# SUPREME COURT OF NOVA SCOTIA

**Citation:** Cape Breton-Victoria Regional School Board v. Canadian Union of Public Employees, Local 5050, 2010 NSSC 40

**Date:** 20100203
**Docket:** SYD NO. 315456
**Registry:** Halifax

**Between:**

**Cape Breton-Victoria Regional School Board**

Plaintiff

v.

**Canadian Union of Public Employees, Local 5050**
on behalf of the Grievor, H.D. and **Susan M. Ashley**
in her capacity as Arbitrator

Defendant

**Judge:** The Honourable Justice Cindy A. Bourgeois

**Heard:** October 27,2009, in Sydney, Nova Scotia

**Counsel:** A.Robert Sampson, Q.C., for the Cape Breton-Victoria School Board
Susan D. Coen, for the Canadian Union of Public Employees
Susan M. Ashley, Arbitrator - not appearing

**By the Court**:

**INTRODUCTION**

[1] The Cape Breton-Victoria Regional School Board ( the "Board") has applied for judicial review of a labour arbitration award rendered by Susan M. Ashley on July 9, 2009 following her consensual appointment as a sole arbitrator to hear a grievance filed by the Respondent, Canadian Union of Public Employees, Local 5050 (the "Union"), on behalf of one of its members, H. D. (the "Grievor"). The grievance related to the termination of the member's employment by the employer Board, and was brought pursuant to the terms of a Collective Agreement between the Board and Union dated May 20, 2005.

[2] Given the nature of the complaints involving the Grievor, as well as the Board's concerns regarding the potentially negative public opinion surrounding the outcome of this decision, I will not refer to the Grievor by name.

[3] This matter was heard by Arbitrator Ashley over the course of four days, involving the *viva voce* evidence of 10 witnesses. Although I have received by virtue of the Arbitration Record, the various exhibits entered at the hearing, a transcript of the testimony was not made available. I have carefully reviewed the Arbitrator's decision, as well as all material provided by virtue of the Arbitration record.

[4] The Grievor was terminated by the Board on November 23, 2007. At the time of the termination, the Grievor had been employed by the Board in excess of 20 years in a custodial position. He worked at several different schools, and had no prior disciplinary record. The primary reason for the termination was due to the Grievor undertaking a personal relationship with a 14 year old girl, which became sexual in nature after she had turned 15 years of age. The Board determined that it was inconsistent with the Grievor's continued employment that he had engaged in this type of relationship, being a breach of his duty of trust to all students within the Board district. It does not appear to be in contention in the material reviewed, or within the submissions of the parties, that the Grievor met the girl outside of the school setting, as she was not a student at any of the

facilities where he worked, nor was his employment position utilized to instigate or develop the relationship which ensued. The development of the initial relationship as well as the initiation of the sexual relationship began in August of 2007, at a location unconnected with school, or the Grievor's employment activities.

[5] The Board has strenuously asserted from the outset, that it is irrelevant as to where the relationship may have started. Notwithstanding the activities involved off-duty conduct the Board alleges that as a student of the Board, the Grievor breached his duty to her, his employer and the larger community. This breach leaves only the option of termination. The Union heartily disagrees, and has forcefully asserted that the Grievor's off-duty conduct in the circumstances of the present case, do not justify any degree of discipline, and certainly not a termination of employment.

[6] In addition to the above, the Board also had concerns surrounding the Grievor's lack of honesty in originally denying the existence of the relationship when initially questioned about it, as well as what appeared to be the Grievor's misuse of school property, notably giving garbage bags,

pens, calculators and other items away to several individuals. The Board did acknowledge at the outset of the arbitration hearing however, that the "case principally involved the dismissal of an employee for breach of their position of trust arising from conduct that occurred during "off-duty" hours" ( Board pre-Motion brief, para. 24).

**OVERVIEW OF THE AWARD**

[7] For reasons that will be more fully outlined below, the Arbitrator determined that there was no ground for discipline in relation to the sexual conduct of the Grievor, but that he was deserving of discipline in relation to his lack of honesty and use of Board property. She writes:

> 89. In summary, I find that there was little or no nexus between the sexual conduct and the Employer's interest. However, the Grievor's lack of honesty in the interview process and the inappropriate use of the School Board property must also be considered. I am satisfied that there were grounds to discipline the Grievor.

[8] The Arbitrator substituted a three month period of suspension finding that discharge was too severe a penalty in the circumstances.

## APPLICANT'S GROUNDS OF REVIEW

[9] In the Notice for Judicial Review, the Board sets out the following grounds of review:

> 1. Given that the Grievor was an employee of the Cape Breton-Victoria Regional School Board working in a position of trust, the Arbitrator erred in failing to apply the duty arising from that position of trust to all students in the School Board, parents, guardians and the public at large.
>
> 2. The Arbitrator erred in law by requiring proof of actual harm to the School Board's reputation in order to justify the discharge of the Grievor.
>
> 3. The Arbitrator erred in failing to hold that the Grievor's dishonesty with respect to his behaviour, when considered in the context of the Grievor's position of trust with his employer, justified the discharge of the Grievor.

## STANDARD OF REVIEW

[10] The preliminary determination which this Court must make is the appropriate standard of review ("SOR") by which to consider the arbitral award. The law pertaining to the determination of the appropriate SOR

was recently revisited by the Supreme Court of Canada in **Dunsmuir v. New Brunswick**, 2008 SCC 9, creating a new approach for reviewing courts. This has been considered and commented upon by the Nova Scotia Court of Appeal in several recent decisions.

[11] In **Police Association of Nova Scotia Pension Plan v. Amherst (Town)**, 2008 NSCA 74, the *Dunsmuir* principles were helpfully summarized by Fichaud, J.A.,as follows:

> [39] Correctness and reasonableness are now the only standards of review (para.34). The court engages in "standard of review analysis', without the "pragmatic and functional" label (para.63).
>
> [40] The ultimate question on the selection of an SOR remains whether deference from the court respects the legislative choice to leave the matter in the hands of the administrative decision maker (para. 49).
>
> [41] The first step is to determine whether the existing jurisprudence has satisfactorily determined the degree of deference on the issue. If so, the SOR analysis may be abridged (paras. 62, 54, 57).
>
> [42] If the existing jurisprudence is unfruitful, then the court should assess the following factors to select correctness or reasonableness (para. 55):
>
> > (a) Does a privative clause give statutory direction indicating deference?

(b) Is there a discrete administrative regime for which the decision maker has particular expertise? This involves an analysis of the tribunal's purpose disclosed by the enabling legislation and the tribunal's institutional expertise in the field (para. 64).

(c) What is the nature of the question? Issues of fact, discretion or policy, or mixed questions of fact and law, where the legal issue cannot readily be separated, generally attract reasonableness (para. 53). Constitutional issues, legal issues of central importance, and legal issues outside the tribunal's specialized expertise attract correctness. Correctness also governs "true questions of jurisdiction or vires", ie. "where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter". Legal issues that do not rise to these levels may attract a reasonableness standard if this deference is consistent with both (1) any statutory privative provision and (2) any legislative intent that the tribunal exercise its special expertise to interpret its home statute and govern its administrative regime. Reasonableness may also be warranted if the tribunal has developed an expertise respecting the application of general legal principles within the specific statutory context of the tribunal's statutory regime (paras. 55-56, 58- 60).

**a) Does the existing jurisprudence satisfactorily establish deference?**

[12] The Union submits that a contextual consideration under the second stage of the *Dunsmuir* analysis is unnecessary, given that existing jurisprudence has satisfactorily established the SOR of arbitral decisions is reasonableness. The Court was referenced to the comments of Binnie J. in **Vaughan v. Canada**, [2005] 1 S.C.R. 146, who describes the deference to be paid to the decision of labour arbitrators at paragraph 13, as follows:

> 13. Labour relations has long been recognized as a field of specialized expertise. The courts have tended in recent years to adopt a hands-off (or "deferential") position towards expert tribunals operating in the field, including arbitrators. The posture of deference was crystallized in *Weber* where this Court established a "bright line" demarcation in the case of disputes governed by the sort of labour relations legislation that typically exists across Canada and which provides for compulsory arbitration. In such cases, if the dispute between the parties in its "essential character" arises from the interpretation, application, administration or violation of the collective agreement, it is to be determined by an arbitrator appointed in accordance with the collective agreement, and not by the courts.

[13] I cannot agree that a SOR of reasonableness can, or should, be applied uniformly to all decisions arising from labour arbitration. The recent decision of Wright, J. in **Halifax (Regional Municipality) v. Nova Scotia Union of Public and Private Employees, Local 13**, 2009 NSSC 283, is illustrative of that point. There, the Court determined that the

arbitrator's interpretation of the privacy provisions under the **Municipal Government Act** was outside his field of expertise, and thus attracted a standard of correctness. In establishing the SOR the Court noted the absence of case authority in Nova Scotia determinative of the degree of deference afforded to the arbitrator, and undertook the second stage of the *Dunsmuir* analysis.

[14] Turning to the grounds of review here, it is clear that the Board, as part of its first ground, questions the Arbitrator's interpretation and application of specific provisions of the **Education Act**. I have not been provided with any authority which is determinative that an arbitrator should be afforded deference in that regard. Notwithstanding that the substance of the second and third grounds are such that fall frequently and regularly within the purview of labour arbitrators, and would attract deference, a consideration under the second stage of *Dunsmuir* is warranted.

**b) Contextual Dunsmuir analysis**

[15] The Union further asserts that the application of the second stage of the *Dunsmuir* analysis should afford the Arbitrator in the present case with deference on all grounds. The Board however argues that given the Arbitrator's decision was in relation to issues, none of which "relate to any specific interpretation of a Collective Agreement or governing statute in the employment law arena. . . none are such that warrant the court to step back and give deference to this decision-maker" (Board's pre-Motion brief, para. 17).

[16] The first two factors of the contextual analysis clearly point to a deferential SOR in the present circumstances. The Collective Agreement contains the following articles:

> 13.03 The decision of the Arbitrator or the majority of the Board shall be final, binding and enforceable on all parties.
>
> 13.04 The Arbitrator or the Board of Arbitration shall not have the power or alter, add to , modify, change or make any decision inconsistent with the provisions of this Agreement, however, the Arbitrator or Board of Arbitration may render a decision which in their opinion is fair and equitable under the circumstances.
>
> 15.01 The Employer reserves the right to discipline, suspend or discharge Employees for just cause.

[17] Additionally, the finality of an arbitral decision is legislatively mandated in the **Trade Union Act**, specifically within section 42, as follows:

> 42(1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.

[18] It is acknowledged by both parties that Arbitrator Ashley is experienced, as described by the Board, "both in the law and in particular labour/employment matters". Prior decisions of Arbitrator Ashley within the arbitral jurisprudence were provided to the Court, as supportive of the Board's submissions.

[19] It is the third contextual factor, the nature of the question addressed by the Arbitrator, which requires greater consideration. The grounds of review put forward by the Board can be simplified as follows:

> a) Did the Arbitrator misinterpret, and improperly restrict, the Grievor's duty of trust contained within the **Education Act**?

> b) Did the Arbitrator err by requiring proof of harm to the Board's reputation?
>
> c) Did the Arbitrator err by not accepting the Grievor's dishonesty as sufficient to justify his dismissal?

[20] Addressing the second and third grounds first, it is clear that the determination of such questions fall well within the mandate of the Arbitrator. The authorities provided by both parties to argue in support, and to oppose the Arbitrator's findings respectively, come almost exclusively from the arbitral jurisprudence. Clearly, arbitrators grapple regularly with these very types of issues, as part of their accepted and expected mandate. The recognized legal test regarding proof of harm to an employer's reputation, the *Millhaven Fibres* test, was developed within the arbitral jurisprudence, and consistently followed therein. The fact that the Arbitrator has applied legal principles, is not determinative of a correctness SOR. As noted by Fichaud, J.A. in **PANS, supra** at para. 42:

> Reasonableness may also be warranted if the tribunal has developed an expertise respecting the application of general legal principles within the specific statutory context of the tribunal's statutory regime.

[21] Returning to the first ground, should the Arbitrator's interpretation of the **Education Act**, attract a reasonableness or correctness SOR? As

noted above, the Board submits that the Grievor, in undertaking the relationship in question, breached his duty of trust, as established under the legislation. Section 40(1) of that legislation was put forward by the Board, and considered by the Arbitrator, which provides as follows:

> 40(1) It is the duty of a support staff member to
>
> (a) support students in their participation in school activities;
>
> (b) maintain an attitude of concern for the dignity and welfare of each student;
>
> (c) cooperate with the school board, superintendent, principal, teachers, students and other staff members to maintain an orderly, safe and supportive learning environment;
>
> (d) respect the rights of students;
>
> (e) participate in staff development opportunities identified by the person to whom the staff member reports, if requested to do so; and
>
> (f) subject to any applicable collective agreement in effect when this Act comes into force, perform such other duties as are assigned by the school board, the superintendent or the principal.

[22] The Board asserts that the Arbitrator's interpretation, and her resulting findings, of statutory authority outside the collective agreement, should be reviewed for correctness. As was addressed in *Dunsmuir*,

supra, there has been some modification of traditional views in this regard:

> [54] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law. Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity: *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157, at para. 48; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487, at para. 39. Deference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context: *Toronto (City) v. C.U.P.E.*, at para. 72. Adjudication in labour law remains a good example of the relevance of this approach. **The case law has moved away considerably from the strict position evidenced in *McLeod v. Egan*, [1975] 1 S.C.R. 517, where it was held that an administrative decision maker will always risk having its interpretation of an external statute set aside upon judicial review**. (Emphasis added)

[23] The Court has found helpful the analysis undertaken by the Ontario Court of Appeal in **Toronto Catholic District School Board v. Ontario English Catholic Teachers' Assn**. (2001), 55 O.R. (3d) 737, relating specifically to the SOR to be applied to an arbitrator's interpretation of a regulation under that province's **Education Act**. On appeal from the Divisional Court, the appellant challenged the lower court's finding that the

SOR should be correctness. Notwithstanding that the arbitrator had interpreted a statutory provision contained in "outside" legislation, the Court of Appeal determined that the appropriate standard was one of reasonableness. In reaching this conclusion, the Court considered the overall problem facing the arbitrator, of which the statutory interpretation was one factor, and determined that the essence of the issue was one which fell squarely within his mandate.

[24] In the case at Bar, the Board points to the provisions of the **Education Act** as a means of underlying the Grievor's breaches of duty and trust. The overall problem grappled with by the Arbitrator was, however, did the Grievor's conduct constitute behaviour warranting his dismissal? It is this global determination which the parties sought to have the Arbitrator determine, in accordance with the collective agreement, and based upon principles well entrenched in the arbitral jurisprudence. I find that the particular provisions of the **Education Act** in question are provisions which are related to the Grievor's employment duties, thus grounding the expectations of the Board as to his conduct. As such, they

are within the area of specialty held by the Arbitrator, and her interpretation of such, should be given deference.

[25] Based upon the above analysis, the SOR to be applied to all grounds raised by the Board, is reasonableness.

**REASONABLENESS OF ARBITRATOR'S AWARD**

**a) The Reasonableness analysis**

[26] The application of the reasonableness standard has been thoroughly reviewed by the Nova Scotia Court of Appeal in two recent cases, namely, **Casino Nova Scotia v. Nova Scotia Labour Relations Board and Service Employees International Union, Local 902**, 2009 NSCA 4 and **Communication, Energy and Paperworkers' Union, Local 1520 v. Maritime Paper Products Ltd.**, 2009 NSCA 60. A helpful elaboration of the reasonableness test as established by **Dunsmuir, supra**, was provided by the Court at paragraphs 29 through 31 of the **Casino** decision. Fichaud, J.A. writes:

> [29] In applying reasonableness, the court examines the tribunal's decision, first for process to identify a justifiable, intelligible and transparent reasoning path to the tribunal's conclusion, then second and substantively to determine whether the tribunal's conclusion lies within the range of acceptable outcomes.
>
> [30] Several of the Casino's submission apparently assume that the "intelligibility" and "justification" attributed by *Dunsmuir* to the first step allow the reviewing court to analyze whether the tribunal's decision is wrong. I disagree with that assumption. "Intelligibility" and "justification" are not correctness stowaways crouching in the reasonableness standard. Justification, transparency and intelligibility relate to process (*Dunsmuir*, para. 47). They mean that the reviewing court can understand why the tribunal made its decision, and that the tribunal's reasons afford the raw material for the reviewing court to perform its second function of assessing whether or not the Boards's conclusion inhabits the range of acceptable outcomes. *Nova Scotia (Director of Assessment) v. Wolfson*, 2008 NSCA 120, para. 36.
>
> [31] Under the second step, the court assesses the outcome's acceptability, in respect of the facts and law, through the lens of deference to the tribunal's "expertise or field sensitivity to the imperatives or nuances of the legislative regime". This respects the legislators' decision to leave certain choices within the tribunal's ambit, constrained by the boundary of reasonableness. *Dunsmuir*, para. 47-49; Lake, para. 41; *PANS Pension Plan,* para. 63; *Nova Scotia v. Wolfson*, para. 34.

**b) The Award itself**

**i) Does the arbitral award display a "justifiable, intelligible and transparent reasoning path?"**

[27] Turning to the award, the Court must on the first stage of the reasonableness inquiry, determine whether it is possible to understand why and how the Arbitrator made her decision. This is not an analysis of whether the Court, should it have heard the matter, would have reached the same conclusion. The Court clearly did not have the benefit of hearing the witnesses first hand, nor was a transcript of the *viva voce* evidence provided.

[28] In the award, the Arbitrator begins by summarizing the evidence called by both parties. She reviews in particular the evidence relating to the initiation of the relationship between the Grievor and the girl, and how it subsequently developed into a sexual encounter. She further outlines how this conduct came to the attention of the Board, the investigation process it undertook, and the Grievor's initial response to the allegations pertaining to his relationship with the girl.

[29] The Arbitrator also carefully outlines the evidence relating to how the Board ultimately reached the decision to terminate the Grievor and the

rationale behind that determination, including not only the sexual conduct itself, but the dishonesty in the investigative process, and the theft of Board property.

[30] The Arbitrator then turns to the arguments advanced including the authorities relied upon by both parties. The Board's position, repeated to this Court, was summarized by the Arbitrator at paragraph 41 of the award as follows:

> 41. Counsel for the Employer acknowledged that the focus of this case is off-duty conduct, and that the Employer must prove a nexus between the conduct in dispute and the Board's legitimate business interests. That nexus is that the Grievor is in a position of trust and subject to the **Education Act**, and that he had sex with a fifteen year old student of the Board. If I find the nexus, he noted that there were collateral issues that should be considered in assessing punishment, such as the Grievor's lack of truthfulness in the investigation.

[31] The Arbitrator reviews the position of the Union, noting that there was agreement as to the appropriate test to be applied when considering off-duty conduct, notably that established in **Re Millhaven Fibres Ltd and Ontario O.C.A.W. Local 9-670** [1967] 18 L.A.C. 324.

[32] The Arbitrator turns to a consideration of **Millhaven, supra**, as the primary step in her determination. At paragraphs 57 and 58 of the award, she outlines the test, as follows:

> 57. The **Millhaven** test requires that
> . . . If a discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from work, the company must show that:
>
> (1) the conduct of the Grievor harms the company's reputation or product;
>
> (2) the Grievor's behaviour renders him unable to perform his duties satisfactorily;
>
> (3) the Grievor's behaviour lead to refusal, reluctance or inability of the other employees to work with him;
>
> (4) the Grievor has been guilty of a serious breach of the *Criminal Code*, thus rendering his conduct injurious to the general reputation of the company and its employees;
>
> (5) the Grievor's conduct places difficulty in the way of the company properly carrying out its function of efficiently managing its work and efficiently directing its working forces.
>
> 58. It is generally held that if the employee's conduct breaches one or more of the above factors, the Employer will have the required "nexus" between the conduct being disciplined and the job being done by the Grievor.

[33] The Arbitrator then embarks upon an analysis of each of the above factors, in order to determine whether any apply to the case at Bar. Prior to doing so however, she comments that the nature of the sexual conduct between a man of the Grievor's age and the girl was "difficult to contemplate" and "repugnant". The Arbitrator notes that the above legal test must be applied, it not being appropriate to "impose discipline on the basis of moral outrage alone, or to punish the Grievor for behaviour which we find offensive."

[34] The Arbitrator reviewed several authorities involving support staff and off-duty conduct. She considered whether the provisions of the **Education Act**, relied upon by the Employer would alter the test or approach to be taken. She concludes:

> 73. On the other hand, the **Education Act** sets out statutory responsibilities for support staff which implicitly accept that they are in positions of trust. While not intending to limit the scope of Section 40, it does appear that the duties described therein relate most primarily to the manner in which the employee does his job. For example, I don't think it can be argued that the Grievor's conduct in relation to this girl has had a negative impact on her "orderly, safe and supportive learning environment".

[35] Regarding the first *Millhaven* factor, the Arbitrator determines that it is not necessary for an employer to establish actual harm in order to establish the required nexus, rather "the test is whether a reasonable and fair-minded person, knowing the relevant facts, would conclude that the continuation of the Grievor's employment was untenable." It should be noted that both parties agree that the Arbitrator cited the correct test, the Board asserting that the Arbitrator erred in applying the evidence thereto. From the decision, it is clear that the Arbitrator considered "relevant facts" and determined that the test was not met.

[36] The Arbitrator addresses each of the remaining *Millhaven* factors in turn, including that the Grievor had not been criminally charged, and that at the time of the sexual conduct, the *Criminal Code* would not have viewed consensual sexual activity with a young person of 15 as an offence.

[37] At the end of her review, the Arbitrator determined that the Board did not meet any of the factors under the *Millhaven* test, and that the Grievor's off-duty conduct was not cause for discipline. Flowing from that determination, the Arbitrator found that the Grievor's dishonesty during the

course of investigating the off-duty conduct, should not warrant discipline to the degree imposed by the Board. She then determined that the Grievor's possession and usage of Board property was inappropriate and warranting discipline. She imposed a suspension of three months.

[38] The Court in reviewing the award, is readily able to understand how and why the Arbitrator reached her decision. She stated the positions of the parties, and considered them in the course of making her determination. As acknowledged by the parties, the Arbitrator cited the appropriate legal tests governing the issues before her. She undertook a clear legal analysis, and the Court understands how the ultimate determination was reached. Further, there is sufficient "raw material" within the arbitral award in order to properly address the second stage of the analysis. As such, there is a "justifiable, intelligible and transparent reasoning path", thus meeting the first stage of the reasonableness analysis.

**ii) Does the conclusion lie within the range of acceptable outcomes?**

[39] The Board forcefully argued that notwithstanding the Arbitrator's correct statement of the *Millhaven* test, that she misapplied the test when considering the evidence before her. Further, the Board asserts that the Arbitrator's view of the Grievor's duty contained within the **Education Act** was flawed.

[40] The Board asserted that several of the Arbitrator's assertions, such as the Grievor's conduct being "repugnant", was inconsistent with her ultimate determination, and therefore she misapplied the evidence. As previously determined, the SOR is not one of correctness in the present circumstances, but the reasonableness of the arbitral award. This Court must determine whether the award was reasonable, based upon the material contained in the arbitral record, including the Arbitrator's decision. This Court cannot substitute an alternate determination unless it is found that the award was outside the range of acceptable outcomes.

[41] Based on the evidence before her given the nature of the relationship between the Grievor and the girl, in particular where and how it developed,

and the application of the *Millhaven* test, it was within the range of acceptable outcomes, for the Arbitrator to render the award under review. Further, her analysis of the **Education Act** provisions, was not unreasonable, and in the event that the Court had applied a SOR of correctness on this point, it would have not disturbed the award.

[42] The Arbitrator's suspension of three months, in light of the nature of the items in the Grievor’s possession, the evidence that other employees have "trinkets" from various schools, and the lack of a policy addressing the issue, was well within the range of reasonable outcomes.

**CONCLUSION**

[43] For the reasons above, the Board's application for judicial review of the decision of Arbitrator Ashley is dismissed. The Union in its oral submissions sought costs of the proceedings, including those incurred in relation to an earlier motion brought by the Board seeking a stay of the Arbitrator's award. Should the parties be unable to reach an agreement

with respect to costs, I would be prepared to hear submissions in that regard.

J.