

Date: 20060303

File: 166-02-35718

Citation: 2006 PSLRB 23



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

ROBERT LALLEMAND

Grievor

and

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

Employer

EXPEDITED ADJUDICATION DECISION

Before: Sylvie Matteau, adjudicator

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

For the Employer: Lorraine Laframboise

N.B.: 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,
February 24, 2006.
(P.S.L.R.B. Translation)

[1] The present grievance concerns a disciplinary measure imposed on the grievor following an incident occurring on September 24, 2003.

[2] The parties filed a joint statement of facts that reads as follows:

[Translation]

...

- 1- *The complainant, Robert Lallemant, has been an indeterminate employee of the Department of National Defence since 1983.*
- 2- *When the complainant lodged the present grievance on January 7, 2004, he held a GS-FOS-02 position as an assistant cook for Food Services at the Saint-Jean Garrison and was governed by the Operational Services Group collective agreement.*
- 3- *On May 20, 2003, management imposed a two-day suspension on the complainant for two incidents that occurred on March 6 and April 2, 2003. The employee lodged a grievance contesting that disciplinary measure. That grievance was dismissed at the first level; the complainant did not pursue that grievance.*
- 4- *Following an incident on September 24, 2003, having to do with the speed of the dishwasher belt, management conducted a disciplinary investigation from October 21 to December 18, 2003.*
- 5- *On December 18, 2003, management imposed a three-day suspension on the complainant for the incident that occurred on September 24, 2003.*
- 6- *On January 7, 2004, the complainant lodged a grievance, asking that the three-day suspension be withdrawn and that management follow up on his request to be transferred.*

...

[3] 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*, the present 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").

[4] The incident in question occurred during lunch break. The belt of the dishwasher was running at full speed, in accordance with the instructions and on the recommendation of a technician who was on site to repair it.

[5] According to the employer, the other employees objected to this dangerous work speed and advised the grievor. The grievor nevertheless insisted on maintaining the speed of the belt, even though he had already been reprimanded for a similar incident that occurred on March 6, 2003, when an employee had been injured.

[6] That said, the employer has not established that the grievor was in fact the supervisor in charge at the time of the incident. According to the evidence, the grievor notified another supervisor about the situation, and according to him, she took over when she arrived. She did nothing and was subsequently reprimanded. The grievor emphasized the lack of proportion between the disciplinary measure imposed on the female supervisor in charge and the one imposed on him.

[7] In light of the evidence, I find that there was misconduct by the grievor. He was aware of the danger represented by the speed of the belt, particularly because he knew it was defective and because a mishap had already occurred under his supervision. He cannot cast the blame on the technician or on another supervisor. However, it has not been established that Mr. Lallemand was the supervisor in charge of the belt at the time of the incident. As well, the particular circumstances surrounding the incident have not been established. No statements by the employees who were present were adduced in evidence.

[8] Progressive discipline must also be taken into account. The employer had already disciplined the grievor for a similar instance of misconduct. As well, that disciplinary measure referred to misconduct without distinction or reference to the operation of the belt or the grievor's actions in that regard. The details and the seriousness of that other instance of misconduct were not presented in evidence.

[9] Accordingly, taking into account the evidence, the circumstances and the principle of progressive discipline, I find that the disciplinary measure imposed by the employer is excessive and I reduce the suspension to one day.

[10] For these reasons, I make the following order:

(The order appears on the next page)

Order

[11] The grievance is allowed in part. The suspension imposed on the grievor is reduced to one day.

March 3, 2006.

P.S.L.R.B. Translation

**Sylvie Matteau,
adjudicator**