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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

**MARIA CORREIA, WENDY MCNEIL,
RITA IRION AND TAMI GOODFELLOW**

Grievors

and

**TREASURY BOARD
(Canada Border Services Agency)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Ian R. Mackenzie, adjudicator](#)

For the Grievors: [Lynn Whittaker, Public Service Alliance of Canada](#)

For the Employer: [Kevin L. Brant](#)

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,
September 29, 2006.](#)

[1] Maria Correia, Wendy McNeil, Rita Irion and Tami Goodfellow have grieved the imposition of a one-day suspension for the inappropriate use of the employer's electronic networks. The grievances were filed on September 6, 2002, and the employer issued the final-level reply on May 18, 2004. The grievances were referred to adjudication on June 30, 2004. The applicable collective agreement is the *Program and Administrative Services Collective Agreement*.

[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*, these references 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.

[3] The parties submitted a book of documents, including an "Agreed Statement of Facts" that reads as follows:

...

1. *At the time of the grievance,*

- *Maria Correia was a CR-04, working for the Canada, Customs and Revenue Agency, Commercial Operations, United Terminals, Burnaby, B.C. She had been an employee of the CCRA for 16 years;*
- *Wendy McNeil was a PM-02 Customs Inspector working for the Canada, Customs and Revenue Agency, United Terminals, Metro Vancouver. She had been an employee of the CCRA for 30 years;*
- *Tami Goodfellow was a PM-02 Customs Inspector working for the Canada, Customs and Revenue Agency, Commercial Operations, Metro Vancouver. She had been an employee of the CCRA for 21 years;*
- *Rita Irion was a PM-02 Customs Inspector working for the Canada, Customs and Revenue Agency, Commercial Operations. She had been an employee of the CCRA for 13 years.*

2. *The CCRA's Code of Ethics and Conduct states:*

Carrying out our mission requires us to interact daily with thousands of Canadians from every walk of life. Effective interaction among colleagues and co-workers is

also a critical factor in fulfilling our mission. We strive to ensure that our behaviour toward clients and colleagues alike is guided by four key values: integrity, professionalism, respect, and cooperation.”

3. The CCRA's Electronic Networks Policy Guidelines, states:

“All users have an obligation to use their computer systems and networks in a responsible and informed manner, conforming with the policies and guidelines in place. We are all expected to use common sense and good judgement in our work and interaction with colleagues, clients, and the public, regardless of the medium.”

4. Each of the above-noted grievors signed that they were in receipt of the Code of Ethics and Conduct.

5. The CCRA Internal Audit Division conducted a review on May 29, 2002. It was determined that six employees in the Pacific Region had sent anywhere from one to nine inappropriate emails. Of these six employees, four are the grievors in this matter.

6. Each of the above-noted grievors admitted in the investigation process to the inappropriate use of the employer's electronic network. Below is a table summarizing the number of emails sent by each grievor.

<i>Name</i>	<i>Total</i>
<i>Corriea</i>	<i>8</i>
<i>McNeil</i>	<i>4</i>
<i>Goodfellow</i>	<i>8</i>
<i>Irion</i>	<i>8</i>

7. Information Technology Branch confirmed that based on the number of emails sent and receive [sic], the number of bytes represented a heavy burden on the Agency's electronic network.

8. The grievors submitted their grievance on September 6, 2002. They grieve that the disciplinary action of August 9, 2002, was excessive and they request that the one-day suspension be rescinded and that they receive their lost salary, that any and all references to this disciplinary action be removed from their personnel file, and that they

be made whole. They further request union representation at all appropriate levels of the grievance procedure.

9. Management issued a final level reply to the grievors on May 18, 2004 advising them that their grievances and requested corrective action were denied.

. . .

[4] The employer's representative submitted that there was no dispute that there had been misconduct. The issue was whether the quantum of discipline was within the appropriate range, and whether there were mitigating factors. He submitted that the grievors were aware of the employer's policies on use of electronic networks and chose to ignore those policies. The employer took into account the grievors' admission of wrongdoing and the expression of remorse as well as their long service and the absence of disciplinary records.

[5] The grievor's representative submitted that the grievors had not been provided with a copy of the electronic networks policy guidelines, and that, the policy had not been drawn to their attention. The employer did not impose progressive discipline, and the discipline imposed was punitive and not corrective. The grievors were remorseful and ashamed, and the employer should have imposed a lesser penalty. A reprimand would have had the desired effect.

[6] I noted that there was no dispute that there was misconduct by these grievors. The appropriate discipline for misconduct is assessed on the basis of the circumstances of the misconduct and on any mitigating factors. The material that was sent was clearly inappropriate, some of it graphically so. Although the grievors may not have had awareness of the *Electronic Networks Policy Guidelines*, they did receive a copy of the *Code of Ethics and Conduct*, which clearly identifies what constitutes inappropriate and unacceptable uses of electronic networks.

[7] Given the nature of the material that was sent by the grievors, I find that the employer clearly considered the mitigating factors of length of service, lack of disciplinary record, and remorse in assessing the penalty. A one-day suspension was within the acceptable range for discipline, in the circumstances.

[8] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[9] The grievances are denied.

October 6, 2006.

**Ian Mackenzie,
adjudicator**