

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

CORINNE A. GRAVES

Applicant/Grievor

and

TREASURY BOARD
(Revenue Canada - Customs, Excise and Taxation)

Employer

Before: Joseph W. Potter, Deputy Chairperson

For the Applicant/Grievor: Barry Done, Public Service Alliance of Canada

For the Employer: Harvey A. Newman, Counsel

Heard at Hamilton, Ontario,
May 20 and 21, 1999.

DECISION

On July 16, 1997, Ms. Corinne Graves, a Customs Inspector at Queenston Bridge in Niagara Falls, is alleged to have assaulted an individual named Ian Speck, a summer student employed by the Niagara Falls Bridge Commission (NFBC). For the incident, Ms. Graves was issued a five-day suspension, which is the subject of this adjudication.

The employer tendered seven exhibits; the bargaining agent, one. A request was made, and granted, for the exclusion of witnesses and I heard direct evidence from seven witnesses.

In addition to the grievance related to the five-day suspension, there was a request for an extension of time pursuant to section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (Board file 149-2-199). The employer's counsel informed me that this was no longer in dispute and, accordingly, the Board's file with respect to this request is closed.

Background

The grievor, Ms. Corinne Graves, began working for Customs and Excise in 1987, and at the time of the incident was classified as a PM-02, Customs Inspector, working at the Queenston/Lewiston Warehouse, Commercial Operations, Queenston Bridge in Niagara Falls. There was no dispute that prior to receiving the notice of a five-day suspension in the instant case, Ms. Graves had a discipline-free work record and was a good performer on the job.

The issue giving rise to the grievance commenced as Ms. Graves arrived in the parking lot used by the Customs Inspectors. It was July 16, 1997, about 7:40 a.m., and Ms. Graves was arriving to work for her 8:00 a.m. to 8:00 p.m. shift. She pulled in to a parking space beside one that was occupied by a vehicle belonging to a fellow Customs Inspector, Mr. Sean Scott. Mr. Scott was just leaving his shift, as his relief had arrived, and was about to enter his vehicle when Ms. Graves exited her vehicle. The two colleagues exchanged morning pleasantries when Mr. Ian Speck approached.

Mr. Speck was a university student who was working for the NFBC for the summer. The NFBC actually owned the parking lot where Ms. Graves had parked her car, and Mr. Speck's function that morning was to record the license plates of those vehicles that did not possess the requisite parking tag.

Although Mr. Speck did not know either Ms. Graves or Mr. Scott, he did state that both individuals were wearing their Customs Inspector uniform and he knew they were Customs Inspectors. A NFBC jacket, a nametag, a clipboard and a radio identified Mr. Speck as an employee of the NFBC.

Mr. Speck approached the two and said: "I hope you have your tag", or words to that effect. Mr. Scott replied that he did not have it visible, but he was just leaving in any event. Ms. Graves said she had a tag but had left it in her other vehicle. Mr. Speck replied he would have to write down her license plate number and proceeded to do so. He did not write down Mr. Scott's license plate number because Mr. Scott was about to leave.

Ms. Graves called Mr. Speck a "jerk", whereupon Mr. Speck said he was just doing his job. It is then alleged that Ms. Graves swore at Mr. Speck, using a vulgarity. Ms. Graves denies using such vulgarity, and Mr. Scott testified he did not hear this language uttered; however, he did not hear all of the conversation between Mr. Speck and Ms. Graves either.

In any event, Ms. Graves proceeded to her work location and informed her supervisor, Mr. Neil Mooney, that she had just had a verbal altercation with an employee of the NFBC. She was concerned that without the parking tag, her car might be towed so she requested permission to go and see the toll captain to get another replacement tag. The toll captain would have been Mr. Speck's boss.

As Ms. Graves was speaking to Mr. Mooney, another employee, Ms. Linda Yurcich, entered the office and said she too had forgotten her parking pass and needed a replacement. Both women were given permission to go to the toll captain's office to get another parking tag.

Coincidental with the above events was the fact Mr. Speck was speaking with his supervisor, Mr. Craig Young, who was the toll captain. Mr. Speck had completed his duties and was reporting on the above-noted parking lot incident to Mr. Young, saying that a woman Customs Inspector had sworn at him when he jotted down her license plate number for failing to display a parking tag. Mr. Young said that Mr. Speck was disturbed that there had been a problem when he was just doing his job.

As Mr. Speck was recounting the events, he glanced out the window of the office and saw the lady with whom he had just had the altercation approaching the office. He said: "Here she comes now." Both women were approaching the building where Messrs. Young and Speck worked and Mr. Speck opened the door for them.

The grievor and Ms. Yurcich proceeded to the counter area, with Mr. Speck bringing up the rear. Ms. Graves said Mr. Speck was virtually breathing down her neck, and asked why he was following her. The toll captain was seated behind the counter, and Mr. Speck moved behind Mr. Young and to his right, facing the two women.

Both Ms. Yurcich and Ms. Graves explained to Mr. Young that they had forgotten their parking tag that day and needed a replacement. As they were doing so, they noticed Mr. Speck was making faces and hand gestures at them. The grievor testified that she stated to Mr. Speck that he was being rude, but Mr. Young testified when he turned around he did not see anything other than a surprised look on Mr. Speck's face. Mr. Young did agree, in cross-examination, that as Mr. Speck was out of his direct line of vision, it was not possible to verify if these gestures were in fact made.

In any event, the discussion continued, then turned to the allegation that the grievor had used a vulgarity in the parking lot and Ms. Graves denied doing so. Both Ms. Yurcich and Ms. Graves turned to leave as Mr. Young had indicated he would take care of the parking tag issue, when Mr. Speck said: "Wait, I've got something for you." In his hand was a two-or three-page computer printout showing traffic statistics. This was a daily report that was taken off the computer by the toll captain and had to be delivered by the employee assigned to traffic detail to Mr. Mooney at any time in the morning. Mr. Speck said he intended to give it to Ms. Yurcich to take back to the office with her, thereby saving himself a trip and avoiding a possible confrontation in Ms. Graves' office. There was no dispute that neither Ms. Yurcich nor Ms. Graves knew what Mr. Speck had in his hand, other than the fact he had some paper.

Mr. Young, Ms. Graves and Ms. Yurcich testified that Mr. Speck approached the grievor and held out the computer printout in front of Ms. Graves' face. The paper unfurled. The three witnesses placed the distance of the document about nine to 12 inches away from Ms. Graves' face. Mr. Speck said he handed the document in a normal fashion, hand extended and slightly above the waist, to Ms. Yurcich. He also

testified that, in retrospect, it was not a good idea to hand the document to either of the two women given the circumstances that had previously transpired.

Mr. Speck testified he handed the document to Ms. Yurcich, and Ms. Graves intervened, grabbing it and crumpling it up. She then struck Mr. Speck once in the face and twice in the neck, causing him to fall back in a chair. At that point, Mr. Young intervened to break it up.

Ms. Graves and Ms. Yurcich stated that the document was thrust in Ms. Graves' face and this caused her to move back at first, following which she put both of her hands up and pushed Mr. Speck, causing him to stumble backwards towards a chair. Both of these witnesses testified Mr. Speck recovered quickly and came up swinging at Ms. Graves. According to the grievor, Mr. Speck looked angry, with his teeth clenched. Both witnesses testified Ms. Graves blocked Mr. Speck's right arm, then swung her right arm in Mr. Speck's direction. Neither knew if contact was made. Ms. Yurcich testified she yelled at Mr. Speck to stop, informing him that Ms. Graves was pregnant. At that point, Mr. Young intervened to break it up.

Mr. Young testified that as Mr. Speck held the computer printout in front of Ms. Graves' face, the grievor moved forward and swung at Mr. Speck, causing him to take a step back. Mr. Speck reached out and held Ms. Graves' wrists, whereupon Mr. Young intervened to break it up. Mr. Young saw scratches and blood on Mr. Speck's neck.

The two women exited the office area and Mr. Speck proceeded to the bathroom to attend to his neck. Mr. Young testified that Mr. Speck stated he wanted to press charges, so Mr. Young took some photographs of Mr. Speck's neck, and the police were called. Mr. Speck completed an incident report (Exhibit G-1). After the police arrived and spoke to Messrs. Young and Speck, Mr. Speck went to the hospital to have his neck looked after. Stitches were not required.

Ms. Graves testified she went back to the office and immediately went to see her supervisor, Mr. Mooney, and recounted the events as described above. The evidence given by Mr. Mooney was that the grievor told him she had struck Mr. Speck, saying: "I hit him. I shouldn't have and I apologize."

Mr. Mooney inquired about Ms. Graves' condition and asked if she wanted any time off. Ms. Graves took some time to lie down to recover, then proceeded to her work area. Mr. Mooney asked both Ms. Yurcich and Ms. Graves for an incident report, which they produced (Exhibits E-5 and E-3 respectively). Neither woman was subsequently interviewed about the incident.

Mr. Mooney testified that later that day, he learned the police had been notified and he accompanied the grievor to the office of Ms. Trudy Kraker, Chief, Customs Operations. The police issued a general appearance notice to Ms. Graves and she was released on that basis. She then went home.

Mr. John Johnston was the Regional Director for the Southern Ontario Region and as such had jurisdiction over the Niagara Falls area. He became aware of the incident and instructed Ms. Kraker to initiate an investigation. He testified he was kept informed about the investigation and was made aware of the various employee statements. The decision to discipline Ms. Graves ultimately rested with Mr. Johnston.

The recommendation for a five-day suspension came from Ms. Kraker to Mr. Johnston, and he supported it. He looked at the written statements provided by Mr. Young (Exhibit G-1), Ms. Graves (Exhibit E-3) and Ms. Yurcich (Exhibit E-5). He stated he took into account the grievor's length of service and discipline-free record. He also considered the requirement to have a mutually acceptable relationship with the Bridge authority employees and the fact Customs Inspectors are trained to react appropriately to stressful situations, which he felt Ms. Graves did not do. This was, in his view, a serious offence and the grievor was a peace officer, in uniform, when the event occurred. His concern also extended to the possibility a similar confrontation could occur when the grievor encountered a problem with a member of the travelling public. The final element he considered was, in reviewing her statement (Exhibit E-3), he did not detect recognition of any wrongdoing or remorse, nor did she apologize. He did state, in cross-examination, that he did not personally interview any of the protagonists, but also said he felt the grievor's story had changed from the time she initially recounted the events to Mr. Mooney to the time she actually prepared her report. He felt a five-day suspension was warranted.

Employer's Argument

Mr. Newman commenced by saying this was an unusual case in that seldom, if ever, has a peace officer, in uniform, been involved in this type of behaviour. The events escalated out of what amounted to nothing and the grievor's actions contributed to it.

While Mr. Newman agreed the employer had the burden of proof, he said the employer was not required to meet the *Criminal Code* definition of assault.

The events of July 16, 1997 unfolded with Mr. Speck being assigned the task of recording license plate numbers of vehicles parked in the lot without the necessary parking tag. He was simply doing his job when he approached Mr. Scott and Ms. Graves. He inquired as to whether they had the necessary tag and was told neither had it displayed. He did not record Mr. Scott's license plate number because Mr. Scott told him he was about to leave, but he did record the license plate number of Ms. Graves' car. Words were exchanged between the two and Mr. Newman speculated that Ms. Graves was annoyed because not having the pass would result in an inconvenience; it was now going to be reported and she would have to take the time to see the toll captain to ensure her car would not be towed away. Her annoyance was taken out on Mr. Speck.

She berated Mr. Speck in public, with an added claim that she used a vulgarity. She denied this and Mr. Scott stated he did not hear it, but Mr. Newman speculated she did, in fact, use the vulgarity and Mr. Scott did hear it but is protecting his colleague. Mr. Newman suggested Mr. Speck's evidence should be preferred here.

The next encounter the protagonists had occurred in the office of the toll captain, Mr. Young. Mr. Speck opened the door for the two women, and remained in the office due to his concern about the parking lot incident, thinking there might be a complaint made against him and he wanted to remain to defend himself against a verbal accusation.

While the events recounted differ, Mr. Newman suggested I should prefer Mr. Speck's version, as he had no axe to grind against the grievor. He may have expressed surprise when things were being said about him and had a surprised look on his face, but the fact remains it was he who was assaulted.

Maybe Mr. Speck used bad judgement in giving the statistical report to the two women to take back for him, but the handing of the document itself can not be said to be a threatening act. He had the paper in his hand and spoke to both women from some distance as he moved in their direction. They knew he had a document to give them and when he moved towards the women, Ms. Graves grabbed it from him.

The grievor became enraged, and quite simply lost it, and physically attacked him. Ms. Graves' fingernails quite probably scratched him, and her actions drew blood.

Mr. Speck wanted to contact the police and Mr. Young concurred. Mr. Newman speculated that had Mr. Speck actually been the aggressor, Mr. Young would not likely have supported calling the police. Mr. Young did not see Mr. Speck punch the grievor, as the grievor would have us believe.

It is irrefutable that Mr. Speck was hit. In addition, there is no indication this was an act of self-defence. The grievor simply lost her temper and engaged in an unprovoked, spontaneous attack on Mr. Speck. In doing so, she disgraced her uniform and her badge. This led to Mr. Johnston's concern about the possibilities of having a similar action occur with a member of the travelling public. Also, the lack of appreciation by the grievor with respect to the gravity of the offence led to the imposition of a five-day suspension. The penalty is designed to have a corrective effect, and also illustrates the fact the grievor is not without blame.

Counsel for the employer referred me to the *Kirkwood* case (Board file 166-2-22226).

Grievor's Argument

Mr. Done asked me to find that, where there is a conflict in evidence between Mr. Speck and other witnesses, I should find Mr. Speck not credible.

It was noted that, although the employer wanted everyone to believe that the disciplinary action was intended to be corrective, there was no element of progressive discipline in the record. Mr. Johnston did not investigate the matter and, in fact, no one actually interviewed Ms. Graves. The employer simply reviewed written statements and chose to believe Mr. Speck over Ms. Graves, then issued a five-day suspension. Mr. Johnston stated he was concerned that this type of behaviour could carry over to a situation with the travelling public, yet there is a discipline-free 10-year record that Ms. Graves carried with her. There is simply no evidence to suggest Ms. Graves ever had a problem with the travelling public.

The employer has the burden of proof, and where there is an element of criminality, as here, a higher standard of proof is required. The employer has not met that standard in this case.

Mr. Speck was not truthful when he addressed his statement (Exhibit G-1). He has tried to add to it, and he has suggested he tried to give the computer printout to Ms. Yurcich. His written statement suggests he was, in fact, giving it to Ms. Graves, and this is also supported by the testimony of Ms. Yurcich and Mr. Young. Also, the evidence suggested the document was put at close proximity to Ms. Graves' face. Yet, Mr. Speck testified he handed the document to Ms. Yurcich in a normal fashion, at waist level. He is not to be believed.

While in the office with the toll captain, both Ms. Yurcich and Ms. Graves testified Mr. Speck was making hand and facial gestures at them, out of site of his boss, Mr. Young. Ms. Graves said she commented on this action at the time. Mr. Speck denied he did so. The grievor should be believed because it is highly improbable she would fabricate such a story on the spot. She had no reason to, and Mr. Speck was simply being provocative.

Now, why did Mr. Speck give Ms. Graves the computer printout if, as he said, he wanted to avoid her? Mr. Done asked again that Mr. Speck be found to have been provocative. Had he not done so, the matter would have ended right there as both women were about to exit the office. Rather than just letting them go, Mr. Speck intervened and shoved the computer printout in Ms. Graves' face. He did this to further antagonize the grievor.

Ms. Graves acted out of a normal reflex motion when she had the document thrust in her face. She put her hands up and pushed Mr. Speck out of her way. He went back against a chair, and came up swinging. That could be a reflex action on his part as well, but the grievor was threatened. She blocked the attack and flailed away. She reacted! It was a reasonable thing for her to do given all the circumstances.

After the event subsided, the employer stated that it investigated. Was it a proper investigation? The answer is no, it was not. There were no interviews conducted at all. This illustrates the fact that the employer's real concern was the relationship it had with the NFBC. If Mr. Johnston had inquired, he would have discovered Ms. Graves did in fact apologize when she returned to Mr. Mooney's office.

Mr. Speck was the type of person who made a mountain out of a molehill. He overreacted to a situation, which he initially provoked.

Rebuttal

While the investigation could have been done differently, what is critical is the evidence that was produced in this hearing. The evidence shows Ms. Graves assaulted Mr. Speck. Mr. Young supported this version, and he has no reason to lie about the events.

While the reaction of Ms. Graves may have been spontaneous, it was also reckless. Her reaction is totally out of proportion to the events of the day. There was no dispute that Mr. Speck was the one injured, and the suspension imposed was justified.

Reasons for Decision

A five-day suspension was imposed because the grievor "...physically assaulted an employee of the Niagara Falls Bridge Commission, Ian Speck, while on duty." (Exhibit E-1). Mr. Done stated that discipline was not imposed for anything that took place in the parking lot, therefore those events should not be factored in when deciding on penalty. I agree because I find those incidents have little relevance to the events that subsequently took place in Mr. Young's office. Those events merely built the platform for the stage where the main event took place. The decision on the

propitiousness of the employer's action will not be based on the events as they unfolded in the parking lot.

Ms. Graves needed a parking tag to permit her to park in the designated parking lot without fear of having her vehicle towed. She did not have her tag in her vehicle on July 16, 1997. As such, she needed to walk over to another office to inform the toll captain, Mr. Young, of her dilemma and obtain a replacement tag. She went there with Ms. Yurcich and encountered the same individual she had encountered earlier that day, Mr. Ian Speck. This left the four individuals in the office of the toll captain, Mr. Young.

All four witnesses testified as to the events that took place, and their recollection did not coincide with each other on all of the events as they unfolded.

All agreed, however, that Ms. Graves and Ms. Yurcich were there explaining to Mr. Young that each of them had forgotten their parking tag and required a replacement. All agreed Mr. Young indicated to them that there was no need to worry as matters would be taken care of.

Both Ms. Yurcich and Ms. Graves testified that Mr. Speck was making facial and hand gestures at them while they spoke. Both testified they felt this was a childish thing to do, and Ms. Graves said so openly in the meeting. Mr. Young did not see this action, as Mr. Speck was behind him and Mr. Speck denied doing so.

I find, here too, that this bears little relevance to the disciplinary action taken. If it did occur, it did not cause the physical assault to take place. Indeed, after Ms. Graves addressed it, both she and Ms. Yurcich turned to leave. Therefore, whether or not it actually took place is not determinative of the propriety of the five-day suspension.

The heart of the matter was the transfer of the computer printout from Mr. Speck to Ms. Graves. The evidence of Mr. Speck was that he intended to hand the document to Ms. Yurcich, and he testified he did so with the document presented at waist level.

Mr. Young, Ms. Yurcich and Ms. Graves all testified the document was put in front of Ms. Graves' face, anywhere from nine to 12 inches away, and the three-page document unfurled.

I find the latter version to be the likely scenario.

Mr. Young was a disinterested party. His testimony, on this point, supported the events as described by the grievor. It simply makes more sense to me that the document was thrust in the face of the grievor than another scenario advanced.

Therefore, having found the computer printout was thrust in the face of Ms. Graves, what next? The grievor's own testimony was to the effect that she raised both hands and pushed. She does not know if contact was made. The evidence indicated that Mr. Speck ended up with a bleeding neck, likely from Ms. Graves' fingernails. I find this to be the likely occurrence. I also find that Ms. Graves likely knows contact was made as Mr. Mooney testified the grievor came to see him immediately following the incident. He testified she stated to him: "I hit him. I shouldn't have and I apologize."

Mr. Done suggested the evidence indicated that the grievor had displayed contrition in this conversation with Mr. Mooney and asked me to find as such. I do. However, in doing so I also find the grievor acknowledged hitting Mr. Speck, and acknowledged wrongdoing.

Given this finding of wrongdoing by Ms. Graves, I must now turn my attention to the quantum itself.

Mr. Johnston stated he based the penalty on the employee statements he received. No one interviewed the grievor. She was asked for a written statement and provided one, and on that basis, as well as other written statements and the severity of the action, a five-day suspension was awarded.

When disciplinary action is being contemplated, sound labour relations practice calls for at least an attempt to meet directly with the employee in order to properly investigate the matter. That is a natural part of the disciplinary process and, were it conducted here, the employer would likely have discovered that the grievor firstly admitted to her supervisor to striking Mr. Speck and, secondly, stated she should not have done it and, finally, apologized.

Mr. Johnston stated specifically the penalty was based, in part, on the fact the grievor did not admit wrongdoing, nor did she ever apologize. He was simply unaware of the fact she had done both, at the very outset. While there was no apology in the written statement (Exhibit E-3), that does not mean there was not one, in fact, offered by the grievor. Mr. Mooney testified there was, and this was not refuted. There is no question the apology would have been better proffered to Mr. Speck, but it was advanced, contrary to Mr. Johnston's belief.

Having said that, I believe a suspension in this case of three days would be a more appropriate result. Certainly I regard the events as serious. A Customs Inspector, in uniform, has been found to have struck another individual. A serious response to this would be, I believe, a suspension which results in the employee losing 30% of her by-weekly pay. This is what a three-day suspension would do, and given the circumstances of this case, I find this is more appropriate.

To this extent, the grievance is sustained.

**Joseph W. Potter,
Deputy Chairperson**

OTTAWA, June 11, 1999.