depot, filled them in and filed the yellow copies in the CLAM unit. I note that this involved the destruction of the white copies as well as the surreptitious filing of the yellow copies. I

have no doubt that at the time, as well as later, the Grievor knew this was something he had no possible business doing, and tried to hide. I do not accept that he was mistaken about this, because of a lack of proper training or for any other reason.

The Grievor also admitted in cross-examination that in the second week of September, 1996, he completed a "Redirection Card" for himself and his partner which is in evidence and which shows the "Effective Date" as "96/07/01", with the "Old Address" as "81 Regina St. #5" and the "New Address" first as "172 Queen St. #1" and then as "7 Railway Ave. #1". He admitted that he put this card in the case for Walk 19, without telling the letter carrier on that walk, and, in effect, dated it to make it look as if the change had been paid for. He also filled in three other Redirection Cards which are in evidence.

The Grievor was caught because he was observed going through the mail at another letter carrier's desk.

I find that the Grievor's admissions at the hearing in this matter and the COAN's and Redirection Cards, which he admitted are in his handwriting, constitute clear and convincing evidence that he filled in and filed the COAN's to make it look as if he had paid for them, and then filled in Redirection Cards to ensure that his mail and his partner's would be redirected to 7 Railway Avenue.

I find that the Grievor filled in and filed the COAN's and the Redirection Cards to avoid paying for the changes of address and to avoid discovery that he had not paid. I reject as false his evidence that at any time he thought he was entitled to a further change of

address free, as an extension. I accept the testimony of Dave Tripp, Moncton Local 1st Vice-President, that, in practice, letter carriers often continue to redirect mail for customers, and for one another, after the period paid for and covered by a COAN. I do not accept that in filling in and filing the COAN's and the Redirection Cards in question here the Grievor thought he was acting in accordance with this practice.

The Grievor's explanation of what he did was very much tied up with a particular bank letter to his partner which had been sent to Queen Street. I not think the specifics of that letter or his attempt to retrieve it from the mail stream are relevant, other than that both he and his partner thought it very important to get the letter, which caused him to try to short-circuit the mail process by getting it back from the letter carrier on the Queen Street walk. This is probably what resulted in the Grievor being caught for his forged COANs, but does not appear to me to be relevant to the issue before me. It did not, and does not, in any way justify what he did, and it was not a basis for the discipline imposed by the Employer. There is nothing in the letter of discharge with respect to this and I find it to constitute evidence of a new ground for discipline rather that after-acquired evidence supporting the grounds relied upon by the Employer, so I have not relied on this evidence and find it unnecessary to set it out here.

The evidence before me with respect not only the Grievor's attempt to intercept the bank letter in question might well go to credibility, but I have found it unnecessary to rely on it in that respect either.

The Grievor acknowledged that what he did in filing a COAN without paying for it was "very wrong", and apologized, with assurances that if reinstated he would never do it

again, stating that at the time he knew had had to pay the same as any customer, but did not realize the "harshness" of what he had done. This, of course, was inconsistent with the fact that in other aspects of his testimony he maintained the position that he had thought he was entitled to free "extensions" of his first COAN. I note, too, that, while the overall effect was that the Grievor made these admissions at his disciplinary interview, his answers there were far from straightforward. He testified that his answers in the course of his disciplinary interviews were inconsistent because he "wasn't sure how to answer to keep his job."

The Grievor testified that his experience as a letter carrier was that when a fellow letter carrier, or a letter carrier's close relative, moved, it was common practice for the letter carrier doing the sorting to hand over the mail "in the cut" on request. He testified that Supervisor Wayne MacArthur had told him that this was "okay" where it involved another letter carrier. However he agreed in cross-examination that no one had ever told him at any time, nor had he ever read anything, that led him to believe that he could "extend" a COAN for free. Nor had he ever asked anyone if he could do that.

The Issues. The central issue is whether the Grievor's admitted wrongdoing justified discharge. This requires an assessment of the seriousness of what he did. Did it amount to fraud? It also requires a systematic assessment of the other factors generally considered relevant in determining whether discipline imposed by an employer is appropriate, specifically those factors generally considered in determining the appropriateness of discharge. There is also an issue of the standard to be applied in determining whether there was "just, reasonable and sufficient cause", in accordance

with Article 10.01 of the Collective Agreement, for the discharge of a temporary employee under this Collective Agreement.

Decision.

The seriousness of what the Grievor did. Was it Fraud? I agree with the submission of Counsel for the Employer that what the Grievor did here was "a deliberate stratagem". It was a fraud on the Employer in that the Grievor , at least twice, knowingly appropriated to himself without paying for it a postal service to which he knew was only entitled for a fee.

For the Union, Mr. Johnston submitted on the Grievor's behalf that if the Grievor had simply asked a supervisor to have the letter carrier on each the streets he was moving from hold his mail, according to practice that would have been done, so his wrongdoing here was very minor and caused no loss to the Employer. I do not accept that submission. The practice established on the evidence was that if the Grievor had asked this would probably have been done, but only to allow him time to get, and pay for, a proper COAN. As counsel for the Employer submitted, there is no suggestion in the evidence that the Grievor had the slightest intention of ever paying for the service he appropriated to himself. Fraudulent intent is clearly established to the applicable standard of proof.

With respect to **the applicable standard of proof,** where what is sought to be proved in a labour arbitration amounts to criminal conduct the civil burden applies, to be discharged by evidence that is clear and cogent in the context. The elaboration of this

opinion is best stated in my unpublished October 17, 1991, award between these parties in *Woodward*, CUPW Gr. No 054-88-00162, where I say, at pp. 12 and 13:

> Counsel for the Union cited cases to the general effect that the burden of proof at arbitration is the civil burden, but that burden may be heavier where the facts sought to be proved would establish the commission of a serious crime. In the words of Lord Denning in *Bater v. Bater*, [1950] 2 All E.R.458 at p.459:
>
> > In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous so ought the proof to be clear. So also in civil cases. The case many be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court...does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.
>
> That statement is said to have been accepted by Chief Justice Laskin, speaking for the Supreme Court of Canada in *Continental Insurance Co. v. Dalton Cartage C. Ltd.*(1982), 131 D.L.R. 559 when he said, at p.564;
>
> > I do not regard such an approach as a departure from a standard of proof on the balance of probabilities nor as supporting a shifting standard. The question in all civil cases is what evidence with what weight that is accorded to it will move the Court to conclude that proof on the balance of probabilities has been established.

In *Woodward*, as here, I found it "unnecessary ... to consider just what the employer's burden is in a case ... where the act complained of undoubtedly constituted a crime,

perhaps a serious one but not an "enormous" one, to use Lord Denning's word, because the civil burden had clearly been discharged".

Here the proven value of what the Grievor appropriated was only $60.00, so the serious question is **whether, in all the relevant circumstances, this relatively minor criminal misconduct justified his discharge**. In *Woodward*, at pp. 10 and 11, I set out a comprehensive list of the factors generally considered relevant in determining whether discipline imposed by an employer is appropriate, and specifically the factors generally considered in determining the appropriateness of discharge. I did this by quoting from the succinct and clear statement in the unreported decision of arbitrator Thistle between these parties in the grievance of *Gagnon* (1989) 8 LAC(4th) 97 at pp. 113-4:

> These have been extensively reviewed in numerous awards, the most often-quoted is *Re U.S.A.W., Loc. 3257 and Steel Equipment Co. Ltd.* (1964), 14 LAC 356 (Reveille) at pp. 356-8. The factors include the previous good record and long service of the grievor, whether or not the offence was an isolated incident in the employment history of the grievor, whether the offence was a momentary aberration or premeditated, whether the penalty imposed has created a special economic hardship for the grievor in the light of her particular circumstances, whether the company policies have been uniformly enforced, thus constituting a form of discrimination, whether there are circumstances negativing intent, and how serious the offence is in terms of company policy and company obligations.
>
> Mitigating circumstances of particular relevance in discharge for theft cases were summarized in *Re Canadian Broadcasting Corp. and CUPE* (1979), 23 LAC (2d) 227 (Arthurs) at p.230:
> (1) *bona fide* confusion or mistake by the grievor as to whether he was entitled to do the act complained of;

(2) the grievor's inability, due to drunkenness or emotional problems, to appreciate the wrongfulness of his act;
(3) the impulsive or non-premeditated nature of the act;
(4) the relatively trivial nature of the harm done;
(5) the frank acknowledgement of his misconduct by the grievor;
(6) the existence of a sympathetic, personal motive for the dishonesty such as family need, rather than hardened criminality;
(7) the past record of the grievor;
(8) the grievor's prospects for likely good behaviour, and
(9) the economic impact of discharge in view of the grievor's age, personal circumstances, etc.

I note the application of the Arthurs list by Arbitrator Outhouse in his recent unreported award in *NSGEU v. Nova Scotia Liquor Commission* (July 31, 1997) which was referred to by counsel for the Employer.

As I have already made clear, I do not find that there was any confusion or mistake by the Grievor as to whether he was entitled to fill out and file the COANs here. There was no impediment to his understanding the wrongfulness of his act, and he did understand that. His acts, although minor if not trivial, were premeditated, and not impulsive, as the Grievor's act appeared to have been in *Woodward.* As I have already indicated in setting out the facts as I have found them on a balance of probabilities, there is clear and consistent evidence that this was deliberate and planned conduct, which the Grievor knew at the time to be improper. It is significant to me that this was not only a case in which the Grievor knew what he was doing was wrong, it was not a "spur of the moment" wrong-doing. It was planned, and repeated, fraudulent activity.

Although the Grievor here acknowledged that he had done wrong and apologized at the hearing I am not prepared to credit him with "the frank acknowledgement of his misconduct". It may be that if the Grievor were to reinstated he would have learned his lesson. That was what he said at the hearing, but I did not find him particularly convincing on that score. It is probable that, as at his disciplinary interview, he was saying what he thought would best protect his job. He still did not seem to have come to recognize that his elaborate explanation about his partner's lost cheque had only to do with how he came to be caught and nothing to do with justifying what he did. Indeed, throughout his testimony I was never clear on whether he was still trying to escape responsibility by confusing the issue, or simply had not thought his way through what was wrong with what he had done and was grasping at inappropriate rationalizations.

Whichever the case I did not feel assured, nor, I think, would the Employer, that as a result of this experience the Grievor would become a more trustworthy employee than he had shown himself to be when he was discharged. While, on the evidence, I certainly would not consider him by any stretch a "hardened criminal", he did not establish what I would consider a "sympathetic, personal motive" for his dishonesty. As counsel for the Employer stressed, his need to recover his partner's bank letter had nothing to do with the forged COANs.

The Grievor's past record was clear, and there was no relevant evidence with respect to "age, personal circumstances, etc.", except that which left a general impression of irresponsible youth. Had this case involved a single impulsive act of fraud I would have weighted this evidence more heavily.

With respect to how serious the offence is in terms of Employer's policy and obligations, I accept the proposition asserted by the Employer and accepted by arbitrators in the past that the nature of the letter carrier's largely unsupervised work makes it more dependent on trust than many other jobs. The Employer has an important responsibility to the public, to its customers, to protect their property and their interest in the proper and prompt delivery of the mail. It can only fulfill that responsibility if it insists on a similar responsibility in its letter carriers, because it cannot oversee their every move. That is why arbitrators have upheld the application of strict standards in cases of theft from, or intentional failure to deliver, the mail.

Fraud is no different from theft in this respect, but this is a case of fraud on the Employer itself, not fraud on a customer. In my opinion that does change the standard somewhat. Nevertheless, when a letter carrier demonstrates lack of trustworthiness in any context the Employer must make a careful judgement about his or her likely future behaviour. This it does not only to protect itself, as any employer is entitled to, but because of its responsibility to ensure that its largely unsupervised letter carriers fulfil Canada Post's responsibility to its customers.

The sample **arbitration awards put before me by counsel** clearly indicate that the Employer has applied a strict standard of discipline to Employees guilty of theft of fraud. In *Nadeau* (Unreported, December 3, 1995, CUPW Gr. Nos. 100-GG-24544, 545 and 141) Arbitrator Rouseau held that a minor but repeated postage meter fraud justified the discharge of a ten year wicket clerk with a clean record. I refer also to the awards cited by Arbitrator Michel Picher in *Nicholson* (Unreported, September 25, 1995, CUPW Gr. No. 626-92-2-05374) at pp.11 and 12.

On the other hand, the Union introduced four awards where, on facts somewhat similar to those before me here, the arbitrator ordered that an employee discharged for fraud on the Employer be reinstated with an appropriate period of disciplinary suspension. These include my own award in *Woodward*, from which I have already quoted extensively. It suffices to say that that was a case of the fraudulent alteration of a medical certificate, which, as it turned out, cost the Employer nothing, and, most significantly, involved a single impulsive, act.

In *Barr* (Unreported, March 5, 1993, CUPW Gr. No. 580-92-00087) Arbitrator Hinnegan reinstated a supervisory employee who had been discharged for taking, without authorization, a cracked and chipped rear tail-light lens cover from a Canada Post vehicle scheduled for disposal at auction. That case is distinguishable not only by the very minor nature of the crime but also by the fact that the Grievor there had fourteen years of service with no discipline, and was straightforward in his admission of guilt when discovered.

In *Goulet* (Unreported, August 13, 1996, CUPW Gr. Nos. 350-92-9112 and 9111) Arbitrator Lauzon reinstated a letter carrier who had taken mail from letter carriers for other routes, with their complicity, to deliver early to friends and acquaintances. Notwithstanding some facts whch suggested otherwise, the arbitrator appears to have treated this as a case of special, although unauthorized, service to customers rather than a case where the employee sought to benefit himself. Without a first hand knowledge of the facts sketched in the award I will make no further comment on the outcome there.

More directly relevant than any of these three awards is the award of Arbitrator Picher in *Nicholson* cited above which, rather like this case, involved a grievor who entered her own, her spouse's and their company's changes of address into the Canada Post system without paying for the service involved. However, in that case there was only one proven instance of such fraud, the grievor was found to have been on disorienting medication at the time, and she was a fourteen year employee with a clean record.

In *Smith* (Two awards, unreported, May 29, 1995 and October 15, 1996, CUPW Gr. No. 626-92-126666) Arbitrator Frankel reinstated an employee discharged for knowingly filling in incorrect delivery times on his priority courier report forms, although the Employer took the position, as here, that this involved a breach of the trust essential to that grievor's work as a mail service courier. This result was maintained in the second "final" award even after it was established the there were two one-day suspensions on the grievor's record, for failing to make deliveries on time and for failing to report an parking lot accident. I have concluded that the nature and circumstances of the alleged "breach of trust" in *Smith* clearly distinguish it from the fraud before me here, and made it less serious. I do note, however, that, like the Grievor here, Smith was a two year temporary employee, but was nevertheless ordered reinstated.

The standard to be applied under the current Collective Agreement between these parties in determining whether there was "just, reasonable and sufficient cause" for the **discharge of a temporary employee** with two years seniority is a serious issue here. It is important, therefore, that in the *Smith* awards Arbitrator Frankel addresses the standard to be applied in assessing the justness of the discharge of a temporary employe under the previous Collective Agreement.

Ms. Roane, counsel for the Employer, submitted that there is a lower standard for temporary employees, although, she submitted, on the evidence here there would have been just cause here for discharging a regular employee.

For the Union, Mr. Johnston stressed that the words of the Collective Agreement with respect to temporary employees are new in the 1995 Collective Agreement. It was established, he submitted, relying on Arbitrator Frankel's awards in *Smith*, cited above, that even under the Collective Agreement preceding the current one temporary employees were not to be equated to probationary employees for purposes of determining the standard of misconduct that justified discharge. He also cited the award of Arbitrator Frankel in *Temporary Employee* (Unreported, November 9, 1996, CUPW Gr. No. 560-95-00198) in which the learned arbitrator conveniently summarizes his own conclusions on this point in the *Smith* awards and considers the effect of the new language in the current Collective Agreement, which gives temporary employees significant seniority rights, particularly when, like the Grievor here, they fall within the terms of Article 44.01.

At p. 17 of *Temporary Employee*, cited above, Arbitrator Frankel says;

> In the submission of counsel for the grievor, however, the current collective agreement has introduced a significant change in the status of temporary employees who possess the requisite seniority.

He then discusses Article 55.02 and his awards in *Smith* and concludes on this point, at p. 18,

> Given the language of art. 44 in the current collective agreement, I tend to agree with the union that the notion of a lesser standard of just cause for article 44.01 temporary employees has become quite irrelevant.

Mr. Johnston referred to Article 55.02, which provides:

> **55.02 Probation**
>
> There shall be a probationary period of three (3) months starting with the first (1st) day of work for any regular employee newly hired by the Corporation.
>
> However, there shall be no probationary period of a temporary employee who is appointed to a regular position if that employee has completed six(6) months of continuous employment as a temporary employee.

Like Arbitrator Frankel in *Temporary Employee* I will not attempt an authoritative analysis of the probationary elements in the employment of Article 44.01 employees under the current Collective Agreement. The Grievor's contract and other obviously relevant evidence was not before me and I did not hear full argument on the issue.

However, for purposes of a grievance against discharge for what the Employer claims is just cause allegedly in breach of Article 10.01, I agree with Arbitrator Frankel's tendency to think "that the notion of a lesser standard of just cause for article 44.01 temporary employees has become quite irrelevant".

This is even more true under the current Collective Agreement than under its predecessor, to which Arbitrator Frankel was referring when he said in the second *Smith* award, at p. 8 (quoted in *Temporary Employee* at p. 18);

> In light of this scheme of accruing rights in the bargaining unit, it is not reasonable to equate those "long term" employees with probationary employees - in the generic sense - who are being assessed for their suitability for regular positions by "employers to whose judgment arbitrators continue to show substantial deference". Arbitrator Picher in *Tyrell* sensed this distinction when he stated "... it is, therefore, important to be cognizant of the work setting, the relationship of the employer and employee [the collective agreement] and the purpose of the specific term contract arrangement in determining the standard of just cause that is appropriate in each case". The distinction is not without general significance for employer-employee relations in our present-day work environment where persons are increasingly employed on contracts for determinate periods of time and, in most cases, are denied the protections and benefits of their co-workers in regular jobs.

In conclusion on this issue; I have considered the Grievor's conduct against the same standard I would use if he were a regular full-time employee, not a probationer, but bearing in mind that he is a two year, not a long term, employee.

I recognize that the Grievor has no previous discipline on his record. However, the **principles of progressive discipline** do not preclude discharge in an appropriate case, such as theft or fraud, where the employee can be assumed to have known that what he was doing was clearly contrary to his employment obligations and would breach the trust essential to a continuing employment relationship, particularly in the case of an employee with relatively brief seniority.

I have re-read and considered the passage from Brown and Beatty *Canadian Labour Arbitration* (looseleaf, para. 7:4422) quoted by Arbitrator London in *Young* (Unreported, November 3, 1995, CUPW Gr. No. 856-92-00980; CPC Arb. No. 466785W), at pp. 33-5, on "Rehabilitative Potential", to which I was referred. I find nothing in that statement of the somewhat varying views of Canadian arbitrators which leads me to disregard the factors I have identified as weighing against the substitution of lesser discipline here.

Conclusion and Award. After considering all of the factors set out above and the awards cited to me, I find that the Employer has discharged the onus upon it of proving that the Grievor was discharged for just, reasonable and sufficient cause. The grievance must therefore be dismissed.

Innis Christie

Arbitrator