RE LUMBER & SAWMILL WORKERS' UNION, LOCAL 2537, AND KVP CO. LTD.

J.B. Robinson, C.C.J., D. Wren, R.V. Hicks, Q.C. *May 30, 1965.*

Discharge — Just cause — Principles examined — Garnishees. Management rights — Rule making power.

EMPLOYEE GRIEVANCE claiming unjustified discharge.

D.W. Labelle, N. Chouinard, I. Fournier for the union.
D.K. Laidlaw and *D.W. Gray* for the company.

AWARD

The grievor, Raoul Veronneau, at the time of discharge by the company was working as a mechanic at camp 500 at Ramsey, Ontario, which is about 104 miles west of Sudbury on the Canadian Pacific Railway.

The grievor had been working for the company for about 8 years and it was common ground that he was a good mechanic and the company had no fault to find with his ability and willingness to do his job; in fact Mr. Chapman, the woods mechanical supervisor, said he did not want to lose a good mechanic such as the grievor and I believe there was some suggestion that in June, 1964, when the grievor was discharged good mechanics were not readily available.

However that may be the grievor was discharged on June 24, 1964, on the ground that his wages had been garnisheed three times since December 1, 1963, contrary to company policy as to garnishees.

The discharge of the grievor was grieved and the grievance which gives rise to this arbitration as filed at stage III of the grievance procedure (see ex. U-1 filed) reads as follows:

> "The Union maintains that the discharge of Mr. Raoul Veronneau on June 24th, 1964, is unjust, and, therefore, request re-instatement of the employee with full compensation for loss of earnings.
>
> "D.W. Labelle"

Institution of Company Policy

Filed as ex. U-5 at the hearing was a photo copy of a letter from the company to the union the body of which is as follows:

"October 21, 1963.

Lumber and Sawmill Workers'
Union, Local 2537,
495 Spruce Street,
SUDBURY,
Ontario.

Attention: Mr. D. Labelle,
President

Dear Sir:

Re: Wage Assignments and Garnishees

For your advice and information we attach copies of notices which are being posted immediately on all camp bulletin boards for the information and guidance of woods employees, and which will be brought to the attention of new employee at time of hiring.

Yours truly,
THE KVP COMPANY LIMITED,

D.W. Gray,
Manager of Woodlands.

Attached:"

The copies of notices referred to in ex. U-5 above were also filed as exhibits U-6 and U-7 respectively and I reproduce each below:

Exhibit U-6

"October 21, 1963.

NOTICE

RE: GARNISHEES

Effective December 1st, 1963, any employee on whose behalf the Company is obligated to process more than one garnishee, will be discharged.

D.W. Gray,
Manager of Woodlands."

Exhibit U-7

"October 21, 1963.

NOTICE

RE: WAGE ASSIGNMENTS

Effective December 1st, 1963 any employee who obligates the Company to process on his behalf, through the medium of wage assignments, more than a single deduction, will be discharged.

D.W. Gray,
Manager of Woodlands."

Findings of Fact

There is a large measure of agreement as to the facts and the issue between the parties is essentially a challenge by the the union of the right of the company to *unilaterally* introduce rules or regulations of this nature which necessitate termination of employment.

Very little, if anything, turns upon the question of credibility and consequently the board chairman is prepared to make the following findings upon the facts:

(1) that the company notices, see exs. U-6 and U-7 above, were posted on the bulletin boards in the camps and such notices were written in both English and French;

(2) that, although the grievor could not read or write, he was aware of the contents of the notice because "other guys told me if garnisheed would be laid off";

(3) the grievor himself said he also got a letter from the company, handed to him by the camp clerk and "other guys told me – they get the same letters", and he agreed this letter could have included the two notices as to garnishees and wage assignments (see exs C-1 and C-2);

(4) that on or about January 29, 1964, the company was served with a garnishee on the wages of the grievor in the amount of $7.99 – Dr. J. Mysak, judgment creditor, and sent cheque for $7.99 to the First Division Court, Sudbury, on February 3, 1964;

(5) that on or about May 29, 1964, the company was served with a garnishee on the wages of the grievor in the amount of $43.55 – St. Joseph Hospital, judgment creditor and

sent cheque for $43.55 to the First Division Court, Sudbury, on June 2, 1964;

(6) that on or about June 23, 1964, the company was served with a garnishee on the wages of the grievor in the amount of $23.80 — Dr. R.S. Shaw, judgment creditor and sent cheque for $23.80 to the First Division Court, Sudbury, on June 26, 1964;

(7) that in each case after the company was served with a garnishee the woods accountant at Espanola would write to the camp clerk at Ramsey so advising him and ask the camp clerk to issue a cash order for 30% of his present balance up to the amount claimed in the garnishee, payable to the First Division Court at Sudbury;

(8) the amount of such cash order would, of course, be deducted from the grievor's earnings and upon receipt of the cash order the woods accountant would forward a cheque to the Division Court Clerk at Sudbury in the amount of the cash order;

(9) that the $7.99 for the Mysak garnishee was deducted from the grievor's earnings for the period January 16 to February 25, 1964;

(10) that the $43.55 and $23.80 for the other two garnishees referred to in paras. (5) and (6) above were deducted from the grievor's earnings for the period May 26 to June 25, 1964;

(11) that, although the grievor did not recall the conversation (but refused to deny that it took place) Mr. Chapman, the woods mechanical supervisor, spoke to the grievor in late January, 1964, and told him he had had a garnishee and if he got another it would mean discharge;

(12) that about June 3, 1964, Mr. Chapman took the grievor to see Mr. Frank Dunne, the logging superintendent, because of the second garnishee (St. Josephs Hospital — see para. (5) above) and Mr. Dunne thinking that this second garnishee was a first garnishee told the grievor he had better consolidate his debts and he would be given time off to see a lawyer to arrange this;

(13) that the grievor had little to say on this occasion but he did say that he did not know whether or not it was his debt as most of his brothers' first names started with R;

(14) that on this occasion Mr. Chapman did not tell Mr. Dunne that the St. Josephs Hospital garnishee was a second one because he did not want to lose a good mechanic;

(15) that while the grievor was away on leave of absence for Monday and Tuesday, June 22 and 23, 1964, the camp clerk at Ramsey received notice of the third garnishee (Dr. R.S. Shaw) and Mr. Dunne instructed Mr. Atherton to send a letter of discharge filed as ex. C-7 which reads as follows:

"Ramsey, Ontario,
June 23, 1964.

Mr. Raoul Veronneau,
Camp 500,
Ramsey, Ontario.

Dear Mr. Veronneau:

I have received notification that you have been served a garnishee on your wages in the amount of $23.80 to Dr. R.S. Shaw.

This is your third garnishee since the notice concerning garnishees effective December 1, 1964. This notice limits the number of garnishees to two.

I am therefore compelled by Company policy to inform you for the reason of three garnishees since December 1, 1963 that your services will no longer be required by this Company.

Yours truly,

John S. Atherton

For: J.F. Dunne
District Superintendent.

c.c. H.A. Supple
W.R. Chapman

Veronneau away at present – this letter to be given to him on his return.

J.S.A."

(16) when the grievor reported for work on Wednesday, June 24, 1964, he was told by the garage foreman to see Mr. Chapman who told him that he had to discharge him under

the terms of company policy because of the garnishees and told the grievor to see Mr. Dunne;

(17) on Monday, June 29, 1964, the grievor saw Mr. Dunne, the district superintendent and Mr. Dunne said there was not much he could do for him as his discharge was due to company policy as to garnishees.

Effect of Lack of Management's Rights Clauses

As a general rule collective agreements include a management's rights clause reserving to the company the right to manage the plant and direct the working forces including the right to hire, promote, transfer, demote and lay-off employees and to discipline or discharge employees for cause provided that the exercise of such rights by the company shall be subject to all the other terms of the collective agreement including the provisions as to the grievance procedure.

In this case, however, it is common ground that this collective agreement with which we are concerned does not include any management's rights clause whatever.

However, art. 1 – purpose includes the following provisions:

> "This Agreement, moreover, seeks to provide for fair and peaceful adjustments of all disputes that may arise between the parties"

and art. VIII – adjustment of grievances includes the following provisions:

> "8.01 It is the mutual desire of the parties hereto that complaints of employees be adjusted as quickly as quickly as possible and it is generally understood that an employee has no grievance until he has given to his foreman an opportunity to adjust his complaint.
>
> "8.03 A grievance under the provisions of this Agreement is defined to be any difference between the parties or between the company and employees covered by this Agreement involving the interpretation, application, administration, or alleged violation of any of the provisions of this Agreement.
>
> "8.04 . . .
>
> Stage 3 – Within ten (10) days the matter shall be taken up by officers of the Union and/or their representatives with the Woods Manager of the Company

or his representative. The one exception to this procedure shall be in the special case provided under Clause 8.08 of this Article. In this case the matter may be taken up by the employee himself, or with the knowledge and consent of the employee, by Union representatives by presenting the case to the Woods Manager or his representative in writing.

"8.08 *A grievance arising from a claim by an employee that his discharge or suspension by the Company was unjust or contrary to the terms of this Agreement.* must be dealt with in writing by both parties and must be presented to the Company not later than ten (10) days after the discharge or suspension becomes effective. Grievances dealing with discharge or suspension shall be processed in the first stage whenever possible.

Where such an employee's grievance is not processed from the first stage before he leaves the camp it may be processed starting at the third stage of the grievance procedure. *In case of discharge or suspension by the Company, the Company will notify the employee in writing of the reason for such discharge or suspension. In the event that an employee is found by an Arbitration Board to have been unfairly discharged or suspended by the Company, the Company agrees that the employee will be reinstated on his job under terms and conditions decided by the Arbitration Board."* [emphasis added.]

"8.10 Grievances which involve Company policy in respect to the interpretation, application, administration or alleged violation of the Agreement may be processed commencing at Stage Three of this grievance procedure."

I quite agree with Mr. Hicks that there is a clear definition of the powers of this board outlined in art. 8.06 of the collective agreement in the following words:

"8.06 It is understood that the function of the Arbitration Board shall be to interpret and apply this Agreement and that it shall deal only with the specific question, as submitted and shall have no power to alter, add to, or amend this Agreement."

Nevertheless the provisions of art. 8.08 which are italicized above make it abundantly clear that this arbitration board is vested with the jurisdiction to review the action of the company in discharging the grievor or determine whether or not the discharge was unjust or contrary to the terms of the collective agreement or unfair under all the circumstances.

Consequently the instant case must be distinguished from

(1) the decision of Professor Bora Laskin in *Re Int'l Chemical Workers Union, Local 424, and A.C. Horn Co. Ltd.* (1953), 4 L.A.C. 1524, where it was decided the board had no power to review the discharge as it was a function of management and there was not included in the collective agreement any power to review, through the grievance procedure, the exercise of such function; and also from

(2) the unanimous decision of a board of arbitration chaired by professor C.H. Curtis, in *Re United Steelworkers, Local 4632, and Dominion Magnesium Ltd.* (1956), 4 L.A.C. 40, where it was held that the board of arbitration had no authority under the collective agreement to rule on the question of the justness of the grievor's discharge; due to lack of a provision in the collective agreement authorizing it to do so; and also from

(3) the decision of His Honour Judge R.S. Clark, C.C.J. in *Re United Steelworkers, Local 4850, and English Electric Co. Ltd.* (1957), 7 L.A.C. 203, where the collective agreement provided that the company had the right to discharge "for cause" and as no mention was made in the agreement of "just cause" or "proper cause" the learned arbitrator held that he was prevented from determining whether the cause was or was not a just cause.

In connection with the above it is of interest to note that in *Re United Electrical Workers, Local 527, and U.E.W. & Peterborough Lock Mfg. Co. Ltd.* (1951), 3 L.A.C. 935, the majority decision of a board of arbitration, chaired by His Honour Judge Lang, held that an arbitration Board has an implied power to review a discharge in the absence of expressions such as "for just cause", or "for reasonable cause" qualifying the rights of the company to discharge or discipline employees.

At p. 936 of the report the board majority makes these observations:

"It will be noted that the usual words which occur after the phrase "discipline and discharge any employee", such as "for just cause" or "for reasonable cause" do not appear in this Contract and therefore it was argued there is no basis on which a Board of Arbitration can overrule the Company's decision to discharge this employee. However, the Board cannot agree with that view. If there is no provision in the Contract then we must fall back on the English Common Law to find out whether the Company was justified in discharging the employee or not."

Company or Plant Rules

In General

While the making of rules appears to be considered to be an inherent right of management, unless taken away by the terms of the collective agreement *R Cane Workers, Local 354, and American Can. Co. of Canada Ltd.* (1963), 14 L.A.C. 297, Judge W.S. Lane, board chairman) yet a review of arbitration cases over the past seventeen years has convinced the board chairman that the general principle appears to be well established that company rules and regulations must be consistent with the terms of the collective agreement.

In this respect I refer to the following:

(a) *Re United Electrical Workers, Local 524, and Canadian General Electric Co. Ltd.* (1951), 2 L.A.C. 688 at p. 690, *per* Professor B. Laskin.

(b) *Re United Electrical Workers and Canadian General Electric Co. Ltd.* (1951), 3 L.A.C. 899 at p. 901, *per* Professor B. Laskin.

(c) *Re U.A.W. and Ford Motor Co. of Canada Ltd.* (1952), 4 L.A.C. 1265, *per* Judge H.D. Lang.

(d) *Re United Brewery Workers, Local 232, and Carling Breweries Ltd.* (1959), 10 L.A.C. 25 at p. 28, *per* Judge Eric Cross.

In award (c) above His Honour Judge Lang, sole arbitrator, made this observation at p. 1265 of the report:

"The Company, however, cannot make rules or formulate policies contrary to the Collective Bargaining Agreement."

Rules Negotiated by the Parties

Where the parties to the collective agreement have agreed to the company rules which are referred to it or attached to the collective agreement by way of appendix then it is clear that a breach of such rules so agreed to will be followed by the agreed upon penalty and the arbitration board will not interfere.

See in this connection *Re U.A.W. and Fruehauf Trailer Co. of Canada, Ltd.* (1951), 2 L.A.C. 781, where the company rules were listed as appendix "A" to the collective agreement and made part thereof and included a rule providing for discharge for a first offence of consumption of liquor on company property.

At pp. 782-3 of the report His Honour Judge Cowan, sole arbitrator, made these remarks:

> "It is not left, however, to the Arbitrator to determine in his own mind whether the action of Mr. Gray is to be condoned or excused, or whether the company have been inconsiderate in regard to the penalty that has been imposed upon him. The Union and the Company have determined for themselves, under the two clauses I have referred to above. . . . Clause 9 of the company rules, definitely prescribes the penalty. Once the offence has been proved the Company had no option but to impose the penalty.
>
> "A Board of Arbitration cannot set up rules which would vary or amend the rules and regulations which the Company and the Union have both agreed upon."

Rules Unilaterally Introduced by the Company

Although a board of arbitration will not interfere with a penalty imposed by the company in accordance with rules jointly agreed to by the parties yet the situation may be quite different when the disciplinary action taken by the company is the result of an infraction of a company rule unilaterally introduced by the company.

Thus in *Re United Electrical Workers, Local 524, and Canadian General Electric Co. Ltd.* (1951), 2 L.A.C. 688, Professor B. Laskin, chairman, in delivering the majority decision in a discharge case involving fighting on the company property during working hours made these observations at p. 689:

> "The Company has, however, unilaterally set out a number of plant rules with indicated penalties for infractions, and these are posted throughout the plant. In doing this the

> Company has given its interpretation of the scope of its disciplinary powers. . . . While the published rules may be controlling for the Company in what they cover, they are not, of course, controlling under the Agreement except as they may be found to square with 'reasonable cause.'"

I refer also to the following remarks by Professor Laskin at p. 690 of the report:

> "It need hardly be emphasized that the Company's plant rules are not binding on this Board. What is binding is the Agreement between the parties. The rules are merely an advance indication by the Company of how it proposes to exercise its disciplinary powers. In any particular instance of discharge the Company's action must find acceptance in an arbitration Board's view of reasonable cause. . . . This Board is not called upon to dictate to the Company how it should formulate its rules. The Board's function is to deal with a particular application of discipline for an assigned cause."

I refer also to *Re United Steelworkers, Local 4487, and John Inglis Co. Ltd.* (1957), 7 L.A.C. 240, in which Professor Laskin, chairman, in dealing with a rule unilaterally imposed by the company, in respect to reporting when absent from work without leave, wrote the majority decision, which found that the company rule was an arbitrary one, and made this observation at p. 247:

> "Certainly, it is no novel doctrine to hold that the company may not promulgate unreasonable rules and then punish employees who infringe them."

The editor's note to this case found at p. 241 of the report states that:

> "The impact of this award, however, is that unilateral rules imposed by a company cannot be unreasonable in their application . . ."

In the case of *Re United Brewery Workers, Local 232, and Carling Breweries Ltd.* (1959), 10 L.A.C. 25, the late Judge Eric Cross, sitting as sole arbitrator, clearly stated his views with respect to company rules unilaterally imposed in the following language at p. 28 of the report:

> "The company in order to maintain order and discipline and efficiency may for that purpose publish whatever bulletins it deems necessary. In the present case . . . the company was within its rights in stating what its policy should be with respect to the type of penalties it proposed for certain offences. The chief purpose this serves in so far as the employees are concerned is that it places them on notice that certain disciplinary action will be taken where certain offences are committed.
>
> "The company could not, however, by the mere publication of such a bulletin, relieve itself from the responsibility of imposing discipline for just cause. The employees' rights under the agreement cannot be impaired or diminished by a company bulletin, but only by agreement of the parties. Under the agreement an employee has the right to grieve in the event that he is disciplined without just cause and an arbitrator hearing such grievance must determine whether or not just cause existed for the discipline imposed."

In *Re Council of Brewers' Warehousing Workers and Brewers' Warehousing Co. Ltd.* (1955), 7 L.A.C. 216, a board of arbitration, Magistrate S.T. Bigelow, Q.C., chairman, was dealing with the discharge of the grievor for drinking during his lunch period. The company rules involved had been unilaterally introduced and prohibited drinking during "working hours." The arbitration board unanimously held that the company rule did not make it clear whether "working hours" included the lunch hour and reinstated the employee.

The editor's note to this case at p. 216 of the report reads in part as follows:

> "The main concern of the board was that whenever an employee's actions are to be regulated by the unilateral decision of a company the employee must be made aware of those regulations. It is thus a twofold issue: (1) the notice must be in clear and unequivocal language; and (2) the notice must be brought to the attention of the employee."

That a plant rule must be brought to the attention of an employee before the company can act upon it as a basis for taking disciplinary action would appear to be only common sense and authority for such a principle, if any is required, may be found in the case referred to immediately above and also in *Re*

General Truck Drivers' Union, Local 938, and Gill Interprovincial Lines (1958), 9 L.A.C. 111, the unanimous decision of a board chaired by Judge Walter Little, and in a decision by Judge W.S. Lane in *U.S.W.A. & Galt Metal Industries,* reported in the U.S.W.A. publication, *Arbitration*, vol. 1, p. 1/112, in which case the discharge of an employee for violating a plant rule as to breakage was upset because the rule was equivocal.

In *Re Retail, Wholesale & Department Store Union, Local 414, and Dominion Stores Ltd.* (1961), 12 L.A.C. 164, an arbitration board, Judge R.W. Reville, chairman, held that for a breach of company rules and regulations to justify a discharge, it must be affirmatively established that (1) the rules in question were clearly brought to the attention of the employee concerned; (2) the employee must have been notified that a breach of the rules could result in his discharge; and (3) the rules must have been consistently enforced by the company from the time of their inception.

Recapitulation re Rule Unilaterally Introduced by the Company

For convenience the above may be summarized as follows:

I – *Characteristics of Such Rule*

A rule unilaterally introduced by the company, and not subsequently agreed to by the union, must satisfy the following requisites:

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee affected before the company can act on it.
5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
6. Such rule should have been consistently enforced by the company from the time it was introduced.

II – *Effect of Such Rule re Discharge*

1. If the breach of the rule is the foundation for the discharge of an employee such rule is not binding upon the board of

arbitration dealing with the grievance, except to the extent that the action of the company in discharging the grievor, finds acceptance in the view of the arbitration board as to what is reasonable or just cause.

2. In other words, the rule itself cannot determine the issue facing an arbitration board dealing with the question as to whether or not the discharge was for just cause because the very issue before such a board may require it to pass upon the reasonableness of the rule or upon other factors which may affect the validity of the rule itself.

3. The rights of the employees under the collective agreement cannot be impaired or diminished by such a rule but only by agreement of the parties.

Narrowing the Issues

There is no question but that the rule we are concerned with here is clear and is not in any sense ambiguous and was brought to the attention of the grievor and all employees and the union itself almost six weeks before the rule became effective.

Also the rule itself was a specific notification to all employees that any employee who breached the rule would be discharged.

There is no suggestion by the union that the company has discriminated against the grievor in that it failed to apply the rule consistently since it was introduced.

As a matter of fact the impression I have is that this grievance is substantially in the nature of a test case and I do not recollect any evidence being given as to any discharges under the rule before that of this grievor.

Consequently the only grounds for attack upon the rule open to the union would appear to be its allegation that the rule is unreasonable, is not consistent with the collective agreement and is invalid as being outside the jurisdiction of the company to impose unilaterally without negotation with the union in that it drastically affects security of employment and consequently the working conditions of the members of the bargaining unit.

Is the Rule in Question a Reasonable Rule?

The company rule we are concerned with reads as follows:

"October 1st, 1963

NOTICE

Re: Garnishees

Effective December 1st, 1963, any employee on whose behalf the Company is obligated to process more than one garnishee will be discharged.

D.W. Gray,
Manager of Woodlands."

For the reasons outlined above under the heading "Effect of Lack of Management's Rights Clause" I am of the view that the provisions of art. 8.08 of the collective agreement clearly clothe this board with jurisdiction to determine whether or not the discharge of the grievor on June 24, 1964, was unjust or contrary to the terms of the collective agreement or unfair under all the circumstances.

As the company has based its discharge action solely upon the breach by the grievor of the rule and as the union has attacked the rule as being beyond the competence of the company to impose unilaterally it would appear that the validity of the rule comes within the purview of the review by this board of the discharge.

De Minimis Non Curat Lex

The company submits that it is a prerogative of management to conduct its business in the most efficient way and to introduce rules to ensure this and this rule is designed to further efficiency in operations.

However it may be noted that no evidence was led by the company to indicate the amount of time and effort required by the accounting staff to look after these garnishees or to establish what was the cost of doing so or that the cost and inconvenience to the company was of any real consequence whatever.

It is true that Mr. Carl Smith, the woods accountant, did outline the routine procedure followed in processing the garnishees and filed the relevant documents, and he did produce, as ex. No. C-17, a company record of garnishees covering the period since April, 1963, to November, 1963, but this production appeared to be solely for the purpose of establishing that in this period, May, 1963, to November, 1963, the company had processed two (2) garnishees against the grievor (before the

introduction of the rule effective December 1, 1963) in addition to the three (3) garnishees this board is concerned with.

Thus, in the case of the grievor, it appears that the company processed five (5) directions to garnishee over a period of some 14 months which would hardly suggest that the clerical work, involved would be other than minimal and in consequence it would not involve any appreciable cost to the company.

There is a well-known legal maxim *de minimis non curat lex* which expresses the legal principle that the law does not concern itself with trifles. An illustration of the application of the maxim is to be found in *Would v. Herrington*, [1932] 4 D.L.R. 308, a decision of the Manitoba Court of Appeal. In this case s. 318 of the *Municipal Act*, R.S.M. 1913, c. 133, as amended, provided that any member of a council accepting or voting in favour of paying any sum to any member of council, for other than certain specified purposes, should be liable to a fine.

A councillor who moved that the sum of $5. be paid to another member of council for timber taken from the latter's land for a public work and who voted in favour of such payment was prosecuted and convicted by a Magistrate under s. 318.

The Court of Appeal allowed the appeal and quashed the conviction and a member of the Court, Trueman, J.A., made these observations at p. 316 of the report:—

> "This seems to me to be eminently a case where the maxim *de minimis non curat lex* should be invoked. In *The "Reward,"* 2 Dods. 265, at pp. 269-70, 165 E.R. 1482, where the proceedings were for an infringement of the revenue laws, that very great Judge, Sir William Scott (afterwards Lord Stowell) said:—
>
> " 'The Court is not bound to a strictness at once harsh and pedantic in the application of statutes, The law permits the qualification implied in the ancient maxim, *De minimis non curat lex*. Where there are irregularities of very slight consequence, it does not intend that the infliction of penalties should be inflexibly severe. If the deviation were a mere trifle, which, if continued in practice, would weigh little or nothing on the public interest, it might properly be overlooked.' See 1 Hals., 2nd ed., p. 23."

If a court of law, with its heavy responsibility to administer justice with an even hand between the state and the citizen is willing to temper the rigours of the statute law by the appli-

cation of a measure of equity then *a fortiori* it would seem to follow that such a principle should be given effect to in the field of labour relations.

The Nature of the Rule

It should be noted that the grievor was hired by this company as an employee in 1956 or 1957 and had been in the company employment for about seven or eight years at the time of his discharge with an unblemished record of faithful service, up to the time of his discharge, and the new company policy, with respect to garnishees, under which he was discharged, was only introduced by the company, by the rule in question here, effective December 1, 1963, which was some six or seven years after the grievor had been hired by the company.

Consequently, this is not a case in which the employee seeks employment with a company which has in effect certain rules and regulations when he is hired and so it may be contended that by accepting the job he has impliedly agreed to accept whatever rules and regulations were in effect at the date of his hiring.

Nor is this a case in which the company had unilaterally introduced rules, even after the employee has been hired, which are not challenged either by the union or by the employee, and having been in existence and consistently applied over a period of time without being challenged have gained a sort of *de facto* recognition so that it may be contended that there has been an implied assent to such rules or that the union is estopped from denying their validity.

On the contrary, in the instant case the company has unilaterally introduced the rule in question, six or seven years after the grievor was hired and it appears that the union and the grievor have challenged the rule at the first available opportunity, *i.e.*, on the occasion of the first discharge to take place under the rule.

Effect of the Rule

According to the rule in question any employee on whose behalf the company is obligated to process more than one garnishee will be discharged.

The company itself appeared to recognize by its action that the penalty stipulated in the rule was too severe because it did not apply the rule until the third garnishee was received and even then the rule was applied with some reluctance.

Thus the grievor stated that after Mr. Chapman told him he was discharged due to company policy the camp clerk told him to phone a lawyer and tell him about it and the lawyer might save his job.

Also Mr. Dunne, the logging superintendent, said that on Monday, June 24, 1964, when the grievor came to see him after his discharge he told the grievor that there was not much he could do for him but that if the grievor would get some letter or notice of an official nature to show that no further garnishees would be issued that he (Dunne) would take the matter up with the company.

It may be said that this evidence indicates that the company was not insensible of the position of the grievor and was trying to ameliorate the provisions of the rule and this may well be so but this evidence also suggests that the rule itself in so far as the penalty was concerned was too severe and that the company supervisors were conscious of this fact and went as far as they could go to reduce the severity of the penalty by delaying its imposition.

In any event, what is now being considered is the effect of the rule as written, because any amelioration applied by the company is extended as a matter of grace and cannot be asserted by the employee as a matter of right, and consequently in considering the validity of the rule this board must deal with the rule as it presently reads.

Total Loss of Accumulated Seniority

The rule as written necessitates the discharge of the employee once a second garnishee is served upon the company which it is obliged to process.

By art. 12.01 of the collective agreement "The Company recognizes the principle of seniority", and provision is made in art. XII for the application of seniority, subject to other factors, in promotions, transfers, lay-offs and recalls after lay-offs and for the accumulation of seniority and for the retention of accrued seniority for a period of eleven (11) months.

By art. 12.08 it is provided that "An employee who . . . is discharged and not reinstated . . . shall automatically lose all seniority".

Accordingly the result of the application of the penalty provided for the *first* infraction of the rule in question is the complete loss of all seniority accumulated by the employee over the period of his employment, in this case a period of some seven or eight years.

This in itself, without considering the loss of his actual job, is a very serious matter for any employee and tends to shock the conscience of an arbitral tribunal because such a penalty is here prescribed for a relatively minor offence and indeed for its first occurrence.

Accumulated seniority is a matter of vital importance to any employee as upon it depend many benefits in relation to promotions, transfers, lay-offs and recalls after lay-offs and perhaps pension and other benefits and indeed the very security of his continuing employment.

Generally speaking such benefits are only earned over a period of continuous and satisfactory service to the company (in this case some seven to eight years) and such rights are zealously cherished and defended by the average employee and the more responsible he is, as an employee, the more importance he will probably assign to his accumulated seniority.

Loss of Seniority a Serious Matter

The importance assigned to accumulated seniority by boards of arbitration is exemplified by the two cases discussed below.

In *Re U.A.W., Local 28, and Canada Cycle & Motor Co. Ltd.* (1949), 1 L.A.C. 333, the arbitration board was dealing with discharge of an employee because she had got married. The company maintained that this policy had been in effect for many years, although it had to be abandoned because of the scarcity of labour during the war years. On behalf of the union it was contended that if there ever was such a policy in effect it had been abandoned, and that in any event the policy is contrary to the terms of the collective agreement.

The collective agreement provided that employees should have seniority in accordance with the "length of continuous service in the employment of the company" and further provided:

> "Seniority status once acquired will only be lost for the following reasons:
>
> (1) Voluntary resignation.
>
> (2) Discharge for cause and not reversed through operation of the Grievance Procedure."

His Honour Judge Ian Macdonell, the board chairman, in writing the decision of the board majority made these obsernations at p. 334 of the report:

"The Company concedes that the services of the employee have always been satisfactory. It contends however that the discharge was one for cause under Clause (2) above.

"I think this is putting an entirely wrong construction on the word 'cause'. I have always understood the plain ordinary meaning of the term to be something unsatisfactory about the employee's services such as a refusal to obey orders, dishonesty, absenteeism, etc. If it had been intended that seniority should be lost by a female employee upon marriage, it seems to me the Agreement should have specifically so provided.

"I am therefore of opinion that the discharge is contrary to the Agreement, and that the employee should be reinstated."

In *Re United Electrical Workers, Local 504, and Canadian Westinghouse Co. Ltd.* (1954), 5 L.A.C. 1824, the grievance was that the company had not granted to the grievor the seniority rights to which she was entitled under the collective agreement. The facts are slightly complicated and will not be gone into here as the case is referred to solely to indicate the serious consideration given to loss of seniority by a board of arbitration.

In delivering the decision of the board majority his Honour Judge E.W. Cross made the following observations at p. 1825:

"An examination of the Agreement shows that an employee is entitled to 52 weeks of absence due to illness without forfeiting any seniority. . . . The Company, however, apparently refuses to recognize pregnancy as an illness and has made an arbitrary ruling that no leave of absence will be given in such cases and that the only alternative to an employee under these circumstances is to resign. If the employee refuses to resign, as was the case with Miss A. [the grievor], then the Company proceeds to discharge the employee and that procedure seems to have been followed in this case.

. . . . . .

"It requires no emphasis that seniority rights under a Collective Bargaining Agreement are very valuable ones to an employee and meant in this particular instance to

this employee her very livelihood itself. It follows, therefore, that seniority rights which are conferred on an employee should not be limited or prescribed except by the clear and unmistakable terms in the Agreement itself. This being the case the onus it seems to me, is upon the Company to show that an employee has lost her seniority rights by reason of some provision in the contract. It does not seem to me that Company practice or Company policy in itself is sufficient to deprive an employee of such rights, unless such practice or policy is clearly authorized by a provision of the contract."

Termination of Employment at Common Law

On Notice

At common law the employer is entitled to terminate the employment of an employee by giving to him the requisite notice, depending on the agreed upon terms, or as provided by custom or by a reasonable notice in absence of agreed terms or custom and in the alternative by way of payment made in lieu of notice.

Dismissal of Employee Without Notice

However where the actions of the employee are inconsistent with the continuance of the employer-employee relationship the employer may dismiss the employee without notice as, for example, in the case of disobedience of orders, misconduct of business, neglect, incompetancy, illness, conduct incompatible with duty or prejudicial to the employer's business.

Leaving aside for the moment disobedience of orders the other grounds for summary dismissal are briefly considered below:

(1) *Misconduct of business* – this refers to misconduct, inconsistent with the due and faithful discharge of the duties for which the employee was engaged and includes fraud or dishonesty in connection with the business of the employer, even outside working hours, misconduct such as to make it unsafe for the employer to retain the employee, conduct so immoral that it is reasonable to say the employee cannot be trusted, abusive, insulting and insubordinate conduct.

(2) *Neglect* – this concerns habitual neglectfulness in respect to duties for which the employee was engaged but does

not include an isolated instance of neglect unless attended by serious consequences.

(3) *Incompetency* – there is an implied warranty on the part of a skilled servant that he is reasonably competent for the work which he is employed to undertake.

(4) *Illness* – permanent incapacity of the employee caused by illness justifies the employer in treating the contract of service as at an end: not so in the case of temporary illness unless the resulting incapacity goes to the root of the matter and frustrates the object of the employment.

(5) *Conduct incompatible with duty or prejudicial to employer's business* – for example, unknown to employer, the employee enters into transactions where his personal interests conflict with his duties as an employee, or if he takes secret commissions, or claims to be a partner or shows such conduct that it would be injurious to the employer's business to retain him.

It will be noted that all of the grounds for dismissal set out immediately above are substantial grounds of serious import and in each case the conduct complained of is incompatible or inconsistent with the continuance of the employer and employee relation.

Wilful Disobedience of Orders

Turning now to the ground of disobedience of orders as a justification for dismissal, wilful disobedience to the lawful and reasonable orders of the employer justifies the summary dismissal of the employee at common law.

However the cases indicate that there must be something in the nature of a deliberate and intentional, that is to say, wilful refusal to obey the company order in such a manner that the employee shows contempt for and insubordination towards supervision which is incompatible with the employer-employee relation and of a sufficient seriousness (sufficiently heinous) to warrant summary dismissal.

It is quite clear from the evidence adduced before this board that no such element was present here as the grievor was a good workman with a respectful attitude towards management and exhibited no degree whatsoever of insubordination and the breach of the company rule which occurred was due to garnishee action in the Division Court initiated by the actions of and

carried out upon the instructions of third parties without any prior knowledge or consent of the grievor.

Thus the most that could be said against the grievor was that the breach of the rule was made possible by his failure to take some remedial action by way of payment or obtaining a consolidation order prior to the issue of the garnishee when he had been warned by company supervision that unless he did so rule would be enforced and he would be discharged.

In the opinion of the board chairman such action or rather lack of action by the grievor cannot be construed to be the wilful refusal to obey an order in the sense of the common law rule justifying a summary dismissal.

See in this connection 13 C.E.D. (Ont. 2nd), p. 224, under "Master and Servant", where the text reads "Wilful disobedience justifies dismissal without notice" and the footnote (u) includes the following:

> "Where the misconduct was not intentional but the result of carelessness it was held that there was no justification for dismissal without notice: *Charlton v. B.C. Sugar Refining Co.*, [1925] 1 W.W.R. 546 (B.C.), affirmed by Supreme Court of Canada (not reported)."

The *Charlton* case, which is a decision of the British Columbia Court of Appeal is reported also in [1924] 4 D.L.R. 1182, 34 B.C.R. 408.

Termination of Employment Under Collective Agreement

An examination of the reported cases in the labour relations field over the past 17 years indicates that with very few exceptions, discipline, imposed by employers upon employees for breach of management rules, has concerned rules relating to the conduct of the employees which would detrimentally affect the production of the plant or management operations or the safety of the employees or of company property or the general discipline in the plant and matters of similar nature.

In other words company rules, by and large, are designed to ensure that the employee shows reasonable care and skill in the performance of his work, that he does not slack on the job, that he reports for work on time and remains for a full shift, that he is not absent without leave, that he does not abuse or destroy company property, that he does not drink or fight on the job, that he follows the orders of supervision as to methods of work, that he does not steal from the company or

his fellow employees nor incite disobedience or insubordination and generally matters of this nature (*ejusdem generis*), all of which are designed to ensure that the company operations are carried out in a reasonably efficient and orderly manner and that the employee carries his fair share of the burden by providing "a fair day's work for a fair day's wage".

An examination of these cases indicates that as a rule graduated penalties are provided for breaches of these company rules, designed to ensure reasonable production, but in cases of major offences such as theft, drinking on the job, reporting for work in an intoxicated condition, falsifying company records, assaulting supervision, wilful refusal to obey a lawful order, aggravated cases of insubordination, refusal to perform assigned work, sleeping on the job and other cases of this nature the company rule may provide for summary discharge for breach of the rule.

It is interesting to note that in practically all these cases, where the company rule provides for discharge as a penalty for its breach, the action of the employee, in breaching the rule, would constitute misconduct of such a nature as to justify the employer in discharging the employee, without notice, under the applicable principles of the common law of England, which principles are also in effect in the common law Provinces of Canada.

Must the Company Justify the Penalty as Well as the Cause?

For many years the argument has been made by company representatives that if the arbitration board found that there existed a just cause for the imposition of discipline then it had no jurisdiction to interfere with any penalty which the company had imposed upon the employee in the absence of specific provisions in the collective agreement to this effect.

There has been a difference of opinion upon this matter but the prevailing rule now appears to be established that where the question arises whether or not the penalty was for just cause, the company must establish just cause not only for the imposition of a penalty but for the imposition of the particular penalty imposed.

In this respect I refer to four cases below:

(1) *Re United Electrical Workers, Local 524, and Canadian General Electric Co., Ltd.* (1954), 5 L.A.C. 1939 at p. 1941, where Professor Bora Laskin in giving the majority decision of a board of arbitration stated:

"It is clear from this article that the Company's power to discipline is subject to grievance in respect of its reasonableness. In the Board's view, 'reasonableness' here covers not only the question whether a proper ground exists but also the nature and severity of the sanction."

(2) *United Brewery Workers, Local 327, and Dow Kingsbeer Brewery Ltd.* (1960), L.A.C. 129, in which Judge E.W. Cross, sole arbitrator, made the following observations at p. 131:

"It was argued on behalf of the company that an arbitrator under this agreement has no power to vary the penalty imposed once the just cause for the discipline was shown. I remain of the opinion expressed in previous cases that just cause must be proved not only for the discipline, but for the degree of discipline. The penalty is as much an integral part of the discipline as the offence itself, and unless the arbitrator is precluded by express terms in the agreement, he has a duty to review both aspects of the imposition."

(3) *Re Retail, Wholesale Bakery and Confectionery Workers, Local 461, and Canadian Food Products Sales Ltd.* (1965), 15 L.A.C. 443, in which Judge R.W. Reville in giving the majority decision reducing a penalty expressed the view that the justness of a penalty concerns not only whether discipline should be imposed but also the amount of penalty which the Company did in fact impose.

(4) *Re Teamsters, Local 230 and Teskey Ready-Mix Ltd.*, (1963), 14 L.A.C. 136, in which Magistrate Hanrahan, chairman of the board of arbitration, which upheld the grievance and ordered the reinstatement of the discharged employee, made this observation:

"It is elementary that where a collective agreement is in existence the right to discharge is no longer the unrestricted privilege enjoyed . . . by statutory authority there is now the right to grieve and to process such a grievance, if necessary, through to arbitration. It therefore behooves one taking discharge action to be sure that all the facts are within his knowledge and to assess all elements on the basis of whether they would be likely to impress an impartial tribunal as reasonably warranting such action."

Recapitulation as to the Validity of the Rule

From the above it is apparent that the conclusion of the board chairman upon this branch of the matter may be summarized as follows:

1. The rule in question is unreasonable because under the guise of improving the efficiency of the company operations it imposes the most drastic penalty possible, *i.e.*, discharge of the employee to correct a situation which has no real relation whatever to work production or discipline in the day to day work of the employees but which represents more of an annoyance than a matter of any substantial cost to the company.
2. In any event the legal principle of *de minimis non curat lex* should be applied.
3. The rule is inconsistent with the collective agreement in that it entails the total loss of accumulated seniority of the employee for a relatively minor offence thus negating the provisions of the collective agreement designed to ensure the accumulation of seniority for the protection of the security of employment of the members of the bargaining unit.
4. As the rule as written provides for the discharge of the employee for the first breach of the rule, it constitutes a serious invasion upon the rights of the employees as it purports to effect a drastic change in the working conditions of the employees without any consultation with the union as their certified bargaining agent.
5. In any event the rule is suspect as it appears to represent an assertion by the company of an arbitrary right of dismissal of its employees upon grounds not recognized by the common law of England and without any consultation with or concurrence by the union representing the employees.

But Matter Not One of First Impression

It follows from what is stated above that for the reasons outlined the board chairman has been impelled to the conclusion that the company rule which is challenged here is invalid and beyond the competence of the company to enforce unilaterally, in its present form.

However, these conclusions have been arrived at by consideration of the matter as one of first impression and reference

must now be made to two previous board awards dealing with garnishee matters, which were cited by counsel for the company to determine whether or not these decisions would affect the conclusions stated above.

Consideration of Two Previous Board Awards

(1) *Re United Electrical Workers, Local 510, and Phillips Electrical Works Ltd.* (1951), 3 L.A.C. 829

In this case the grievor, whose wages had been garnisheed four times, was told by the company on February 1, 1951, to make arrangements with the Division Court Clerk to make regular payments which he did to pay $12 per week into court commencing February 10th. The grievor failed to make his first payment under the arrangement and six days after it was due was given a last warning by the company to make regular weekly payments of $12 to the Division Court commencing February 17th. The grievor made one payment and was late in making his second payment which he made by dropping it in an envelope through the letter slot of the door at the Division Court office.

He was discharged by the company for failure to comply with its policy in respect to habitual garnishment of wages.

The arbitration board, chaired by the late Judge J.C. Reynolds, unanimously found [p. 831] that the grievor "was dismissed due to a misunderstanding inasmuch as he had in fact honoured the commitment he was accused of breaking" and ordered his reinstatement but without compensation for time lost because of the grievor's "failure to inform Mr. Middleten [personnel manager] of the circumstances of payment contributed materially to the misunderstanding which led to his dismissal".

Although this disposition by the board was sufficient to dispose of the grievance before it yet the board expressed its unanimous view by way of approving in principle the policy of the company in respect to habitual garnishment of wages in the statement which appears at p. 831 of the report as follows:

> "Nothing in the findings of the Board should be considered to imply any criticism of the Company's policy in the matter of employees whose wages have been garnisheed. The Company's policy in this regard, which appears to the Board to be both fair and reasonable, was not tabled with the Board at the hearing, and the Board takes this opportunity of tabling the Company's policy on garnishees.

1. On receiving notice that an employee's wages have been garnisheed where a single or more than one garnishee is in excess of $50.00, the Personnel Supervisor will instruct the employee concerned to report all of his debts to the Clerk of the Division Court in detail and come to an arrangement with him to pay off his creditors on a regular basis.

2. On receipt of a subsequent information by way of a further garnishee that the employee has welched on his obligations through his own fault, the Personnel Supervisor will give him a last warning to come to the same arrangement as in 1 above with Mr. Webb, and to inform the Personnel Supervisor to that effect by the Monday of subsequent week.

3. On receipt of another garnishee after the arrangement detailed in 2 above has been made the employee will be discharged if the explanation he offers of his default warrants it.

"In exceptional cases the Personnel Supervisor may use his discretion if the employee's seniority, performance on the job, and evidence of honesty in defraying his debts would warrant special consideration."

Although the principle of *stare decisis* does not apply to the previous decisions of arbitration boards which are not binding upon subsequent arbitral tribunals, except in special circumstances not present here, yet the views of previous arbitration boards are entitled to considerable respect.

I would first observe that the views of the Judge Reynolds' board set out above, which, in effect, approved of the nature of the company rules as to garnishment of wages, were in the nature of *obiter dicta* as such views would not appear to have been essential to the disposition which was in fact made of the grievance and therefore were hardly part of the *ratio decidendi*.

In the second place it will be noted that the company rules in question provided for a direction by supervision to the employee upon receipt of a first garnishee, followed by a last warning upon receipt of a second garnishee, and this to be followed by a discharge upon receipt of a third garnishee "if the explanation he offers of his default warrants it".

And in respect to this third stage the board stated [p. 831] that the personnel supervisor "may use his discretion if the

employee's seniority, performance on the job, and evidence of honesty in defraying his debts would warrant special consideration". This discretion to the personnel supervisor is sufficient to distinguish the *Phillips* case from the instant (*KVP*) case where the company rule reads "will be discharged".

In this respect I refer to the remarks of the late Judge Cross in *Re United Brewery Workers, Local 232, and Carling Breweries Ltd.* (1959), 10 L.A.C. 25 at p. 30:

> "I should like to make clear that just cause must depend on the circumstances of each particular case which an arbitrator must deal with on its merits. He cannot be expected to prescribe a code of penalties for the future guidance of the parties. I might observe, however, that the company's notice contains the phrase that, 'an employee who is not at his work station when the shift is scheduled to start will *suffer* the following penalties'. If the bulletin instead stated, 'an employee will be liable to the following penalties', the company could then accept a reasonable explanation or excuse from an employee for an offence and not be bound by the language of its bulletin to impose a penalty. It could then fulfil its obligation of determining that just cause existed for any penalty which was imposed, by giving consideration to the nature and circumstances of the offence, the employee's explanations, the length of the employee's service, or other extenuating circumstances."

And finally I venture the observation that the attitude of arbitral tribunals changes from time to time, over the years, even though an attempt is made to reach a degree of consistency in the application of legal principles to differing fact situations with the result that the principles themselves are not static but undergo constant revision in the light of changing circumstances.

For all these reasons, and with greatest respect, I do not consider that the views of the board of Judge Reynolds, expressed by way of *obiter* some 14 years ago in respect to a company policy as to garnishees, which was not *in pari materia* with the company rule in question here, should be considered as of persuasive effect in the determination of the issue before this board.

(2) *Re Nat'l Union of Public Service Employees, Local 6, and City of Sudbury* (1963), 13 L.A.C. 431

In this case the union by way of a policy grievance challenged the discharge of two employees for failure to co-operate with the Board of Control of the municipality in respect to its policy as to garnishees.

There was also a challenge by the union of the policy of the municipality as to wage assignments but I refrain from dealing with that issue as I have specifically refrained from dealing with the matter of wage assignments in writing this decision because the grievor here (in the *K.V.P. case)* was discharged solely upon the ground of the company being obliged to process garnishees.

His Honour Judge Lane wrote the majority decision which upheld the discharge of Albert Duchene and Romeo Ross for non-co-operation with the Board of Control regarding garnishee policy but it is perfectly clear that the attitude of the grievor to supervision was considered by the board to be incompatible with the employer-employee relation, as appears from these remarks by the board chairman at p. 440 of the report:

> "Insofar as Albert Duchene is concerned, the city in applying its policy which was enunciated first by ex. 4 in August, 1960, has been, it would appear to us, particularly patient. When the first garnishee was served, Mr. Duchene was interviewed and he was interviewed on a number of occasions after that when garnishee proceedings were taken. He was instructed that he would have to make arrangements to have these garnishees stopped, and *Mr. Duchene became abusive* and showed a complete lack of interest in trying to co-operate and work out these difficulties. *We are satisfied that he was notified to appear before the Board of Control on December 10th and that he refused to appear and did not appear at that time. Surely, in itself, this attitude in this man would justify discharge.* This becomes a matter, whether the city be right or wrong, of discipline, *and in our view the city could do nothing else but discharge him when he became abusive and when he failed to respond to the notice that was sent to him to appear on the date of December 10th."* (Emphasis added.)

In the case of Romeo Ross it appears that his attitude towards supervision was not so much defiant as indifferent. On January 23, 1962, as a result of continued garnishees the Board of Control directed the personnel director to contact Ross to take steps to get a consolidation order and if this was

not done within three months the Board of Control would seriously consider dismissal.

On January 31st the personnel director so notified Ross by letter that if any garnishees were received after May 1st he would be required to appear before the Board of Control for discipline.

Ross was interviewed at the personnel office as the result of a further garnishee on May 15th. On May 25th Ross was directed by the personnel director to appear before the Board of Control on May 28th as at least four garnishees had been received since January 31st. Ross did not appear before the Board of Control so he was notified to appear before it on June 4th, or to face disciplinary action.

Ross did appear at this second meeting and was warned it was his last chance so he must see a lawyer and if there were any more garnishees he would lose his job. He agreed to see a lawyer the next day. Apparently Ross did not take any further steps because four more garnishees followed this meeting of June 4th.

Ross continued to promise and state that he was trying to get a lawyer and to get a consolidation order if only he could have time. Apparently this was extended to him because it was not until December 10, 1962, that the Board of Control passed a resolution discharging him for non-co-operation regarding garnishees. This resolution was only passed after complete consideration and after Ross was asked by Controller Hawkins why he did not obtain a consolidation order as promised at the previous meeting of the Board of Control and he just shrugged his shoulders.

In view of these facts and this attitude it is understandable that the board chairman would observe, as he did at p. 440 of the report:

> "It would appear, therefore, to us that on this ground whether or not the city was right in its policy, this man has no right to set himself up to flaunt the orders of the city and expect it to continue his employment,"

Nevertheless the Judge Lane board majority did go on to give consideration to the policy of the City of Sudbury with respect to garnishees and expressed its views as follows at pp. 440-1 of the report:

> "Before concluding the comments upon this case, it might be well for us to consider the policy itself. It must

be remembered that every time a garnishee order is served upon an employee it requires that employer first to make a calculation and to appropriate such monies as are required to be appropriated to the garnishee after having reserved the monies that are required to be reserved by the *Wages Act*. This entails time, this entails book-keeping, this entails responsibility. It is true that the government from time to time requires that employers make deductions for income tax, make deductions for unemployment insurance and other charges. All these entail responsibility, calculation, cost on the employer. These that are justified by government sanction or requirement are matters of legal requirement and are just another form of taxation and cannot be avoided, but those that are entailed by virtue of the employees' requirements are not just another bit of taxation or another requirement, they are something that might be avoided if the employee did not require that it be done. The issue, then, is whether or not the employer has the right in the employer-employee relationship to set up such a policy as has been set up here. It is well known that in industry on occasion it is done. It is also well known and a matter of interest that the governments from time to time set up such a policy. The matter of such a policy in an industrial relationship has been the subject matter of comment by the late Judge J.C. Reynolds in *Re U.E.W. and Phillips Electrical Works Ltd.* (1951), 3 L.A.C. 829. In our view, there is nothing in the collective agreement or in any Act which can withdraw or does withdraw from the employer the right to set such a wage policy. Such a policy does not, in our view, contravene any of the conditions of the *Wage Act* or the *Creditors' Relief Act* as argued by the union. In our view this grievance, therefore, must be dismissed."

It is interesting to contrast these views with those of the dissenting member of the board, J.H. Craigs, Esq., the union nominee, who wrote a minority opinion, which appears at p. 444 of the report as follows:

"Both the city solicitor, Mr. Lunney, and the personnel director, Mr. Hatton, made much of the fact that excessive costs were involved in processing of these wage garnishees and that this was a tremendous burden on the taxpayer. They attempted to support their claim by producing letters from private employers several hundred miles away which

appeared to support a policy of dismissal for the incurring of wage garnishees. Personally, I am not persuaded by this line of argument, since it is a known fact that an entirely different policy prevails with the International Nickel Co. in Sudbury, itself. I am further persuaded that there is no standard policy or even unanimity of opinions on the question of dismissal where wage garnishees are incurred; nor am I aware of a single case of a municipal by-law dealing with garnishees was ever offered as evidence.

"With regard to the cost of administering garnishees, I am of the opinion that this has been exaggerated. While I would expect a corporation to attempt to be every bit as efficient as an industrial corporation, the corporation of Sudbury has just as many unwritten laws and unofficial practices as perhaps any other organization. The evidence with regard to the actual method of distributing wage and salary envelopes clearly supports this.

"There can be no doubt that the problem of wage garnishees in the Sudbury area is a continuing one for every employer and, although the Board of Control and the Council have been clearly aware of this for many years, no firm policy has ever been evolved for dealing with it; nor has the union, as representatives of the employees, ever been consulted at any time about this problem or their assistance invited in an attempt to solve it. There can be no doubt that it is of as much interest to the union to eliminate wage garnishees, and wage assignments, as it is to the employer."

My first observation as to the views of the board of Judge Lane as to the City of Sudbury policy as to garnishees is that they appear to be strictly by way of *obiter* as they were hardly requisite to the determination of the issues before the board as it had already stated that the discharges of Duchene and Ross were fully justified due to their attitude to and non-co-operation with management, "whether or not the city was right in its policy".

In the second place, the city policy as to garnishees was instituted by a resolution of the Board of Control dated and passed on August 25, 1960, which was 4 months and 6 days before Albert Duchene was made a permanent employee, and which was 2 years and 28 days before Romeo Ross was made a permanent employee.

This is sufficient to distinguish the *City of Sudbury* case from the case before this board in which, the company sought to introduce its policy as to garnishees six or seven years after the grievor (Raoul Veronneau) had been hired.

However, with great respect for the contrary views expressed by the board of Judge Lane, I am unable to agree with it, due perhaps to a fundamental difference in approach which need not be restated here as it is implicit in and flows from the consideration of the various precedents and principles discussed above.

Duty of Arbitrator

In *Re United Brewery Workers, Local 232, and Carling Breweries Ltd.* (1959), 10 L.A.C. 25, the late Judge Cross, as sole arbitrator, said at p. 29:

> "In order for an arbitrator to determine whether or not just cause exists, he must look at all the circumstances that surround the imposition of the discipline. It is quite true that there may be offences for lateness under some circumstances which are inexcusable and for which there would be just cause for the discipline proposed by the company in their bulletin, but to apply rules and regulations indiscriminately without regard to the circumstances in any particular case would certainly result in injustice to employees. If the bulletin were enforced in every case without regard to the circumstances, the employees' rights of grievance under the agreement would certainly be impaired. All that the company would have to do would be to prove there was a technical breach of the rules, impose the penalty, and then say to the arbitrator that he had no power to decide whether just cause or not existed for the discipline. While the company has the right to lay down certain rules and regulations as to lateness, such rules must be applied by an arbitrator in light of the employees' right to be disciplined only for just cause.
>
> "For example, in determining just cause for discipline, an arbitrator is entitled to consider an employee's record with the company."

Conclusion

For the reasons outlined above, the board chairman has concluded that the discharge of the grievor on June 24, 1964, was not warranted under the circumstances due to two reasons, *viz:*

1. The company rule in question as written was beyond the competance of the company to introduce unilaterally several years after the grievor commenced his employment with the company.

2. In any event, even if the rule had been within the competence of the company to so introduce (which this board considers it was not), the penalty actually imposed (discharge after two garnishees) was unjust under the particular circumstance in view of the length of service and good record of the grievor.

Accordingly this board must find that the grievor was unjustly discharged by the company and that he is entitled to be reinstated on his job with back pay and with no loss of seniority.

[R.V. Hicks did not concur in the award.]

RE INT'L BROTHERHOOD OF TEAMSTERS, LOCAL 647, AND CANADA BREAD CO. LTD.

J.A. Hanrahan, I.J. Thomson, B.M. Osler, Q.C. *April 26, 1965.*

Work week — Extra pay for work on day off — Day off changed in week of statutory holiday.

The collective agreement provided that the normal work week would be five days, and that, after discussion with the union, the company might institute other work weeks. The agreement provided further that an employee scheduled to work on his day off would receive an additional one-fifth of his week's earnings. The regular day off had been Wednesday. During the week of Christmas, 1964, the work week was changed to provide for Saturday as the day off. The employees worked on the Wednesday but did not receive additional pay. *Held*, by a majority of the board of arbitration, I.J. Thomson not concurring, there had been no violation of the collective agreement. Changing the regular day off for one particular week did not constitute the institution of an "other work week" and did not require discussion with the union.

T.E. Armstrong, N. Houle, S. Powers for the union.
B. Paulin, F. Pamenter, C. St. Pierre for the company.

[Full award 7 pages]