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File: 166-34-31641

Citation: 2005 PSLRB 134



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

WILLIAM (BILL) BURROW

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, adjudicator](#)

For the Grievor: Cécile La Bissonnière, Public Service Alliance of Canada

For the Employer: [Sybille Rohatgi, Canada Customs and Revenue Agency](#)

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

[Heard at Ottawa, Ontario,
August 26, 2005](#)

REASONS FOR DECISION

[1] This grievance concerns a 3-day suspension imposed on Mr. Burrow on May 21, 1997. The parties presented the following agreed statement of facts:

At all material times Mr. William Burrow (hereinafter "the grievor") was a GS STS 03 with Finance and Administration at the Toronto West Tax Services Office.

By memorandum dated March 7, 1995, the grievor was advised of requirements concerning the provision of medical certificates, the use of vacation leave and reporting procedures with regard to the grievor's hours of work and lunch-break. (E-1)

By letter dated March 31, 1995, the grievor was issued a written reprimand for being late three (3) times, taking a long lunch break and leaving the work site without permission. (E-2)

By letter dated September 14, 1995, the grievor was issued a one (1) day suspension for numerous unauthorized absences. (E-3)

The grievor was on Injury on Duty Leave from February 20, 1996, until October 7, 1996.

Prior to the grievor's return to work on October 6, 1996, the grievor was advised by letter dated September 28, 1996, of requirements concerning the provision of medical certificates, the use of vacation leave and reporting procedures with regard to the grievor's hours of work and lunch-break. (E-4)

By letter dated February 20, 1997, the grievor was advised of requirements concerning the provision of medical certificates, the use of vacation leave and reporting procedures with regard to the grievor's hours of work and lunch-break. (E-5)

The grievor was late, did not follow reporting requirements for his lunch break, was absent without authorization, or did not provide medical certificates on the following dates:

<i>April 3, 1997</i>	<i>(late)</i>
<i>April 7, 1997</i>	<i>(Late)</i>
<i>April 8, 1997</i>	<i>(lunch)</i>
<i>April 17, 1997</i>	<i>(late)</i>
<i>April 18, 1997</i>	<i>(lunch)</i>
<i>April 23, 1997</i>	<i>(unauthorized absence)</i>
<i>April 28, 1997</i>	<i>(late)</i>
<i>May 1, 1997</i>	<i>(lunch)</i>

May 1, 1997	(late)
May 2, 1997	(lunch)
May 2, 1997	(late)
May 12, 1997	(late)
May 13, 1997	(late)
May 14, 1997	(late)
May 15, 1997	(medical certificate)
May 20, 1997	(medical Certificate)
May 21, 1997	(late)

By letter dated May 21, 1997, the grievor was issued a three(3) day suspension for being late ten (10) times, not adhering to requirements for reporting with respect to his lunch break, not providing medical certificates and one occurrence of unauthorized leave (E-6)

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the “former Act”).

[3] The grievor was allowed by the employer to make up time which, Mr. Burrow argues, amounts to condonation.

[4] The employer believes it did not condone the grievor’s misconduct. Quite the contrary, Mr. Burrow was clearly advised by management of the requirements concerning his attendance at work.

[5] The employer recognizes that it allowed the grievor to make up for missed work but, in doing so, was only trying to be compassionate. Such compassion should not be mistaken for condonation.

[6] I agree with the employer that Mr. Burrow knew or, should have known what was expected of him with respect to his attendance at work.

[7] Mr. Burrow was disciplined in March and September 1995 for related misconduct. I therefore conclude that the 3-day suspension imposed on the grievor for being late, for being absent without authorization and for failing to provide medical certificates during April and May, 1997, was appropriate and in keeping with the principles of progressive discipline.

Order

[8] The grievance is denied.

September 7, 2005.

**Yvon Tarte,
adjudicator**