III
PRINCIPLES AND AUTHORITIES

While discharge for any reason can give rise to hardship and human suffering, as this case sadly illustrates, accusations of sexual harassment are among the most devastating in their consequences for the employee accused, for the accusers and for employees and management alike who can be drawn into an intense and divisive process of acrimony and side-taking. A case of alleged sexual harassment is fraught with difficulty for Company and Union alike. Management, on the one hand, must take the greatest care to avoid false accusations that may wrong an employee of previous good service, cost that employee his or her job security and tarnish an individual's reputation not only within, but also outside the workplace. When, as in this case, the accused and accusers are co-members of a single bargaining unit, the trade union is cast in the invidious position of generally espousing principles which deplore sexual harassment while at the same time vigorously defending an accused employee who proclaims innocence and is entitled to fair representation by his union in the pursuit of his grievance against discharge. Such disputes are fought with little joy.

On one matter, however, no one is in disagreement. Throughout the hearing, both in evidence and in argument, witnesses and counsel alike were unanimous in the conviction that the sexual harassment of one employee by another constitutes an intolerable aberration of conduct which can have no place in the contemporary work setting. While sexual harassment has only come to relative prominence in recent years, its historic existence in male dominated workplaces has been well documented and has, in recent times, been the subject of vigorous attack both through legislation and through the private efforts of employers, trade unions and interest groups associated with the feminist movement. In Canada the seminal writings of authors Constance Backhouse and Leah Cohen in the 1970s contributed greatly to the raising of public consciousness about sexual harassment, primarily directed towards females in the workplace (See Backhouse and Cohen, The Secret Oppression: Sexual Harassment of Working Women (Toronto, 1978)).

Canadian jurisprudence on sexual harassment began with a landmark decision of a Board of Inquiry under the Ontario Human Rights Code in 1980 in what has become known as the Cherie Bell case (Ont. 1980), 1 C.H.R.R. D/155 (Shime). In hearing the complaints of two female employees alleging that they had been sexually harassed by the owner of the restaurant where they were employed, Adjudicator Shime ruled that sexual harassment constitutes sexual discrimination prohibited by the Ontario Human Rights Code. Subsequently, in 1981, the Ontario Human Rights Code was specifically amended to incorporate a prohibition against sexual harassment in the workplace (Human Rights Code, S.O. 1981, c.53). In 1983, Parliament amended the Canadian Human Rights Act by adding a direct prohibition of sexual harassment (Canadian Human Rights Act, 1976-77, c.33, s.13.1 & 13.2 (reenacted in 1980-81- 82-83, c.143 s.7)). More recently, the Government of Canada has further prohibited sexual harassment under the Canada Labour Code, Part III, R.S.C. 1970, L-1, ss.61.7, 61.8, 61.9 (en. 1983-84 c.39 s.12). The terms of those provisions are as follows:

> 61.7 In this Division, "sexual harassment" means any conduct, comment, gesture or contact of a sexual nature
>
> (a) that is likely to cause offence or humiliation to any employee; or
>
> (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.
>
> 61.8 Every employee is entitled to employment free of sexual harassment.
>
> 61.9 Every employer shall make every reasonable effort to ensure that no employee is subjected to sexual harassment.

The leading Canadian legal text on the subject of sexual harassment is the thorough study of Professor A. P. Aggarwal, Sexual Harassment in the Workplace (Toronto, 1987). In commenting on the definition of sexual harassment appearing in the Canada Labour Code, Professor Aggarwal at p.8, makes the following distinctions with respect to sexual harassment:

> These identified descriptions of "sexual harassment" appear to indicate that such behaviour can be divided into two categories: sexual coercion and sexual annoyance. Sexual coercion is sexual harassment that results in some direct consequence to the worker's employment status or some gain or loss of tangible job benefits. Sexual harassment of this coercive kind can be said to involve an employment "nexus". The classic case of sexual harassment falls in this "nexus" category: a supervisor, using his power over salary, promotion and employment itself, attempts to coerce a subordinate to grant sexual favours. If the worker accedes to the supervisor's request, tangible job benefits follow; if the worker refuses, job benefits are denied.
>
> Sexual annoyance, the second type of sexual harassment, is sexually related conduct that is hostile, intimidating or offensive to the employee but nonetheless has no direct link to any tangible job benefit or harm. Rather, this annoying conduct creates a bothersome work environment and effectively makes the worker's willingness to endure that environment a term or condition of employment.
>
> This second category contains two subgroups.

> Sometimes an employee is subjected to persistent requests for sexual favours and persistently refuses. Although that refusal does not cause any loss in job benefits, the very persistence of the demands creates an offensive work environment, which the employee should not be compelled to endure. The second subgroup encompasses all other conduct of a sexual nature that demeans or humiliates the person addressed and in that way also creates an offensive work environment. This includes sexual taunts, lewd or provocative comments and gestures, and sexually offensive physical contact.

As this case amply demonstrates, great emotional stress and human hardship can result from an allegation of sexual harassment. The grievor has experienced extreme personal anxiety and has suffered both in the loss of his employment and damage to his reputation and his family life. The two complainants, one of whom has had to seek professional counselling, have been ostracized by their co-workers, have been the victims of adverse media attention and have been effectively driven from their jobs, one having resigned and the other forced to take a medical leave of absence. The employer and the Union are both faced with a bitter and divisive controversy that has tainted the workplace and undermined morale. The Company, which to this point has lost the services of three valued employees, stands accused of supporting false accusations that have destroyed the life of an innocent man. The Union, on the other hand, bound as it is to fully protect the rights of a discharged employee, is bitterly accused by the female complainants of having forsaken their right to be free of sexual harassment by turning its defence of the grievor into an attack on themselves. The costs, both emotional and economic, have been high to all concerned.

These observations are not, however, to suggest that well-founded complaints of sexual harassment should not be made by the victims of such misconduct and that they should not be vigorously pursued by Company and Union alike. It now appears beyond serious discussion that the victimization of female employees by sexual harassment, described by the authorities as the historic legacy of a male dominated working world, has been as hidden as it has been widespread. One American authority estimates that some forty percent of women working in the United States have experienced some form of work related sexual harassment and have, for the most part, "suffered alone and in silence". (See Meyer, Bechtold, Oestreich and Collins, Sexual Harassment (New York, 1981)). A review of the generally accepted literature supports the conclusion that as difficult as it may be to initiate and pursue an emotionally volatile complaint of sexual harassment against an employee, the alternative of passive acquiescence by victims or wilful blindness by companies and unions will, in the long run, exact a far heavier toll of personal suffering.

IV
DECISION

I turn to consider the findings of fact to be made on the evidence. In so doing I accept the argument of counsel for the Union that the seriousness of the charge against Mr. Morgan requires a commensurate standard of clear and cogent evidence. The issue in this instance becomes one of credibility. If the evidence of Mr. Morgan is accepted, he has done nothing wrong, and in particular has neither verbally nor physically harassed either Ms. Burt or Ms. Peldiak. Should their evidence be preferred, however, the Arbitrator must conclude that the grievor did engage in a course of sexual harassment, both verbal and physical, over a sustained period in October of 1987.

It is well established that the demeanour of witnesses, the quality of their evidence in respect of the care and candour with which it is given, and the overall consistency of their account of factual events may all be looked to as a means of assessing their credibility. In the instant case the Arbitrator must conclude that the credibility of Mr. Morgan's evidence is considerably less compelling than that of either Ms. Burt or Ms. Peldiak. The two female complainants gave evidence at the hearing that did not vary from examination-in-chief through cross-examination and, indeed, which was in all material respects identical to the factual accounts which they made both in their initial complaints to the Company and during the course of the subsequent Company investigation. When they were unsure of a particular fact they readily admitted it. Nor did they seek to attack Mr. Morgan indiscriminately or in any general sense with respect to his character. Both described Mr. Morgan as a friend in the workplace who was among the best crew dispatchers, always willing to help with any work related problem they might have. They did not attempt to single out Mr. Morgan insofar as the issue of verbal harassment is concerned, freely describing the verbal improprieties of other males in the workplace, including two supervisors.

The Arbitrator was also impressed with their overall demeanor in the witness box. Both Ms. Peldiak and Ms. Burt gave their evidence in a careful, measured way, with understated tone of intense personal feeling for the humiliation and frustration they have suffered. Only in the case of Ms. Burt did emotion briefly prevail, when she broke into tears while recalling what she described as the mixed sense of embarrassment, fear and outrage that she felt when Mr. Morgan's attempts at physical familiarity were repeated, precipitating her breakdown in tears at home on October 15, 1987. In the Arbitrator's view that aspect of Ms. Burt's evidence does not undermine her credibility. If anything, it supports her account of the very intense emotion she felt at the time.

Counsel for the Union seeks to rely, in part, on the fact that neither Ms. Burt nor Ms. Peldiak raised any immediate hue and cry when they were first subjected to physical advances by Mr. Morgan, and that when words of a sexual nature were openly addressed to them in the office, they simply laughed rather than raise any objection. In the Arbitrator's view reliance on this evidence should be considered with great care. The reactions of women to sexual harassment have been well studied in the authorities cited above. In the Arbitrator's view it is neither implausible nor unlikely that the first reaction of some women to overt sexual harassment might be silence. Silence can be the natural consequence of a woman's fear of

embarrassment at the thought of publicizing an unpleasant and humiliating experience. It can also be motivated by a natural fear of reprisal and the possibility of charges of lying for ulterior motives or having provoked the male employee by conduct that invited sexual advances.

Similarly, great care should be taken before characterizing a female's laughter in the face of overt sexual comments or teasing as acceptance or encouragement of such conduct. For men and women alike, laughter can be a ready shield for a number of emotions, and a handy means of dealing with embarrassing or awkward situations. The Arbitrator accepts the evidence of Ms. Peldiak and Ms. Burt that when they laughed in response to the sexual comments which Mr. Morgan and others directed at them, they did so largely because, as relatively junior employees who were in a distinct sexual minority in the crewing office, they didn't know what else to do.

By contrast to the evidence of the two female complainants, the accounts which Mr. Morgan has given with respect to the alleged incidents are marked by substantial inconsistency. During the initial investigation by the Company Mr. Morgan denied having made any verbal or physical advances of a sexual nature towards either Ms. Burt or Ms. Peldiak. He denied massaging Ms. Burt's back on any occasion, or attempting to touch her breasts. He denied asking Ms. Peldiak to marry him, and saying "I know what you want" on October 3, 1987 while physically assaulting Ms. Peldiak in the kitchen. He also denied ever patting Ms. Peldiak's behind or any other verbal or physical contact in respect of either of the female complainants that could be construed as sexual harassment. As noted, however, during the arbitration hearing, after Mr. Johnston had made a statement confirming that he had observed Mr. Morgan massaging Ms. Burt, Mr. Morgan had a different account to relate. He then purported to remember both incidents in some detail, relating how he had simply put his hands on Ms. Burt's shoulders, once while helping her to locate a crew member and another time while asking whether he could pick her up a snack. He was also able to recall a single incident in which he maintains Ms. Peldiak might have misinterpreted his statement "Marry me!" which he says was meant as a joke and was addressed to no one in particular.

The suggestion that the conflicting accounts of these events given by the female complainants is the product of a conspiracy is unsupported by any direct evidence whatever. The evidence does not establish any relationship of substance between Ms. Peldiak and Mr. Stephen Burt. While it does appear that Mr. Burt and Mr. Morgan exchanged harsh words on occasion, the evidence discloses beyond controversy that Mr. Morgan consistently used harsh words with anyone in the workplace with whom he might have a disagreement, something which appeared to be a matter of personal style which no one took very seriously. In the entirety of an extensive record the Arbitrator finds it impossible to locate a conspiracy of any kind, save in the mind of Mr. Johnston.

In comparing the evidence of the female complainants and that of Mr. Morgan it is, in the Arbitrator's view, important to weigh the corroborative testimony of independent witnesses. Firstly, it is significant, that Mr. Johnston's first statement to the Company did

corroborate the account of Ms. Burt, at least to the extent of confirming that, contrary to his initial denials, Mr. Morgan did massage her shoulders on two occasions. The evidence of Mr. Hogan establishes that Mr. Morgan in fact admitted doing so when the manager of the Crew Management Centre attended at his home to serve him with the Form 780 notifying him of his termination.

The discrepancies between Mr. Morgan's answers during the course of the Company's investigation and his very different account of events rendered at the arbitration are obviously problematic. How can these be explained? While the arbitrator appreciates that the stress of the accusations made against him by Ms. Peldiak and Ms. Burt may have been considerable, it is, in my view, unlikely that the difficulty of his circumstances would have prevented him from having any recall whatever of these events. In the Arbitrator's view, having regard to Mr. Morgan's general demeanour as a witness, and after a careful review of the entirety of the evidence, it is more probable that the posture which he adopted during the Company's investigation was deliberately defensive, as was the contrasting position of detailed recall which he advanced at the arbitration hearing. In these circumstances the Arbitrator is compelled to prefer the evidence of Ms. Burt and Ms. Peldiak, and cannot accept the denials and alternative characterization of the events of October 1987 advanced by Mr. Morgan. I must conclude as a matter of fact that he did, on two occasions, attempt to touch the breasts of Ms. Burt while massaging her neck and shoulders, and that he did approach Ms. Peldiak from behind in the office kitchen on October 3, 1987, grabbing both of her breasts and rubbing his penis against her behind while making a lewd comment to the effect that he knew what she wanted. I also accept the evidence of Ms. Peldiak that Mr. Morgan had, on a number of occasions, patted her behind and engaged in occasional verbal sexual innuendos, including imprecations of marriage and the suggestion of gifts.

I turn to consider the appropriate measure of discipline in the circumstances. The seriousness of acts of sexual harassment, and in particular of unwanted physical touching, can scarcely be understated. In a thoughtful article by Ms. Mairin Rankin in its own periodical publication, "Canadian Transport", in February 1981 the Union, in an article entitled "Unions Declare War on Sexual Harassment", accurately summarized the seriousness of sexual harassment. That article, at p.11, makes the following observations:

> Dangers to health can exist in any workplace, from asbestos dust in mines to cathode ray tubes in offices. These problems are widely publicized through the media, and unions wage a constant battle for improved working conditions and higher health and safety standards.
>
> However, there still remains a major threat to health in the work place that is rarely publicized, and it is the major on-the-job health hazard for women.
>
> At least once in their lives, 70 to 90% of

working women will be affected by it, yet it remains the least discussed problem.

That occupational hazard is sexual harassment.

Sexual harassment is, in effect, a social disease, borne of traditional sex roles that established males as the sexual aggressors in our society, while passivity has been the female's role. . . .

Sexual harassment is an expression of power, and can be defined as any sexual advance that threatens a worker's job or well-being.

It can be expressed in a variety of ways, including unnecessary patting or touching, suggestive remarks or verbal abuse, leering, demands for sexual favours and physical assault - all of which may or may not be directly accompanied by threats to the victim's job or career.

Sexual harassment means being treated as a sex object, not a worker. It means being judged on physical attributes instead of skills and qualifications when seeking a job or raise.

It is not harmless, nor is it fun, and can have serious effects on the victim's working and personal life.

Victims of such harassment suffer tension, anger, fear and frustration, often manifested by headaches, ulcers and other nervous disorders.

The psychological and physical effects of harassment can affect a victim's performance at work to the point where the employer may begin to question her abilities, and even fire her without seeking the true cause of her deteriorating performance. . . .

Quitting - or risking dismissal - for reporting harassment is often a step women cannot afford to take because of their already vulnerable position in the labour force.

Even so, fully 48% of the victims of sexual harassment lose their jobs. They are either fired or forced to quit by the intolerable working conditions. When a victim complains, men often close ranks behind the harasser, and other women, fearful for their own jobs, may prefer not to get involved.

> Despite the fact that harassers are often "repeaters", it is still the victim who suffers. It is extremely rare for a harasser to be fired or transferred, even though the organization may be sympathetic. They usually have more of an investment in the harasser, as he is generally in a higher position than the victim.
>
> Rather than being seen as a victim of unwelcome abuse, the woman is often assumed to have been willing or to have encouraged the advances.
>
> She is made to feel that she could stop the harassment if she really wanted to, or she is accused of over-reacting or being vindictive.
>
> If the harassment is clearly documented, the harasser will often be excused on the ground that it was "an isolated incident."
>
> Sexual harassment is extremely difficult for a woman to combat alone, and must be fought against collectively. . . .

In the Arbitrator's view the foregoing passages represent a generally accepted view, among trade unions and employers alike, of the importance of eliminating sexual harassment from the work place. As applied to the unfortunate realities of the instant case, and particularly to the employment fortunes of Ms. Peldiak and Ms. Burt, the words of the Union's own article have a chillingly prophetic ring. Unfortunately, less prophetic is the representation made to Company employee's in the sexual harassment policy promulgated by the Company. The final statement of that document is as follows:

> Employees who make legitimate complaints of sexual harassment will not have their careers affected in any way as a consequence of their complaints. In fact, they will be assisting the Company in providing a healthy working environment.

Boards of Arbitration have generally recognized the gravity of sexual misconduct in the work place. Acts of overt indecency have readily been found to justify discharge, although the jurisprudence in this area is still relatively underdeveloped. In a recent decision this Office sustained the discharge of an employee who deliberately exposed himself to a female employee who was a member of a track maintenance crew working in a remote location. (See C.R.O.A. 1658.) In re Indusmin Ltd. and United Cement, Lime and Gypsum Workers International Union, Local 488, (1978) 20 L.A.C. (2d) 87 (M. Picher) a Board of Arbitration had occasion to review the discipline of two consenting employees who engaged in a sexual act in the workplace. At p.91 the Board made the following observation:

> A sexual act ... can risk disturbing other

> employees, if only as an offense to their personal sensibilities, and can likewise risk offending persons with whom the employer does business. To the extent that it is perceived by other employees at being tolerated by management, it can pose a threat to the very authority of the employer.
>
> The offence may be viewed as more serious still in a workplace where an employer has sought by affirmative hiring practices to achieve a more sexually integrated work force. When an employer has taken the initiative and responsibility to introduce a member or members of one sex, be they male or female, to a work pool that has traditionally been the exclusive preserve of the opposite sex, there is a commensurate responsibility on the employees of both sexes to refrain, at work, from conduct that will discredit or hinder that valuable initiative.

The foregoing comments are particularly appropriate in the instant case. It is common ground that the Crew Management Centre has traditionally been male dominated. The employment, in the summer of 1987, of Ms. Burt and Ms. Peldiak was a step in the direction of altering the gender imbalance in that particular part of the Company's operations. This was plainly consistent with the employer's obligation to implement affirmative action programs pursuant to a direct order made by a tribunal under the Canadian Human Rights Act, R.S.C. 1976-77, c.33. The decision of the Tribunal in Action Travail des Femmes v. Canadian National (1984) 5 C.H.R.R. d/396 affirmed by the Supreme Court of Canada, eradicated any lingering doubt about the obligation of the Company to recruit females into employment in what had been traditionally been male positions. (See, generally, Davis and Neudorfer "Affirmative Action in the Workplace" (1988) 2 National Labour Review 18 at pp. 21-24.)

If the dictates of the public law place upon the Company an obligation to redress an historic gender imbalance within its working forces by means of affirmative action, it would appear undisputable that vigilance with respect to the deterrence of sexual harassment in traditionally male-dominated places of work must be an intrinsic part of such a program. Employer and union alike bear an obligation to sensitize employees to the need for gender equality and dignity in the work place. In those increasingly exceptional circumstances where employees are either unable or unwilling to adhere to a suitable standard of respect for peers of the opposite sex the Company may have no alternative but to revert to disciplinary sanctions. Indeed, it would appear that a failure to take steps against sexual harassment in the work place may leave an employer under the Canadian Human Rights Act liable for the transgressions of its employees in the course of their employment. (See Robichaud v. the Queen, a decision of the Supreme Court of Canada reported at 87 C.L.L.C. p.17, 025.)

As serious as the issue of sexual harassment may be, failure to

observe appropriate norms of conduct should not necessarily trigger the automatic discharge of the offending employee. Sexual harassment, like any disciplinary infraction, must be assessed having regard to the facts of the specific case, including all mitigating factors, with due regard to the general standards of conduct tolerated within the work place, the length of service of the employee who is disciplined and the quality of his or her prior record. (See, e.g., Re Canada Cement Lefarge Ltd. and Energy and Chemical Workers Union, Local 219, (1986) 24 L.A.C. (3d) 202 (Emrich).)

Some arbitrators have expressed reluctance to ground a finding of sexual harassment solely on verbal references to sexuality, particularly where they take place in a conversational setting and are repeated over time without apparent objection by the employee who later claims to be offended. In Re Canadian Union of Public Employees and Office and Professional Employees International Union, Local 591, 1982, 4 L.A.C. (3d) 385 (Swinton) a Board of Arbitration concluded that conversations between a male and female employee, extending over a substantial number of years, with occasional references to sex and sexual conduct did not, standing alone, substantiate a charge of sexual harassment. At p.401 the Board reasoned, in part, as follows:

> ... Surely, employees can discuss issues with a sexual connotation, whether rape laws or the problems of single parents, without risking a charge of sexual harassment because a male holds a view which a woman workers perceives as sexist. A standard of reasonableness is required in reviewing the verbal conduct, both as to the offensiveness and whether it creates a harassing and negative condition of work.
> ...
>
> Furthermore, if a woman finds comments distasteful, even though such comments are within the realm of tolerable or acceptable comments to many, she should make this known to her co-worker. Communication of discomfort may well end the discussion by the other employee.

This theme was also touched on in the earlier decision of Chairperson Shime in the landmark Cherie Bell Case ((Ont. 1980), 1 C.H.R.R. d/155). Discussing the problem of verbal sexual harassment in the context of the employee - supervisor relationship at d/156 Adjudicator Shime comments:

> The prohibition of such conduct is not without its dangers. One must be cautious that the law not inhibit normal social contact between management and employees or normal discussion between management and employees. It is not abnormal, nor should it be

> prohibited, activity for a supervisor to become socially involved with an employee. An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is coerced or compelled social contact where the employee's refusal to participate may result in the loss of employee benefits. ...
>
> Again, The Code ought not to be seen or perceived as prohibiting free speech. If sex cannot be discussed between supervisor and employee neither can other values such as race, colour, or creed, which are contained in The Code, be discussed.

In the instant case there is much evidence going to the use of crude language and frequent joking references to sex within the workplace generally. In the Arbitrator's view it is unnecessary to dwell at great length on this aspect of the case. As noted above, I am satisfied that Mr. Morgan did make unwelcome comments of a sexual nature to both Ms. Burt and Ms. Peldiak, but that his conduct in that regard was not substantially different from that of employee Morrissey and Supervisors Cachia and Kravecas. Indeed, the evidence of Mr. Johnston confirms that the language which he overheard one of supervisors use, including his very pointed sexual references expressed to one of the female complainants, offended him to the point that he privately rebuked his own supervisor for this excessive conduct.

The evidence discloses that all three of the members of the staff of the Crew Management Centre who also engaged in verbal familiarities of a sexual nature with the complainants were reprimanded by the Company for their actions. There is, however, a sharp distinction between the actions of Mr. Morgan, which in the case of Ms. Peldiak amount to overt molestation, and those of the three others. The actions of the three staff members other than Mr. Morgan who addressed what may arguably be construed as a form of verbal sexual harassment to the two female employees are plainly reprehensible. There is nothing, however, in the actions of these individuals which could in any way be construed as giving a licence to Mr. Morgan, or any other employee or supervisor, to engage in a sustained pattern of touching, bum patting, massaging and ultimately engaging in at least one act of sexual molestation.

The Arbitrator is not unaware of the length of Mr. Morgan's service nor of his undisputed quality as an employee. Nor should the findings of fact in this award be construed as a condemnation of Mr. Morgan's overall character. The fact remains, however, that with respect to the complaints filed by Ms. Burt and Ms. Peldiak, the evidence does sustain a conclusion that on a number of occasions Mr. Morgan crossed the line of acceptable behaviour in a most serious way, and in a way that caused personal offense and hardship to the two ladies in question.

There can be little doubt that sexual assault is, prima facie, grounds for discharge (see, e.g., St. Joseph's Health Centre v.

Canadian Union of Public Employees, Local 1144, an unreported award of Arbitrator R. J. Roberts, dated November 23, 1983, sustaining the discharge of a male employee for attempting fondle the breast of a female employee and to kiss her). It is the most fundamental right of any employee, whether male or female, to work without fear of assault, whether sexual, physical or otherwise. The maintenance of that condition is among the first obligations of an employer and responsibilities of an employee. A sustained course of conduct that violates that condition and instills fear, humiliation or resentment among victimized employees will, absent the most extraordinary mitigating circumstances, justify the removal of the offending employee from the workplace by the termination of his or her employment.

In all cases where discharge is at issue consideration must be given to the alternative of a lesser penalty. If there are indications within the evidence that rehabilitation can be achieved without resort to discharge, and that the reinstatement of the offending employee will not be unduly disruptive to the workplace, that alternative may well commend itself. Regrettably, that is not so in the instant case. Mr. Morgan admits to no wrongdoing, notwithstanding the considerable evidence against him. He has offered no apology for his conduct. He has, for the reasons canvassed above, been less than candid both with the Company and with the Arbitrator. In all of the circumstances I can see no basis on which to conclude that the Company did not have just cause to terminate the grievor's employment.

Before leaving this matter, one further comment should be made. While the Arbitrator is without jurisdiction to order any direct form of redress for the two female complainants, the full justice of this case would not be served without acknowledging the great loss they have suffered. If the statement of principle appearing in the Company's document on sexual harassment to the effect that employees who make legitimate complaints of sexual harassment will not have their careers affected is to have any substance, it would appear to the Arbitrator appropriate for the Company to consider closely what might be done to restore both Ms. Peldiak and Ms. Burt to positions of gainful employment comparable to those which they enjoyed prior to making the complaint that ultimately gave rise to this grievance. It is hoped that this matter will be the subject of discussion between the Company and the Brotherhood.

For all of the foregoing reasons the grievance must be dismissed.

September 16, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR