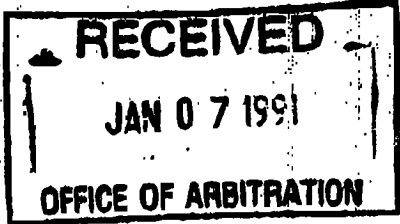


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IN THE MATTER OF AN ARBITRATION

BETWEEN:

SENECA COLLEGE OF APPLIED ARTS AND TECHNOLOGY,
(the "College"),

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION,
(the "Union")

AND IN THE MATTER OF THE GRIEVANCES OF FRANCIS VAN HUYEN

BOARD OF ARBITRATION

Paula Knopf, Chairman
R. J. Gallivan, College Nominee
Brian Switzman, Union Nominee

APPEARANCES

For the College

C. G. Riggs, Counsel
W. Howorth
J. Limkilde
M. Fogel
N. Grant

For the Union

Susan Ballantyne, Counsel
Larry Olivo

Hearing in this matter was held on February 28 and October 29, 1990 in Toronto

A W A R D

This is a discipline case. The Grievor is a Teaching Master at Seneca College and has nine years' seniority. He teaches Computer Systems. This case involves three grievances which arose out of a series of three events in the early part of 1989. We shall deal with each of the grievances separately.

1. January 31, 1989 - Marking of Examinations and Conduct in the Analysis/Design BCS-335 Course

The Grievor taught an Analysis and Design course in Computer Systems in the fall of 1988. After the release of the marks, one student launched an academic appeal setting out a series of complaints against the Grievor's teaching and organization of the course as well as the marking of exams. As a result of the complaint, the Dean of the Computer Studies Division gathered together a group of four people who were familiar with the subject to review the student's complaint and to try to determine what ought to be done. The group looked at the student's final examination and the marks assigned by the Grievor. In doing this, they noticed that the students' examination booklet contained only a grade noted on the outside without any indication of the analysis as to how the mark was computed throughout the body of the examination. Since there was no indication on the face of the examination paper as to how the mark had been calculated, the Appeal Committee had concern as to whether the grade had been calculated in an entirely subjective manner or not. The Committee also felt difficulty defending a grade when they could not see the basis on which the mark had been determined. Upon further investigation, the Committee realized that all the marks on the examination papers were recorded on the front without any indication of analysis throughout the examination paper. Another thing that raised concern with the Committee was that only five

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different marks were used, namely, 30, 40, 50, 60 and 70. There were no odd numbers and all were multiples of ten. This raised suspicions in the Committee's mind. The Dean wrote to the Grievor saying:

I am left to conclude that these final exams, which represent the work of 37 students, were graded in a highly subjective fashion without proper attention to the detail of each answer. The mark recorded for each final was then the result of your "gut" reaction rather than the result of detailed marking. You are hereby admonished for this behaviour and directed to re-mark all 37 of the BCS-335 exams in a proper fashion that will show how the grades were developed.

The Grievor did re-mark the examinations as required. In his testimony the Grievor explained that he had used detailed analysis and answer scheme when he originally marked the examination. He had done the calculations and the notations on a scrap piece of paper as he was marking the papers and then simply recorded the final results of the mark on the front page of the examination forms. He had never been instructed to do otherwise and had no idea that any different system was expected. It was out of the ordinary for him to mark in multiples of ten as he did in this case. However, the Grievor explained that he did so in order to benefit the students by giving them higher marks because he rounded each final score up to the next highest multiple of ten. In other words, if someone achieved a mark of 41, the Grievor would have assigned a final grade of 50 for the exam.

In any event, the Grievor did re-mark the examinations as requested. They were then reviewed by the Department. There were no significant differences between the final grades assigned by the Grievor in the original and in the re-marked set of examinations. Further, the College has no quarrel with the final grades that the Grievor ultimately awarded.

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The College also had other complaints about the way the Grievor has taught this course. These complaints related to issues raised in the student appeal about the Grievor's instructions to the students prior to the final examination, the way the Grievor conducted assignments and the way the Grievor announced mid-term marks to the students. However, the main thrust of the case as it was presented to this Board of Arbitration was that the discipline of the written warning to the Grievor was justified principally upon the way he had marked the final examination. The College clearly took this seriously and in the letter of discipline to the Grievor advised him that "any further incidents of a similar nature may result in further discipline up to and including dismissal."

A. Decision on the Marking Grievance

The evidence of the College is clear and convincing that the College initially had ample reason to be concerned about the way the Grievor had marked the final examinations in this course. The mere fact that all the grades came out to multiples of ten raised suspicions. These suspicions were understandably heightened when the Appeals Committee reviewed the examination booklets and found no indication of any analysis on the face of the booklets. It certainly seemed that the Grievor had not applied the careful analysis to the examination questions to which the students are entitled. Further, the fact that the basis of the analysis was not recorded on the examination made it difficult for the Appeals Committee to make any decisions on a student's academic appeal. Hence, we find no fault in the College launching a serious investigation into this matter and looking very critically at the Grievor's conduct.

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However, nothing in the evidence establishes that the Grievor or any faculty were ever instructed that it was a requirement to record the analysis of the assignment of marks on the examination papers themselves. While it may make common sense, it was not a requirement that was ever made known to the Grievor or that he could be disciplined for per se. Further, even though one could be suspicious about marking in terms of multiples of ten, the re-marking by the Grievor and the subsequent review by the Appeals Committee indicated that none of the marks given by the Grievor were inappropriate or out of line. Thus, there was no harm done to the students or to the academic process. The other matters raised in the letter of discipline were clearly not the main reason why the discipline was granted, nor were they relied upon with any degree of emphasis by the College in their presentation of this case. They may amount to matters of some concern that a Dean may want to raise with a Teaching Master, but they are not the type of thing that this Board feels warrants a letter of discipline because in and of themselves they are too trivial.

Therefore, because the main reason for the imposition of the letter of reprimand was a marking system that appeared suspicious, but that ultimately proved itself to be valid, and because the minor matters raised in the letter of discipline are not significant, it is our conclusion that the disciplinary letter of January 31, 1989 should be removed from the Grievor's record.

2. February 23, 1989 - Letter of Reprimand Regarding "Deviation from Approved Valuation Method - BCA 335"

The BCA 335 course is one that the Grievor had taught many times. The course is developed in conjunction with other members of faculty. Prior to the running of the

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course, a course outline was drafted which was given to the students. That outline contains the Teaching Masters' and Departments' collective decision as to how the course will be run. In this case, the course outline indicated that there would be four mid-term examinations in specified areas.

During the meetings which set up the course and the course outline, the Grievor told his colleagues that he felt that it was inappropriate to try to administer four tests in the academic term. His experience from teaching the course previously had been that it is "not possible" to give four tests because there is simply not enough teaching time to do so.

In the fall of 1988, the Grievor told his section of the course that he would only be giving them three mid-term examinations but that they would be tested in the four areas set out in the course outline. Early in the fall semester Ms. Limkilde, the Chair of the Computer Studies Division, spoke to the Grievor reminding him that the Computer Studies Division expected him to administer four tests in that term. However, the Grievor did not do that. He administered three tests, but did cover the four specified test areas. He told Ms. Limkilde and this Board of Arbitration that his reason for doing that was that there was not enough time in the course to administer an appropriate test because there was not enough material early on in the semester to test upon.

The Division considered the Grievor's deviation from the Division's approved plan of the course. On February 23, 1989, a second letter of reprimand was issued to the Grievor concluding:

In light of the recent warnings that have been issued to you regarding your performance during the past semester I must advise you that this is a serious matter and that this letter is to be

considered as a final warning. Any incidents of a similar nature may result in further discipline up to and including dismissal.

B. Decision Regarding the Administration of Tests

The Grievor offered articulate and genuine explanations as to why he did not conduct the four tests expected of him by the Computer Studies Division. He clearly and honestly believes that it is not pedagogically sound to administer four tests in this particular subject. He also felt that his class was not ready for the first test. On the other hand, the Division determined that the subject should be taught with four tests as part of the course. It is difficult and awkward for a Board of Arbitration to sit in judgment of an academic decision and that is not what we are required to do. Instead, we are required to determine whether the discipline imposed upon the Grievor was just under all the circumstances.

The Computer Studies Division does, through its Teaching Masters, develop and design its own courses. This is done on a collegial basis by the Teaching Masters working together. Once the course is designed, that design is committed to paper by way of a course outline. That course outline is given to the students and stands as the minimum expectation of what they can demand in the course. While the Grievor may have had sound reasons for conducting the course as he did, we cannot find fault with the College for saying that it is a disciplinary matter to deviate from the course outline unless there are very clear and persuasive reasons to do so. The Grievor's individual judgment in this case, which flies in the face of the judgment of his peers in the Division, does not amount to that sound, convincing form of evidence which we would seek. It is simply his individual opinion. Hence, we feel that the College is justified in

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disciplining the Grievor for his deviation from the approved evaluation method. Under the circumstances, a written warning was appropriate. However, in order to clarify the Grievor's record, the letter of February 23 should be revised within the file to expunge any reference in the last paragraph to the events outlined in the January 31, 1989 letter of warning. Thus, with that caveat, this grievance is denied.

3. March 29, 1989 - A Two-Day Suspension for Non-Attendance at a Class

On March 27, 1989 the Grievor was scheduled to teach a Computer Studies course. The Grievor did not attend to teach that class. Instead, he had given the students an assignment previous to that day which he wanted the students to complete without any assistance from him. Thus, he designated to the students that the March 27th "class" would be an "unsupervised study period." Study periods are a common occurrence at the College and, indeed, a number of them are designated in the course outline for this particular course. They are usually meant to be periods when the students can do work in the classroom and when the Teaching Master is present to offer any assistance. They count as contact hours in the calculation of the Teaching Master's teaching load. The Grievor's designated unsupervised study period was simply a scheduled class hour when he expected students to attend in the classroom and do the assigned work, but where he would not be present or available to the students. The Grievor felt that the unsupervised study period was an appropriate thing to schedule. He did not feel that he needed any authorization from the administration to be absent from his classroom. In his testimony he made it clear that he considers what he did to be a sound pedagogical teaching device and that it is something quite different from being absent without leave. The Grievor says that he felt

that it was appropriate not to be in the class during the work period because "no one told me contrary." He testified he believed other Teaching Masters followed the same practice. However, there was no direct evidence of this.

The College sees this incident quite differently. The College sees this as something akin to an unauthorized cancellation of class. The Grievor had cancelled a class in December of 1988 without authorization and was warned by Dean Howorth that this was inappropriate. The College's evidence made it clear that it would have had no objection to the Grievor designating this particular class as a work study period. However, it expected that the Grievor be present in the classroom at the time. Even though the Grievor testified that he did not want students to come to him for answers on the assignment, the College feels that it is imperative that the Grievor be present for all scheduled classes. The Grievor had lost a day's pay for the incident in December of 1988 when he cancelled a class without authorization. On March 29, 1989 he was given a letter of discipline referring to the December 1988 issue as well as the warning letters of January 31 and February 23, 1989. After these references the College concluded:

As a result the College has determined that in the circumstances you are not entitled to salary for your day of absence, ie. March 27, 1989 and that a 2-day suspension without pay is an appropriate measure to reflect the seriousness with which the College views your conduct. Accordingly, you are advised that you are suspended without pay on Thursday, March 30 and Friday, March 31, 1989 and consequently relieved of your duties and responsibilities on those dates.

Please be advised that any incidents of a similar nature may result in further discipline up to and including dismissal.

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The Union suggested in cross-examination that it would be ironic if the Grievor's classes had to be cancelled while he served his suspension. But, there is no evidence of what actually happened, nor can it influence the decision.

C. Decision Regarding Scheduled Classes

Again, we wish to reiterate that it is not the function of a Board of Arbitration to determine how courses ought to be taught or how classrooms ought to be run. All we can do is sit objectively and determine whether the discipline imposed in the circumstances of the case is just and fair. This situation creates a classic dilemma. On the one hand we have the College, as employer, saying that as a bare minimum it has a right to demand that the employees, i.e. the Teaching Masters, appear and present themselves for their scheduled teaching or classroom hours. Further, management says that it has the right to discipline any employee for his/her failure to live up to this minimum requirement. On the other hand, we have a Teaching Master who is saying that he decided to conduct himself in a manner that would be of academic benefit to the students.

In a purely theoretical sense, the right of the College as the Employer and the right of the Teaching Master as the teacher in charge of his classroom could be very difficult to reconcile. However, in the circumstances of the case, the reconciliation is not difficult. It is virtually impossible to imagine any academic or pedagogical justification for telling students to appear in a classroom even though the teacher has no intention of presenting himself/herself there to be of any assistance to the students. If a teacher wants students to perform assignments on their own without the teacher's assistance, this can be accomplished by either assigning homework or assigning a

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study or work period wherein the teacher is present to ensure that students are working, but wisely avoids giving the answers the students may seek of him/her. The Grievor chose to do neither of these things. He simply told the students to work in the classroom at their regularly scheduled hour and, as the Grievor admits, he was not available to the students in any way during that hour. Despite what the Grievor may have felt was an honestly held pedagogical justification for what he did, we see no difference in these actions than from him simply being absent from a scheduled class without prior authorization. We are also concerned because the Grievor gave no indication at the hearing that he has realized that there was any justifiable cause of concern on the part of the College for this type of conduct. Clearly, the Grievor does not understand that what he did was inappropriate or justifiably unacceptable by the College.

Given that the Grievor was disciplined earlier for an absence without authorization, and given that this particular absence cannot be objectively justified, we do not feel that the two-day suspension imposed by a College was outside the realm of a reasonable response by management. Hence, we do not feel it appropriate to interfere with that decision. Hence, this grievance is also dismissed. However, once again, the parties are directed to change the wording of the March 29, 1989 letter of discipline to remove any reference to the letter of January 31, 1989.

Conclusion

Hence, for all the reasons mentioned above, the grievance against the first letter of discipline is upheld. The second and third grievances have been dismissed. However, the Employer has been directed to reword the

contents of those letters to expunge any reference to the incidents set forth in the letter of January 31, 1989.

DATED at Toronto, Ontario this 24th day of December, 1990.



Chairman

I concur.

"R. J. Gallivan"
College Nominee

I dissent: Reasons to follow.

"Brian Switzman"
Union Nominee