



Stewards' Action Bulletin

Canadian Union of Postal Workers

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Kates' decision cautions members that the "customer is always right"

Whether or not the old adage "the customer is always right" is true, following this motto can be a source of added protection for postal workers.

In stressful situations, we sometimes forget to heed this advice and strong verbal exchanges can occur. If we're not careful they can erupt into threats and, occasionally, violence. For postal workers who get caught up in these situations, many face suspensions, or worse, dismissals.



A verbal exchange, started by the receptionist, soon escalated. According to the receptionist, the grievor said: "You'll see me outside,

left work. He immediately filed a complaint with Canada Post.

The arbitrator found that at the time of the incident, the grievor's intention "to beat the customer up" was to inflict utter terror.

And within this factual context, the arbitrator reviewed the case in order to determine if there were sufficient mitigating factors that would convince him to alter the employer's decision to discharge the grievor. The arbitrator noted that the incident was isolated, the grievor had reported it to the employer after his shift, and,

Continued on page 4

Kates' decision in Hastings

This was the case for Toronto letter carrier W. Hastings, as decided by arbitrator Kates (CUPW file 626-01687 & 02206, September 21, 2005).

In November 2004, Hastings became involved in an incident with a receptionist at a business who was unhappy about the number of mis-directed letters being received.

Arbitrator Kates noted that instead of responding, the grievor should have simply handed the receptionist a Canada Post business card to contact customer service, and heeded the adage "the customer's always right."

"I'll fucking kill you. Mark my word, I'll kill you, you fucking fruit loop."

The grievor admitted the intent to threaten to beat the customer up. However, he disputed saying, "I'll fucking kill you." Rather he responded to the receptionist's verbal abuse with: "Step outside you fruit loop, I'll kick your ass."

The grievor insisted use of the term 'fruit loop' was because of the customer's frenzied attitude, and he was not aware of the customer's sexual orientation. The customer disclosed being gay at the arbitration hearing. He also testified that he was devastated by the grievor's threat and that he feared for his well being when he

In This Issue

BC Solidarity strikers discipline upheld
.....2

Grievance backlog update: \$2.2 million
.....3

Disciplinary scale used on B.C. teachers' strike supporters

CUPW has a proud history of supporting other unions in their struggle for justice. It should therefore have come as no surprise that CUPW supported the British Columbia Federation of Labour, in an effort to help the British Columbia Teachers' Federation (BCTF) fight against the provincial government's legislation in October 2005. This regressive legislation sought to roll-back teachers' collective agreement rights.

In communities where the Federation of Labour asked its affiliates to support the teachers by not going to work, post offices were essentially shut down. However, unlike most previous occasions, Canada Post changed tactics. They had the Canada Industrial Relations Board (CIRB) declare CUPW's actions illegal and issue a cease and desist order.

Canada Post's disciplinary response was possibly one of the harshest of any employer in the province. Five-day suspensions were imposed on members who decided not to go to work. The employer 'waived' three of the days for members who reported for a portion of their shifts, after the picket line was down.

In response, CUPW submitted grievances on behalf of the approximately 500 members who were disciplined. Hearings began in January 2006 before arbitrator Stan Lanyon.

Lanyon's decision in BC Day of Protest Picket Lines Case

CUPW argued the blanket approach to imposing discipline did not take into account individual circumstances and treated similar circumstances differently. The union also argued the



discipline was excessive and not in line with previous similar situations.

Arbitrator Lanyon cited that blanket discipline is approved by the Labour Relations Board as it saves time and resources for both sides, when large numbers of people are involved.

The arbitrator further clarified stating:

Acceptance of a blanket disciplinary response as a legitimate approach to certain types of situations does not excuse the employer from 'individualizing' its response to the extent that it must:

- + exempt from discipline those individuals with a legitimate explanation or excuse for not reporting for work, and
- + justify singling out any individuals upon whom it desires to impose more severe discipline than the norm.

Both the general level of discipline and individual exemp-

tions are subject to review by an arbitration board under s.89 of the Labour Relations Board.

Arbitrator Lanyon rejected the union's submission that Canada Post's distinction between those who failed to report to work, and those who reported for part of their shift, did not constitute a discriminatory element.

As to the union's argument that the penalty was excessive, the arbitrator cited jurisprudence that a refusal to cross a picket line is by itself evidence of insubordinate conduct. He stated that the employer provided notice to employees of the decision to impose a five-day suspension without pay in response to such conduct.

For those who occupy leadership positions within the union, the arbitrator found that these employees could expect more serious disciplinary penalties than other participants.

Therefore, when applying these principles to the cases before him, the arbitrator:

- + upheld the employer's decision to impose five day suspensions on those who actively participated on picket lines.
- + reduced five days to two days for those who did not report to work at all but were not active on any picket line.
- + applied a "restrained approach" imposing a written reprimand for those who:
 - reported to work, approached the picket line, were persuaded not to cross the picket line,

Continued on next page

Teachers' Strike

Continued from previous page

phoned their supervisors and waited for further instructions as to when they could report to work.

- performed some part of their scheduled shift.

The arbitrator offered the following explanation for this approach:

All the employer's witnesses stressed how orderly and peaceful the picketers were. This evidence was presented in anticipation of the potential reliance of employees on the employer's policy that unless they were subject to physical danger they were required to cross the picket line; ...

It would seem contrary to a reasonable labour relations policy... to require both those employees on the picket line, and those attempting to cross the picket line, to escalate their conduct so that an employee would fall within the physical danger exception of the employer's policy in order to avoid discipline. This could, of course, affect relationships in the workplace... long after the picket lines come down.

CUPW disagrees with the upheld sanctions, but believes this decision to be just within the context of the jurisprudence that exists in similar cases. Ultimately, CUPW believes workers should have the right to express their solidarity with other workers, including participation in work stoppages.

The arbitrator's decision is important, as it counters the employer's disciplinary policy that insists workers be exposed to picket line abuse to be exempt from discipline.

Grievance backlog update:

Total compensation so far exceeds \$2.2 million

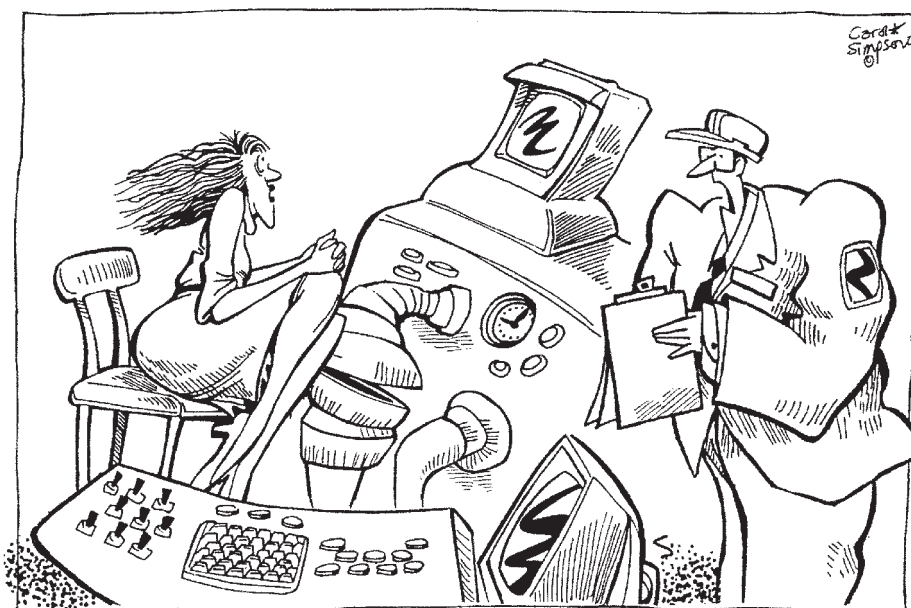
This past January, CUPW successfully negotiated a memorandum resolving 1,429 grievances filed by locals in the Quebec Region that were part of the pre-August 1992 backlog. As a result, the employer will forward \$357,250 to the union so that it may distribute it to the eligible grievors.

Similar settlements for grievances filed by locals in the Montreal, Toronto, Central and Ontario Regions were negotiated in the last half of 2005. This brings the total number of grievances from the backlog settled by the union since last summer to 8,119. The

employer has paid \$2,218,610 in compensation so far.

The administrative work involved in distributing this money is ongoing. The union hopes that all eligible grievors will receive the compensation to which they are entitled before summer 2006.

Meanwhile, the union is continuing the work to identify all the remaining grievances that date from before August 1992. Our objective is to have the remaining grievances, the number of which we have brought down from 170,000 to less than 1,000, resolved by summer 2006.



"You'll need a bathroom pass signed by the plant manager... unfortunately, he took the afternoon off."

Stewards: Take special care in cases involving allegations of violent exchanges with members of the public

Continued from page 1

genuinely sorry, offered to apologize to the customer.

In addition, the arbitrator found that the grievor needed to demonstrate to the employer that nothing of the kind would happen again if reinstated. However, when asked about his mindset at the time of the incident the grievor replied:

“I was thinking about my next call. I didn’t mean to hurt his feelings. I was trying to explain, he would not listen, and he got madder and madder. I should have walked away. I am a boxer and we don’t walk away” (underlined by the arbitrator).

The arbitrator discussed the implications of the grievor’s statement and found that:


“[By] adverting to his reputation as a boxer, he planted the seed that, if confronted again with a similar emotionally charged situation, he would likely not walk away but implied that he would, because of his values as a boxer, engage in the very same aggressive behaviour. [However,] the employer must have the confidence in those circumstances that he knows when ‘to walk away.’ The grievor failed in his effort to convince me that the likelihood of a repetition of his

conduct in a similar situation would be farfetched.”

The arbitrator therefore dismissed the grievance. It’s unfortunate that such a blow-up with a customer could lead to the grievor’s life being fundamentally changed. However, this award sets out how seriously arbitrators view the nature of the relationship between postal workers and the public.

As a shop steward, take special care in cases involving allegations of violent exchanges with members of the public. Use the 24-hour notice period given to grievors prior to a disciplinary interview to find out their perspective and circumstances. Together you can decide how best to approach the interview.

STOP



WORKER ABUSE

DAY OF MOURNING

APRIL 28

Remembering the dead and improving safety for the living

The numbers are staggering. In Canada, some 835 employees die from accidents at work each year, averaging more than 2 deaths every day. From 1993 to 2004, more than 10,026 people lost their lives due to workplace accidents. Another 900,000 per year are injured.

(Source: Canadian Centre for Occupational Health and Safety <http://www.ccohs.ca/events/mourning/>)

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