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### Re Canada Post Corp and CUPW (Morgan)

Innis Christie

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IN THE MATTER OF A REGULAR ARBITRATION:

BETWEEN:

THE CANADIAN UNION OF POSTAL WORKERS  
(The Union)

and

CANADA POST CORPORATION  
(The Employer)

07 296 080

RE: *Morgan S.*

CUPW No. 096-03-01893

BEFORE: Innis Christie, Arbitrator

HEARING DATE: October 4, 2007

AT: Halifax, N.S.

FOR THE UNION: Doug Smith, Union Representative  
Jean Francois Savoie, Union Representative  
Larry Gladue, Grievance Officer, Nova Local

FOR THE EMPLOYER: Ellen Campbell, Labour Relations Officer  
Joe Doucette, Labour Relations Officer  
Adam Lintaman, Superintendent Mail Operations, Shift 3  
Steve McPhee, Shift Supervisor, Shift 3

DATE OF AWARD: OCTOBER 14, 2007

Union grievance, submitted on March 19, 2007, on behalf of Sylvia Morgan alleging breach of the Collective Agreement between the parties bearing the expiry date January 31, 2007, in that the Employer violated Articles 5,10, 35 and 56 and all other related articles by imposing a three day suspension without just, reasonable and sufficient cause. The Union sought an order that the Employer pay damages to compensate the Grievor for what she lost as a result of the suspension and remove all documents relating to this incident from her personal file.

The Parties agreed that I am properly seized of this matter and that I should remain seized after the issue of the Award to deal with any issues arising directly from its application.

### AWARD

**Introduction.** This is a matter of a three day suspension which involves a factual dispute between the parties as to what exactly occurred in two instances upon which the suspension is based, and the issue of whether the discipline imposed was appropriate.

**The Facts.** The Grievor, who is a fifteen year employee at Canada Post, was disciplined in the terms and on the grounds set out in the following letter from Adam Lintaman, who was acting Superintendent on Shift #3 in the “distribution products” section of the HMPP, which is on her personal file:

28 February, 2007

Sylvia Morgan;

I am writing further to a scheduled interview with you on Wednesday February 28, 2007 at 17:00. The purpose of the interview was to discuss:

- 1) Your angry outburst toward fellow employee Dawn Huntley at approx. 1745 on February 26, 2007.
- 2) Your raising you hand as if to hit a fellow employee Sam Snow at approx. 1810 on the same date.

In attendance at the interview were Shop Steward Celeste Currie, Supervisor Scot Hawthorne, yourself and the undersigned.

During the interview you stated that you did not feel you had done anything wrong. That you just come to work and try to "do your job." You claimed that you raised you voice to Dawn because it was loud in the workcenter and that you were attempting to move around Sam when he felt threatened. I stated that is the third documented incident of inappropriate behaviour in as many months and I asked why employees would come to me, in tears and visibly shaken, and make these claims. You replied to this that you "did not harass anyone" and asked me if you were "going to work or not".

Sylvia, as I stated in the interview I am very concerned about you and your future employment at Canada Post. I offered our Employee Assistance Program to you, even offering to help schedule the initial meeting. Again I cannot stress enough how serious this matter is. Your angry outbursts and threats of physical violence have no place at Canada Post or any workplace at all. I strongly encourage you to seek assistance to help you express yourself more appropriately.

I also reviewed your personal file which contains the following letters:

December 29, 2006	Inappropriate Behaviour	3 Day Suspension (2 Waived, 1 Served)
October 06, 2006	Late Arrival	2 Day Suspension (Waived)
June 29, 2006	Late Arrival	1 Day Suspension (Waived)
March 20, 2006	Late Arrival	Disciplinary Letter
March 08, 2006	Work Performance	Disciplinary Letter

Based on this incident and the previous letters on your file this misconduct will carry a three day served suspension. I will count this suspension as having been served on the following days:

February 26, 2007 – February 28, 2007 inclusive.

I would like to take this opportunity to inform you that further misconduct will be subject to disciplinary action which may include discharge from Canada Post.

A copy of this letter will be placed on our personal file.

Adam Lintaman, the Superintendent who wrote this letter, testified about the disciplinary interview it describes and with reference to two signed "complaint" documents passed on to him by Supervisor Scot Hawthorne, who had spoken to the Grievor after the incidents referred to in the disciplinary letter and whom he had instructed to conduct an investigation. For the Union, Mr. Smith objected that the complaint documents were hearsay. Indeed, they were double hearsay, because it was Supervisor Hawthorne who took the statements and then passed them on to the witness, Superintendent Lintaman. I allowed the two documents into evidence, but have accorded them significantly less weight than I would have had I heard testimony from Supervisor Hawthorne or, best of all, the authors of the documents. As I said in my companion Award in RE: *Morgan S.*, CUPW No. 096-03-01772, dealing with an earlier incident for which the Grievor was disciplined:

This is a "regular" arbitration under the Collective Agreement. Article 9.66 provides:

9.66 The hearing shall be conducted in the most informal and expeditious way that is possible according to the nature of the grievances and all the circumstances.

This does not mean that the grieving party or, in the case of discipline, the Employer, need not prove its case. It does, however, mean that the rule in the arbitration jurisprudence that the fact that evidence is hearsay does not result in its exclusion but simply goes to its weight, is particularly applicable.

The most relevant passages in the first of the two complaint documents, dated February 26, 2007 and signed by Donna Huntley, a co-worker of the Grievor, are:

I covered "decision parcels" table for Jesse Comstock for about five minutes. During this time an altercation occurred with Sylvia Morgan and myself. She was working the Premium Ball Table and sending up "Sobey's" mail improperly. I pulled the 3 bags from the belt and asked her to please hand them over to Scott

Blackburn, as Sobey's flats are always in a flatainer. She took them from me and threw them back up the belt and I told her they were supposed to be in a flatainer, to which she argued that Scot Hawthorne had told the group "if it can fit through the rollers, it does not go up the belt." I replied to Sylvia that that statement was true except for Sobey's, which always gets put in a flatainer. And I handed the 3 bags back to her. She again threw them up the belt and she didn't care and was just doing her "fxxxing" job.

The statement goes on to describe how the altercation escalated to the point where the belts became clogged, the Grievor told Ms. Huntley she was preventing her from doing her "fxxxing" job correctly and Ms. Huntley "told her to stop being a bitch and that if she was doing her 'fxxxing' job correctly" Ms. Huntley would not have to pick up after her. Ms. Huntley states she then complained to Supervisor Hawthorne, who then moved the Grievor to a different task. Subsequently, she goes on to state, the Grievor came back to the section with Shop Steward Celeste Currie, and started again to tell Ms. Huntley that she wanted to be left alone when she worked. Ms. Huntley states that she said that at times they had to work as a team and communicate. She continues, "She said she didn't care. We both started to get angry again so Celeste stepped in between us and made Sylvia go back to her work station".

Superintendent Lintaman testified that Ms. Huntley was correct about the treatment of the Sobey's mail. He testified that it was not at all unusual for co-workers to discuss procedures, particularly where, as in this case, there was no clear statement in any manual. The appropriate thing, he said, would have been to get a supervisor to clear up the disagreement. He also testified that in his interview with the Grievor and Supervisor Hawthorne he had learned that the inappropriate language used by the Grievor had been said in a very loud voice. He testified in cross-examination

that he had counselled Ms. Huntley verbally against her use of profanity in reply, but, based on her clean record, took no other disciplinary action against her.

The Grievor testified that she had been working with her earphones on, listening to music, and did not understand what Ms. Huntley was saying to her; that all she saw was parcels being “thrown back” at her twice, “and then the supervisor was there.

I quote again from what I said in my companion Award in RE: *Morgan S.*, CUPW No. 096-03-01772, dealing with an earlier incident for which the Grievor was disciplined, this time about the Grievor's credibility as a witness:

I did not find the Grievor to be a credible witness. In her testimony in this matter, as well as with respect to the other of the two Grievances heard simultaneously about which she testified, my impression was that she testified with little regard to the truth. Her concern, rather, was to say whatever she conceived at the moment would best serve her interests in this arbitration. This was evident both in her demeanour in the witness chair and in inconsistencies and shifts in her testimony, for instance with respect to whether she had heard what the employee who complained had said to her.

Notwithstanding the double hearsay nature of Donna Huntley's statement of the altercation over the Sobey's mail on February 26, I accept it as essentially factual.

The second of the two complaint documents, dated March 8, 2007 and signed by Sam Snow states:

On Feb 26.07 I was going to break at 6:15 pm, when passing Sylvia Morgan she gestured to me in a threatening manner by raising her arm as if to swing at me.

The Grievor testified that she had done no such thing, that she had merely raised her hand to her face as she passed Mr. Snow in the close quarters of the lane lines painted on the floor.

I find the evidence of this incident presented by the Employer to be so limited that I accept the Grievor's testimony on this, in spite of her general lack of credibility. She was not effectively cross-examined on this point nor was her testimony on this specific point otherwise impugned.

Mr. Lintaman apparently found the Sam Snow incident more disturbing than the evidence before me suggests, because when he heard about it he issued an emergency suspension at 1915 hours, which required the Grievor to leave the workplace. He told the Grievor to return on February 28, the date of her disciplinary interview, notice of which was given on February 27. He testified that he feared for the Grievor's safety and the safety of her fellow workers. On the basis of evidence before me, this seems to have been an over-reaction, although I appreciate the difficult situation of management fearing physical violence in the workplace.

This Grievance was one of three heard together. In connection with all three the Union called Ross Gould as a witness. Mr. Gould, who has been a shop steward but held no union position at the time any of the incidents which are the subjects of these Grievances occurred, works on Shift #3 with the Grievor. She has, on occasion, voiced concerns to him about her work situation. He testified with respect to the atmosphere in which the Grievor worked at the time. She had been transferred from the dock to distribution which resulted in some unhappiness among her fellow workers because it upset some of the schedules established by bidding. There were rumours that she would not fit in and some of her fellow employees did, in fact find



her difficult to relate to. He emphasized the stressful atmosphere of their workplace, because of activity, noise and production pressure.

When the Grievor complained to him about two employees in particular, Mr. Gould advised her to speak to a shop steward. The same two employees, one of whom was Donna Huntley, complained to Mr. Gould about their difficulties in getting along with the Grievor.

Mr. Gould also testified that it is not uncommon to hear swearing on the floor, in joking and serious terms, and that in his experience it did not result in discipline unless it was directed at a supervisor.

For the Employer Adam Lintaman, the Shift Superintendent, testified that he did not think the work situation in distribution where the Grievor worked was any more stressful than many others at the HMPP or any other industrial situation. He had not had an undue number of complaints.

**The Issues:** 1. For the Union Mr. Smith submitted that the Employer had relied heavily on hearsay evidence, which should be discounted, and had therefore not proved its case. 2. He also submitted that in imposing a three day suspension the Employer relied improperly on the Grievor's disciplinary record. 3. Mr. Smith also submitted that the Grievor had been provoked by Donna Huntley and should not, therefore, have been disciplined for her outburst over the Sobey's mail, or had been too heavily disciplined.

**Decision.****1. The Employer relied heavily on hearsay evidence, which should be discounted, and had therefore not proved its case.**

I have already addressed the hearsay issue in my finding of fact above. As I said, this is a “regular” arbitration under the Collective Agreement. Bearing that in mind, I have found the Grievor’s inappropriate language in her altercation with Ms. Huntley properly gave the Employer some cause for discipline. On the other hand, I have found that the Employer has not proved that the Grievor’s behaviour toward Mr. Snow properly warranted any discipline at all.

**2. The Employer relied improperly on the Grievor’s disciplinary record.**

Mr. Lintaman’s February 28, 2007 letter suspending the Grievor for three days states:

Based on this incident and the previous letters on your file this misconduct will carry a three day served suspension.

I agree with the Union that there are some difficulties with this. First, progressive discipline generally cannot be based on totally unrelated past behaviour. Therefore, while the March 8, 2006 discipline for deliberately poor work and disregard for customer impact was properly taken into account, the Grievor’s record of tardiness could not properly have been taken into account in determining the discipline appropriate for her behaviour in the altercation with Ms. Huntley. It is, of course, unclear how heavily this aspect of the Grievor’s record weighed in Mr. Lintaman’s decision to impose a three day suspension.

Second, Mr. Lintaman clearly took into account the Grievor's 3 Day Suspension (2 Waived, 1 Served) on December 29, 2006 for "Inappropriate Behaviour". At the time he acted entirely appropriately in taking that discipline into account, but in my companion Award in RE: *Morgan S.*, CUPW No. 096-03-01772, I have reduced that discipline to a 1 day suspension. I must now assess the appropriateness of the discipline imposed here on the basis that the December 29, 2006 discipline was for only one day.

**3. The Grievor was provoked by Donna Huntley and should not, therefore, have been disciplined for her outburst over the Sobey's mail, or was too heavily disciplined.**

On the evidence before me I do not find that the Grievor's inappropriate outburst was provoked by Donna Huntley. Ms. Huntley responded to the Grievor rather than provoking her, apparently in a way that was also inappropriate, and was verbally counseled for that. I have no basis for saying that counseling was inappropriate given her clean record, or that it demonstrates unfair treatment of the Grievor.

**Conclusion and Order.**

I have found that the Grievor's outburst toward Donna Huntley on February 26, 2007 warranted some discipline, but that her behaviour toward Sam Snow, upon which the Employer, in part, based the imposition of the three day suspension, warranted none. I have also found that the Employer based the imposition of the three day suspension in part on the Grievor's previous suspension for three days, with two days waived, which has now been reduced to one day. The Employer appears also to have taken

improperly into account the Grievor's record of tardiness. Because of these considerations I think it appropriate to reduce her suspension.

Based on the Grievor's outburst toward Donna Huntley on February 26, 2007, the ungrieved March 08, 2006 disciplinary letter for poor work performance and what I now treat as a one day suspension for inappropriate behaviour on December 29, 2006 on her file, I have decided that the appropriate discipline would have been a two day suspension. She is to be compensated for all losses resulting from the third day of suspension.

Innis Christie  
Arbitrator

