

**Date:** 20060629

**File:** 166-02-36667

**Citation:** 2006 PSLRB 79



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

LORNE SCHNARE

Grievor

and

TREASURY BOARD  
(Department of National Defence)

Employer

***EXPEDITED ADJUDICATION DECISION***

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

***For the Grievor:***        Richard Cashin, Federal Government Dockyards Trades and  
Labour Council (East)

***For the Employer:***        [Shairoz Verjee, 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.

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[Heard at Ottawa, Ontario,  
June 23, 2006](#)

## *REASONS FOR DECISION*

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[1] Lorne Schnare is grieving discipline imposed for insubordination. The discipline was originally a five-day suspension without pay, reduced to four days at the second level of the grievance process. Mr. Schnare is represented by the Federal Government Dockyard Trades and Labour Council (East).

[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 parties submitted agreed documents and an “Agreed Statement of Facts” that reads as follows:

...

1. *The grievor, Lorne Schnare, is an indeterminate employee of the Department of National Defence.*
2. *He is employed at the Fleet Maintenance Facility, Cape Scott in Halifax, Nova Scotia.*
3. *At the time of his grievance, the grievor was covered by the Ship Repair (East) group collective agreement between the Treasury Board and the Federal Government Dockyard Trades and Labour Council (East) that expired on December 31, 2003.*
4. *At the time of his grievance, the grievor was classified at the SR BOB 09 group and level.*
5. *On 24 September 2004, the grievor received a letter entitled notice of investigation alleged misconduct in that he misconducted himself in the following manner:*
  - a. *He was inebriated on DND premises during working hours;*
  - b. *He was insubordinate towards his manager*
  - c. *He threw metal objects at a piece of DND equipment**(Reference Tab 1)*

6. As a result of an investigation into the matter, it was determined that:

*Based on the behaviour that the grievor exhibited and his own admission to a supervisor that he had been drinking during his lunch break and was under the influence of the alcoholic beverages that he consumed. This was compounded by his admission that he also took medication. (Reference Tab 2)*

*The grievor was insubordinate towards a supervisor on three separate occasions on 24 September 2004.*

- a. *He refused to take a cab home when initially directed to do so by a supervisor. After several attempts, the grievor agreed to take the cab home in order to avoid involving security. As such, management called a cab for the grievor and he went home.*
- b. *He refused to stop throwing metal objects on the shop floor.*
- c. *He grabbed a pair of mechanics gloves out of a supervisor's hands when he told him he could not have them (Reference Tabs 3)*

*By his own admission, the grievor threw metal in the shop. He haphazardly threw metal in the direction of the sheet metal shop without any regard for the safety of the personnel that were in that area.*

7. *On 19 October 2004, the grievor was advised that he was found guilty of misconduct and was awarded a five-day suspension. (Reference Tab 4)*
8. *On 4 November 2004, the grievor filed a grievance grieving the five-day suspension. (Reference Tab 5)*
9. *The grievance was denied at the first level of the grievance process. (Reference Tab 5)*
10. *The grievance was partially allowed at the second level of the grievance process. The suspension was reduced from five days to four days. (Reference Tab 5)*
11. *At the third level of the grievance process, the grievance was partially allowed to the extent already provided at the second level of the grievance process. (Reference Tab 5)*

...

[4] The employer's representative submitted that the issue here was the quantum of discipline, as the employee had admitted to misconduct. She submitted that the limitations on drinking alcohol while using the prescription drug oxycontin are clearly noted on the label of the medication, and Mr. Schnare would have been advised of this by his pharmacist. His actions compromised the safety and security of the workplace. His actions could have had extremely serious consequences. She referred me to the decision of *Proulx v. Treasury Board (Solicitor General of Canada)*, 2002 PSSRB 45.

[5] The employer's representative noted that the employer took into consideration the following mitigating factors in coming to its determination of appropriate discipline: the remorse of the grievor, his long service (over 30 years), the fact that he had no prior disciplinary record, the personal stress he was under, and the fact that he was on medication. Given the seriousness of the risk posed by his behaviour, the employer initially imposed discipline of five days. During the grievance process, the employer took a closer look at Mr. Schnare's situation and reduced that to a four-day suspension. She submitted that this was well within the acceptable range of discipline.

[6] The grievor's representative submitted that Mr. Schnare had over 30 years of service, no prior discipline, above average performance ratings, and letters of commendation for his work. He had been on medication for pain and was under significant stress, as his father had recently passed away. Mr. Schnare was not aware of the side effects of the medication he was taking and, after this incident, he soon stopped taking the medication. There were issues in the workplace as a result of changes to the infrastructure that were causing frustration in the workplace. The incident with the mechanic's gloves happened earlier in the day and had nothing to do with the situation for which he was disciplined. No one was injured and no equipment was damaged.

[7] The grievor's representative also referred me to an e-mail sent by Norm Chouinard (the grievor's supervisor) to all employees on June 23, 2004. In that e-mail, Mr. Chouinard referred to intoxicants in the workplace and stated: "I will award a five-day suspension for first offence, and seek dismissal for a second". The grievor's representative noted that this was contrary to DND policy and was punitive, not corrective. He submitted that the suspension was imposed on Mr. Schnare in order to make an example of Mr. Schnare, as clearly stated in the e-mail.

[8] The grievor's representative noted that the *Proulx* case involved death threats and injury, which was not the situation in this grievance.

[9] I dismissed the grievance. The grievor has acknowledged that there was misconduct, and the issue for me to determine was whether the amount of discipline was warranted.

[10] The actions of the grievor were a serious matter, especially given the safety-sensitive nature of the workplace. The absence of injuries to others and the fact that there appeared to be no damage to equipment are relevant factors, and I find that these factors were considered by the employer in determining the appropriate discipline. If there had been injuries or damage to property a longer suspension would likely have been appropriate.

[11] Mitigating factors in assessing the appropriate discipline to be meted out include age, length of service, the particular circumstances of the grievor (his health and stress), and remorse or the acceptance of responsibility. The employer did take these factors into account in coming to its decision. There is an obligation on the part of employees who are prescribed medication to take the necessary precautions, including obtaining information on possible side effects and proper usage, and using the medication appropriately. It was not clear from the agreed statement of facts whether Mr. Schnare knew of the risks of mixing alcohol with his medication or not. However, I conclude that he ought to have known. The four-day suspension without pay is within the acceptable range of discipline for misconduct of this kind, taking into consideration the mitigating factors, and does not warrant any interference by an adjudicator.

[12] I expressed no opinion on the e-mail of June 23, 2004. The fact that the employer did reduce the discipline to four days shows that it did not take a "one size fits all" approach in this case.

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

*(The Order appears on the next page)*

Order

[14] The grievance is dismissed.

June 29, 2006.

**Ian R. Mackenzie,  
adjudicator**