

Date: 20050603

File: 166-2-33496

Citation: 2005 PSLRB 49



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

GREG JONES

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: [Robert D. Downey](#)

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,
May 27, 2005.](#)

REASONS FOR DECISION

[1] On July 26, 2002, Mr. Jones grieved a three-day suspension that was reduced to one-day by the employer during the grievance process. The grievance was referred to adjudication on February 24, 2004. The parties to this expedited adjudication process have agreed on the following statement of facts:

[1] Mr. Greg Jones is a GL-ELE-03, Trades Helper employed within the Engineering Services Company at CFB Edmonton, AB. He has been employed with DND since 01 February 1971.

[2] Prior to the instant grievance, Mr. Jones held a DND 404 driver's licence which gave him permission to operate DND vehicles in order to assist DND trades people.

[3] Mr. Jones was aware of the Engineering Services Company Policy pertaining to the use of DND vehicles.

[4] On 23 May 2002, at approximately 0750 hrs, Mr. Jones was stopped by the Military Police on Highway 28A, Edmonton, Alberta driving a DND vehicle 104 km/h in a 60 km/h speed zone. Mr. Jones' speed was confirmed by MP radar gun.

[5] The Military Police did not issue Mr. Jones a speeding ticket, but rather they prepared a MP Daily Occurrence Report (DOR #1237/02) and referred the incident to Major R.E. Fenton, Commanding Officer, Engineering Services Company, for administrative action.

[6] Major Fenton initiated an investigation into the alleged misconduct of Mr. Jones on 06 June 2002. Captain Clark was tasked with this investigation and completed the report to Major Fenton on 07 June 2002.

[7] A disciplinary hearing was conducted on 19 June 2002, and a decision was rendered on 05 July 2002. Mr. Jones was found to have misconducted himself and was awarded a three (3) day suspension without pay and his DND 404 driver's licence was suspended for six (6) months effective 06 July 2002.

[8] At the time of this disciplinary action against Mr. Jones by management, the grievor had a prior discipline record that consisted of a letter of reprimand dated 31 May 2002 for absenting himself from the Garrison without prior approval and for the misuse of a DND vehicle.

[9] On 29 July 2002, Mr. Jones presented a grievance at the first level of the departmental grievance procedure

related to the above discipline. The details and corrective action requested in his grievance were as follows:

Details of Grievance:

"I grieve that management is abusing their authority by exceeding their jurisdiction by suspending me and revoking my DND 404 for an alleged speeding incident. This matter should have been handled by the military police and the court system. Management is penalizing me in an arbitrary and clearly biased manner.

Corrective Action Requested:

"I want the suspension order rescinded and my DND 404 returned."

[10] The instant grievance was heard at 1st level of the departmental grievance procedure on 22 October 2002. The grievance was denied and the grievor was advised by way of letter from Major R.E. Fenton, Commanding Officer Engineering Services Company dated 04 November 2002.

[11] Mr. Jones' DND 404 licence was reinstated after four (4) months due to operational requirements.

[12] Mr. Jones transmitted the grievance to 2nd level on 13 November 2002. A second level hearing was held on 08 January 2003 and a decision was rendered on 21 January 2003, partially upholding the grievance. That is, the second level grievance officer, Lieutenant Colonel C.D. Wright reduced the disciplinary sanction from that of a three (3) days suspension without pay to that of a one-day suspension without pay.

[13] Mr. Jones transmitted the grievance to final (3rd) level of the departmental grievance procedure on 31 January 2003. The third level reply from Diane McCusker, Director General Employee Relations dated 29 December 2003 advised that the grievance was partially allowed to the extent that the one-day suspension was confirmed as reasonable in the circumstance, but the mention of the suspension of the DND 404 licence was to be removed from the disciplinary letter dated 05 July 2002 as it did not constitute a disciplinary measure.

[sic throughout]

[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*, I continue to be seized with this reference to adjudication, which 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 has shown in this case that there were grounds for discipline and that the penalty eventually imposed was appropriate.

[4] Mr. Jones is not part of an emergency response team or unit which may at times be authorized to exceed posted speed limits. His speeding in this case was inappropriate and possibly dangerous given the proximity of a school, a fact mentioned at the hearing.

[5] Although the three-day suspension initially imposed was excessive, the eventual one-day suspension was appropriate in the circumstances and meets the requirements of progressive discipline.

[6] The employer properly looked at mitigating circumstances such as the grievor’s 31 years of service as well as aggravating circumstances such as recent discipline.

[7] The grievance is therefore denied.

**Yvon Tarte,
adjudicator**

OTTAWA, June 3, 2005.