

2005 CarswellNat 7113, [2005] C.L.A.D. No. 269

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2005 CarswellNat 7113

Wilson v. Bell Mobility Ltd.

In the Matter of an Adjudication under Division XIV - Part III of the Canada Labour Code

Ms. Eileen **Wilson**, (the "Complainant") and **Bell Mobility** Limited, (the "Employer")

Canada Adjudicator appointed under the Canada Labour Code

M.R. Newman Adjud.

Heard: May 23, 2003 - November 29, 2004

Judgment: May 4, 2005

Docket: None given.

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Counsel: Kevin Fox, for Complainant

Johanne Cavé, for Employer

Subject: Labour and Employment; Public

Labour and employment law.

M.R. Newman Adjud.:

1 A complaint was filed by Eileen Wilson (herein "Complainant" or "Wilson") against Bell Mobility Limited (herein "the Employer" or "Bell") under Part III of the Canada Labour Code ("CLC") on July 8, 2002 alleging that she was unjustly dismissed from her position. At Wilson's request, the subject matter of her complaint came before me as duly designated Adjudicator under Subsection 242 of Part III of the CLC. Wilson was dismissed by Bell on April 30, 2002 for engaging in fraudulent conduct in violation of the Employer's Code of Business Conduct (herein "CBC") by giving away or excessively discounting phones and accessories which increased her personal commissions and decreased revenue to the Employer.

2 The hearing commenced on May 23, 2003, continued on June 23, 2003 and testimony was completed and arguments submitted on October 10, 2003. Thereafter a Motion to Reopen the Record was submitted by Complainant's counsel and opposed by Bell, argued on December 18, 2003, and granted by my Preliminary Award dated March 4, 2004. The hearing recommenced on November 11 and was completed on November 29, 2004, again with leave granted to Complainant's counsel to subsequently submit full copies of the precedent relied upon, which I received on December 21, 2004.

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3 The issue in this case is not whether Wilson engaged in the conduct for which she was dismissed - violating corporate policy by selling overly discounted phones and accessories - but whether she did so with the implicit or explicit approval or condonation of her managers. There is no question that Wilson sold phones at prices below those listed in M Source, the corporate pricing guide for hardware and features, and gave away three accessories for free on many occasions exceeding corporate policy. What I must decide is whether she knew her actions were wrong and proceeded with them without the help or knowledge of her managers in order to increase her commissions. I am also faced with the issue of whether her conduct supports Bell's dismissal response. Therefore, I will detail the evidence concerning the practice in the Small Business Department (herein "SBD"), the Employer's knowledge of any variations from M Source, and its investigation into these matters when Wilson's actions were brought to the attention of the Human Resources ("HR") Department, rather than listing the specifics of each transaction Wilson's Activation Forms ("AF") reveal she made which Bell determined were inconsistent with its CBC and relied upon in support of her removal. Suffice it to say that I have carefully reviewed this documentation which forms the underlying basis for my summary of its contents found below.

4 Wilson had worked in the banking industry for 23 years before coming to work for the Employer in its collections department in March, 1999. A year later she joined a sales team the Employer put together as a telesales representative, and then was one of an elite group that was selected to work in the newly created SBD, the position she held at the time of her dismissal. The sales representatives in the SBD work on a dialer, making outbound and receiving inbound calls in an attempt to sell phone activations and value added services. They receive a base salary (approximately \$30,000), commissions paid quarterly, and an annual bonus based upon team sales. Sales representatives are given targets for sales of phone activations and features. Commissions are earned if they exceed 86% of their target. Additionally, they receive commissions for achieving over 100% of the revenue target, with higher uncapped commissions paid to representatives who achieve over 160% ("stretch") of the revenue target. Commissions are based on phone activations and sales of services, not on the hardware associated with such sales.

5 Needless to say, the SBD is a sales driven department, with daily and weekly sales goals posted, and team managers actively involved in motivating the sales force to achieve higher levels of sales. The commission earnings of the team managers and SBD Manager are directly tied to the sales and revenue of the department. Wilson was always one of the five top sellers in the SBD, surpassing her stretch objectives.

6 Employees complete an AF if they make a sale, which includes personal information concerning the customer, the number of phones and services ordered, the charges and discounts, and an agreement number. The order then goes to the warehouse to be filled, the appropriate phone number is programmed, the phone is shipped, and the order is linked into the billing system. Sales representatives are obliged to enter the value added features and the phone cost into the account for activation and billing purposes through a computer system. SBD employees and managers recognize that paperwork is secondary to sales, and the record establishes that many employees were behind in completing their paperwork, meaning that certain phone charges had not been recorded into the billing system. Wilson was known by her managers to be behind in her paperwork, and to come in on some Saturdays to catch up.

7 The corporate policy with regard to pricing for all hardware including phones and features is contained in M Source, which is updated daily on the computer. It establishes the regular price and mail-in-rebate (MIR) available for each different phone and feature depending upon the length of the service contract, and is applicable corporate-wide, including the inside sales force as well as the dealers. The Employer has a relationship with each dealer obliging them to comply with the corporate pricing guidelines contained in M Source and assuring them that similar guidelines will be followed by its telephone sales representatives. There is a natural tension between dealers and SBD sales representatives, since both are competing for the same business.

8 The major area of conflicting testimony in this case revolves around whether the SBD actually followed M Source at the relevant time. Steve Singeris, Wilson's SBD Team Manager, testified that M Source was the bible and must be followed in the department. His superior, Bruce Syer, SBD Manager, confirmed that the SBD could not vary from the terms established in M Source. Singeris stated that if M Source does not offer a free telephone or other

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special deals, none can be offered by the SBD, and that he never authorized deals different from those set forth in M Source. His recollection was that between January 1 and April 29, 2002, there were no free phones available in the system, and that none were authorized in the SBD. Singeris did state that a telephone sales representative could offer one free accessory to close a deal, and seek verbal approval from a manager for a second free accessory only if a sale was for between 5 and 10 telephones. He denied ever authorizing more than two free accessories.

9 On the other hand, Wilson and each of the employees who testified at the hearing (Anton Cockburn and Qadeer Abdul) or were interviewed during the course of the Employer's security investigation, acknowledged that the pricing in M Source was not strictly followed in the SBD and that all employees were doing deals better than that offered in M Source. Almost all agreed that the SBD always had a free phone to offer to potential customers, most often the lower end Audiovox 9100 or Motorola 120c models, which normally had a net cost to the customer after the MIR of \$19 and \$29 respectively, which was routinely waived without the need for approval. Also, one or two free accessories were available without seeking separate approval. Additionally, the employees acknowledged that there were circumstances when they and others would seek and obtain approval from Syer to give mid and higher end phones for free to a good customer, one who was activating a number of phones, one who was seeking to duplicate a prior deal given on a more expensive phone, or one with a good track record with the Employer. While not all employees sought such approval, it appears to have been common knowledge within the closely knit SBD that approval for free higher end phones had been given to others.

10 Abdul, Cockburn and Wilson each stated that they understood that this pricing was an issue with the dealers, and SBD sales representatives were all told by Syer to be careful they were not talking to a dealer rather than a prospective customer when offering deals better than M Source. Abdul testified that all SBD employees and their managers knew they could not make sales if they had to go by the book, since a dealer could offer the customer the phone immediately while their hardware would have to be shipped from the warehouse involving a waiting period. Abdul stated that when he went to Syer to get approval on certain deals, Syer would often say that he should do whatever he needed to do to close the deal, but that "we never talked about this." Abdul testified that about 80% of his deals include free items such as waiving installation charges, free phones and accessories, waiving certain packages for 3 months, and other things in excess of M Source for which he obtained approval from his managers.

11 Cockburn testified that he did not seek many special deals with higher end free phones because he did not trust Syer to back him up if there was a problem with later discovery. He related an incident where Syer asked him to activate an account without a credit check, which he refused to do because it was against the rules, noting that it was "my ass on the line, not yours." Then Director of Revenue and Acquisitions Kelly Parascandalo explained that managers have the authority to approve activations without credit approval under certain circumstances.

12 Wilson testified that at the end of 2001 she obtained the Airflight Limousine account. She recalled initially speaking with Raminder Punia (herein "Rami") who indicated that he could give Bell hundreds of activations and wanted to know the best deal she could offer on a Motorola 270c phone for that amount of business. Wilson was excited and approached Syer asking what kind of deal she could offer. She testified that he agreed to offer that phone, normally retailing for \$269 or \$319 with a MIR of \$100, for \$99, and told her to work out a deal on the features and call display. Wilson met with Rami and, according to Rami's testimony, they negotiated a package at \$25/month, 200 anytime minutes and free evenings and weekends for 3 months, older model phones for free and the Motorola 270c phone for \$99, with a \$50 discount if the new account could prove that they came from another company. Wilson testified that she informed Syer they got the account and its terms. She stated that as the daily activations came in and were reported, the only comment Syer made was "just don't be giving away the kitchen sink." Wilson testified that everyone knew the limo deal, and she was in constant contact with Rami, and he, in turn, with Syer and Singeris.

13 After a large number of activations, Rami asked for a better deal. Along with the \$50 credit, he wanted the \$99 phones for free. Wilson informed him that she would have to talk to her manager. Rami testified that he received a call from Syer, in which he went over the terms of the deal they had negotiated and asked him to further

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reduce the \$49 phone to a free phone. According to Rami, Syer told him he was already getting a great deal and he could not do it. Rami testified that he had a few telephone conversations with Syer, although never meeting him. Syer admitted knowing that Rami was Wilson's Airflight contact, but denied ever talking to him or being informed of the specifics of the deal he was getting.

14 On another occasion, Rami asked Wilson for a V60 model phone (\$900 retail plus tax) for free as a result of the amount of business he was bringing in at no personal gain, and she said she could not give it to him but that she would talk to her manager Singeris. Wilson testified that she sought and obtained his approval for this one time phone for Rami. Rami recalled Wilson informing him that her manager okayed it, and getting a bill indicating a \$1100 price with a promotion making the cost to him zero. He stated that he spoke with Singeris a few times between January and the end of April, 2002. Singeris recalled having conversations with Rami but stated that he never knew the deal Airflight was getting or approved anything other than what was authorized in M Source. Wilson was adamant that both of her managers knew the deal that was approved by Syer for Airflight, and that she never sold anything in excess of what was available to everyone in the SBD other than what was approved by her managers.

15 At some point during this time period, an appreciation luncheon was set up due to the fact that Airflight was the largest account in the SBD. Rami, Singeris, Wilson and Abdul were in attendance at a local restaurant. Abdul was the only other SBD sales representative that dealt with Rami and this account in Wilson's absence. Rami testified that he went over the package they were getting and wanted a better deal on the hardware. Singeris testified that they never discussed the cost of the phones, he never checked before hand, and he assumed they were getting the corporate rate. Both agreed that Singeris said that what they were getting was the best Bell could do, and that Rami was given a diary with a calculator as a gift of thanks. Abdul recalled that Rami wanted a high end phone for himself and a better deal, and that he got the phone but that Singeris told him that if he continued to bring in the business, he would get the deal.

16 Wilson stated that for the last four months of her employment she spent most of her time on the Airflight account, having activated some 340 phones. She stated that they were very demanding, and she would receive 8 or more faxes from them by the time she arrived in the morning complaining about not immediately having their features available for use. In order to better service the account, she agreed to put the features in immediately along with the \$50 credit if appropriate, and leave the billing debits to be performed at a later date. Abdul testified that he was the back up for Wilson on the Airflight account, and that the deal Syer approved included the Motorola 270c for \$99, voicemail, accessories and many minutes. He stated that when Wilson was out, Syer told him just to follow the deal in the file for new activations and leave the paperwork for Wilson to complete.

17 The events leading up to Wilson's termination occurred in late April, 2002. Parascandalo testified that she received a phone call from her boss advising her of a dealer complaint voiced to the Vice President of Channel Management that his customer was offered a deal he could not match involving free phones and a deactivation/reactivation (herein "De & Re"). Since a new customer often gets a better deal on a telephone than an existing customer, a device used to take advantage of this is for a customer to deactivate a contract with a dealer and reactivate one with a sales representative, for which the representative earns a commission. Parascandalo testified that it is often hard to prove that the sales representative knew that it was an existing customer in a De & Re situation when the Employer gets such complaints, which are common. Parascandalo was told to suspend the employee pending investigation.

18 During the investigation it was discovered that Wilson was the sales representative involved. Although no evidence was found to support the De & Re allegation, Parascandalo noticed that there were no phone charges on the account. She informed Syer of the nature of the complaint and instructed him to suspend Wilson pending investigation. Parascandalo explained that she wanted to conduct an objective investigation and decided to keep both Syer and Singeris out of it since she knew they were fond of Wilson. She noted that any investigation they did was on their own.

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19 Syer and Singeris testified that when they found out about the dealer complaint they called Wilson in and questioned her about why there were no charges for phones on some of her accounts. Both managers testified that Wilson denied ever giving away a free phone, and they decided to suspend her pending further investigation. She was escorted from the building on April 30, 2002.

20 Wilson recalled the events of that day differently. She testified that she was called into a meeting with Syer and Singeris where Syer said "Eileen, we have a fucking problem here." She recalled being told that a dealer wants her fired immediately. Wilson stated that she looked at the account they were referencing and knew it was her Subway shop guy who always referred his friends to Bell, and for which she had received approval from Syer to give him a higher end phone for free and other phones then on special. Wilson testified that Syer was very upset and indicated that this dealer threatened a lawsuit against the company, which they didn't need in addition to two other pending ones. Wilson recalled Syer stating that he did not know how they were going to cover it, it was a really serious problem because it came from a Vice President through Parascandalo, and he did not know what they were going to do. Syer asked Wilson about De & Res, and she told him that she did not do them and did not know how to on the computer. Wilson testified that Syer asked her about all of her accounts and she told him she was a month and a half behind on her paperwork. She recalled him saying that he was going to have a hard time with that. Wilson stated that she was very upset when she left the office. She testified that she trusted and loved Syer as her manager, and he always approved special deals for her, but often said "you're on your own if anything comes up."

21 Later that day Wilson was called back into Syer's office. She recalled him saying that he was going to Montreal to speak with a particular Vice President to smooth things out, because he knows the kind of worker she is and what she means to the department. Wilson testified that when she left she was walked out of the building by Singeris but did not realize at the time that she was being formally escorted out. Wilson stated that she phoned daily and was told by Singeris that they were doing the best they could.

22 Parascandalo conducted a further investigation by pulling multiple accounts of Wilson over a period of time. Thirty seven (37) of Wilson's AFs within the March 18-April 26, 2002 period were introduced into evidence, along with the first monthly billing and activity logs for each account. Thirteen (13) are Airflight accounts, twenty-four (24) are not. None of the 24 non-Airflight accounts had any phone charges on the first bill, nine (9) were Motorola 270c models and the rest were Motorola 120c. The AF has columns entitled "Charge" and "MIR" under which the sales representative note the appropriate cost and rebate amounts. Most of the Motorola 120c models are listed on Wilson's AFs having a charge of \$99 and a MIR of \$99. The notations for the Motorola 270c models are inconsistent, some stating a charge of \$269 and a MIR of \$269 or \$99, some blank, some listing a charge of \$319 with a MIR of \$319 or \$99.

23 Wilson explained that her paperwork was horrible, and although she knew from it what she was going to charge the customer, it was not always apparent from the AF itself. She stated that she often left the columns blank or used the MIR column as the actual price she was charging the customer for the phone, and the charge column for the regular price of the phone. Wilson testified that Matt and Rose, who were the administrators in the SBD to whom this paperwork was turned in initially for processing the order to the warehouse, often got on her about how she filled out her paperwork and she tried to comply with their instructions by listing amounts in each column. After input, the paperwork was placed in a tray on Wilson's desk for her to use to activate the services and input the charges for the phone and accessories for billing purposes.

24 Wilson explained that she was always months behind in her paperwork, since she spent her working hours selling rather than completing forms as was the norm in the SBD, and often activated the services in the computer after the phone SKU number was entered by the warehouse so that the customer could use them immediately upon receipt of the phone, but did not enter the debits for the phone at the same time. Cockburn confirmed that a lot of people did not charge for their phones for several months although inputting their services. While other employees were not always current on their phone debiting, the Employer preferred to have the phone charge on the customer's first bill to avoid later surprises. It was agreed that it would take less than a minute to enter the appropriate items in

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the computer to charge for the phone and that it could easily be done at the same time that the services were activated by the sales representative.

25 During the investigation of Wilson's accounts, the Employer assumed that when there was no charge on the customer's first bill for the phone, she had given it for free. Of the thirteen (13) Airflight AFs in the record, two (2) had no charge on their first bill, seven (7) were billed \$50, three (3) were billed \$99, and one (1) was billed \$100, and some were given the \$50 promotion credit. Wilson was not able to explain this discrepancy, stating that all Airflight account Motorola 270c phones were sold for \$99 per the terms of their agreement. She stated that she never gave a Motorola 270c phone for free without permission, and just because she had not billed them immediately, she intended to when she came in to catch up on her paperwork as was her practice.

26 On the basis of this investigation into the paperwork of Wilson, Parascandolo concluded that Wilson was repeatedly giving away three accessories and free higher end phones or charging amounts that were not consistent with corporate policy expressed in M Source. Parascandolo advised Syer to terminate Wilson. She had no conversations with Wilson directly to get her explanation of the records she had reviewed.

27 Wilson testified that when Syer phoned, he said that this was the hardest thing he was going to have to do in his life. She replied that he could not do this to her. Wilson recalled Syer being so upset that he had to get off the phone, and Singeris informing her that she was fired for giving out free phones. Wilson questioned what free phones, and asked if he was referring to the Motorola 270c to the limo people. She denied giving them away for free, indicating that Syer had approved her offering them for \$99 which is what she was charging. She noted that she was behind in her paperwork and would come in and catch up with her phone charges. Singeris informed her that they had no choice but to fire her. Wilson testified that she felt totally betrayed by her managers, because she only did what had been approved by Syer, who knew all of her deals and had okayed them.

28 Syer and Singeris each testified that when they phoned Wilson with the results of Parascandolo's investigation, she was adamant that she would never give away free phones. Singeris stated that she could have been referring to the Motorola 270c, and indicated that she would come in and charge her accounts. They agreed to further investigate. Syer and Singeris looked through her AFs and called two of her customers, who confirmed that they never expected to be charged for the phone. They phoned Wilson back on May 6, 2002 and read her the dismissal letter which states, in part:

As a result of a security investigation and subsequent interview, it has been discovered that you have placed yourself in a conflict of interest situation over a long period of time depriving the Company of money while favouring friends to the detriment of Bell Mobility's interests.

The Company views your actions as a serious violation of our Code of Ethics and Conduct.

Your actions have resulted in our Bond of Trust being broken.

In view of the above, you are hereby dismissed effective April 30, 2002.

29 Syer testified that he was not Wilson's direct supervisor, but did speak to her once or twice a day. He described his management style as one where he assumes that all employees are doing their jobs properly until a problem arises. He stated that he trusted Wilson, she was a mother figure, was well-liked in the SBD, and had a high volume of sales. He knew she was behind in her paperwork and sometimes came in on a Saturday to catch up, but he assumed it was for a reasonable period of time like a business week. Syer testified that the sales representatives usually add features and phone charges at the point of activation. He stated that he was not aware that Wilson was giving Motorola 120c phones for free or Motorola 270c units for \$99, and she never received his approval to do either. While he knew that Airflight was the largest account in the SBD, he was unaware of the size of it or the num-

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ber of activations. With large individual liability accounts such as Airflight, where the terms are negotiated by the corporation for its employees but the individual is responsible for payment, they can get a 5-10% discount on the rate plan, but not on the hardware. Corporate group accounts, where the liability is with the corporation, are handled by the corporate sales department, not the SBD, and they have the ability to give special pricing on hardware.

30 Singeris also testified that he did not review Wilson's paperwork, but only went over her sales numbers. He knew she was behind in her paperwork, but not in her billing. Singeris indicated that Wilson was a high performer and was used to motivate the rest of the SBD group. He also testified that he never authorized her to give out free phones.

31 Parascandalo testified that, during the course of her investigation, she was concerned that perhaps the giving out of free phones and accessories was a department practice or that managers were condoning it, so she pulled random accounts from different SBD employees, some of whom were also top sellers, and their review confirmed that they were following corporate offers with respect to higher end phones and giving away only one or two free accessories, not three like Wilson was giving. Parascandalo stated that she did not consider the possibility that Wilson was just late on her paperwork since the feature charges had been put into her account and the phones are normally charged at the same time, in some cases there were phone charges which were not in compliance with the corporate offer, and her AFs showed that she was netting out the cost of the phones by giving MIRs for the same amount as the cost of the phones. She concluded that termination was required since Wilson's actions were against the Code of Ethics and corporate policies, dealer relationships require sticking to the corporate offer, there was a negative impact on company revenue (calculated to be about \$10,000 in a two month period) while at the same time an increase in Wilson's commission pay out.

32 After Wilson's termination, Parascandalo received an anonymous letter dated May 28, 2002 alleging, among other things, that Wilson got fired for doing what she was told to do, and "took the hit" so that the manager could save his position, and voicing other concerns about management unfairness within the department. She decided to send a neutral investigator into the SBD when both Syer and Singeris were not present to see what was happening there and informed employees that they could select representatives to speak to him anonymously.

33 Security department investigator Michael Rickard was sent into the SBD at Parascandalo's request to learn about the practice of giving promotions to close deals and management's awareness, and understood that his investigation was the result of Wilson's termination for repeatedly exceeding company policy in giving free accessories and cellulars in order to close sales. He interviewed five employees on June 13, 2002 about their knowledge of company policy and the methods by which management could increase morale. During these interviews he took handwritten notes, indicating the names of the four employees who agreed to give them and a number for the fifth, who he later identified as Abdul. Thereafter, he sent a typewritten report to Parascandalo of his conclusions based upon his interviews. He did not share with her his notes of the interviews.

34 Rickard's report concludes that, with respect to accessories, (1) three of the five employees knew corporate policy was that one accessory could be given and in exceptional circumstances two, and felt it was being followed by everyone in the office; (2) one knew and followed the policy but was aware of others who did not, but did not think that management knew that policy was not being followed; and (3) one stated that there was not any stated policy and management knew that three accessories were being given away to close a sale. With respect to cellulars, Rickard reported that four employees knew the policy and followed it, and that the only deviation was to waive the \$19 net cost on the Audiovox 9100 and \$29 on the Motorola 120c if the customer had a good track record with Bell (herein "AREC"). The fifth employee did not know about the policy and felt he could give away high end phones if he felt it was warranted to close a sale, and that his manager was aware of this practice. Rickard's report also listed the employee concerns expressed to him including job security.

35 Rickard testified that he did not know the corporate policy at the time of the interview and thought that giving away two accessories and waiving the \$19 and \$29 fee on the Audiovox 9100 or Motorola 120c was a deviation

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from policy. Rickard did not think it was necessary to interview Wilson or Syer and Singeris. He concluded that four out of the five employees knew the policy and were following it and that managers did not know if the policy was not being followed. He discredited the fifth employee as his comments revealed a close relationship with Wilson and Rickard felt that he molded his statement to benefit her. Rickard's specific employee interview notes reveal that all employees understood that lower end phones could be given for free in the department, and that a customer's AREC was only mentioned in reference to the ability to give higher-priced phones for free with approval.

36 Parascandalo testified that she received Rickard's report and had a conversation with him where he confirmed that there was no evidence that employees were giving away 3 free accessories or high end phones for free or that managers were aware of these deviations. Parascandalo testified that she also discredited Abdul's statements because they were not corroborated by the other employees and she felt that, due to his close relationship with Wilson, he would say anything to save her job and was known to exaggerate.

37 Parascandalo testified that she saw no evidence that others were doing what Wilson had done, but in order to prevent this from happening in the future, she instituted tighter controls, changing the job functions of the two administrators in the SBD to include auditing accounts and sending reports to team managers and the SBD Manager, and requiring them to sign off on all AFs. Some of the comments of the employees contained within Rickard's notes indicate that they felt that they had flexibility and judgment in making deals before Wilson was fired, but that the changes to the SBD after her termination removed their judgment and made it necessary to go to a manager for any deviation, which employees did not feel comfortable doing under the circumstances. There is no question that Wilson's termination had an adverse effect on employee morale and sales figures within the SBD.

38 It was the evidence of Cockburn and Abdul that formed the basis for the Complainant's Motion to Reopen the Record, and their testimony was elicited after arguments had been made in the case. In his testimony, Abdul stated that he was a very good friend of Wilson's both inside and outside of work and that their friendship had grown since her dismissal. He stated that he was willing to come forward earlier in the hearing if he was called, but he wasn't. He asserted that he did not know the status of the case when he wrote the letter to Wilson's counsel in October, 2003 about what was occurring in the SBD, but he felt really bad about what had happened to her. Abdul testified that he and Wilson both had a very good working relationship with Syer before her dismissal, but that changed for him after and it became very awkward and uncomfortable for him to say anything after Syer did not back up Wilson. Abdul stated that after Wilson was dismissed Syer went to everyone in the SBD and told them to do their paperwork and not to do De & Res because Parascandalo would be investigating.

39 Abdul testified that everyone in the department was offering special deals to close sales. He stated that some deals, like offering three free accessories or higher end phones for free, required the approval of a supervisor. He gave an example of another employee whose large account customer was referred to him in her absence with a complaint about the lack of promised follow through with training. In investigating the account he discovered that between 17 and 27 high end phones had been given for free. Abdul also related a situation in the SBD where two employees had been sending out more phones than were ordered to increase their sales, since returns of equipment ("claw backs") were not deducted from earned commission on the sale. According to Abdul, employees went to Syer to complain about this practice, but at least one of the employees remained in the department.

40 Rami testified that after Wilson was dismissed he dealt with Singeris on his account, and was told that Bell could not offer the Motorola 270c which was being given for \$99 less the \$50 promotion, for free. Rami related that Singeris indicated that they could not do anything further and suggested that he go elsewhere. Rami testified that he was dissatisfied with this treatment and took his additional business to Telus, a competitor, where he brought in 125 new activations. Rami stated that he was contacted by a Bell Transportation Data Specialist who indicated that it was her department that should have been handling his account, not the SBD, apologized for the treatment he had received, and gave him a better deal on rate plans and services than he had been receiving through Wilson.

41 The Employer initially argues that Wilson knew of the CBC and her ethical obligation as well as the impor-

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tance of following corporate policy set forth in M Source, but repeatedly and deliberately violated them in a way that breached the bond of trust vital in this employment relationship. It asserts that Wilson took advantage of the fact that she was well liked and trusted by her managers to the point of not having her AFs reviewed, and gave three free accessories and excessively discounted or free phones outside the bounds of M Source without authorization. The Employer relies on the fact that her AFs reveal that Wilson never gave just one free accessory, but on 13 occasions gave two and on 38 occasions gave three, resulting in \$2800 in lost revenue to Bell. Additionally, the Employer notes that there is no consistency within her documentation to support her understanding of the alleged practice within the SBD, since she gave \$29 phones for free eight times, \$79 phones for free sixteen times, \$199 phones for free once, \$219 phones for free eight times, \$219 phones for \$50 four times, \$219 phones for \$99 once, \$249 phones for free seven times, \$249 phones for \$50 three times and \$249 phones for \$99 twice. It notes that Wilson's records do not even support her claim that she was authorized to give the Airflight account Motorola 270c phones for \$99, since her records reveal no such consistent charges. The Employer asserts that its lost revenue for hardware alone during this brief period of time exceeded \$7000. While it lost money, the Employer stresses that Wilson received commissions on all of the activations and services associated with these sales, and acted to her own advantage.

42 The Employer contends that Wilson's explanations are incredible and unsupported by the evidence. The fact that Wilson was behind in her paperwork does not explain the fact that her AFs show that she had no intention of charging the customer for phones when the cost of the phone and the MIR recorded are the same, and customers confirmed that they were informed that they were getting the phones for free. It asserts that the record reveals that Wilson did catch up on some of her paperwork on April 4 and 28, 2002 and input the features on her accounts but failed to make the additional 15 strokes on the computer necessary to charge for the phone. The Employer notes that Wilson was unable to explain why, on the occasions when she put in phone charges, they were only for a fraction of the price.

43 The Employer argues that there was no evidence to support Wilson's claim that Syer gave her approval to sell the Motorola 270c to Airflight for \$99. It points to the fact that her records show that she sold that phone to Airflight accounts in April either for free, for \$50 or for \$100, not only \$99. The Employer notes that 38 free phones were given in the last few months to accounts that were not Airflight, and Wilson offered no evidence that she had authorization for other than the Airflight account. The Employer asserts that Wilson's evidence that sales information was kept within the close group and that Syer told her she was on her own if something came up reveals knowledge on her part that she was doing something that was wrong. The Employer posits that other SBD employees were shocked and upset about Wilson's dismissal because it chose not to divulge her unethical conduct and respected her privacy in not sharing the facts underlying its action.

44 The Employer states that there was no support for reopening the record, since Abdul's testimony establishes that he was willing to testify from the beginning and told Wilson of this fact, so his evidence was not "new" as alleged in Complainant's Motion. The Employer argues that bringing Abdul and Cockburn to the hearing after the record had closed and arguments had been made was an effort on Wilson's part to bolster her evidence after realizing the strength of the Employer's case, and calls into question that credibility of such evidence and its motivation. Even considering such evidence, the Employer asserts that Complainant did not show that management knew that Wilson was giving away high end phones for free and three free accessories, especially on other than the Airflight account.

45 The Employer confirms that it conducted thorough and independent investigations both before and after Wilson's dismissal in an effort to learn the truth, and that employees were given the opportunity to discuss the practice in the SBD anonymously and without fear of reprisals. It argues that the facts support the conclusion that it took the employees' expressed concerns seriously and gave full consideration to all facts divulged during the course of the investigations.

46 The Employer concludes that it has established that it had just cause to dismiss Wilson, and that Wilson failed to meet the burden of showing that her conduct was either authorized or condoned by her managers, citing

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Bell Canada and Canadian Telephone Employees' Association, [unreported] (Rayner, March 20, 2000). It asserts that the penalty of dismissal was appropriate in this case because the bond of trust vital to this type of employment relationship has been broken and could never be reestablished, relying on *Re Brasseries Molson (St-Jean) and Travailleurs et travailleuses unis de l'alimentation et du commerce*, [Local 301 \(2001\)](#), 101 L.A.C. 4th 174 (Frumkin). The Employer argues that progressive discipline is not necessary for the type of unethical sales practices engaged in by Wilson, and that theft and breach of trust, as occurred herein, are grounds for immediate removal. It posits that, even if the Adjudicator were to find in Wilson's favour, it would be inappropriate to reinstate her since such action would send the wrong message where its profitability depends upon the integrity of its employees, and Wilson's duty to mitigate damages must be considered. Since the bond of trust has been irrevocably destroyed, the Employer requests that its dismissal action be upheld, citing *Bender v. Telus Communications Inc.*, [2001] C.L.A.D. No. 105 (Poetker).

47 Wilson's first argument is that she acted with the full knowledge and approval of her managers and did deals in accordance with their instructions, so she did not engage in any disciplinable offense. She notes that the resolution of the issue of whether the SBD was permitted to give deals greater than those set forth in M Source turns on the credibility of all of the witnesses. Wilson posits that she was more credible than either Singeris or Syer, as her version was supported by all of the other employees within the department who gave evidence despite possible adverse consequences to them, and only contradicted by the two managers who had the most to lose from the Employer's discovery that they were permitting practices in excess of corporate policy.

48 Wilson asserts that Cockburn and Abdul confirmed that there were always free phones available in the SBD and you could get higher end phones for free with manager approval, and that these facts were supported during the Employer's security investigation. While the Employer chose not to believe Abdul from the beginning, Wilson notes that he has always told the same story - during the security investigation, in his letter to counsel and at the hearing - and had the greatest familiarity with the Airflight account, as he was her replacement during her absence. Wilson highlights that only Syer and Singeris continued to deny the existence of the availability of a free phone in the SBD, when all evidence pointed to the contrary, and despite the fact that the Employer was forced to later admit that certain models could be given for free under particular circumstances.

49 Wilson avers that Syer's and Singeris' claim to have no knowledge of the specifics of her account or the deal worked out with Airflight and the amount of business generated in light of the 340 activations coming through the department is contrary to logic and flies in the face of much of the evidence. She points to Rami as the only truly disinterested witness, and his testimony that he discussed the specifics of his deal with both managers and continually attempted to negotiate a better deal, while, on the other hand, Syer denied ever talking with Rami personally, and Singeris admitted Rami negotiating a new deal with him over lunch but not knowing the specifics of the current deal. Wilson relies upon the evidence that the SBD was a close knit group with constant manager involvement in establishing goals and targets and motivating the sales representatives to sell more. She alleges that in order to credit Syer and Singeris, one would have to believe that they were totally unaware of what Wilson was doing for a 4 month period in this environment, when she was a top seller positively impacting their financial stake in the outcome, or any of the deals other sales representatives were making, a conclusion she contends strains the bounds of imagination.

50 Alternatively, Wilson argues that, even if the Adjudicator believes that she started giving better deals on her own without manager approval, the record establishes that management became aware of their content and failed to stop her or reprimand her for improper conduct, thereby constituting condonation of her actions and negating the finding that she engaged in a disciplinable offense, citing *Baden G. Pilling v. Southern Alberta Broadcasting Ltd.*, [unreported], (Rooke, June 22, 1987); *Transport International Iberville Ltee v. Maurice Lavigne*, [unreported], (Dupuis, September 17, 1990). Wilson relies upon Rami's evidence that he discussed the specifics of his Airflight deal with both Syer and Singeris, her testimony that she got specific approval for each deal negotiated with Rami and her communication of that fact to Rami, and Syer's comments to herself, Abdul and Cockburn to the effect that he would permit them to negotiate deals in excess of corporate policy but would not back them up if any problem arose,

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to support the conclusion that both managers knew the contents of the deals she was making and either agreed or turned a blind eye to them. Wilson contends that the Employer did not prove that she was acting on her own under a balance of probabilities standard, an onus that it bears in a case of this sort, relying on *Bradley Kelsall v. Delta Air Lines Inc.* [unreported], (Glasner, November 1, 1989); *Continental Insurance Co. v. Dalton Cartage Co.* [1982], 1 S.C.R. 164.

51 Wilson argues that dismissal was too harsh a penalty for her actions, noting that the Adjudicator must determine if it was unjust, not only wrongful, relying on *Rogers Cantel Inc. v. Meilleur* [1992], 40 C.C.E.L. 95; *Browne v. C.K.W.X. Ltd.* [unreported], (Bluman, February 17, 1983). In order for the penalty to be upheld, Wilson asserts that it must be a fair and reasonable response to the facts, must not be excessive, and must consider mitigating factors such as her three years of good service, the belief that what she was doing was with her supervisor's approval, the lack of progressive discipline without a showing that she cannot be rehabilitated, and the absence of irreparable harm established by the fact that Bell is still making better deals with Rami, citing *Olga Starr v. Sandy Bay Band* [unreported], (Smith, July 27, 1992); *Diane Palin v. National Bank of Canada* [unreported], (Turmel, January 5, 1989); *Naotkamegwanning First Nation v. Gauthier* [2000], 1 C.C.E.L. (3d) 252 (Aggarwal).

52 Wilson asserts that it is appropriate to grant a make whole remedy, which includes reinstatement and full back pay, relying on *George Willberg v. Jo-Ann Trucking Ltd.* [unreported], (England, November 10, 1982); *Daryl Gray v. Sunwest Charters Ltd.* [unreported], (McFetridge, May 26, 1993); *Stephen Woloschiniwsky v. Saskatchewan Wheat Pool* [unreported], (Hornung, March 15, 1989); *Victor Pierre v. Roseau River Tribal Council* [unreported], (Schulman, July 31, 1992); *David Leech v. British Columbia Television Broadcasting System* [unreported], (Thompson, June 15, 1991); *David Wrong v. The Royal Bank of Canada* [unreported], (P. Picher, December 15, 1989). She asserts that it is inappropriate to deny reinstatement when any damage that may have occurred to the employment relationship is the responsibility of the Employer. Wilson notes that she is 55 years old with little formal education or special skills, limiting her marketability and the chances of her securing comparable alternative employment since her earnings in 2001 were over \$52,000. Complainant requests that any monetary compensation include lost vacation pay and other benefits, as well as the payment of interest and costs associated with this litigation, citing *Belinda Frank et. al. v. Ts'Zil Board of Education* [unreported], (Dorsey, August 2, 1985); *Daniel Freedman v. C.F.C.F. Inc.* [unreported], (Frumkin, March 26, 1987); *Mary Johnson et. al. v. Mowachaht Band Council* [unreported], (Brown, May 28, 1984); *Pioneer Grain Company Limited v. David Kraus* [1981], 2 F.C. 815.

53 The issues I must decide in this case are whether Wilson knowingly violated corporate policy by selling overly discounted phones and accessories without management approval or condonation, whether her conduct supports the Employer's dismissal action, and, if not, what is the appropriate remedy. There is no question that Wilson sold phones at prices below M Source and gave away three free accessories on many occasions. She admits to being aware of the CBC and the fact that Bell was operating under an agreement with its dealers that it would not sell phone activations in house by exceeding the M Source discounts available to them. By comments she attributes to Syer, she also must have understood that what was going on in the SBD would not pass public scrutiny. Thus, I find that the Employer has met its initial onus of proving that Wilson violated known corporate policy by giving overly discounted phones and accessories when making sales of activations. See, *Bell Canada and Canadian Telephone Employees' Association, supra*.

54 Wilson's main defense is that all such transactions were approved, either explicitly or implicitly, by one of her managers. They deny approval for any deviations from M Source pricing. Wilson shoulders the burden of proving her affirmative defense of approval and/or condonation in this case based on a balance of probabilities standard. *Bell Canada, supra*.

55 The primary issue of whether Wilson acted with approval turns on my determination of the credibility of such testimony. On the one hand, not only do Syer and Singeris deny approval or knowledge of Wilson's transactions in excess of those supported by corporate policy, but Parascandalo's audit and Rickard's investigation concluded that the deviations from policy were not widespread within the SBD and were unknown to the managers. On

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the other hand, Wilson, Abdul and Cockburn testified about accepted practices within the SBD as did employees interviewed by Rickard, and Rami confirmed his dealings with both Wilson and her managers. It is the consistency of this evidence which must be reviewed in making the necessary credibility resolutions.

56 Upon consideration of the entire record, I am unable to credit the testimony of Syer and Singeris that they never authorized deals different from those offered in M Source. They were both adamant about this and repeated their denials. Singeris testified that under corporate policy, there were no free phones offered in the SBD between January 1 and April 29, 2002. However, all employee testimony at the hearing and as recorded in Rickard's notes of his June 13, 2002 interviews, unanimously support the fact that M Source was not followed in the SBD and that deviations were routinely approved by managers. All employees acknowledged that they always had a free phone to give away in the SBD. The record suggests that at the relevant time it was within an employee's discretion to give the lower end phones and one or two accessories for free without seeking specific approval on each sale. The Employer did not show that such low end phones were offered free through M Source during this period and Singeris' recollection was specifically that none were. This is true regardless of whether SBD employees went to their managers for authorization to give higher end phones and three free accessories to close the deal.

57 The fact remains that the foundation of the testimony of Syer and Singeris - that they never approved better deals than offered by M Source for anyone in the SBD - was disproven to my satisfaction on this record, and undermines the credibility of their evidence with respect to what they knew and approved for Wilson. There is no question that both managers had much to lose by admitting that they approved special deals they should not have. They also had a financial stake in the increased sales that this practice would engender. On the other hand, the employees had little to gain by admitting that they engaged in conduct contrary to corporate policy. I am not convinced that Abdul was fabricating in an effort to aid Wilson's cause based upon their friendship, as concluded by both Parascandalo and Rickard, since it was not only Abdul, but other employees interviewed as well, that confirmed such practice within the SBD. After Wilson was terminated, many employees within her department voiced concerns about their own job security. The fact that the Employer chose not to discuss the specifics of her actions to protect her privacy does not explain their expressed fear that their managers would not stand up for them and their admitted knowledge that others had special deals approved by managers.

58 Singeris and Syer went on to say that they had no knowledge of the specifics of the Airflight account or the deal that was being offered by Wilson to Rami. In fact, Syer claimed not to know that there were more than 70 activations, when, in fact, the record reveals about 340 activations at the time of Wilson's dismissal. Syer explained his management style as one of "hands off," only getting involved in the specifics when there was a problem. Neither, apparently, reviewed Wilson's AFs. Syer testified that he never conversed with Rami. Singeris admitted to a few such conversations and one luncheon meeting where Rami attempted to improve upon the deal he was getting, but claimed not to have been aware of the specifics of the existing deal.

59 I find this testimony to be inconsistent with common sense, the workings of a sales driven department like the SBD, and the testimony of Rami. The picture was painted by all involved in the SBD that there was a high pressure atmosphere with managers setting daily, weekly and monthly goals, being constantly visible to the sales force for motivational purposes, and with rewards being held up for those exceeding targets. Employees spoke of a close knit group within the department, where everyone knew what was going on and also knew to keep practices to themselves and assure that dealers were not privy to what they were offering in excess of M Source. In such an environment, it is hard to accept that the managers would not have known, or been party to, offers made by the telesales representatives such as Wilson.

60 The record further establishes that it was a common practice for telesales representatives to go to either Singeris or Syers with questions about the types of deals they could make. Some sought approval for discounts on higher end phones for good customers or larger accounts. Some, like Cockburn, did not feel comfortable doing so on other than rare occasions. However, the involvement of the managers in the day to day working of the SBD is clear. A lack of knowledge on their part could only be the result of an effort to distance themselves from practices they

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knew were occurring but which they could not overtly countenance. Statements attributed to Syer by Wilson, Abdul and Cockburn, to the effect that they could do what they needed to do to close the account but that they were on their own if there was a question later on, lend support to the conclusion that Syer chose not to delve into the specifics of what he knew was happening, and made no effort to stop the practices.

61 With Syer and Singeris admitting that they knew that Airflight was the biggest account in the SBD, and that Wilson was the only telesales representative in charge of their continuing activations, it would have been irresponsible for them not to have inquired into the deal that was made for Airflight and naive for the managers to expect that amount of business with no perks. To say that they were unaware of the specifics of the deal strains common sense and good business practice. Abdul testified that as the only other telesales representative with knowledge of the Airflight account resulting from his handling it in Wilson's absence, he knew the agreement to be Motorola 270c phones for \$99 and certain free accessories and services and was specifically instructed by Syer to give the deal contained in the files but to leave all of the paperwork to Wilson.

62 On the other hand, Wilson's testimony that she sought specific input from Syer as to what she could offer Rami at the beginning knowing it might end up to be a huge account, and obtained approval to give Motorola 270c phones for \$99 with a possible \$50 credit, as well as some free accessories and services ("just don't give away the kitchen sink") and communicated such approval to Rami is consistent with logic and Rami's unbiased evidence. While Rami was called as a witness on behalf of Wilson, it was clear that he was always out for the best deal possible for himself and other Airflight drivers, and had nothing to gain from reciting the facts concerning his dealings with Wilson and her managers as he knew them to be. At the time of the hearing, he was back as a customer of Bell through a different department. His relationship with Wilson was one of a business client at the time she serviced his account. His testimony was not for the purpose of advocating her case, but for setting the record straight. I have concluded that Rami's account of the facts was unbiased and without the inherent self-preservation motive of most of the other hearing participants.

63 Rami testified that he had a few telephone conversations with Syer during which he went through what Airflight was getting and what he wanted in addition. He also testified that he had similar discussions with Singeris. In light of this evidence, as well as the other factors mentioned above, I cannot accept the veracity of the claim of the managers not to have been aware of the specifics of the Airflight deal. Nor do I credit Syer's testimony that he had no direct contact with Rami. To believe that Syer or Singeris would have conversed with a good client without investigating the background of the account does not give them credit for knowing how to best perform their jobs. Wilson and Abdul, among others, testified that they were excellent managers. I am unwilling to accept that they were ignorant of Wilson's dealings with the Airflight as well as other accounts.

64 While the evidence is not entirely consistent with respect to how Wilson handled the Airflight account charges, debiting some \$50 and one \$100, a fact she could not explain, I accept her testimony and that of Abdul, that the deal she originally negotiated with Rami in around November, 2001 was specifically approved by Syer. I am convinced that she would not have acted in such a far reaching fashion all on her own, especially since she understood that giving this higher end phone for such a discounted amount was not a practice in the department for which she had independent discretion and required manager approval. Wilson did not strike me as a rogue employee, who routinely pushed the limits of her ability to surpass corporate policy as she understood it without having the backing of her superiors. She was well liked by all in the SBD, and considered to be a mother figure to which Syer and Singeris often turned to help motivate others. That she would intentionally undermine their trust in her and her relationship with others in the SBD by surreptitiously exceeding the bounds of her authority is not in character with the way others described her, the way she explained her manner of operating, and the strong reaction of the department to her loss.

65 Wilson's testimony portrayed a diligent hard worker, who sought to please her managers and other employees at every opportunity. She was devastated by the treatment she received from her managers and extremely emotional when reliving the events during which they would not back up the fact that they had approved everything

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she did that required manager approval. To accept the Employer's spin on her actions is to believe that everything Wilson did was without the knowledge of her managers and without their blessing. In the light most favourable to the Employer, the evidence supports the inference that some of her deals were merely condoned, rather than outright approved. In either case the legal consequence is the same. I conclude that Wilson met her burden of proving that M Source was not specifically followed in the SBD, and that her sales in excess of her independent ability to offer lower end phones and one or two accessories for free were known to her managers, generally if not specifically, and condoned by them if not expressly approved on each account.

66 There is no evidence in the record that Wilson conducted herself differently during the period January-April, 2002 than she had done previously in the SBD, with the possible exception of the amount of time she spent servicing the Airflight account. She was always a high seller, and her testimony establishes that her modus operandi was the same since the SBD began. The Employer has offered no evidence that Wilson was specifically warned that she was violating corporate policy and informed of the disciplinary consequences of continuing that method of sales. The closest her managers came to informing her that she was acting to her detriment was Syer's warning that she was on her own if anything came up. Based upon the managers' testimony that they were unaware of such conduct, evidence I have discredited on this record, it goes without saying that Wilson was not the recipient of progressive discipline, as had been the case in *Bender v. Telus Communications*, *supra*, relied upon by the Employer. The principle of corrective discipline is applicable to unjust dismissal cases. *Roberts*, *supra*; *Naotkamegwaning First Nation*, *supra*.

67 I have no doubt that the audit Parascandalo conducted confirmed what everyone in the department knew, but a fact to which she was not a party - Wilson's paperwork was a mess and she was months behind in her debiting for phones. When Parascandalo discovered the discrepancies on Wilson's AFs, and her inputting the features but not billing for the phones, she reached the understandable conclusion that Wilson was giving all phones which had not been debited on the first bill for free, was discounting phones beyond that approved in M Source, and was giving away three free accessories. Knowing that this was all contrary to corporate policy, she requested that Wilson be suspended pending her further investigation.

68 I accept that Wilson's conversation with Syer included the fact that he was going to have a hard time with her being behind so far on her paperwork, and Abdul's statement that Syer went to each department employee and told them to update their paperwork immediately due to the upcoming audit. This may be one explanation for why Parascandalo did not find that other telesales representatives had failed to bill phone charges as had Wilson. It was acknowledged by both employees and managers that it was common for the SBD sales force to be behind in their paperwork, and that it was known to Syer and Singeris that Wilson was always behind and often came in on a Saturday to catch up with some of her paperwork. During the conversation with her managers on May 6, 2002 Wilson asked for the opportunity to come in and catch up on her paperwork, referring specifically to the Motorola 270c phones she had yet to bill, while continuing to deny that she had ever given them to Airflight employees for free. These facts are consistent with Wilson's claim that she intended to bill customers for these phones, and that her AFs did not reflect otherwise because she often used the MIR column to indicate the amount she was going to bill, not the discount.

69 Parascandalo could not have known of Wilson's practice and what her forms actually reflect were the terms of the sale without interviewing her and giving her the opportunity to explain them. Since what Parascandalo found from other accounts she audited in the SBD did not appear to support any practice like what was exhibited by Wilson, she saw no need to get Wilson's explanation. The testimony of Syer and Singeris that they called two of Wilson's accounts and discovered that they never expected to be charged for their phones does not prove that the phones in question were high end models, or that special deals had not been approved for them. The specifics of such transactions were not made a part of the record. Wilson testified that during her April 30, 2002 meeting with Syer and Singeris, she identified the account from which the dealer complaint arose as her Subway guy for whom she had obtained specific approval for a high end phone for free due to the amount of business he was bringing in to Bell. In line with my finding that Syer and Singeris either approved or condoned Wilson's actions in excess of the accepted policy within the SBD to give lower end phones for free with one or two accessories, I conclude that their testimony

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that they first discovered that she had no intention of charging for the phones when calling her two customers is self-serving. Wilson's recollection was that her managers told her that they were attempting to seek the intervention of the Vice President in Montreal who knew her and admired her work. This evidence is more in line with the managers buying time to cover their own tracks.

70 There is no doubt that Parascandalo attempted to conduct a thorough and objective audit of the department, but was not in possession of all of the facts which may well have affected her ultimate conclusions with respect to Wilson's actions. After Wilson's termination, and in response to the anonymous letter of concern from SBD employees, Parascandalo, again to her credit, took the matter seriously and tried to obtain evidence in a manner most comfortable to employees, who obviously respected her. She wanted to confirm the accuracy of her conclusions about what Wilson had done and whether the managers were aware of it. The method she chose was commendable.

71 Unfortunately for Parascandalo, there is some question about the accuracy of the facts and conclusions contained within the report she received from Rickard. Rickard did not share his interview notes with Parascandalo. He concluded that that four out of five employees interviewed knew the policy and were following it and that managers did not know if the policy was not being followed. However, at the hearing Rickard admitted that at the time of the interviews and his writing of the report, he was unaware of what the policy was. He apparently thought that it referred to the terms contained in M Source. Rickard understood that the only deviation from policy that occurred was to waive the net cost of \$19 or \$29 on lower end phones for a customer with a good AREC, and so reported. He did not accurately report that only one employee stated this, and the other four made clear that they were able to give the lower end phones and up to two accessories for free without seeking approval and that consideration of a customer's AREC occurred, and approval was sought, for higher end phone deals.

72 While Parascandalo concluded that the report confirmed that none of the employees in the SBD, other than perhaps Abdul, were making the types of deals she believed Wilson had been guilty of, she did deem it advisable to put tighter controls on the SBD by requiring that managers sign off on AFs. During her early testimony, before hearing from Wilson, other employees and Rami, Parascandalo explained the basis for Wilson's termination as her giving away free phones and accessories over and above the corporate offer contained in M Source, to the financial detriment of the Employer, and in violation of the CBC. Fifteen (15) of the group of thirty-seven (37) AFs relied upon by the Employer to prove Wilson's violation involved the Motorola 120c model, referred to by all during the hearing as a lower end phone. Of those, nine (9) included only two free accessories. At the conclusion of the hearing, it appeared that the gravamen of Parascandalo's complaint was not that Wilson had given deals surpassing those offered in M Source, but that she far exceeded permissible bounds by giving away higher end phones and three accessories for free, not only with respect to the Airflight account.

73 While this is not really a change in grounds for Wilson's dismissal, Cf., Rogers Cantel, *supra*, it does reveal an implicit acknowledgment that some element of latitude was expected and permitted in the SBD, and that it was the extent of Wilson's actions, not the fact of them, that proved to be her downfall. Since I have found that Wilson's explanation that her paperwork did not accurately reflect whether she had the approval to give higher end phones for free, or just that she had not been timely in her intended charges for such phones, the Employer has not proven the extent of her violation. While Wilson is responsible for the inaccuracies and delay in her paperwork, the record again supports the conclusion that, at least the delay in processing paperwork and charging for phones, was known to her managers and condoned by them in favour of spending working time selling.

74 Therefore, on the basis of the entire record, I conclude that the Employer has failed to prove that Wilson acted on her own, without approval or condonation, in making deals which included giving higher end phones and three free accessories. Thus, despite the good faith investigations undertaken by Parascandalo and her attempted fairness, I find that Wilson's dismissal was unjust. See, *Browne v. C.K.W.X.*, *supra*; *Childs v. Royal Bank*, *supra*. Based upon this finding, I hold the Employer's dismissal response to be excessive.

75 CLC Section 242(4) gives an adjudicator of an unjust dismissal case broad remedial authority to order "make

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whole" compensation, reinstatement, or "any other like thing that is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal." What I must assess is what the appropriate remedy is in this case. Complainant seeks reinstatement as well as compensation for lost earnings, interest and costs, arguing that reinstatement should not be denied absent strong reasons to do so. *Gray v. Sunwest Charters, supra*; *Woloschniowski, supra*; *Pierre v. Rousea River Tribal Council, supra*. The Employer contends that reinstatement is inappropriate in this case even if I were to find that Wilson has been unjustly dismissed, since the bond of trust vital to this type of employment relationship which depends on the integrity of its employees has been irrevocably destroyed. *Bender v. Telus, supra*; *Brasseries Molson, supra*.

76 Some of the factors which militate against reinstatement in a particular case include contributory fault on the part of the complainant, the destruction of the bond of trust sufficient to undermine the employment relationship, the deterioration of personal relations between the complainant and management, and facts evincing the impossibility of complainants reintegration into the workforce. See, *Pierre, supra*; *Wrong v. Royal Bank, supra*. While finding that Wilson's breach of company policy was condoned by her managers, the evidence reveals that she was not entirely without fault and did engage in unethical sales practices she knew violated the CBC. Syer's warning that she would be on her own if she were caught should have put her on notice that she was operating on shaky ground, and that she might well be held accountable for her actions in excess of known corporate policy. This warning turned out to be prophetic. In determining the appropriate remedy, I cannot discount that Wilson was not entirely without blame.

77 At the time of the hearing, it became clear that the practice in the SBD had changed as a result of Parascandalo's investigation and the placement of more stringent controls on the process and additional management accountability. According to the security investigation, SBD employees did not appear to be happy with the new limitation on their judgment. They were aware that these changes were a result of what was uncovered in the Wilson investigation. It is difficult to discount the fact that Wilson may be blamed for changes which undoubtedly had a negative impact on department earnings, creating a barrier to her smooth reintegration into the workforce. Further, Wilson has successfully challenged the credibility of the managers in the SBD, and it is hard to imagine that she would be welcomed back by them or others in a position of authority to her. Whether the bond of trust has been broken due to Wilson's actions or those of her managers, there is no question in my mind that, at this point, it has been irrevocably broken.

78 Additionally, Wilson continued to experience an intensely emotional reaction to what she viewed as a betrayal by her manager. This was evident from the fact that she could not look Syer in the eye when he appeared at the hearing, and broke down when talking about how he could have done this to her when she devoted herself to him and would have done anything for him. The hard feelings and hurt were palpable. She took personal offense at being considered to be untrustworthy by the Employer.

79 Under such circumstances, I deem it not in the best interests of the parties to order that Wilson be reinstated to her job. Such remedy would not place her back into the position she would have been but for her unjust termination. Unfortunately, nothing can do that. The SBD needs to move forward, not be reminded of injustices of the past. Accordingly, I direct the Employer to compensate Wilson in the amount of 3 months salary plus the average commission rate paid in the SBD during the last business quarter as notice in lieu of reinstatement based upon her three years of service at the time of her termination. Wilson did not offer specific proof that she was unable to secure comparable alternative employment as a telesales representative elsewhere. Her argument as to her age and formal education limiting her marketability was equally applicable at the time she was hired by Bell and is an insufficient basis upon which to order additional compensation for loss of future earnings. However, the Employer shall substitute a letter of resignation for her termination letter in its personnel files and advise prospective employers accordingly.

80 I also conclude that it is appropriate for the Employer to make Wilson whole for lost earnings directly attributable to her unjust dismissal by compensating her for the amount she would have earned had she continued working in the SBD after April 30, 2002. This calculation is to be based upon her salary and commissions earned during

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calendar year 2001, the annual salary of an experienced telesales representative in the SBD since her termination and the average commission rate earned by employees of that department since that time, including any annual bonus paid to SBD employees. It is also to include any lost vacation pay and benefit entitlement which Wilson would have accrued during that time period. Additionally, she is to be paid interest at the appropriate federal rate on these lost earnings. See, e.g. *Johnson v. Mowachaht Band Council*, *supra*.

81 However, this record supports certain deductions from the back pay calculation noted above. While reaffirming my decision to reopen the record based upon facts put forward in Complainant's Motion to Reopen the Record filed on October 24, 2003, and my consideration of the relevant evidence elicited at the resumption of the hearing upon which I relied, I do not believe it appropriate to assess lost earnings against the Employer during the period between October 24, 2003 and November 11, 2004, which was delay attributable to the argument on the Motion, my Ruling and the resumption of the reopened hearing. This conclusion is based upon the fact that the evidence adduced as "new" in November, 2004 was evidence that not only was available to Wilson earlier in the hearing, but, at least as far as Abdul was concerned, was offered by him throughout the process. Thus, with due diligence, some of the additional evidence could have been presented in Wilson's case in chief prior to the conclusion of the initial hearing. I find that the Employer has been prejudiced by the delay occasioned by the passage of time resulting therefrom, and should not have liability assessed against it during that time period. Thus, lost earnings will be paid to Wilson forthwith for the period between April 30, 2002 and October 24, 2003, and again from November 11, 2004 to the date of this Award, along with appropriate interest.

82 In line with my assessment of the appropriate remedy noted above, I direct that Wilson be compensated for her reasonable costs including attorneys fees in pursuit of her unjust dismissal complaint, less any amounts attributable to the preparation for, and argument of, the Motion to Reopen the Record. *Frank v. Ts'Zil*, *supra*; *Pierre*, *supra*. In the absence of a showing by the Employer that Wilson failed to mitigate damages, a specific amount of interim earnings, or the exact dollar amount which constituted average SBD commission and earnings for the period encompassed by my back pay award, I direct the parties to make the appropriate calculation based upon the formula recited herein. See, *Pioneer Grain Company*, *supra*. I shall retain jurisdiction to deal with issues that may arise with respect to compliance with this award.

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