

Date: 20060601

File: 166-02-35558

Citation: 2006 PSLRB 67



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

BRUCE ENNIS

Grievor

and

**Treasury Board
(Department of Human Resources and Skills Development)**

Employer

EXPEDITED ADJUDICATION DECISION

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

For the Grievor: Cécile La Bissonière, PSAC

For the Employer: [Guy Cyr](#)

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 26, 2006.](#)

REASONS FOR DECISION

[1] Bruce Ennis was given a one-day suspension for making long distance calls at work both during and after working hours.

[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 an Agreed Statement of Facts and documentation. The Agreed Statement of Facts reads as follows:

1. *The grievor, Bruce Ennis, is an indeterminate PM-02 employee of the Department of Human Resources and Skills Development Canada.*
2. *At the time of his grievance, the grievor was covered by the Program and Administrative Services Collective Agreement that expires June 20, 2007.*
3. *The employee filed the present grievance on February 3, 2004, regarding management's decision to suspend him for one (1) day and to deduct 7.5 hours from his pay. **The issue of the 7.5 hours has been resolved at the first level of the grievance process.***
4. *An internal audit conducted by the Department revealed that during the period of January 1, 2003 and October 31, 2003, 180 long-distance calls were made from the grievor's workstation. The grievor identified 78 calls, which were of a personal nature. The total time spent on these personal calls was 11:45 hours of which 8.5 hours were during the grievor's regularly scheduled hours of work.*

[4] At the first level of the grievance process, the employer partially allowed the grievance and revoked its decision to deduct 7.5 hours from the grievor's pay. The employer representative, Guy Cyr, submitted that this was done after examining the treatment of others in the workplace, none of whom had had pay deducted as a result of the use of long distance for personal matters.

[5] Mr. Cyr submitted that there was no issue that the long distance calls had been made by Mr. Ennis. The sole issue was whether the discipline imposed was

appropriate. Mr. Cyr argued that the employer took into account a number of factors in coming to its decision to impose a one-day suspension. These included the grievor's level of remorse, the reimbursement of long distance charges, his prior disciplinary record, the amount of the long distance charges (\$24.19), the time lost to the employer during working hours and the knowledge of the grievor that his actions were inappropriate. Mr. Cyr noted that during the period of the long distance calls, Mr. Ennis did pay for a long distance call that he made to his aunt. He submitted that this showed that Mr. Ennis knew that he should be advising his employer of long distance personal calls and reimbursing the employer for those calls.

[6] Mr. Cyr also referred me to two decisions relating to long distance calls for personal use: *Kiesler v. Treasury Board (Employment and Immigration Canada)* PSSRB file No. 166-2-15229 (1986) and *Quigley v. Treasury Board (Employment and Immigration Canada)* PSSRB file No. 166-2-18034 (1989).

[7] The grievor's representative, Cécile La Bissonière, submitted that the fact that Mr. Ennis paid for one long distance call during the period did not show that he was aware that making long distance personal calls was inappropriate. It showed that he was not hiding the fact that he made long distance calls at work. Also, she submitted that if the employer felt it was wrong to make such calls, why did it not say something when he advised them of this call? Ms. La Bissonière also submitted that the employer condoned the making of long distance calls at work. She submitted that no discipline should be imposed.

[8] Mr. Cyr submitted that the employer accepts the making of long distance calls in exceptional circumstances and to that end the employer met with Mr. Ennis prior to imposing discipline to determine the nature of the calls he had made. Mr. Cyr submitted that the calls were clearly not made for emergencies.

[9] The use of employer facilities and services (long distance phone service) for personal use is not appropriate. While some usage of the telephone for personal business may have been condoned by the employer, the amount at issue here is an excessive amount and there is no evidence that the employer ever condoned such extensive use. I find that the employer considered mitigating factors such as the nature of the calls made, his remorse, the reimbursement of the costs of long distance

calls and the treatment of other employees, in coming to its determination of appropriate discipline.

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

(The Order appears on the next page)

Order

[11] The grievance is dismissed.

June 1, 2006.

**Ian R. Mackenzie,
adjudicator**