

Date: 20051107

File: 166-02-35980

Citation: 2005 PSLRB 161



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

LORRAINE THOMAS

Grievor

and

**TREASURY BOARD
(Department of Human Resources Development)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, adjudicator](#)

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

For the Employer: [Joel Stelpstra, Department of Human Resources Development](#)

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 is concerned with a two-day suspension imposed on the grievor by the employer on March 26, 2004. The parties have produced an Agreed Statement of Facts which reads as follows:

1. *Lorraine Thomas (herein referred to as "the grievor") is a CR-05 Service Delivery Representative employed by Service Canada (formerly HRDC) in the Vancouver Employment Insurance Call Centre,*
2. *The grievor is 55 years of age, has been employed by the department since 2001, and has 11 years of employment in the public service,*
3. *On March 15, 2004, the Call Centre received a call from "K", a member of the public in receipt of Employment Insurance benefits,*
4. *"K" inquired as to why her claim had been removed from the "automatic pay" system, and she was now being asked to report earnings,*
5. *"K" further identified that the grievor, her mother-in-law, worked in the Call Centre,*
6. *Management convened an investigation which determined the grievor took action to remove the file from automatic pay, causing the file to be flagged for further review and action,*
7. *The grievor was forthright in acknowledging that she had accessed the client file in question and initiated the above change in the file status,*
8. *The grievor has maintained throughout the process, that while she inappropriately accessed the client file of a family member, she did so at the request of the client, who had recently returned to work on a part-time basis, and had been advised by the grievor that unreported earnings would cause a benefits overpayment,*
9. *Departmental and Call centre policy requires that employees not handle calls or enquiries from family, friends, or co-workers; this is outlined in the Employment Insurance Benefits Manual, Section 2.7 and the Quick Link web-based tool, [...]*
10. *The grievor received values and ethics training that outlined the above policy, and how to address conflict of interest situations between [10-Mar-03 and 18-Apr-03],*

11. *On March 26, 2004, the grievor was suspended for a period of two days. [...]*

12. *The parties acknowledge mitigating circumstances include length of service, no previous discipline, and considerable personal and financial stress, as the grievor was going through a divorce at the time of the incident.*

[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 employer’s rules clearly dictate that an employee must not access the client files of a family member. Ms. Thomas violated those rules by taking direct action on her daughter-in-law’s file.

[4] During the grievance process, the grievor tendered a letter of explanation which was filed at the hearing. In it, Ms. Thomas attempted to justify her actions by stating that they had been taken at the request and with the consent of her daughter-in-law.

[5] It is interesting to note that Ms. Thomas was certainly mistaken as to the nature of her daughter-in-law’s wishes given the ensuing query concerning her file.

[6] Whether or not the grievor was asked to take action on K’s file is irrelevant to my determination. The employer’s rules concerning access to the client files of family members are eminently appropriate and were known or should have been known by the grievor.

[7] The integrity of the employment insurance system and the public perception of its neutrality require that these rules be strictly adhered to.

[8] The sanction imposed by the employer in this case is well within the acceptable range of penalties for the misconduct involved. The employer properly considered all mitigating circumstances, including the grievor’s length of service, her clean disciplinary record and her personal situation, before imposing the two-day suspension.

Order

[9] The grievance is denied.

November 7, 2005.

**Yvon Tarte,
adjudicator**