NO. 7/80

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

B. C. CENTRAL CREDIT UNION, CENTRAL DATA SYSTEMS DEPARTMENT

(the "Employer")

- and -

OFFICE AND TECHNICAL EMPLOYEES' UNION, LOCAL NO. 15

(the "Union")

DECISION OF THE BOARD

PANEL:	ROD GERMAINE, VICE-CHAIRMAN GRAHAM LESLIE, MEMBER PETER CAMERON, MEMBER
FOR THE EMPLOYER:	MICHAEL A. COADY
FOR THE UNION:	MICHAEL BLAXLAND
DATE OF DECISION:	JANUARY 31, 1980

For our purposes, there are critical implications arising out of this consensus among arbitrators with respect to the effect of the just cause concept. Those implications are summarized by Adams in these words:

> " ... at some point in time, the interest of the employee in being given another chance to learn, and the employer's interest in having a productive workplace, may diverge. When this occurs, dismissal may be appropriate."
>
> (at p. 28)

What does the foregoing analysis mean for purposes of the issue before this Panel, i.e., whether there are any principles inherent in the Code which affect an arbitrator's authority to render a monetary award in substitution for a discharge which the arbitrator has determined was excessive? In our view, simply this. Implicit in the just cause concept and consistent with the basic theme of the several concepts of industrial discipline which have been employed to give effect to the just cause concept is the notion that, to the extent that the employer's interest in a "productive workplace" permits it, the employment relationship is to be preserved. Because this notion is implicit in the just cause concept, it is now a principle implicit in the Code. Moreover, it is this very question of whether the common theme of the concepts of industrial discipline, i.e., the premise that an employee will respond positively to disciplinary measures, is to be served that an arbitrator addresses when the arbitrator makes a determination about whether discharge was excessive. To state this conclusion in another way, it is our view that once an arbitrator has concluded that the grievor gave just cause for some discipline, and as a result, the arbitrator turns to address the next question, i.e., whether discharge was an

excessive response, the essence of the judgment required of the arbitrator is whether, in all of the circumstances of the grievor's employment relationship, the grievor's entitlement to a second chance should prevail over the employer's entitlement to a "fair day's work". It follows that it is only when the interests of the employee and his or her opportunity to correct patterns or incidents of misconduct are outweighed by the employer's interest in obtaining value from the employment relationship that an arbitrator will conclude a discharge was not excessive. It also follows that, having determined that a discharge was excessive, the arbitrator has implicitly found the employee's interests should prevail. The only form of an alternative measure which will give effect to those interests is one which involves the preservation of the relationship upon terms which constitute a lesser penalty. A lesser penalty which preserves the relationship necessarily includes reinstatement.

In our opinion, any other conclusion would abort a fundamental aspect of the reforms inherent in the law of collective bargaining. As we have noted, the contemporary law of collective bargaining has given effect to the expectation of continued employment. What we have said here is that it does so by means of a concept which entitles the arbitrator to review a discharge and determine whether the employer's termination of the employment relationship was necessary in all of the circumstances, having in mind the interests of both the employer and the employee. If termination was not necessary in this sense, then the arbitrator will find that discharge was excessive. One of the logical implications of such a judgment is that the relationship should not be terminated. Thus, having found that a discharge was excessive, when an arbitrator turns to address the third question identified in the reasons given in the Wm. Scott case, i.e., the question of what constitutes the appropriate measure to be substituted for the discharge,

the arbitrator must begin to answer that question by a consideration of whether reinstatement can be effected. If there are no factors which would render an order of reinstatement an empty and artificial result, then the arbitrator must decide the terms upon which it should be ordered which will comprise the appropriate penalty less severe than discharge.

It is for these reasons that the conclusion that a discharge was excessive but that a monetary sum of damages is the appropriate measure to replace the discharge, is obviously inconsistent with the just cause concept. There is, moreover, in any such award a striking resemblance to the common law regime permitting dismissal without cause and without notice but with a continuation of salary for the requisite period of notice. The arbitrator would be making a finding that there was not just and reasonable cause for discharge but that a sum of money is adequate compensation for the employee and that conclusion is, in the words of a prominent arbitrator in this province, " ... in effect to grant the grievor severance pay as an alternative to reinstatement" (British Columbia Ferry Corporation and British Columbia Ferry and Marine Workers Union, November 20, 1979, (Hope), unreported, at p. 51.

We pause here to observe that there is substantial evidence to suggest that the implications of the just cause concept we have described have proven effective in practice as well as theory. The major part of Adams' monograph to which we have already referred consists of an analysis of a study of the impact of the reinstatement remedy. The scope of Adams' study was hardly modest. The study examined 645 cases involving a disciplinary discharge and a further 63 involving a non-disciplinary termination over a period of more than four years concluding at the end of 1974. The awards in question upheld 300 of the disciplinary discharges and 22 of the non-disciplina

discharges. Of the disciplinary discharges which were not upheld, in 230 of the cases a lesser penalty was substituted and in the remaining 115 cases the arbitration board found that no discipline was justified. Information for the study was gathered from the arbitration awards and from questionnaires sent to the employers, the trade-unions and the employees affected. The rate of return of completed questionnaires varied but Adams concludes that:

> "Because so many of the tabulated results are similar to those of earlier American studies and one Canadian study, I am satisfied that the statistical information produced from the awards and the questionnaires is generally reliable."
>
> (at p. 42)

The results obtained from this study are of interest in a great many respects but for our purposes it will be sufficient to refer to only a few of the conclusions. First, there is no indication that in any of the 230 cases examined in which the arbitration board substituted some other response to the grievor's conduct than discharge, there was a single award of monetary compensation instead of a form of reinstatement. That statistic in itself constitutes a powerful statement of the just cause principles relevant to the issue before us. Beyond that, we would recite two further conclusions:

> "A summary of results pertaining to employee rehabilitation can be reported thusly. Of the 128 employees who returned to work with lesser discipline, 37.5 percent experienced some form of subsequent discipline including discharge, and 24.2 percent of the 128 employees were involved in a recurrence. If a successful reinstatement is to be measured by the absence of any subsequent discipline, the collective success rate of the arbitration tribunals involved in this study is in the order of 63 percent. This 'rate of success'

> is comparable to earlier studies and, predictably, much at odds with the poor results of rehabilitation in the criminal law field. Reinstated employees in an industrial relations setting are almost certain to come from different socio-economic backgrounds than of those persons who commonly come into contact with the criminal law. The stigma of being a reinstated employee is in no way comparable to that which burdens a public law offender and makes it difficult for him to 'go straight'. Lastly, the 'rehabilitation' of the employee offender takes place within a very normal environment, the workplace. Prisons are notorious for their counterproductive impact on many inmates. Therefore, while the correction and rehabilitation justifications for punishment in the criminal law field may be waning this is not so in industrial relations. Indeed, as a general matter, these results appear to vindicate the corrective approach to discipline forged by arbitration tribunals.
>
> (at p. 66)

> "This statistical information goes to establish that the reinstatement decisions of arbitrators have not had an adverse impact on the discipline of the workplace. Workplace morale has gone largely unaffected and a qualitative assessment of employee performance reveals that both the grievors and their fellow employees have responded well to disciplinary action. All of these findings are consistent with those of earlier studies, and provide justification for extending the corrective discipline approach."
>
> (at p. 86)

It is thus apparent that there is good reason to sustain the integrity of the just cause concept and its emphasis upon the preservation of the employment relationship if that is a result consistent with the interests of the parties concerned.

We have thus extracted the principle of the statute which bears upon the arbitrator's use of the remedial authority

provided by Section 98 of the Code in cases in which the arbitrator has determined that the grievor's discharge was excessive. In answering the final question posed by the Wm. Scott decision in such cases, i.e., the question of the terms of the appropriate alternative measure to be substituted for the discharge, the arbitrator should exercise that remedial authority in a manner consistent with the implications of the decision that the discharge was excessive. In order to be consistent in this respect, the arbitrator's decision concerning alternative measures should include as one of its terms, if it can be realistically effected, the reinstatement of the grievor in order that, in accordance with the decision that the discharge was excessive, the grievor's employment relationship is not terminated. Therefore, not only is there a principle of the Code which governs the manner in which an arbitrator may exercise the power to substitute a monetary award for a discharge which is excessive, that principle obviously places severe restrictions upon the occasions that a monetary award will be the appropriate alternative measure.

Essentially the same conclusion was reached in the as yet unreported award in British Columbia Ferry Corporation and British Columbia Ferry and Marine Workers Union to which reference has already been made. The arbitrator determined that the grievor's discharge was excessive and the arbitrator then responded to the employer's argument that if the arbitrator came to that conclusion, the grievor should nevertheless be compensated in damages rather than reinstatement upon any terms. In advancing this argument, the employer relied upon the awards in Douglas College, supra, and Progressive Contracting, supra, two of the five awards mentioned earlier which have substituted a monetary award for an excessive discharge since the amendments to Part VI of the Code. The arbitrator disposed

of this argument in this fashion:

> "In the present case it is not alleged on the part of the grievor that the relationship could not be restored. It is alleged that the grievor has lost the confidence of the employer and hence no meaningful relationship could be restored.
>
> "It was pointed out by the union that a similar conclusion can be drawn in every dismissal case. Obviously, an employer who dismisses an employee does so for the reason that the employer concludes that the employee can no longer function in a proper employer-employee relationship. There is no doubt that there is an erosion of the confidence of the employer in this dispute but it is the obligation of the parties to an arbitration of this kind to abide by the decision of the Board and to take all steps available to restore the relationship to a meaningful status.
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> "The significant difference in collective bargaining relationships from common law relationships is the concept of job security. This employer has covenanted as a matter of contract that it will not dismiss an employee except for just cause and it would do grave abuse to the right afforded to an employee in that contractual provision to deprive him of the benefits of his employment where he seeks to resume the employment and is ostensibly capable of resuming employment.
>
> "It is one thing to award damages in response to a set of circumstances where the employee is unable to satisfy the Board of his ability to resume the relationship and another to apply the same remedy in response to the employer's assertion that it doesn't want him back because it does not repose confidence in him.
>
> .....
>
> "What the corporation proposes, in effect, is to grant the grievor severance pay as an alternative to reinstatement. In the circumstances before this Board there is no jurisdiction to dictate that result. In order to award damages, the Board would have to be satisfied that the relationship could not be restored and that damages were a necessary alternative.
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> "In the two cases cited that situation arose because

> neither employee was capable of meeting the obligations of employment, one because of an inability to perform the job and the other because of an inability or an unwillingness to abide the conditions of employment. Those factors are not present in this case and the Board is compelled to reinstate the grievor once having determined that the employer failed to meet the contractual test of establishing just cause for his dismissal."
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> (at pp. 48-51 - emphasis added)

For reasons which we have repeatedly indicated, the reference to a contractual covenant obligating the employer not to dismiss an employee except for just cause in this passage from the B. C. Ferry Corporation award is not incorrect but it is incomplete. That obligation has a statutory foundation in this province because of Section 93(1) of the Code. Moreover, for reasons which should be apparent from what we have already said, we regard the arbitrator's conclusions as necessitated by statutory principles rather than considerations of jurisdiction. Nevertheless, in our opinion, the arbitrator otherwise persuasively states the reasons why the just cause concept required him to reject the employer's argument.

The passage we have recited from the B. C. Ferry Corporation award also provides considerable assistance in the identification of those occasions on which it would not be inconsistent with the just cause concept of the Code to substitute a monetary award rather than a form of reinstatement for a discharge that was an excessive response to the grievor's conduct. We would emphasize, in particular, the arbitrator's comment that such an award would be appropriate where the employment " ... relationship could not be restored". As we have said, reinstatement is to be an aspect of the substituted measures if there is no reason to conclude that such an order would constitute an artificial remedy. In whatever language is used to describe the kind of circumstances warranting a monetary award, the hypothetical example referred to earlier

in this decision to illustrate that an arbitrator does have the authority to substitute such an award for an excessive discharge involves the sort of considerations which justify that conclusion in a manner which is consistent with the Code. Clearly, any attempt to restore a relationship when the grievor would have been subject to severance under the collective agreement at some point following his or her discharge would be to attempt the impossible and any such remedy would be totally illusory. To turn the hypothetical facts somewhat, however, the grievor who would have been laid off following his discharge presents a different set of considerations. It is true that reinstatement of such a grievor to active employment would amount to a gesture that is no less empty than a similar reinstatement order in relation to a grievor who would have been severed. Therefore, it follows that a monetary award without an order reinstating to active employment would not be inconsistent with the Code. Nevertheless, if under the collective agreement the grievor would have retained his or her seniority during the layoff then the employment relationship should be restored to that extent subject only to whatever terms would render that award an appropriate lesser penalty.

There are other obvious examples of situations in which, although the grievor's discharge is excessive, the employment relationship is not capable of restoration and thus a substitute measure that does not include reinstatement would be consistent with the just cause concept of the Labour Code. One of those examples would involve a grievor who does not seek reinstatement. There are cases in which the grievor may not desire reinstatement and numerous reasons why that should be so. The grievor, for example, may have located alternative employment after being discharged and the grievor may be content to remain in that new employment. The grievor's good fortune in this respect does not terminate the Union's

entitlement to grieve and, if necessary, arbitrate the differences with the Employer over the grievor's dismissal although, of course, it will affect the quantum of any entitlement the grievor may have to compensation. There is, however, no requirement that the grievor pretend he or she still wants to be employed by the employer if that is not so. When that occurs, it is an obvious example of an employment relationship that is incapable of being restored and in respect of which any attempt at restoration is simply not a realistic approach to the question of the appropriate measure to be substituted for the discharge. Thus, the absence of an order of reinstatement and instead an order for monetary compensation to the extent that the grievor is so entitled will in those circumstances represent an appropriate alternative measure entirely consistent with the principles of the Code.

There is another clear example of circumstances in which an alternative measure substituted by the arbitrator will require an award of damages rather than an award including reinstatement. A grievor whose dismissal was an excessive response on the part of the employer as of the date of the grievor's discharge may have subsequently become incapable of performing any work for the employer. In those circumstances, it would be as artificial and short-sighted to reinstate the grievor as it would be in the case of the grievor whose job has been eliminated. Any final and conclusive settlement would, of course, include consideration of the benefits, if any, the grievor would receive by reason of the application of the pertinent provisions of the collective agreement to an employee who becomes unfit for employment. Nevertheless, reinstatement would not be a sensible or feasible remedy. One of the awards in recent years which has substituted a monetary award for an excessive discharge involved just such a set of circumstances. In the Board of School Trustees, School District No. 39

(Vancouver) and Vancouver Municipal and Regional Employees Union, supra, the grievor was discharged for a combination of culpable and non-culpable reasons. The arbitration board found that the employer had not made "such attempts at warnings and discipline as were reasonable in the circumstances" and that when terminated the grievor was still capable of performing at a demoted level. Thus, on the date of discharge, discipline was warranted but discharge was not. However, in the interim there had been a "progressive deterioration of [the grievor's] mental and physical powers". By the time the grievance came to arbitration the grievor was "no longer employable ... in any capacity because of [the grievor's] progressive deterioration ...". Because the grievor was no longer employable, the award of the arbitration board did not order reinstatement. The award is reported as follows:

> "In lieu of reinstatement and an order for payment of wages and other economic advantages lost by reason of a dismissal without just cause, less an allowance for a proper substituted penalty, the Board made an award of general damages of $5,000.00 and in all other respects dismissed the claims advanced by the Union ... ."
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> (at p. 363)

We have thus been able to sketch by way of a few examples the kind of considerations which may lead to an award involving a substituted measure less severe than discharge which does not include reinstatement and yet which is consistent with the principles of the Code. There will be other situations in which such an award is equally consistent with the Code because we have made no attempt to exhaustively define every situation in which this remedy may be tolerated by the just cause concept. Nor, we should reiterate, have we suggested that the just cause concept is so rigid that every judgment required of an arbitrator in a discharge case (or a discipline

case of any kind for that matter) is so strictly regulated by the principles of the Code that the Board will necessarily interfere if in its judgment the arbitrator has erred. On the contrary, such cases generate a myriad of issues and in respect of most of those issues there are no definable statutory principles. In relation to those questions, for reasons canvassed by the Board in a number of decisions under Section 108 (see, for example, Simon Fraser University, supra; Western Mines Ltd. et al, 81/76, [1977] 1 Can LRBR 52; and Lornex Mining Corporation Limited et al, 96/76, [1977] 1 Can LRBR 377), the Board will not become a "full fledged avenue for appeal from arbitration decisions" (Simon Fraser University, supra, at p. 160). Thus, for example, it will remain the function of the arbitrator to consider, adopt or modify the arbitral jurisprudence in relation to such common issues arising in discharge cases as the particular concept of discipline to be observed in the review of a discharge or the formulation of the proper alternative measures, the significance of off-duty conduct to the employment relationship, the entitlement of the employer to impose standards of personal appearance, etc. What we have said, however, is that such judgments must be made within the framework of the just cause concept and that the basic elements of that framework are a matter of statutory principles. Furthermore, one of the essential features of that framework is the notion that, in contrast with the common law of master and servant, the judgment that a discharge was, in all of the circumstances, excessive means a judgment that the relationship should be restored upon some appropriate terms, if that result can be realistically accomplished.

VIII

With the foregoing analysis in mind, we can now

address the final question to be answered: in utilizing the power available to an arbitrator under Part VI of the Code to substitute a monetary award as an alternative measure to discharge, did the arbitrator make a determination consistent with the principles of the Code? As we have previously indicated, the arbitrator concluded that the discharge was excessive in all of the circumstances and particularly because the employer "had not taken any constructive measures to discipline Kraemer for his prior conduct and clearly and unequivocally illustrate to him that such conduct was not to be tolerated". A second reason for the conclusion that the discharge was excessive involved the Employer's contribution to the grievor's conduct on the occasion that led to his discharge; the Employer had contributed by "arbitrarily denying him that which they had previously granted (early time off)". Both of these reasons, and more particularly the first one, are most relevant to the judgment about whether discharge was excessive and the arbitrator's consideration of both reasons is consistent with the statutory principles we have examined at length, as well as arbitral jurisprudence. However, for reasons that should be abundantly clear by now, the same statutory principles would appear to dictate reinstatement as one aspect of the measures to be substituted for that discharge. The arbitrator did not order reinstatement because "the relationship ... is not one, having regard to all the facts of the circumstances of employment, which can be realistically maintained in the future".

The arbitrator's conclusion, it seems to us, is inconsistent with the reasoning upon which the arbitrator held the discharge was excessive. The award appears to fall into the same error that the arbitrator attributes to the Employer, i.e., the failure to implement corrective disciplinary action.

The arbitrator properly takes this factor into account in reaching his conclusion that the discharge was excessive but then the arbitrator provides a remedy inconsistent with that conclusion in the sense that the remedy does not provide the grievor the opportunity to benefit from corrective discipline. If the reason the grievor's discharge was excessive is because the grievor has not had the benefit of any corrective or progressive discipline, then it is contradictory to provide remedial measures which also deny the grievor that benefit.

This internal inconsistency in the award, however, is but a reflection of the larger inconsistency between the award and the statutory principles we have identified in the previous part of this decision. On the basis of valid considerations involving primarily the absence of any opportunity afforded the grievor to correct his unsatisfactory conduct, the arbitrator concluded that, in all of the circumstances, the grievor's discharge was an excessive response on the part of the Employer. As we have said, that conclusion suggests that, upon a consideration of all the circumstances relevant to both the interests of the grievor and the Employer, the employment relationship should not be terminated. That being so, in the absence of any apparent reason why the employment relationship could not be restored, the just cause concept of the Code required that in substitution for the discharge the arbitrator should have imposed an alternative measure that did not result in the termination of the employment relationship but, instead, preserved that relationship upon terms constituting the lesser penalty which is appropriate in light of the grievor's conduct. Clearly, the matter should be referred back to the arbitrator and the major task of the arbitrator will be to reconsider his award in light of the foregoing principles of the Code and their application to the circumstances of this difference.

In its present form, the award does not appear to be consistent with the collective bargaining law associated with the just cause concept now incorporated into the Labour Code. The award, as it now stands, appears to have been accurately described in the B. C. Ferry Corporation award, supra; its effect is "to grant the grievor severance pay as an alternative to reinstatement".

There is, on the other hand, a possibility that the foregoing directions with respect to the necessary further consideration to be given this matter by the arbitrator do not adequately take into account the interests of the Employer. In reaching the conclusion that Kraemer's employment relationship was not one "which can be realistically maintained in the future", the arbitrator may well have had in mind certain factors which were more properly a part of the judgment about whether the discharge was excessive. It is possible, in other words, that the inconsistency between the award and the governing statutory principles arises in connection with the determination about whether, in all of the circumstances of the grievor's employment relationship, the grievor's discharge was an excessive response by the Employer. Clearly, "all of the circumstances" of this case included the Employer's failure to implement any earlier corrective discipline and the Employer's contribution to the grievor's misconduct which led to his dismisal. It is equally clear that both of those factors were considered by the arbitrator to point to the conclusion that the discharge was excessive. In this respect, the arbitrator's approach to the question of whether the grievor's discharge was excessive is entirely consistent with the just cause principles of the Code; both of these factors indicate that the grievor's interests in a fair opportunity to correct his conduct must be given a high priority in this case. However, another factor among "all of

the circumstances" was the arbitrator's apprehension that, given the nature of the job and the grievor's temperament, the employment relationship could not be sustained in any event. This factor involves a consideration of the Employer's interests in receiving value from the employment relationship and it cannot be ignored in the overall assessment of whether the discharge was excessive. These observations should not be misunderstood. We do not say that the Employer's interests in this case outweigh the grievor's with the result that the grievor's discharge was not excessive. The point of these comments is only that we recognize that the arbitrator's further consideration of this matter may include a re-assessment of the question of whether the grievor's discharge was excessive.

Whatever the result of the arbitrator's further deliberations, there is no doubt that the judgments which are necessary in order to finally and conclusively settle this difference in a manner consistent with the principles of the Code are judgments which the arbitrator must make. They are not judgments which this panel should attempt. It is the arbitrator who has seen the witnesses, heard their evidence and received the submissions of counsel. Although the award which has been rendered is inconsistent with the just cause principles of the Code, that does not undermine in any sense the arbitrator's position as the private adjudicator of this difference between the parties arising under their collective agreement.

Although, for the reasons we have indicated, it is not inconceivable that the arbitrator's further deliberations following upon the directions contained in this decision could result in a determination that the grievor's discharge was not excessive, such an award seems to us to be unlikely. That is

because of the total absence of any earlier corrective discipline, combined with the Employer's contribution to the incident resulting in the grievor's discharge. The first of these two factors is obviously crucially important in the determination of whether the discharge was excessive and that determination, as we have said, is essentially a judgment about whether the employment relationship should be preserved upon terms which appropriately penalize the grievor but which provide the grievor with a fair opportunity to correct his unsatisfactory conduct. If, on a full reconsideration of all of the relevant circumstances, the arbitrator does retain the view, as we expect he will, that the grievor's discharge was excessive, then the determination of the appropriate alternative measures to be substituted for the discharge must be made in accordance with the just cause principles inherent in the Code. Those principles will require some form of reinstatement so that the excessiveness of the discharge is properly remedied. There are, of course, a number of other measures which could be combined with reinstatement in order that the resulting discipline would serve whatever particular concept of industrial discipline the arbitrator is persuaded should apply. A suspension is the most obvious of those other alternative measures. There appears, however, to be no reason why, regardless of the precise terms imposed, the employment relationship could not be restored in accordance with one of the basic features of the just cause concept. The matter will therefore be referred back to the arbitrator for his further deliberations in light of the relevant statutory principles.

IX

SUMMARY

In brief, we have concluded first of all that the

arbitration award under review is not inconsistent with the Code for any of the reasons alleged by the Union in connection with the evidence received during the hearing or the weight attributed to that evidence by the arbitrator.

In addition, however, we have concluded that the award is inconsistent with the principles of the Code in its approach to the determination of the appropriate measures to be substituted for a discharge which was an excessive response by the Employer to the grievor's conduct. While the arbitrator is to be commended for attempting a creative solution intended to provide for a final and conclusive settlement of the difference between the parties arising out of Kraemer's discharge, his award addresses this issue in a manner which fails to recognize the full impact of the just cause concept in collective bargaining law, the concept which is incorporated into the Code by virtue of Section 93(1).

A fundamental feature of the just cause concept is its recognition of the expectation of continued employment and its preservation of the employment relationship if that is a result compatible with the interests of both the Employer and the employee. It is well settled that, having determined that the grievor provided the Employer with just cause for some form of discipline, the arbitrator must then determine whether, in all of the circumstances of the grievor's employment relationship, the decision to discharge was an excessive response on the part of the Employer. The determination that the discharge was excessive means that, having regard to the interests of all of the parties, the employment relationship should not be terminated. Having reached such a conclusion, and if the relationship is capable of being restored, it is then the arbitrator's further obligation to devise and substitute for the

discharge such other alternative measures which are appropriate in light of the grievor's conduct and which are consistent with the finding that the discharge was excessive. In order to be consistent, the alternative measures substituted by the arbitrator should include an order for reinstatement. The terms upon which that reinstatement is to be effected are, of course, for the arbitrator to decide. Thus, the award under review is remitted to the arbitrator for his further deliberation and further award premised upon these principles of the Code.

LABOUR RELATIONS BOARD
OF BRITISH COLUMBIA

Rod Germaine, Vice-Chairman

Graham Leslie, Board Member

Peter Cameron, Board Member