

**In The Matter of a Dispute**

between

**HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND & LABRADOR**  
**(MARINE SERVICES DIVISION)**

(hereinafter referred to as the "Employer")  
(represented by Treasury Board Collective Bargaining Division)

and

**NEWFOUNDLAND & LABRADOR ASSOCIATION OF PUBLIC & PRIVATE EMPLOYEES**

(hereinafter referred to as the "Union")

**THE GRIEVANCE**

On September 13, 2005, a written grievance was filed by Shop Steward, Mr. Howard Dodge, on behalf of Mr. Brian Byrne, Purser/Deckhand, claiming full redress for a 5 day suspension imposed by the Employer. In a letter dated September 26, 2005, N.A.P.E. Employee Relations Officer, Mr. Bert Blundon, wrote in part:

. . . The Union is alleging that the Employer, albeit not specifically stated on the grievance form, violated Article 32 – Discipline and all other pertinent Articles of the Marine Services Collective Agreement. The Employer's decision to impose an unjust and unwarranted suspension to [the grievor] gives rise to this grievance.

Arbitration hearings were held at St. John's, Newfoundland and Labrador, on October 23<sup>rd</sup> and November 1<sup>st</sup>, 2006.

For the Union:	Mr. Bert Blundon, <i>et al.</i>
For the Employer:	Mr. David Martin, <i>et al.</i>
Sole Arbitrator:	Mr. David Alcock

The parties agreed:

- 1) with the selection of the arbitrator;
- 2) that the arbitrator had jurisdiction to deal with the dispute;
- 3) that the arbitrator would remain seized of the matter to deal with questions of interpretation that might arise out of the award, including the *quantum* of compensation, if any, should the parties fail to agree;
- 4) that witnesses would not be excluded;
- 5) that the collective agreement and/or statutory time limits for filing the final award were extended.

The following evidence was entered by consent:

- 1) Marine Services collective agreement, expiring March 31, 2008;
- 2) Public Services Resumption and Continuation Act, SNL 2004 Chapter P - 44.1;
- 3) Grievance form, September 13, 2005 with explanatory letter September 26, 2005;
- 4) Discipline letter September 13, 2005, viz:

Mr. Brian Byrne  
P. O. Box 313  
Bell Island, NL  
A0A 4H0

Dear Mr. Byrne:

This will refer to deposits made on September 5 and 6, 2005 for the Beaumont Hamel that were signed off by you. With each deposit was a third party government cheque that had been cashed by you.

Given the fact that you have been informed in the past of the departments [sic] policy on cashing personal and third party cheques and that the notice concerning this is posted quite clearly in the ticket booth, it gives us no choice but to issue you with a five (5) day suspension (10 days in total including your off-shift period) effective September 14, to 18, 2005.

Should there be a recurrence of an incident of this nature; further more severe disciplinary action will result.

Also you are reminded of your right to follow the normal grievance procedure in accordance with your collective agreement.

Sincerely yours,

Ben Hammett  
Marine Manager

- 5) Affidavit by Mr. David Martin, accompanied by two photographs of the NOTICE posted

inside the Ticket Office at the Portugal Cove Terminus of the Bell Island-Portugal Cove Ferry Service, viz:

Third party cheques are **not** accepted for payment on this ferry service.

No personal or third party cheques will be redeemed for cash or credit.

6) Marine Policy Manual.

The following items were introduced into evidence by witnesses:

- DH#1 Bell Island Ferry Service Daily Cash Report, September 5, 2005;
- DH#2 Bell Island Ferry Service Daily Cash Report, September 6, 2005;
- DH#3 Prior Payment History, Earnings/Deduction Detail, for Philip Cooke, September 7, 2005;
- DO#1 Written reprimand for Brian Byrne for incident on MV Flanders on March 14, 2005.

Appearances for the Employer

Ms. Darlene Hearn, Regional Highway Administration Officer  
Mr. Ben Hammett, Marine Manager  
Mr. Dean Osmond, (then) Director Eastern Region 1

Appearances for the Union

Mr. Brian Byrne, grievor  
Mr. Danny Payne, Chief Mate on Beaumont Hamel

The following are the relevant collective agreement provisions:

**8.07** Employees shall have the right to grieve against suspensions and alleged unfair treatment on promotion and transfer and such grievances may be submitted in the first instance at Step 3 of Clause 8.01.

’ ’ ’

**9.16** An arbitration board may not alter, modify or amend any provisions to this Agreement but shall have the power to dispose of a grievance by any arrangement which it deems just and equitable.

....

**32.01** Any employee who is suspended or dismissed shall within seven (7)

calendar days of such suspension or dismissal be provided with written notification which shall state the reasons for the suspension or dismissal.

....

**32.03** The Employer shall notify an employee in writing of any dissatisfaction concerning his work within seven (7) calendar days of the event of the complaint. This notification shall include particulars of work performance which led to such dissatisfaction. If this procedure is not followed, such expression of dissatisfaction shall not become part of his record for use against him at any time. This Clause shall apply in respect of any expression of dissatisfaction relating to his work or otherwise which may be detrimental to an employee's advancement or standing with the Employer.

....

**33.01** A copy of any document placed on an employee's personnel file which might at any time be the basis of disciplinary action shall be supplied concurrently to the employee, who shall acknowledge having received such document by signing the file copy.

**33.02** Any such document shall be removed from the personnel file of the employee and destroyed after the expiration of two (2) years provided there has not been a recurrence of a similar incident during that period.

....

Relevant excerpts from the Marine Policy Manual, Section 4.2 – REVENUE COLLECTION

are as follows:

#### **4.2.2 DAILY SALES REPORT**

....

The daily sales report form is used to summarize daily sales. The Purser prepares the report at the end of each day and is responsible for the reported revenue balancing with ticket stubs/cash register tape and cash. The Purser signs the report and hands it to the Ferry Manager (Division Clerk in areas without a Ferry Manager). The Ferry Manager, after confirming the report is accurate, will sign the report to confirm its accuracy and acceptance of the cash.

The Ferry Manager or alternate after signing the daily sales report returns the book with Copy 3 to the Purser. The Ferry Manager will then complete a bank deposit slip and either deposits the cash or retains in a safe place until the deposit is complete (see Bank Deposits Section).

....

### **4.2.3 SECURITY OF SALES AND FLOATS**

Cash floats and daily revenues must be adequately secured and accessible by only the Captain and the Purser. Cash floats must be maintained on the ferry in order to ensure availability for the first trip the next day. If access to a more secure facility (such as a ferry terminal) is available early in the morning, it is recommended that the cash float be maintained there overnight.

Daily sales revenues, if not deposited through the night deposit or if held over for several days, must be secured in a safe under adequate safeguard in a ferry terminal where possible.

....

### **4.2.4 PERSONAL CHEQUES**

Personal cheques will only be accepted where:

- the payer provides two forms of identity
- the payer has no known record of issuing worthless cheques and
- the cheque is only for the amount of the fare

It should be noted these criteria eliminate cashing personal cheques for employees.

....

## **THE EVIDENCE**

All the evidence is not reproduced here. The following is a summary of what I consider to be the most relevant and salient evidence adduced at the hearings.

### **BACKGROUND**

The grievor, Brian Byrne, is a 16 year employee who has considerable experience in the position of Purser/Deckhand on the Portugal Cove/Bell Island ferry service. Mr. Byrne's qualifications include a Grade XI education and completion of a Medical course and a Bridge Watch Certificate, which were required by the Employer. Everything he knows about the role of Purser he learned by observing other Purses perform their duties. He was given no courses by

the Employer on the proper handling of funds and was not provided with any instruction on what the Employer considered to be a third party cheque. Prior to the arbitration hearing, Mr. Byrne had never seen the Marine Services Policy Manual and did not know that one existed.

In 2002, Mr. Byrne was disciplined for cashing his own personal cheque, which bounced. Discussions on that incident led to the Employer creating a notice. i.e., a sign, which Mr. Byrne personally attached to the wall of the Purser's Office. His understanding of the Employer's concern was that he would not be permitted to accept a personal cheque from the general public for more than the amount of the fare being charged. In other words, a personal cheque had to match the exact fare, or it could not be cashed. Although his practice thereafter was to cash personal cheques only for the exact amount of a fare, Mr. Byrne had no knowledge of any Policy which dealt with the cashing of personal cheques.

It appears that, after Mr. Byrne's 2002 discipline, the Employer also decided to tighten its financial controls on the Bell Island ferry service by requiring that each Daily Cash report be signed by the Purser, the Captain (or the Chief Mate relieving as Captain), an Administrative Assistant, and another person in administration.

The parties appear to agree that Article 33.02 required the removal (after two (2) years) of any documents on the grievor's file relating to the disciplinary action imposed on him in 2002. The Union objected to any mention of this incident, arguing that it violated 33.02 and also violated Article 32.01 by improperly adding to the reasons that had been expressly stated in the grievor's current suspension letter. The Employer argued that it was not relying on the 2002 incident to establish the basis for discipline for the latest incident, but only for the purpose of establishing that the grievor knew that his actions were wrong when he improperly cashed other cheques in September 2005.

It was common ground that Mr. Byrne's personnel record did contain a March 22, 2005

written reprimand for an incident of verbal abuse which had occurred on March 14, 2005, on the bridge of the MV Flanders. That matter was not grieved. However, the Union argued that this letter could not be relied on because it also was not mentioned among the reasons for suspension for the most current incident.

#### THE INCIDENTS OF SEPTEMBER 5<sup>TH</sup> AND 6<sup>TH</sup>, 2005

##### *The Employer's witnesses*

Ms. Darlene Hearn, Regional Highways Administration Officer, testified that she handled the Daily Cash Reports from the Ferry Services in the area. She explained that the Report from September 5<sup>th</sup>, 2005 (DH#1) indicated a deposit amount of \$1200.00 which consisted of \$1127.00 cash and a \$73.00 cheque. On the Report itself, she commented that a personal cheque for \$73.00 for Danny Payne (whom she determined was an employee of the ferry service) was returned for cash. It was her assumption that the cheque was Mr. Payne's personal cheque. Similarly, Ms. Hearn reviewed DH#2, the Daily Cash Report for September 6<sup>th</sup>, noting that a personal overtime cheque in the amount of \$421.89 for Philip Cooke (whom she could not find among government payroll records) was returned for cash. Ms. Hearn signed both Reports.

Since the cheques were payroll cheques made out to Danny Payne and Philip Cooke, Ms. Hearn agreed that she could not really classify them as personal cheques. She suggested that there are other types of personal cheques, such as those made out by companies to the Ferry Service for the amount of a particular fare and signed at the bottom. Ms. Hearn conceded however that she would not be able to tell whether such cheques were redeemed for cash or for ferry services. She was also not aware of any policy regarding the cashing of cheques. Ms. Hearn could not recall whether either of the cheques was endorsed. However, it was because those two

cheques seemed odd to her that she decided to bring them to Mr. Hammett's attention on the days she reviewed the Reports. Thereafter, both cheques were sent to the Royal Bank along with the relevant deposit.

Mr. Ben Hammett confirmed that the cheques in question were passed on to him by Doreen Hearn after which he conferred with Mr. Gary Kendall. Then, on the basis of his own knowledge of a past event concerning the grievor in 2002 in which he cashed his own personal cheque, thereby prompting the Employer to have a notice posted in the Purser's office, Mr. Hammett wrote the discipline letter of September 13, 2005. Reference to events in 2002 were objected to by the Union because they are no longer part of the grievor's record. The Employer countered that reliance on the grievor's record was not to establish that discipline was warranted, but solely for the purpose of establishing the quantum of penalty. Mr. Hammett stated that his reliance on the grievor's poor record only applied to the 2002 incident, not to any other disciplinary action.

To Mr. Hammett's knowledge, the cheques in dispute in 2005 were not redeemed for fares because the amounts did not match any of the individual or commercial fares being charged by the ferry service. A list of names exists of most regional users who pay by cheque or by an established credit account with the Department.

Mr. Hammett testified that he was aware of section 4.2.4 of the Marine Services Policy Manual regarding the cashing of cheques. Personal cheques are acceptable for the exact amount of the travel fare, but not acceptable for them to be redeemed for cash. Mr. Hammett said that employees are aware of this policy.

In cross examination, Mr. Hammett agreed that both cheques in dispute were provincial government cheques issued to two employees of the Marine Services Division who were working on shift with Mr. Byrne on the dates in question. He said he had no knowledge where the cheques are or who might have endorsed them. He also said that no copies of the cheques were made

because he did not think it was necessary to do so at the time. In his view, a 3<sup>rd</sup> party cheque is any cheque being exchanged for cash. However, after conceding that the only parties to the cheques were the government and the individual employees to whom the cheques were made out, Mr. Hammett agreed that he did not know what a 3<sup>rd</sup> party cheque was and it was possible that the grievor also did not know.

With respect to section 4.2.4 of the Policy, Mr. Hammett agreed that the content of the 2002 Notice is not in the Policy Manual, i.e., 4.2.4 refers solely to the cashing of personal cheques and that nowhere in the Policy or the Notice does it say that an employee cannot cash a government cheque. However, on reflection, Mr. Hammett felt that an employee's payroll cheque is a personal cheque. Therefore, he considered the two cheques cashed by Mr. Byrne to be personal cheques, which were prohibited by both the Policy and the Notice. Notwithstanding this, Mr. Hammett agreed that the cashing of a provincial government cheque would not result in a loss of revenue or cause any other adverse consequences. Indeed, it was agreed that all monies were fully accounted for in these circumstances and nothing was lost.

In Mr. Hammett's view, there was no conflict between the Notice and the Policy because he believed the Notice was actually an amendment to the Policy made under the authority of Mr. John Baker, Director of Marine Services at the time. He agreed however that the Notice does not indicate who authorized it, and he also agreed that the Notice differed from the Policy as it is written. He further agreed that the Revision Procedure expressed in Section 1.6.3 was not followed for this amendment.

The Employer's evidence confirmed that neither Mr. Payne nor Mr. Cooke were disciplined for their parts in this situation. He recalled that Danny Payne was notified about the problem and wanted to pay the money back. However, Mr. Cooke's circumstances were somewhat more difficult. As far as Mr. Hammett was concerned, Mr. Byrne's situation was different because he had

experience with cheque cashing issues in 2002, whereas neither Mr. Payne nor Mr. Cooke had any similar previous experience with such matters. While they did present their cheques to Mr. Byrne for cashing, the Notice clearly made the Purser on duty responsible for the transaction. In his view, Messrs. Payne and Cooke were not responsible for the ferry's cash at the end of the day. That responsibility was solely Mr. Byrne's. Although there was no theft involved here, and no money belonging to the ferry was given away to a fellow employee, Mr. Hammett insisted that the issue was the fact that Mr. Byrne did something which he knew was wrong, but he did so anyway. Mr. Hammett spoke to Mr. Payne and Mr. Cooke insisting that they reverse the process by giving back the money in return for the two cheques. In other words, he wanted them to go back to Mr. Byrne and get their cheques back. Although he did not know that this actually happened, his intent was for them to know the procedure.

In answer to the arbitrator's question, what was Mr. Byrne disciplined for, Mr. Hammett stated that the grievor deliberately cashed the two (2) cheques despite his prior knowledge of cheque cashing issues for which he received a letter of reprimand on his file in 2002 and which caused the Employer to post the Notice in the Pursers' office. In discussing the matter with Mr. Osmond, Mr. Hammett said he chose the penalty of suspension because of Mr. Byrne's previous disciplinary experience with cheque cashing issues. Five (5) days was not a consensus. In Mr. Hammett's opinion, more than five days was not merited, but in trying to ensure responsibility as far as the ferry service monies were concerned – a fairly serious matter for the Employer – he did not consider a two (2) or three (3) day suspension to be sufficient.

In answer to the Union's question on this matter, Mr. Hammett unequivocally confirmed that, in determining the appropriate penalty in Mr. Byrne's circumstances, he relied on the 2002 discipline letter which had been placed in his file for a cheque cashing infraction. His concern was that Mr. Byrne was developing a pattern of repeat infractions every two years plus one day. Mr.

Hammett stated that he did not check the grievor's file because he did not think any document was there due to the two year removal rule. As far as he was concerned, Mr. Byrne's record was clean and was no different than the records of Mr. Payne or Mr. Cooke. By this particular suspension, as a matter of deterrence, he wanted everybody involved, as well as new employees, to be aware what the procedures were.

Mr. Hammett explained that five (5) days of suspension meant losing five (5) actual days from his planned work schedule, plus another five (5) days off during which he would not be permitted to participate in any overtime opportunities that might arise.

At the time of the September 2005 incidents, Mr. Dean Osmond was Director of Eastern Region 1 and was responsible for land and marine transportation in the area, including the Bell Island ferry. He recalled meeting with Mr. Byrne in September 2005 to discuss the incidents. Mr. Byrne did not deny cashing the cheques.

Mr. Osmond was involved in management's decision to suspend Mr. Byrne. In determining his view of the appropriate suspension for the offenses in question, Mr. Osmond considered the fact that the grievor's personnel file contained a written reprimand for a March 14, 2005 incident of verbal abuse on the bridge of the MV Flanders (see DO#1). He stated that this March 2005 document was discussed with Mr. Hammett before the final penalty was decided. When reminded that Mr. Hammett testified that he considered only the 2002 letter of discipline, Mr. Osmond responded that he could not speak for Mr. Hammett. On the basis of the factors Mr. Osmond considered, he advised Mr. Hammett that he favoured a five (5) day suspension (10 days in total).

Since he only became responsible for the Marine Services Division in April 2004, Mr. Osmond was not involved in the posting of the Notice in the Pursers' office.

Mr. Osmond did not enquire about the nature of the cheques involved in the September 2005 incidents. He did not learn until the first day of arbitration hearings that both cheques were

provincial government payroll cheques. And although he would have no knowledge of any employee requesting to have his payroll cheque changed, as far as he knew this was the only cheque of this nature cashed since 2002. Also, although he knew the other two employees who were involved in the incidents, he did not speak to them or conduct any other investigation on the matter. In his view, this was an issue regarding Mr. Byrne's work performance, i.e., it was his responsibility to handle the ferry service's cash. Although the other two employees did present their cheques to Mr. Byrne to be cashed, he did not consider them as having been involved at all.

Mr. Osmond stated that he has read the Marine Services Policy Manual but the Policy was not in his mind when he determined what the appropriate penalty should be. Although he was aware of the Notice, he was not aware of any Policy, rule or regulation that prohibits an employee from cashing a provincial government payroll cheque, nor was he aware that the Policy permits the cashing of cheques for the exact amount of a fare. In his view, a personal cheque is one which an individual writes authorizing a withdrawal from his own personal account. Therefore, he would not consider a government payroll cheque to be a personal cheque.

In deciding on a five (5) day suspension, Mr. Osmond said that the only thing he considered was the seriousness of the offense. Whether or not an event is serious depends on the particular event. In his view, this event was serious because cash was given away. However, he conceded that he had never seen or heard of a government payroll cheque bouncing. As he saw it, the issue was the grievor's responsibility for handling cash. By way of comparison, Mr. Osmond indicated that he would consider a refusal to obey an order of management to be less serious than an offense related to the handling of cash.

In answer to questions put to him on redirect, Mr. Osmond testified that, over the period of two shifts, there could be 16 or 18 employees on board a vessel each day. He estimated that the average employee payroll cheque would be between \$800 and \$900. Therefore, if payroll cheques

were cashed by the Purser, he would quickly run out of cash in the float and would be unable to make change for fares. Clearly, the cashing of employee payroll cheques would limit the size of the daily cash float and would adversely affect the purpose of the float itself.

With respect to the issue of the grievor's discipline record, Mr. Osmond took the position that the application of progressive discipline is an appropriate system. That system presumes that an employee's record of previous infractions may be relied upon to justify an increased penalty for a future offense. In Mr. Osmond's view, that is precisely the reason why the March 2005 written reprimand justifies a higher penalty for the September 2005 infractions than would be the case if there was no record of discipline on Mr. Byrne's file.

#### *The Union's witnesses*

While on shift on September 5, 2005, Chief Mate, Danny Payne, presented his provincial government meal allowance cheque for \$73.00 to Purser Brian Byrne asking for cash in return. Mr. Byrne's evidence was that Mr. Payne's request to cash his government cheque was the first one he had ever received. Mr. Payne said that, if he had any knowledge at the time that Mr. Byrne would be violating any Employer policy if he acceded to his request, he would not have made such a request. Mr. Payne had previously worked on the Fogo Island ferry service where he had cashed personal cheques with a number of Pursers (there are 7 services in all around the province), but he had been off work for 3 years and had not been on any other service since 2002. He had been on the Beaumont Hamel for one (1) year before he presented his meal allowance cheque to be cashed. This was the first time he saw the sign on the wall of the Purser's office and it prompted him to ask Mr. Byrne if he could cash his cheque. Mr. Byrne said that he was not permitted to cash 3<sup>rd</sup> party cheques. It was Mr. Payne's view at the time that neither he nor the grievor knew whether

his cheque was a 3<sup>rd</sup> party cheque, but Mr. Byrne believed Mr. Payne's cheque could be cashed because it was a provincial government cheque. Mr. Payne endorsed it and then told Mr. Byrne that, if any problem arose, he would gladly fix it.

Although Mr. Payne had seen the Marine Services Manual on the bridge, he had never read it and had never been told to read it. Mr. Payne indicated that, if he had been Captain or Chief Mate when the Cash Report indicated that a government cheque had been presented for cash, he would have signed off on it. In his view, there is no risk associated with provincial government cheques. However, he would probably not say the same thing about cheques from other employers.

Before returning to work from his off shift, Mr. Payne was called by Mr. Brian Hammett who told him that there was a problem with his cheque and he would have to bring back the money he received from Mr. Byrne. He followed Mr. Hammett's instructions to bring him \$73.00 cash and his cheque was returned to him. He later cashed his cheque at the bank.

On September 6<sup>th</sup>, Mr. Philip Cooke, another Purser/Deckhand, also presented his endorsed provincial government payroll cheque to Mr. Byrne for cashing. Mr. Byrne cashed that cheque for the same reason that he cashed Mr. Payne's cheque, namely, it was a provincial government cheque that would not bounce (as his own cheque did in 2002, which caused all the trouble at the time) and, therefore, was risk free. Under those circumstances, Mr. Byrne did not consider it necessary to check with the Captain before cashing the cheques or to bring them to the Captain's attention after they were duly entered on the Daily Cash Reports for the Captain's and others' signatures. Although he was not completely certain of it, in his view, the cheques were neither personal nor 3<sup>rd</sup> party cheques. His definition of a 3<sup>rd</sup> party cheque is one that is made out by one person to another person who then tries to cash the cheque. The grievor testified that, as a matter of common sense, he would not cash a payroll cheque of another employer even if the

payee was a Marine Services ferry employee. Mr. Byrne insisted that, even as of the date of the arbitration hearing, it was his belief that he did nothing wrong on September 5<sup>th</sup> or 6<sup>th</sup>, 2005. This situation was nothing at all like the 2002 incident. The whole issue then was that his cheque bounced and that was the reason behind the Notice being posted. However, a government payroll cheque would never bounce. Nevertheless he indicated that, for whatever reason, if the Employer were to post another sign saying that provincial government cheques shall not be cashed, he would certainly follow such an instruction in future.

Mr. Cooke did not testify at arbitration.

Mr. Byrne testified that he was called to meet with Mr. Hammett and Mr. Osmond on the subject of the September 5<sup>th</sup> and 6<sup>th</sup>, 2005 issues. However, during their discussion, no mention was made of the discipline letter he received (see DO#1) for his March 14, 2005 incident.

Following the September 2005 incidents, both Mr. Payne and Mr. Cooke told Mr. Byrne that their cheques had been returned to them. They said nothing about being told to have their cheques returned by him.

## **ARGUMENT**

### **The Employer**

The Employer described the arbitrator's responsibility as 1) determining whether an incident occurred that was deserving of any discipline and if so 2) whether the penalty imposed was justified.

The evidence establishes that the grievor cashed two government cheques on September

5<sup>th</sup> and 6<sup>th</sup>, 2005, which Ms. Hearn, upon reviewing the Daily Cash Reports, considered to be an odd (rare) occurrence. She said that the grievor had cashed cheques that were in excess of any fare, which was against Policy. Mr. Hammett notified Mr. Osmond and they both confronted Mr. Byrne who did not provide an adequate explanation for his conduct. They disagreed with his statement that he believed he had done nothing wrong. Back in 2002, the grievor cashed another cheque, was disciplined for it, and the incident led to the posting of the Notice in the Purser's office, which clearly states that 3<sup>rd</sup> party cheques shall not be accepted. Mr. Osmond also testified that he considered the mishandling of the government's cash to be a serious offense. It is hard to believe that, given his previous experience with improper cheque cashing, Mr. Byrne would commit another cheque cashing offense. The grievor's own evidence was that he knew that he could only accept a cheque for the exact amount of a fare. Obviously, \$73.00 and \$421.89 were not ferry service fares.

Mr. Byrne's evidence is that he did not know what a 3<sup>rd</sup> party cheque was, yet he did not see fit to ask for the advice of his Captain at the time. Given his past history, the grievor knew that the cashing of personal or 3<sup>rd</sup> party cheques was not permitted. In the Employer's view, whether a cheque presented for cashing is a personal, 3<sup>rd</sup> party, or government cheque, a prudent employee would not accede to such a request.

The Union's position is that the two (2) other people, i.e., Mr. Payne and Mr. Cooke, who were involved in these incidents, should have been disciplined – despite having been contacted and dealt with by returning their cheques to them after they returned the money they had received from Mr. Byrne. The Daily Cash Reports DH#1 and DH#2 demonstrate the chain of command involved in such reports. Neither Mr. Payne nor Mr. Cooke was responsible for handling cash.

It should be noted that Mr. Byrne started work in 1988. Mr. Payne was also a long standing employee. The fact that the cashing of cheques had never been done before demonstrates that

employees knew the Policy. Their experience taught them this.

In this case the initial onus is on the Employer to establish that a disciplinable event occurred. The Employer has discharged that onus by proving that the grievor cashed two cheques outright, knowing that it was unacceptable to do so. Therefore, the onus shifts to the grievor and the Union to explain his actions (see Brown & Beatty, 3<sup>rd</sup> edition, Para. 7:2300 – Burden of Proof). However, no adequate explanation has been provided. In the result, the inescapable conclusion is that discipline was warranted in these circumstances.

Given the seriousness of the offense for the Employer, the issue becomes whether the discipline imposed was the appropriate punishment in the short term, i.e., did the punishment fit the crime. It is significant that the grievor's record showed that he had been disciplined for verbal abuse some six months earlier. In other words, within the last two years, Mr. Byrne's record contains another incident of a serious nature, i.e., insubordination. Arbitral jurisprudence (see Brown & Beatty, 3<sup>rd</sup> edition, para. 7:4428 -- Employment record) establishes that arbitrators may consider an employee's record, whether good or bad, in determining an appropriate penalty.

In support of its position that the Employer is entitled to rely on employee's records in determining penalties, the Employer submitted:

1. *Her Majesty the Queen In Right of Newfoundland (Department of Transportation, Motor Vehicle Division) and Newfoundland Association of public Employees (April 28, 1987) unreported (Scott).*
2. *The Department of Transportation and Communication and Newfoundland Association of Public Employees (September 2, 1983) unreported (Woolridge).*
3. *Her Majesty the Queen In Right of Newfoundland (Bell Island Cottage Hospital) and Newfoundland Association of Public Employees (October 24, 1975) unreported (Harris).*
4. *Her Majesty the Queen In Right of Newfoundland (Department of Public Works and Services) and Newfoundland Association of Public Employees (May 30, 1984) unreported (Thistle).*

In summary, the grievor cashed two (2) cheques, conduct which was unacceptable and

considered by the Employer to be very serious. At the very least, such conduct constituted very poor judgement by the grievor. He admitted that he did not know whether the cheques were third party cheques. Also significant is the fact that the grievor had been disciplined for inappropriate check cashing in the past and, because of the Notice that was posted in the Purser's office in 2002, he was aware that cheques were not acceptable for cashing unless they were made out for the exact amount of a fare. In these circumstances, the Employer was justified in suspending the grievor for two weeks for the serious offense of mishandling cash. Therefore, the grievance should be dismissed.

### **The Union**

The Union agreed that the onus is on the Employer to establish that discipline was warranted for the offense expressed in the grievor's letter of suspension. In its view, the Employer has failed to discharge its onus because no culpable conduct has been established. However, if the arbitrator does conclude that there is some justification for discipline in these circumstances, the Union feels that what the grievor did was definitely not serious and could justify not more than a mild penalty.

As the Union sees it, the problem in this case keeps shifting. In the Employer's argument, Mr. Martin alleged insubordination. He also said that the issue was about mishandling cash and that deterrence was a factor in assessing the penalty. None of those issues is expressed in the grievor's discipline letter. In the Union's view, the Employer is restricted by Article 32.01 to the reasons expressed in that letter. Therefore, the arbitrator would exceed his jurisdiction if he considered insubordination, mishandling of cash or deterrence in this case.

The Daily Cash Reports DH#1 and DH#2 are also signed off by the Captain C. Janes and

by D. Parsons and D. Hearn. Yet the Employer sole focus is that the Reports were signed off by Mr. Byrne.

The grievor's discipline letter says that he cashed a 3<sup>rd</sup> party cheque. But the evidence is that he cashed provincial government cheques, not 3<sup>rd</sup> party cheques. Indeed, the grievor made it perfectly clear that he would not cash a Sears payroll cheque or any other employer cheque, or any personal cheque. Mr. Hammett testified that a 3<sup>rd</sup> party cheque was one owned by someone else and that a government cheque was not a 3<sup>rd</sup> party cheque, rather it was a government payroll cheque. Section 4.2.4 of the Policy makes mention of personal cheques only. There is no mention of 3<sup>rd</sup> party cheques. Clearly, Mr. Hammett did not know what a 3<sup>rd</sup> party cheque was. On the other hand, Mr. Osmond did seem to know the distinction between a personal, a 3<sup>rd</sup> party, and a government payroll cheque.

The Notice in the Purser's office does mention personal and 3<sup>rd</sup> party cheques, but the government cheques at issue here were neither. In the Union's view, the Employer cannot create a new rule prohibiting the cashing of government payroll cheques, which are not prohibited by either the Policy or the Notice.

Contrary to the Employer's assertion, there is no evidence that a government payroll cheque has ever before been presented for cashing. Therefore, there is no evidence of any experience being learned on this matter. Under no circumstances can the grievor's actions in September 2005 be considered insubordinate.

On the one hand, the Employer acknowledges that it has imposed the equivalent of a 10 day suspension upon the grievor. On the other hand, the evidence clearly establishes that neither a personal cheque nor a 3<sup>rd</sup> party cheque was involved in this case. Since the cheques cashed by the grievor were not personal or 3<sup>rd</sup> party, i.e., the only ones referred to in the Notice or the Policy, the grievor cannot be justifiably accused of violating any direction or instruction stipulated by

the Employer.

Mr. Payne is second in command to the Captain on the vessel. In the Union's view, he should know whether it is acceptable to cash a payroll cheque. However, he did not know. In fact he even told Mr. Byrne to let him know if a problem arose and he would take the cheque back.

Also, since Philip Cooke is a Purser/Deckhand, one would expect him to know if it was unacceptable to cash a payroll cheque. Obviously he did not believe there was anything wrong because he presented his own payroll cheque for cashing. In the Union's view, the evidence demonstrates that nobody understood this issue the way the Employer says they did.

The evidence establishes beyond any doubt that the security of the Employer's cash was never compromised by Mr. Byrne. Every cent was properly accounted for and nothing was lost. With government payroll cheques among the receipts, the Employer's money was probably even more secure.

Mr. Osmond said that he did not talk to anyone but the grievor in this case. Mr. Payne and Mr. Cooke were not disciplined, yet they were equally to blame because they presented their cheques for cashing in the first place. It was the Union's position that all employees must be treated equally for their role in an incident. Here they were not. Only Mr. Byrne was singled out for discipline. By the Employer's reasoning, an employee could give the Employer's money to the Mate and the Mate could steal it without being reprimanded. Clearly that is not acceptable. Therefore, Mr. Byrne should not have been treated differently from either Mr. Payne or Mr. Cooke.

According to section 1.3 of the Policy Manual -- Authority and Compliance:

. . . Captains are responsible to ensure that they and all personnel serving under their command have read and are familiar with this Manual. All staff identified above are expected to maintain a working knowledge of the Manual, particularly those that are relevant to their areas of responsibility and to read all revisions as they are issued or as soon as practicable thereafter.

. . . .

Mates are second in command to the Captains. However, the evidence indicates that Mr. Payne did not read the Manual and Mr. Byrne did not even know of its existence. As for any revisions that may be alleged by the Employer here, it is clear that none were issued in the first place.

It is noteworthy that the Employer has attributed some significance to what happened in 2002, but in argument the Employer neglected Mr. Byrne's testimony that his understanding of his discipline and the posting of the Notice was that he was not permitted to cash a personal cheque. The fact is that he did not cash a personal cheque this time. Also, despite the collective agreement requirement that an employee's record be purged after two years, Mr. Hammett testified that he relied on the grievor's 2002 discipline record in determining the 5 day suspension he imposed in September 2005. Mr. Hammett also testified that he had no knowledge of any other disciplinary matter on Mr. Bryne's file. It was Mr. Osmond who said that the March 2005 written reprimand was discussed. At best, the Employer's evidence on this issue is conflicting. In any event, the grievor's discipline letter did not mention any other discipline on file as a reason for the penalty imposed. Therefore, in accordance with Article 32.01, such a document cannot be considered in these particular circumstances.

In argument the Employer said that Ms. Hearn said the cashing of the cheques was against the Employer's Policy. She did not say that. What she did say was that the matter was odd, unusual or irregular. Ms. Hearn's answer to the Union's questions clearly demonstrate that she had no knowledge of any Policy.

The Employer also has argued that it received no explanation from the grievor why he cashed the cheques. But the evidence is that, other than calling him in to discipline him, nobody spoke to Mr. Byrne. Mr. Osmond did not even know what kind of cheque was at issue. It seemed that all that mattered to him was that a cheque had been cashed.

There is no indication of any kind that the grievor tried to hide anything or be deceitful.

Indeed he had no reason to do so. He knew from his 2002 experience that he was not permitted to cash a personal cheque. He knew that the cheque presented was not a personal cheque and that there was no prohibition against cashing government payroll cheques, and he had the clear sense that he should not cash a payroll cheque from another employer. He also knew that the Chief Mate, i.e., the person who was second in command on the vessel, presented his government payroll cheque for cashing. Under those circumstances, it was understandable that he would not feel the need to check with the Captain before cashing the cheques.

In the Union's view, a reasonable person in the grievor's circumstances, with his knowledge of the reasons behind the posting of the Notice and his sense of right and wrong, would do the same thing as he did.

In support of its various positions, the Union submitted the following:

1. Krashinsky, Stephen and Sack, Jeffrey, *Discharge and Discipline*, Lancaster House. Particular attention was directed to the following topics in Ch. 3, *Determining When Just Cause Exists*: Requirement of Just Cause and Burden of Proof on Employer (p.4); Arbitrators Can Modify Penalties and Discipline Should be Progressive (p.5); The Disciplinary Record and Adding Grounds Not Allowed (p.6); Random or Discriminatory Discipline and Disciplinary Rules; Ch. 3, *Assessing the Appropriate Penalty*, which, in the instant case, the Union argued the relevance of the following factors for consideration: 1) The Seriousness of the Misconduct; 2) Disciplinary Record; 3) Correction, Rehabilitation and Deterrence; 4) Provocation; 5) Employee's State of Mind; 6) Admission of Misconduct; 7) Consistency of Discipline; 8) Condonation.
2. Brown, Donald J.M. and Beatty, David M., *Canadian Labour Arbitration*, 3<sup>rd</sup> edition, para. 7:4414 - Discrimination; para. 7:4410 – Employer Conduct; para 4:1520 – Rule-making as an exercise of management's prerogative; para. 4:1556 – Notification; para 7:4000 – Disciplinary Penalties; para. 7:4100 – Scope of Review; para 7:4400 – Mitigating Factors; para 7: 4416 – Warnings; para 7:4424 – Employee's state of mind; para 7:4427 – Compassion; para. 7:4428 – Employment record; para. 7:4500 – Deterrence.

It was the Union's view that Article 9.16 provides the arbitrator with the power to dispose of this grievance by any arrangement which he considers just and equitable, which, it argued, should be nothing less than upholding the grievance. However, should the arbitrator find some justification for discipline, no added grounds may be relied upon. Only the specific ground

expressed in the letter of suspension is permitted to be considered, namely, whether the grievor breached the Employer's policy or whether he cashed a personal or 3<sup>rd</sup> party cheque.

Of concern to the Union was the fact that the Employer did not discipline Mr. Payne and Mr. Cooke for their part in the incidents. Both those individuals held positions of responsibility, yet were involved in the same offense. It is simply not acceptable that the Employer disciplined only the grievor in these circumstances. The Employer failed to consider the degree of responsibility involved in the presentation of the payroll cheques by two other employees. In the result, the Employer's decision was discriminatory.

Also of concern to the Union was the evidence that the Employer's Policy was not adequately communicated to the grievor. While the Policy may have been clear, the Notice was not. In any event, it is clear that Mr. Byrne knew nothing of the Policy's existence. As for the Notice, he knew what the Employer's concern was that led to its posting, namely, it did not want personal cheques cashed except for the amount of a fare. However, a 3<sup>rd</sup> party cheque was not explained. The evidence indicates that Mr. Hammett did not know what a 3<sup>rd</sup> party cheque was. In fact, he believed that the cheques in dispute were personal cheques, which they were not. The evidence also strongly indicates that Mr. Payne and Mr. Cooke did not consider their payroll cheques to be personal or 3<sup>rd</sup> party cheques. For clarification, Black's Law Dictionary, 6<sup>th</sup> edition, defines a third party check as a

check which the payee endorses to another party, e.g. as when a person endorses a cheque received from a customer and endorses it to the IRS. A person who takes a third party check in good faith and without notice of a security interest can be a holder in due course....

Clearly, the Employer's payroll cheques were not 3<sup>rd</sup> party cheques as only two parties were involved. In the circumstances, it was not unreasonable for the grievor to cash the Employer's payroll cheques because nothing in the Policy or the Notice prohibited such action and he knew that the Employer's funds were perfectly safe and secure. His was not a premeditated action

designed to misappropriate funds. He had a responsible notion of what kind of cheque would or would not be acceptable to cash. Therefore, he cannot be considered to have a guilty state of mind. If he did make a mistake in this situation, it was because the Notice was not clear.

The Employer bore the onus of establishing why a 5 day suspension (10 days in total) was appropriate in Mr. Byrne's case. One of the reasons the Employer relied on was deterrence. Yet there is no evidence that the cashing of payroll cheques is a problem. Indeed, the evidence is that the two incidents in dispute were the first ones experienced. Clearly, there is nothing to deter.

The Employer took the position that the grievor should have known that his actions were inappropriate. However, neither the Policy nor the Notice covered this type of situation. If the cashing of Employer payroll cheques was considered to be unacceptable, it was the Employer's responsibility to include such a prohibition in its Policy and take steps to advise all employees of any Policy revision. The Employer clearly failed to do this.

In support of its positions, the Union submitted the following jurisprudence:

- *Re Ford Motor Co. of Canada Ltd. and United Automobile Workers, Local 707* (1974), 5 L.A.C. (2d) 5 (Palmer). This case was submitted to support the position that the Employer cannot now claim that the grievor was insubordinate or that he should have checked with the Captain.
- *Re St. John's Health Care Corporation (St. Clare's Mercy Hospital) and Newfoundland Association of Public Employees* (Feb. 12, 2001) unreported (Alcock) – a case submitted to support the Union's position that the Employer is prohibited from adding reasons for disciplinary action that had not been expressed in the letter of discipline. In the Union's view, the arbitrator has no jurisdiction to determine whether the cashing of government payroll cheques can justify discipline, because that is not what the grievor's discipline letter says.
- *Re Greyhound Lines of Canada Ltd. and Amalgamated Transit Union, Local 1374* (1989), 4 L.A.C. (4<sup>th</sup>) 288 (Beattie) – dealing with unclear rules and procedures. The Union's position is that, if the Employer does not want employees to cash government payroll cheques, it should revise its Policy accordingly. However, until it does this, the Employer has no authority to discipline anybody.
- *Re Iron Ore Company of Canada and United Steelworkers, Local 5795* (October 7, 1975) unreported (Harris) – for the proposition that the Employer loses the right to discipline when it chooses not to discipline all employees involved in an incident.

- *Re Goodyear Canada Inc. and United Rubber Workers, Local 232* (1977), 14 L.A.C. (2d) 340 (Burkett) – another case dealing with the issue of equity of treatment.
- *Re Magic Pantry Foods and Bakery, Confectionery & Tobacco Workers, Local 264* (1990), 10 L.A.C. (4<sup>th</sup>) 327 (O’Shea).
- *Re Powell River General Hospital and British Columbia Nurses’ Union* (1995), 46 L.A.C. (4<sup>th</sup>) 177 (McPhillips).
- *Re Her Majesty the Queen in Right of Newfoundland (Department of Transportation, Division of Motor Registration) and Newfoundland Association of Public Employees* (April 28, 1987) unreported (Scott).
- *Re Her Majesty the Queen in Right of Newfoundland (Department of Justice) and Newfoundland Association of Public Employees* (November 4, 1993) unreported (Alcock) – this case was submitted to support the Union’s claim that the “verbal warning” given to the grievor in March 2005 is not a disciplinary action and should not be considered by the arbitrator in the instant dispute.
- *Re The Department of Works, Services & Transportation, Government of Newfoundland and Labrador and Newfoundland Association of Public Employees* (December 1, 1999) unreported (Fagan). In the Union’s view, there were no implications for the Employer as a result of Mr. Byrne’s actions. Therefore, the issue is a minor one, which, if necessary, should be subject to progressive discipline and not, as the Employer has done here, premised its penalty on an earlier act that is now removed from his file.

In summary, the Union’s position is that the Employer has not established a basis for the imposition of any discipline. No 3<sup>rd</sup> party cheque was cashed by the grievor. No other reason for discipline is expressed in his letter of discipline. By not disciplining the other two employees who were actively involved in the incidents, the Employer has improperly discriminated against Mr. Byrne. Also, the Notice (which is the only instrument containing reference to 3<sup>rd</sup> party cheques) did not clearly indicate what a 3<sup>rd</sup> party cheque was. The grievor cannot be disciplined for failing to follow an unclear rule. If the arbitrator determines that some discipline is deserved here, the Union feels that a 10 day total suspension is way off the mark as far as severity is concerned. In these circumstances, the very most that might be justified is a written warning. Therefore, the grievor should be reimbursed for all lost wages and benefits.

## **Employer Rebuttal**

The Employer agreed that the grievor was not disciplined for insubordination.

Care should be taken to resist being sidetracked by the issue of what might or might not be a 3<sup>rd</sup> Party cheque. The true focus of this case should be on the fact that Mr. Byrne cashed two cheques outright when he was fully aware that he was not permitted to accept any cheque for more than the exact amount of a fare. No cheque, regardless of what type it is, may be accepted unless its purpose is to purchase a ferry service fare and is made out for the exact amount of such fare. Mr. Byrne knew that he should not have cashed a government payroll cheque even if the Chief Mate presented it to him. If he had any doubt whatsoever, he should have asked someone in higher authority before accepting the cheque. It was not reasonable for him to cash it without seeking advice.

The Union has made a claim that Mr. Payne and Mr. Cooke should have been disciplined equally for the same infraction. However, there was no same infraction in this case. Mr. Byrne had the responsibility for handling the Employer's cash at the time. The other two employees did not have such responsibility. Clearly, their circumstances were different and the Employer had justifiable reason for treating them so. No one person was singled out for discipline in this case. The grievor was the only one responsible for handling cash. Therefore, he was the one who was disciplined when the cash was not handled properly.

As for the Union's claim that this was not a serious offense, it should be noted that Mr. Osmond's evidence is that any mishandling of cash is a serious matter in the Employer's view.

The Employer denied that it now has added additional reasons for disciplining Mr. Byrne. That allegation is simply not true. Insubordination has not been claimed by the Employer. The only issue associated with the September 2005 incidents is the cashing of a government cheque for an amount in excess of a fare.

The Union has claimed that the Employer has condoned improper conduct on Mr. Payne's part. That too is not true. The evidence is that Mr. Payne did not know that cashing his payroll cheque was wrong. He did not possess such knowledge because he was not responsible for handling cash.

It also appears that the Union would have the arbitrator believe that a government payroll cheque is not a 3<sup>rd</sup> party cheque. In the Employer's view, it can be a 3<sup>rd</sup> party cheque when it is cashed. Nevertheless, that point is not material when the real issue is considered, i.e., cashing a cheque for an amount that is not a travel fare

The Employer argued that the evidence is that Mr. Hammett did not rely on the 2002 discipline to justify Mr. Byrne's penalty this time. Reference was made to that event solely to establish that the grievor knew he was not supposed to cash a cheque for more than a fare. No reliance was placed on any expired disciplinary action.

In summary, the Employer requested that the arbitrator look at the real issue involved in this case, i.e., the cashing of a cheque for more than the amount of a fare. All the other evidence presented by the Union was superficial and only served to cloud the real issue. At the end of the day, all that is relevant is that Mr. Byrne cashed the cheques in question knowing full well that their amounts did not match a travel fare. That was justification for the Employer to discipline him. Under the circumstances, the penalty determined by the Employer was not excessive for the type of offense involved. Therefore, the arbitrator should deny the grievance and refuse to reduce the 5 day suspension imposed.

## CONSIDERATIONS

### Whether just cause for discipline existed in these circumstances

#### *The reasons cited for discipline*

The grievor's discipline letter of September 13, 2005 refers to the cashing of two "third party government cheques," one on September 5<sup>th</sup> and the other on September 6<sup>th</sup>. Reference was also made to Mr. Byrne having "been informed in the past of the department's policy on cashing personal and third party cheques and that the notice concerning this is posted quite clearly in the ticket booth."

It is common ground that Mr. Byrne did cash two government cheques on the dates mentioned. Therefore, there are two issues to be addressed: 1) whether the grievor's actions violated the department's Policy; 2) whether the grievor's actions were prohibited by the posted Notice.

#### *Did the grievor violate the department's Policy by accepting third party cheques?*

Despite the Employer's claim that the grievor has been informed in the past of the department's Policy on cashing personal and third party cheques, the evidence suggests otherwise. A reading of section 4.2.4 of the Marine Services Policy Manual reveals that "personal cheques" is the only type of cheques mentioned. There is no mention at all of third party cheques. Therefore, as far as third party cheques are concerned, whatever Mr. Byrne may have been informed about in the past had nothing to do with what the Marine Services Policy Manual said about third party cheques.

As for Mr. Hammett's claim that the Notice (which does mention both personal and third party cheques) was actually an amendment or revision of the Policy, I find no evidence to support

his testimony. For example, there is no evidence of any such revision in the Policy itself. There is also no evidence that section 1.6.3 -- Revision Procedure of the Policy Manual was activated.

That section states:

### **1.6.3 Revision Procedure**

The Director of Transportation Services forwards to each Captain:

- a copy of the revised section
- an updated Table of Contents, where necessary, and
- a Revision Control Sheet (Section 1.6.7)

The Captain will:

- update the Policy Manual
- ensure all staff under his/her command have read and are familiar with updated (new) section
- complete the Revision Control Sheet; and
- return completed Revision Control Sheet, with replaced sections attached, to the Director of Transportation Services

(Blank Revision Control Sheet attached)

If any of those requirements had taken place, they should have been available for presentation at the arbitration hearing. After all, to the extent that the Employer claims a violation of the Policy, it is the Employer's responsibility to provide the actual Policy, including the updates and revisions that it says were in effect at the time. If the revisions or amendments claimed by Mr. Hammett did take place, the Employer's responsibility to produce them has not been discharged.

I accept the evidence that Mr. Byrne did not know that a Policy existed. Prior to the hearing, he had never been aware of and had never seen Section 4.2.4. Also, while Mr. Payne, the Chief Mate, did know that the Policy Manual was in the wheelhouse and was available for reading, there is no evidence that, under section 1.3 – Authority and Compliance, the Captain discharged his/her responsibility "to ensure that all personnel serving under their command have read and are familiar with this Manual," or that the Captain complied with section 1.6.3 above, if a revision had been made.

In the result, the Policy Manual that was entered into evidence is the one of record for this

discipline procedure. That Manual contradicts the Employer's claim that the grievor has been previously informed of the Employer's Policy regarding third party cheques. In my view, if an employee is unaware of the existence of a particular Policy that the Employer relies on as having been violated, then a charge against him of violating that Policy cannot be sustained. Therefore, I find that the charge against the grievor of cashing a third party cheque in violation of the department's Policy does not justify the imposition of discipline in these particular circumstances.

At this point, it should be noted that this decision on the violation of the Policy does not answer the question whether or not discipline might be justified for a violation of the Notice.

*Did the grievor violate the department's Policy by accepting personal cheques?*

The short answer to the question is that, for the reason indicated above, namely, that Mr. Byrne was not aware of the existence of the department's Policy, a charge against him of accepting personal cheques in violation of the Policy also would not justify the imposition of discipline in these particular circumstances. The Employer has claimed that Mr. Byrne has been informed in the past about the Policy regarding personal cheques. I presume that this claim alludes to discussions with the grievor in 2002 when he was disciplined for cashing his own personal cheque, which bounced. While I am satisfied that the implications of cashing personal cheques was discussed at that time, including the risk of such cheques bouncing and also that they would be acceptable only if made out for exact fares, I am not convinced that the Employer brought to Mr. Byrne's attention section 4.2.4 of the Policy, or that the Policy itself was referenced in the discussions. In my view, the best evidence before me strongly indicates that the grievor did not know the Policy existed and was previously unaware of what section 4.2.4 said. However, In making this decision, I hasten to assure the parties that it is not my intention to lightly dismiss the department's Policy. It is just that an employee cannot be disciplined for violating a Policy that he

does not know exists.

As I sifted through the evidence and submissions, it became abundantly clear to me that the overriding area of concern for the Employer was the issue of internal control. However, most of the discussion at arbitration was limited to two specific types of cheques – third party cheques and personal cheques. In my view, the purpose of internal control in this particular workplace is not well understood by the grievor and at least two other employees because the Employer has not adequately explained the purpose of internal control, preferring instead to focus only on two specific types of cheques. The analogy of not being able to see the forest for the trees is probably appropriate here.

Since there is an apparent lack of understanding of internal controls, yet the department's Policy does deal with one control item, i.e., personal cheques, I think it might benefit the parties if I addressed issues that would arise in determining the long answer to the question.

Hypothetically, the only possible way a violation of the Policy could have occurred was for Mr. Byrne to have accepted personal cheques knowing such action to be contrary to one or more of the following conditions:

- the payer provides two forms of identity
- the payer has no known record of issuing worthless cheques and
- the cheque is only for the amount of the fare

In addition, section 4.2.4 of the Policy indicates that the cashing of employee personal cheques is not permitted.

The letter of discipline characterizes the cheques cashed by the grievor as “third party cheques.” But I am satisfied that saying so does not necessarily make them third party cheques, especially since there was no clear understanding among the witnesses (or management witnesses for that matter) as to what constitutes a third party cheque. In that regard, should the Employer's characterization prove to be incorrect but mean “personal cheques” instead, I would not hold the

Employer to its characterization in the letter of discipline. In other words, I would not consider a mistake in characterization or ill conceived wording in the discipline letter to be an irrevocable reason for discipline. Indeed, I would not view that as constituting any more of a deficiency than the grievance form did in this case, which the Union's letter of September 26, 2005, obviously sought to rectify. At the end of the day, to decide whether a violation of the Policy has occurred, it is important to determine what kind of cheques were actually involved, most particularly whether they were personal cheques.

The evidence is that two provincial government payroll cheques were cashed. On the face of the cheques themselves, only two parties were involved, i.e., the government as issuer and the individual employee as payee. Although the Employer's witnesses could not recall whether the cheques had been endorsed, I am satisfied by Mr. Payne's and Mr. Byrne's testimony that each employee endorsed his own payroll cheque upon presenting same to the grievor. As I understand it, the process of endorsing a cheque is to make it payable to a person other than the payee. In Mr. Payne's and Mr. Cooke's circumstances, their endorsements did not add a third person. Rather they made government both the issuer and the recipient.

The definition of third party cheque in Black's Law Dictionary essentially describes the payer as the first party, the payee as the second party, and the additional person to whom the cheque is assigned by means of the payee's endorsement as the third party. On September 5<sup>th</sup> and 6<sup>th</sup>, 2005, no additional third party was ever involved.

When the fact was presented to Mr. Hammett that there were only two parties to the cheques in dispute, he conceded the point that he did not know what a third party cheque was and probably neither did Mr. Byrne. Later on reflection, he switched to the view that the cheques were personal cheques instead. Mr. Osmond had a better understanding of third party cheques, but his evidence was that, at the time he recommended a particular disciplinary penalty, he did not know

what kind of cheques had been involved. Indeed, to him the type of cheque did not matter. His view was that the cashing of any cheque was prohibited and, therefore, was disciplinable. For their parts, neither Mr. Byrne nor Mr. Payne considered government payroll cheques to be third party cheques.

On balance then, the evidence convinces me that the notion of third party cheque was never adequately explained or clarified by the Employer. In the absence of clear instructions from the Employer as to what constitutes third party cheques, I do not consider it reasonable or justifiable to place full blame on an employee who does not act in accordance with a particular manager's understanding of what third party cheques are and how they should be handled. To be guilty of culpable conduct, it would have to be established not only that the grievor was aware of a Policy or rule, but that the Policy or rule itself was clear and understandable, and that the grievor deliberately violated the Policy or rule. Whether or not there was any culpability in this case will be determined later in these considerations.

The next question is whether the cheques at any time could reasonably be considered to be personal cheques. On that issue, except for Mr. Hammett's altered conclusion at arbitration that the payroll cheques were personal cheques, there appears to be less difference of opinion between the parties. For example, it is common ground that the cheque Mr. Byrne wrote in 2002 was one which he personally wrote and signed for the purpose of having an amount deducted from his account at a financial institution. That check then bounced, which apparently prompted the Employer to impose disciplinary action against him. While I can accept that the issue for the Employer then was the assurance of overall control for its ferry transportation receipts, I am not convinced that the grievor shared the same understanding of the Employer's reasons for posting the Notice following his offence. The evidence suggests that, from the discussions he had, he understood the issue to be one of preventing the cashing of a personal cheque which might be

returned for insufficient funds. In other words, the primary message that registered in his mind was that the Employer was concerned about the risk of cheques bouncing. For example, he knew that personal cheques were not acceptable unless written for the exact amount of a fare (something that he had been informed about by the Employer). Also his sense was that there might be some risk associated with payroll cheques of other employers. Therefore he assumed that such cheques were not acceptable. However, since he felt that there was no risk associated with accepting provincial government payroll cheques, he reasoned that there would be nothing wrong with cashing them for fellow employees.

On balance, I do not consider the two government payroll cheques to be personal cheques in the context of what seems to be generally understood a personal cheque is, namely, a cheque drawn on a personal account. For example, neither cheque was written or signed by the employee, and neither was an instrument authorizing a withdrawal from the employee's account at his financial institution. Rather each one was written and signed by government officials. Each one was the sole property of the employee until it was endorsed to the provincial government. I am satisfied that, if people have enough time to think about the nature of these cheques, some might convince themselves that, while they did not start out as personal cheques, they became something tantamount to personal cheques at the point they were endorsed. However, I am equally satisfied that others might not agree with that conclusion.

In essence, my point is that, in the normal circumstances faced by Pursers on the job, they do not have the luxury of spending long periods of time deciding whether or not to accept certain cheques. If Mr. Byrne's training and instruction is representative among Pursers -- there is strong indication at least that Mr. Cooke, another Purser on the same ferry service, shared the same understanding as Mr. Byrne on the issue of cashing government payroll cheques -- they are not as well informed as they need to be to make the kind of internal control decisions expected of them

by management. They make decisions on the basis of their shared job experiences, supplemented to some extent by individual specific direction or instruction from the Employer in response to incidents that may have happened at work. At the end of the day, on the basis of their own experience, Pursers develop an understanding of what is acceptable or unacceptable. For familiar situations where little discretion is required, it appears that they are able to function reasonably well. However, when an unfamiliar situation presents itself, as happened on September 5<sup>th</sup> and 6<sup>th</sup>, 2005, I am satisfied that their current level of understanding about the purpose of cash controls may well be insufficient to enable them to make the kinds of discretionary decisions required of them.

In my view, the concluding argument of counsel for the Employer clearly indicates that the issue for the Employer is that, regardless of how one characterizes a cheque, no cheque of any kind should be accepted for cash in return. Simply put, this is an internal cash control issue. Whether personal or third party cheques are involved, I would expect an internal control to be established because it is difficult, if not impossible, to assess the collectability of a cheque prior to presentation to the payer's bank for payment. Even if a call were to be made to the bank prior to accepting the cheque, there would be no guarantee that the funds would still be available by the time the cheque was deposited and was processed through the bank clearing process.

Both personal and third party cheques are legal tender, but one would think they are declining in general acceptance because of the above issue and also because of the immediate credit checking abilities of credit and debit cards. In the case of the ferry ride, where the service is immediately provided and there is no recourse for the collection of the "bad debt," the control is entirely appropriate. There is no doubt that adherence to strict cash controls is of paramount importance to the Employer. I have no difficulty accepting that the Employer has every right to establish and enforce the kind of ferry service cash control system it wants. However, to be

properly enforceable, the control system must itself be clear and must also be clearly understood by employees whose job it is to handle cash. As I see things, that is where the current problem exists.

If an employee is expected to make the correct decisions on the job, he/she must be equipped with the appropriate decision making tools. An individual possessing overall knowledge and understanding of the purpose of financial controls and appropriate systems to achieve them may be expected to make better discretionary decisions on the job. In the absence or deficiency of such knowledge and understanding, the only way that controls may be reasonably attained would be by following a simple explicit set of instructions devised by the Employer. The less overall understanding an employee has of the purpose of controls, the less able he/she will be to make discretionary decisions. Therefore, the more comprehensive and the more explicit the instructions provided by the Employer would have to be.

During the hearing, the Union made light of the Employer's attempt to address the effect on the cash float that cashing of employee payroll cheques might have. While the particular issue addressed was the potential for depleting the float to the point of having insufficient cash available to make change -- an event which the Union considered hardly likely -- the point that was missed was that the primary purpose of a cash float is to permit the Purser to make change for customers of the ferry service. A cash float is not intended to be a cheque cashing service for employees or anybody else for that matter. While the grievor reasoned that cashing provincial government payroll cheques protected the value and security of the Employer's cash float, he clearly did not understand the other implications of such a practice. Granted that having only two employees present their cheques to him does not constitute a practice, but there is no guarantee that other employees hearing that their peers had done so would not also want the same benefit on other occasions. If word spreads among ferry employees, more and more demands may be expected

upon the Purser. The issue for him then is to whom does he say no. Worse still, if word should spread beyond the group of ferry employees, what does he say to other government employees from other departments who might demand the same treatment. After all, one government payroll cheque is probably just as secure as another government payroll cheque. Complicating matters further would be people attempting to cash government payroll cheques made out to an employee who endorsed his/her cheque to them, i.e., a potential fourth party cheque.

Of course, one way to accommodate government employees who request that their payroll cheque be cashed is to have substantially more cash on hand, thereby creating more problems for the ferry Purser as well as Administration. At some point, the essential logical question would have to be answered, namely, why should the Employer increase the size of its float to provide a check cashing service for employees? Indeed, why should the Employer provide any portion of a float at any time to accommodate the cheque cashing wishes of its employees? Any person possessing a reasonable understanding of internal cash control would instinctively realize the potential problems that could arise from using a float for any reason other than its primary purpose. The sensible approach from the very beginning would be to restrict floats solely to their intended purpose. That would be the Employer's prerogative.

On the basis of the evidence in this case, I am satisfied that the grievor lacked a reasonable basic understanding of internal cash control. His reasoning that the security of the float was the primary consideration for deciding to cash a government payroll cheque demonstrates that he does not understand why a cash float has only one primary purpose and why that purpose should be strictly followed. In my opinion, Mr. Byrne's persistent view that he did nothing wrong is honestly held. In that regard, I am satisfied that he did not possess a guilty state of mind when he cashed the payroll cheques on September 5<sup>th</sup> and 6<sup>th</sup>. He did not intend to breach any rule or Policy and he was not aware of any Employer directive prohibiting his actions. Therefore, I find that his

conduct was not culpable.

The department Policy, which focussed solely on personal cheques did not cover his situation because no personal cheques were involved. Therefore, there was no violation of the Policy for that reason.

*Did the grievor violate the posted Notice by cashing personal cheques or third party cheques?*

The Notice in the ticket booth states:

Third party cheques are **not** accepted for payment on this ferry service.

No personal or third party cheques will be redeemed for cash or credit.

Since the Employer has the right at any time to set reasonable workplace rules, the issue here is not whether the stated rules in the Notice reflect the department Policy. These rules may be judged and enforced on their own merits.

For the reasons cited earlier in these considerations, I find that no third party and no personal cheques were cashed by the grievor. What the grievor cashed were government payroll cheques, a type of cheque which was not specifically covered by the Notice (or the Policy) and, because of the grievor's lack of understanding of internal control and the primary purpose of cash floats as well as his lack of understanding of the implications of cashing government payroll cheques, all due to inadequate training and explanation by the Employer on such matters, no culpable conduct can be reasonably attributed to him.

To establish just cause to discipline Mr. Byrne in these circumstances, the onus would be on the Employer to prove that he deliberately violated the rule (i.e., the Notice). That onus was not adequately discharged in this case. The evidence satisfies me that the discussion of the event

related to his discipline in 2002 and the wording of the Notice simply did not provide him with sufficient understanding of internal control issues that would assist him to recognize the impropriety and implications of cashing government payroll cheques, and also did not provide him with comprehensive and explicit instructions concerning different types of cheques, including government payroll cheques, that would obviate the need for discretionary decision making on his part.

This is something that the Employer should seriously consider improving in its Policy as well as its rules (Notice). Also in need of improvement is 1) adequate training on the subject of internal control and the purpose of a cash float; 2) sufficient explanation of what personal cheques and third party cheques are and 3) sufficient explanation why no payroll cheque of any kind should be cashed at any time.

#### *Associated discipline issues*

##### 1. *Inconsistent application of discipline*

Given the Employer's stated concern for appropriate internal control of ferry service cash floats, I have difficulty with the Employer's rationale for disciplining only Mr. Byrne in these circumstances. While Mr. Byrne was the Purser on duty on both shifts in dispute, he was not the only one responsible for the payroll cheque cashing incidents. By presenting his payroll cheque to him in the first place, Mr. Payne, the Chief Mate, who presumably would be called upon to relieve the Captain if needed – thereby assuming the responsibility for signing off on the Cash Reports – gave no indication to Mr. Byrne that he believed his request to be inappropriate. Surely the Chief Mate should know as much as the Captain and the Purser as far as the acceptance of cheques is concerned. On that point I accept the grievor's explanation that he did not consider it necessary to check matters with the Captain because he saw nothing wrong with cashing Mr. Payne's

government cheque. I view the fact that he did the same thing for Mr. Cooke without hesitation the very next day as an indication of his comfort level with this activity, which he based on the security of the value of the float. More to the point, in Mr. Payne's case was that, as Chief Mate, he was someone higher than the grievor in the chain of command, participating in an action in direct contravention of a Policy which the Employer insisted all employees knew about. Clearly, the Employer was willing to forgive him for initiating the situation, yet was adamant that the grievor be assessed all the blame because he was the Purser at the time. In my view, Mr. Payne was not devoid of responsibility in this case. If the Employer considered the cashing of this cheque to be conduct worthy of discipline, I would also find Mr. Payne's conduct to be blameworthy. Even if Mr. Payne's level or extent of responsibility may be considered to be somewhat less than that attributed to Mr. Byrne, disciplinary action should have been taken against him proportionate to that level.

Much the same can be said about Mr. Cooke's responsibility. The evidence was that he was also a Purser/Deckhand. Yet he presented his payroll cheque to the grievor for cashing. Obviously, Mr. Cooke saw no more wrong with the cashing of his cheque than the grievor did. As for the issue of responsibility, it cannot have escaped the Employer's attention that here was a second Purser whose understanding of both the Policy and the Notice was no different than Mr. Byrne's. At the very least, one would expect the Employer to question just how well employees knew and understood the Policy and the Notice. In my view, if the Employer considered the necessity for any discipline here, it was entirely inconsistent and unreasonable not to have taken some disciplinary sanction against Mr. Cooke. As in Mr. Payne's situation, the responsibility level might not be considered equal, but it was no less deserving of some disciplinary response.

To the extent that the Employer failed to discipline both Mr. Payne and Mr. Cooke in these circumstances, I would consider the decision to discipline only Mr. Byrne to be unjustifiably discriminatory, inconsistent and unreasonable. It is unthinkable that the Employer would have

considered their actions to be so insignificant and innocuous that they should not be exposed to some sort of discipline. Bluntly put, if the incident was disciplinable for one, it should have been disciplinable for all. Conversely, if it was not disciplinable for all, it should not have been disciplinable for one.

2. *The grievor's record*

The Employer's evidence is inconsistent on whether the grievor's 2002 discipline record was considered in determining what disciplinary action to be imposed for the September 2005 incidents. While counsel carefully took the position that the Employer only considered the 2002 discipline for the purpose of demonstrating that Mr. Byrne was aware that his conduct was wrong, Mr. Hammett's testimony was considerably less clear. In direct examination he said that his reliance on the grievor's poor record only applied to the 2002 incident, not to any other disciplinary action. In cross examination, he unequivocally confirmed that, in determining the appropriate penalty in Mr. Byrne's circumstances, he relied on the 2002 discipline letter which had been placed in his file for a cheque cashing infraction. His concern was that Mr. Byrne was developing a pattern of repeat infractions every two years plus one day. On the other hand, he stated that he did not check the grievor's file because he did not think any document was there due to the two year removal rule. As far as he was concerned, Mr. Byrne's record was clean and was no different than the records of Mr. Payne or Mr. Cooke. By this particular suspension, as a matter of deterrence, he wanted everybody involved, as well as new employees, to be aware what the procedures were.

I find it difficult to reconcile the notion that Mr. Hammett relied on the 2002 discipline letter which had been placed in Mr. Byrne's file for a cheque cashing infraction with the notion that he did not check the grievor's file and did not think the 2002 letter was there because of the two year

removal rule. On balance, however, I am satisfied that, notwithstanding that he knew the 2002 letter was not on the file, Mr. Hammett did rely on the fact of that discipline in determining the extent of the penalty for the September 2005 incidents. In my view, the extent and impact of this reliance was much greater than merely attempting to demonstrate that Mr. Byrne was aware from previous experience that his conduct was wrong. Mr. Hammett's reliance actually affected the *quantum* of penalty that was decided. In my view, such reliance was not appropriate. Article 33.02 required the 2002 discipline letter to be removed from the grievor's file and destroyed two years after it was placed there. The purpose of such removal was to ensure that the previous discipline no longer existed and could no longer be used or relied upon as a factor in future disciplinary matters. What Mr. Hammett did, in effect, was rely on the previous discipline as if it still existed on file for the purpose of determining what disciplinary action to impose upon the grievor in September 2005. In my view, such reliance was prohibited by Article 33.02.

As for the March 2005 letter of discipline for the verbal abuse incident, which was on file, Mr. Hammett's testimony was that he did not consider it (indeed he described the grievor's file as being as clean as Mr. Payne's or Mr. Cooke's). On the other hand, Mr. Osmond said that he considered it in making his recommendation for suspension and that the matter was also discussed with Mr. Hammett. On balance, the best I can make of this inconsistent evidence is that Mr. Osmond considered the March 2005 letter but Mr. Hammett did not.

The Union has argued that, since the suspension letter of September 13, 2005, makes no mention of the March 2005 letter, Article 32.01 prohibited its use. Article 32.01 requires that a suspension or dismissal letter state the reasons for a suspension or dismissal. It is well settled among arbitral jurisprudence that an employee's record of discipline may be considered, not to justify whether a later infraction should attract some disciplinary response, but as a factor in determining the *quantum* of penalty that should be imposed. A distinctive feature of progressive

discipline systems (which I would argue should apply to minor infractions only) is that penalties become increasingly more severe as more infractions are committed. Therefore, a minor infraction, which would by itself might warrant no more than a warning, could legitimately result in a suspension or even dismissal if the employee's discipline record shows that he is in the advanced stages of the progressive discipline system. Similarly, where a major infraction occurs, the Employer would be entitled, as a matter of corrective discipline, to consider whether the employee's discipline record can justify the imposition of a more severe penalty than would otherwise be the case. In other words, the record may not be relied upon to provide just cause to discipline in future infractions, but it may affect the *quantum* of penalty that is determined. In the sense that a discipline letter on an employee's record can be part of the reason one penalty is chosen rather than another penalty, it may be considered part of the "basis of disciplinary action" that is expressed in Article 33.01. Therefore, as a matter of interpretation, if such a letter of discipline is relied upon to justify a particular length of suspension or a dismissal for a future infraction, I would consider it part of "the reasons for the suspension or dismissal" that Article 32.01 requires must be stated in the relevant written notification.

In the instant case, the relevant written notification is the grievor's September 13, 2005, suspension letter. That letter does not in any way specify or even allude to consideration of the March 22, 2005 discipline on the grievor's record. What was stated in the March 22, 2005 letter was that the grievor was being reprimanded in writing (not a verbal reprimand as the Union has suggested). This written reprimand was available to be considered and relied upon in determining the *quantum* of penalty for the September 2005 incidents. However, in order to be eligible for consideration, it was required to be stated in the grievor's suspension letter that it constituted part of the reasons for the particular suspension decided. That requirement, though not onerous, was not followed. Therefore, I find that, to the extent that it was considered in any way by either Mr.

Osmond or Mr. Hammett, the March 22, 2005 written reprimand was improperly relied upon.

## SUMMARY

The grievor's letter of discipline alleges that he cashed two "third party government cheques" contrary to "the department's policy on cashing personal and third party cheques," of which he allegedly had been informed in the past; it is also alleged that his actions are contrary to the Notice posted in the ticket booth.

The evidence establishes that 1) the grievor did not know that the Policy existed and had never seen or been aware of section 4.2.4 of the Policy until the arbitration hearing and 2) he did not deliberately or knowingly violate the Policy. Therefore, the Employer did not have just cause to discipline him for any allegation of violation of the Policy.

In addition to the foregoing, section 4.2.4 of the department Policy deals with personal cheques only. It makes no mention of third party cheques, government cheques, or "third party government cheques". Therefore, no violation of the Policy can be based on the cashing of a third party cheque, or a government cheque, or a "third party government cheque".

The only type of cheques covered by the Policy was personal cheques. The cheques cashed by the grievor were not third party cheques. They were also not personal cheques. Therefore, even if the grievor happened to have knowledge of the Policy, the Employer has failed to establish that the Policy was violated in these circumstances.

The Notice posted in the ticket booth constituted Employer rules that 1) third party cheques are **not** acceptable for payment on the ferry service and that 2) no personal or third party cheques are redeemable for cash or credit. The grievor knew about those rules, but the evidence is that he did not cash any personal or third party cheques. Although he did cash two provincial government payroll cheques, the Notice did not cover that type of cheque. Therefore, no violation of the Notice

has been established in these circumstances.

In my view, the grievor did not possess sufficient understanding about internal control or the cash float to justify the conclusion that he should have known it was wrong to cash provincial government cheques. The evidence is that he received no training or courses on the financial aspects of his job as Purser. His current level of knowledge and understanding of such duties was attained by observing other Pursers work and by his own personal experience on-the-job, which was supplemented by information provided to him in discussion with management in 2002 after he cashed his own personal cheque, which bounced. The Notice was posted in response. There is no evidence that the concept of third party cheques was adequately explained to him. There is also no evidence that the concept of personal cheques was explained to him beyond the instruction not to accept them unless for the exact amount of a travel fare. His own understanding of the Notice was that the Employer's concern was to avoid cheques that might bounce.

The evidence is also that the grievor understood that his chief concern about the cash float should be to ensure its security. In that regard, he reasoned that the presence of a provincial government payroll cheque among the receipts did ensure the security of the float. In other words, he believed that nothing could be safer than a government payroll cheque because there was no danger of it bouncing.

In the absence of adequate knowledge of internal control matters and the primary purpose of the cash float, and also in the absence of adequate explanation about what constitutes third party and personal cheques, the grievor did not possess the requisite skills to make an informed and rational decision whether to accept or reject government payroll cheques. He acted on his knowledge of the Employer's rules and his understanding of what was or was not acceptable. Unfortunately his knowledge was deficient and his understanding was flawed, neither of which can be attributed to any blameworthy conduct on his part. He was not sufficiently trained in internal

control matters to equip him to make discretionary decisions or to recognize the potential for adverse impact on the cash float associated with the cashing of cheques that are not specifically mentioned among the Employer's unclear and incomplete set of rules and instructions.

In the result, I find that the Employer has not established just cause to discipline the grievor for the particular incidents complained of in these circumstances.

As for the other associated disciplinary issues such as the inconsistent application of discipline and the use of the grievor's record, etc., I refer the parties to the relevant points of discussion in these considerations

### **DECISION**

On the basis of the evidence any by the foregoing considerations, I find that the Employer has failed to establish just cause to discipline Mr. Byrne in these particular circumstances.

Therefore, the grievance is upheld.

All reference to disciplinary action for the September 5<sup>th</sup> and 6<sup>th</sup>, 2005, incidents shall be removed from his personal file.

Mr. Byrne shall be reimbursed for all lost pay and benefits resulting from the imposition of the suspension against him.

### **GETTING THE MESSAGE ACROSS**

In accordance with Article 9.16 of the Marine Services collective agreement granting an arbitration board the power to dispose of a grievance by any arrangement which it deems just and equitable, in addition to the decision rescinding the disciplinary action imposed against the grievor,

I order that a copy of the following comments be provided to Marine Services ferry employees, both bargaining unit members and management.

I recognize the Employer's concern that an award nullifying disciplinary action against the grievor in these particular circumstances might be perceived by ferry service employees as validating the practice of cashing of government payroll cheques. However, in no way should this award be construed as condoning such an action.

The application of discipline against the grievor was negated this one time only because the rules were unclear, he lacked sufficient training, and did not possess adequate knowledge or understanding to recognize the negative internal control implications upon cash floats that could be caused by cashing government payroll cheques. While it may take some time for the Employer to determine how best to address those deficiencies in the future, possibly by revising its Policy and/or its rules and notifying employees accordingly, or providing appropriate training on internal control issues and/or explanation and instruction of explicit rules, there should be no mistaking what is required of employees in the interim.

Now that this arbitration award has made it clear why the cashing of government payroll cheques from a ferry's cash float is not acceptable, employees should recognize that the Employer is fully justified in prohibiting such action as a matter of establishing a valid and reasonable internal financial control. Employees who are made aware of the above by receiving and reading these comments, shall be considered to have been advised that the cashing, i.e., redeeming for cash, of any government cheque, or any other cheque for that matter (not to be confused with accepting appropriate personal cheques made out for an exact fare), will be considered grounds for disciplinary action.

The Employer may provide to employees and management all or any other portion of the arbitration award it might deem to be of assistance in communicating the correct message.

Respectfully submitted as the decision of the arbitrator.

**Dated at Mount Pearl, Newfoundland and Labrador, this 17<sup>th</sup> day of January, 2007.**

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David L. Alcock  
Sole Arbitrator