

Date: 20051107

File: 166-02-35711

Citation: 2005 PSLRB 159



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

GEORGE DESROCHERS

Grievor

and

**TREASURY BOARD
(Department of National Defence)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, adjudicator](#)

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

For the Employer: [Michael Holt, Department of National Defence](#)

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 Saint-Sauveur, Quebec,
October 19, 2005.](#)

REASONS FOR DECISION

[1] This grievance involves a one-day suspension imposed on Mr. Desrochers following an incident which occurred on January 8, 2004. The Agreed Statement of Facts reads as follows:

1. *The grievor, George Desrochers, is an indeterminate employee of the Department of National Defence. He is employed at the Canadian Forces Base in Kingston, Ontario.*
2. *At the time of his grievance, the grievor was covered by the Operational Services group collective agreement between the Treasury Board and the Public Service Alliance of Canada that expired on August 4, 2003.*
3. *At the time of his grievance, the grievor worked as a carpenter in the Structural Shop and was classified at the GL WOW 09 group and level.*
4. *On January 8, 2004 the grievor arrived at work without his safety boots. He was told by his supervisor Master Corporal Woodhouse, to return home, retrieve his boots and return to work.*
5. *The grievor left the workplace and failed to return to work that day.*
6. *On February 4, 2004 the grievor received notice of a one-day suspension for his unauthorized absence. The grievor had received a written reprimand, issued February 3, 2004.*
7. *On February 12, 2004, the grievor filed a grievance against management's decision to impose a one-day suspension for his conduct and following an outburst allegedly directed at him by Corporal Woodhouse.*
8. *As corrective action, the grievor has requested the following:*
 - . *A copy of the investigation of Corporal Woodhouse's conduct and to be informed of the corrective action taken*
 - . *Reinstatement of his lost wages*
 - . *To be made whole*

[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] In the letter of suspension filed at the hearing, the employer accuses the grievor of failing to return to work with the proper safety equipment and failing to properly notify his supervisor that he would not be returning to work.

[4] In a statement prepared shortly after the incident and also filed at the hearing, the grievor states that, following a heated exchange with Master Corporal Woodhouse, he advised his supervisor that he would not be returning to work. There is no evidence on file to suggest that Mr. Desrochers was in fact ordered to return to work by Master Corporal Woodhouse.

[5] The employer alleges that the grievor’s conduct amounts to insubordination.

[6] I disagree. Following a heated discussion where voices were raised and tempers flared, the grievor went home and told the employer he would not be returning that day. There was no direct order to return to work and therefore no insubordination. The employer could have taken administrative action to ensure that the grievor was not paid during his absence from work in keeping with the principle of no work, no pay.

[7] There is, in the circumstances of this case, no justification for the discipline imposed on Mr. Desrochers. It is not appropriate for me, however, to order production of any document dealing with the investigation of and possible disciplinary action against Master Corporal Woodhouse, a member of the military.

Order

[8] The one-day suspension imposed on Mr. Desrochers is hereby rescinded. The employer is directed to reimburse Mr. Desrochers his regular wages for one day.

November 7, 2005.

**Yvon Tarte,
adjudicator**