

Date: 20050907

File: 166-2-33000

Citation: 2005 PSLRB 131



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

MARLENE F.J. MARTIN

Grievor

and

**TREASURY BOARD
(Department of Indian Affairs and Northern Development)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, adjudicator](#)

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

For the Employer: [Jeff Laviolette, Treasury Board](#)

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] The grievor is a grade 4/5 teacher at a Six Nations school in Ontario. On January 15, 2003, Ms. Martin received a two-day suspension without pay for tilting a student's desk until its contents had fallen to the floor.

[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] At the time of the suspension, the grievor had been at the Six Nations school for more than 12 years and had been in the teaching profession for more than 18 years. The agreed statement of facts reads in part as follows:

The incident occurred in late September 2002, in Ms. Martin's classroom.

On October 1st, 2002, the principal of the school, Ms. Kathryn Hill, learned of the incident when Mrs. Harris, the parent of the child whose desk was "dumped", complained about Ms. Martin's action.

On October 21st, 2002, the principal of the I.L. Thomas Odadrihonyani'ta School at Six Nations received a petition requesting the removal of Ms. Martin for "dumping" the contents of a student's desk onto the floor. 144 parents and community members of Six Nations of the Grand River signed the petition, alleging abuse, health and safety concerns of the children.

On October 22nd, 2002, Ms. Martin was directed to report to the Brantford Business Centre for work, pending the outcome of the investigation into the allegations outlined in the petition.

The investigation report was submitted on December 12, 2002 and contains the following findings:

- The investigation did not reveal evidence of "abuse", but the investigators did note that Ms. Martin has failed on a number of occasions to meet the standard of conduct expected of teachers at the school.*
- They also note that Ms. Martin remained reluctant to acknowledge any problems or to understand that parents*

might have legitimate concerns about their children's well being.

Ms. Martin filed a grievance on February 10th, 2003, grieving the two-day suspension without pay. The corrective action is to reverse the suspension, to reinstate her pay for January 16 and 17, 2003 and that record of this disciplinary suspension be removed from any and all employment records, including her personnel file.

[4] The employer argues that the grievor's behaviour contravened the school's code of conduct, as well as the department's standards of professional conduct. Ms. Martin demonstrated poor judgement and flagrant disregard for a child's social and emotional well-being.

[5] While recognizing that an incident had taken place at the school, the grievor's representative argued that it was not as serious as the parents or the employer made it out to be.

[6] This is a first instance of discipline for a fairly long-serving employee. The principles of progressive discipline dictate that something less than a two-day suspension without pay be imposed in this case.

[7] Although regrettable, the conduct of the grievor did not amount to abuse. It was a momentary lapse of judgement for which a written reprimand would be sufficient.

Order

[8] The grievance is allowed in part. The two-day suspension without pay is hereby rescinded and is to be replaced by a written reprimand.

September 7, 2005.

**Yvon Tarte,
adjudicator**