

Date: 20080718

Files: 166-09-34240 and 36001
and 566-09-35

Citation: 2008 PSLRB 59



Public Service Staff Relations Act
and
Public Service Labour Relations Act

Before an adjudicator

BETWEEN

DR. CHANDER GROVER

Grievor

and

NATIONAL RESEARCH COUNCIL OF CANADA

Employer

Indexed as

Grover v. National Research Council of Canada

In the matter of grievances referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act* and in the matter of an individual grievance referred to adjudication pursuant to section 209 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Mary Ellen Cummings, adjudicator

For the Grievor: Paul Champ, counsel

For the Employer: Ronald Snyder, counsel

Heard at Ottawa, Ontario,
December 13 to 16, 2005; October 23 and 24, and November 23, 2006.

REASONS FOR DECISION

I. Grievances referred to adjudication and individual grievance referred to adjudication

[1] Three grievances were referred to adjudication. They were heard together because they involve a continuing series of events, all of which occurred against the backdrop of an unhappy employer/employee relationship. Within a 10 month period, Dr. Chander Grover received 3-day, 5-day and 10-day suspensions for alleged misconduct. Each instance of the alleged misconduct was viewed by the National Research Council of Canada (NRC or “the employer”) as similar because it related to a refusal to follow the directions of management and was accompanied by insubordination.

[2] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, 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 references to adjudication concerning the three-day and five-day suspension must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35. The 10-day suspension must be dealt with in accordance with the provisions of the *PSLRA*.

II. Summary of the evidence

[3] The names of some people in this decision have been withheld.

[4] Dr. Grover was employed by the employer for more than 25 years at the time of the grievance. At the time these grievances were filed, Dr. Grover was the Director, Radiation Standards and Optics Section, a position he held since the mid-1990s. In that position, Dr. Grover supervised approximately 80 employees. In the relevant period, the organizational structure called for the appointment of four group leaders who would provide leadership and mentoring to the employees in the four divisions that comprised the Radiation Standards and Optics Section.

[5] Dr. Grover received the three-day suspension on June 1, 2004, for his failure to appoint a group leader when directed to do so. Dr. Grover’s response, which will be detailed later, is that he appointed himself as group leader, as he believed he was entitled to do. Dr. Grover received a five-day suspension on February 16, 2005, for failing to provide information when requested. Dr. Grover had made allegations of bias against a senior member of management — Dr. “A” — who was to become his

supervisor as a result of an organizational change. The employer requested details to support the allegations, and, in the view of the employer, when Dr. Grover did not comply, a five-day suspension was imposed. After the suspension was imposed, Dr. Grover supplied information that he believed supported his claim of bias. The employer determined that Dr. Grover had made unsubstantiated allegations of a serious nature against a member of senior management. As a result, on April 7, 2005, Dr. Grover was suspended from his employment for 10 days.

[6] The events that are the subject of this hearing are but a chapter in the ongoing saga of a difficult employment relationship. The parties endeavoured to confine this hearing to the events that gave rise to the three episodes of discipline but, of necessity, both placed the evidence within the context of the history between them. It is important for me to describe some of that history. I am intentionally choosing neutral language where possible and am offering only the broadest outline of the historical events.

[7] Dr. Grover filed a complaint under the *Canadian Human Rights Act* in the early 1990s. The complaint alleged systemic discrimination based on race and place of origin, which resulted in Dr. Grover's advancement being held back. Dr. Grover was successful in his complaint, and the decision of the Canadian Human Rights Tribunal ("the Tribunal") on August 21, 1992, is quite scathing in its description of the treatment Dr. Grover was subjected to from a number of persons, including members of senior management, over a number of years. However, the case did not end with the Tribunal's decision. There were significant difficulties in implementing the decision, and from the perspective of the Tribunal and Dr. Grover, there was considerable resistance from the employer in implementing the "make whole" remedies. Ultimately, in 1994, Dr. Grover and the NRC agreed on a series of remedies, which, on consent, were made an order of the Tribunal. One element of the remedy was appointing Dr. Grover Director of the Radiation Standards and Optics Section. Another aspect of the order was moving the Radiation Standards and Optics Section out of the Institute for Microstructural Sciences (IMS).

[8] It is not surprising that the human rights complaint, its hearing, the critical decision and the perceived resistance to implementing remedies created significant difficulties in moving forward. Dr. Grover had, in the Tribunal's view, suffered a great deal. At the end of the day, his complaints had been vindicated. It might have been

challenging for the NRC to accept such a critical view of its operations and for employees who had been harshly censured to react with equanimity. It would also have been difficult for Dr. Grover to view the future decision making of the NRC's management as benign and appropriate.

[9] It appears that for a period of years no effort was made to manage Dr. Grover's performance at all or to interfere in any way with how he operated his section. For example, I am told that for many years, Dr. Grover was not required to provide a performance plan to be considered for a salary increase, an exemption not accorded other directors. Similarly, Dr. Grover's decision to appoint himself as project leader for two of the four sections he managed, in addition to retaining his director responsibilities, was accepted for a number of years.

[10] In the same period, Dr. Grover was extremely vigilant about reminding the NRC of the Tribunal's findings, and the remedies that he had been granted. Any effort made by the NRC to manage Dr. Grover's performance or to provide the kind of direction senior management would be expected to provide was not only resisted by Dr. Grover but characterized by him in articulate but inflammatory language as further evidence of discrimination. Having read a number of letters written to NRC management by Dr. Grover, I remain astonished at their tone. I will set out some excerpts below. Certainly, the NRC responded in strong language. However, I have no difficulty understanding why NRC management practised conflict avoidance with respect to Dr. Grover for a long period of time.

[11] We now move to 2004. At the time of the events that led to the discipline, the only discipline on Dr. Grover's record was an April 26, 2004, letter of reprimand for an incident that is also part of the history that I am relating. At the risk of oversimplifying, all of the alleged misconduct arose from Dr. Grover's reactions to the NRC's efforts to manage the workplace. The three-day suspension arose from Dr. Grover's refusal to run a competition for the position of group leader when directed. Instead, he appointed himself group leader. Shortly after, Dr. Grover left his work, asserting that he was too ill to work on a full-time basis but that he could work part-time on a schedule of his own choosing. The NRC did not accept that arrangement, and for some time, it is agreed, Dr. Grover was prevented from entering the workplace. That situation also became the subject of a grievance and a hearing

before the Public Service Labour Relations Board (“the Board”). Dr. Grover’s grievance was allowed.

A. Events leading to the three-day suspension

[12] As set out above, Dr. Grover was assessed a three-day suspension for his failure to run a competition process to select a group leader for the Ionizing Radiation Standards Group (IRS). Between October 2003 and March 2004, there was an extensive exchange of correspondence between Dr. Grover and Dr. Peter Hackett, Acting Director General, Institute for National Measurement Standards (INMS) and Dr. Grover’s supervisor, about why Dr. Grover wanted to appoint a certain person and did not want to run a competition. Dr. Grover cited a history of friction among scientists in the IRS that was abating and a general agreement among the researchers that “B” would be an appropriate candidate. Dr. Grover was concerned that “B” might not compete. After setting out those reasons, Dr. Grover wrote to Dr. Hackett on October 27, 2003, that directors had always selected the group leader without a competition and that the practice should continue, especially in that instance. Dr. Grover concluded that he intended to appoint “B” within a week and told Dr. Hackett to advise if he had any concerns. Dr. Hackett wrote back on October 30, 2003, stating the reason: “. . . I require a selection process for Group Leader.” He added that he hoped that Dr. Grover would accept his position, explain it to “B” and encourage him to enter the selection process.

[13] Dr. Grover responded on November 4, 2003, setting out his concerns that the INMS had not received any direction from senior management about competitions for group leaders and wondering whether they were being implemented elsewhere. In any event, Dr. Grover wrote that he thought that a competition was inappropriate in the INMS, that it took away from the role of the director and that it “. . . verges on micro-management.” He asked for further discussion and indicated that, in the meantime, he intended to appoint “B” on an interim basis “. . . until we have had the time to discuss these issues. . .” leaving open the possibility of a competition in two years.

[14] Both Dr. Hackett and Lorna Jacobs, a human resources generalist within the INMS who was developing the group leader job description, testified about a meeting held the morning of November 12, 2003, to discuss Dr. Grover’s concerns about the selection process for group leader. The employer also introduced Ms. Jacobs’ notes of the meeting. Dr. Grover recalled no such meeting and said that it was unlikely that he attended because it is well known that his personal schedule does not allow him to

attend early morning meetings. Both Ms. Jacobs and Dr. Hackett were certain that the meeting took place with Dr. Grover. As Ms. Jacobs put it, there would be no reason for the meeting if Dr. Grover had not attended. I conclude that a meeting did take place on November 12, 2003, which Dr. Grover attended and at which he had an opportunity to discuss all of his concerns about the selection process that Dr. Hackett was proposing.

[15] Dr. Hackett then issued a memo to all INMS staff on November 19, 2003, setting out his plan to implement a selection process for the INMS group leaders. One of the first two selection processes would be in Dr. Grover's area, the IRS. A summary of the competencies against which candidates would be assessed was attached. Dr. Hackett became concerned that the process was not moving forward, and he believed that Dr. Grover was not cooperating. Dr. Hackett wrote to Dr. Grover on January 18, 2004, about a number of issues, including a repeated request for an update from Dr. Grover on the group leader selection process. Although Dr. Grover responded to a number of the other issues raised by Dr. Hackett, he was silent on the group leader appointment selection process.

[16] On January 20, 2004, Dr. Grover wrote to Dr. Carty, President, NRC, complaining about Dr. Hackett. Dr. Grover wrote that Dr. Hackett was undermining his authority and making decisions without consulting him. In the text of the letter, Dr. Grover sets out that Dr. Hackett made a decision to include group leaders in management meetings "... despite my input that it would dilute the role of the Directors of the Institute." In the same letter, Dr. Grover relates that in a management meeting, he challenged Dr. Hackett about his creation of a new directorate: "He did not respond to my question as to why he had not consulted with myself. . . ." Dr. Grover also related to Dr. Carty that he had challenged Dr. Hackett about the appointment of an acting director in a section:

...

I questioned Dr. Hackett at the meeting as to the reasons he had chosen Dr. D. . . . Clearly he did not consider me for this position. . . I asked him why he did not consider holding a competition for the Acting Director position that Dr. D. was given, and along the same vein, whether a competition was held prior to his appointment as Acting Director General. Dr. Hackett refused to reply. . . [Dr. Grover asked Dr. Carty] to meet with him to discuss . . . "my mistreatment by Dr. Hackett."

...

[17] Dr. Carty responded briefly on January 28, 2004:

...

I wish to advise you that, in his capacity as both Vice President and Acting Director General, Dr. Hackett has the right to restructure the INMS management committee, to establish new directorates and to appoint acting directors with or without a formal competition process. I also wish to advise you that Dr. Hackett has the discretion to consult on his management decisions as he sees fit.

...

[18] On January 28, 2004, Dr. Grover informed Dr. Hackett, by copy of an email sent to the human resources department, that he would "... continue to remain as the Acting group leader of the Ionizing Radiation Standards Group."

[19] On the same day, Dr. Grover responded to Dr. Hackett's request that he complete his Project Performance Review (PPR) and Merit Review, that is, his performance plan for the next year. Instead of completing the form, Dr. Grover wrote that he "... had not had a PPR for the last several years. I have been given the understanding . . . that this practice would continue in the future." Dr. Grover wrote that he had discharged all of the duties of director as well as the duties of three out of the four group leaders in his area and that he had acted as administrative assistant. On the following day, Dr. Grover advised Dr. Hackett by email that his doctor had prescribed a four-week stress leave "... to be utilized as required over an eight-week period."

[20] In a letter dated March 5, 2004, Dr. Hackett set out the steps he had taken to gain Dr. Grover's cooperation in running a selection process for group leader and his dismay in finding out that Dr. Grover had appointed himself to the position. Dr. Hackett indicated that Dr. Grover's failure to adhere to his instructions was "... a complete disregard to the position of your superior. I will not tolerate any such further disrespect or indifference." In his letter, Dr. Hackett set a deadline for the completion of the group leader selection process. He concluded that "[a]ny deviation from this expectation shall be considered insubordination and will be dealt with progressively in accordance with NRC Discipline policy."

[21] Dr. Grover responded in writing on March 18, 2004, saying that because the IRS had had a difficult period of conflict over the past years, “I have decided that under the circumstances it would be best if I continue as the Acting Group Leader. . . .” He went on to say that staffing the group leader position was his responsibility and that he had kept the human resources department advised of his intention to staff the position himself. Dr. Grover continued:

. . .

Given the above, I consider your intervention into the operation of my section to be micromanagement. While I understand your suggestion of finding a permanent group leader, I would prefer to remain as Acting Group Leader of the IRS Group for the reasons mentioned above. . . I consider your attempt to remove me from this position using threats of intimidation to be discriminatory harassment.

. . . I consider your insistence in demanding that I initiate a selection process for filling the position of IRS Group Leader, while being fully aware that I am currently acting in this position to be harassment.

. . .

[22] Dr. Grover went on to allege that Dr. Hackett’s “. . . decisions in this matter are biased and are intended to prejudice myself and the IRS Group.” He concluded the letter with the advice that he had asked his counsel to include these matters in actions that were currently before the courts and the Canadian Human Rights Commission.

[23] On April 26, 2004, Dr. Grover was assessed a written warning for insubordination for failing to complete the group leader selection process.

[24] Dr. Grover’s letter of May 3, 2004, in response to the written warning, claimed that he had overall authority over his section, including decisions about appointing group leaders. He wrote that this authority was given by the May 1996 agreement between him and the NRC that resolved the remedial disagreements after the human rights complaint. Dr. Grover accused the NRC of unilaterally changing that agreement and acting in contempt of the Tribunal’s order.

[25] On May 7, 2004, Dr. Grover advised Dr. Hackett that he would be on sick leave from May 10 to 21, 2004.

[26] On June 1, 2004, Dr. Grover was given a three-day suspension for failing to follow Dr. Hackett's instructions to initiate a selection process for group leader.

[27] Dr. Grover responded that he would be on stress leave from June 4 to 25, 2004, and that he would initiate the selection process for group leader on his return. The NRC did not accept the medical certificate that accompanied Dr. Grover's note and directed him to remain off work until an NRC-chosen physician had assessed the matter. He did not return to work throughout the period that followed. Put another way, all of the conduct that led to the 5- and 10-day suspensions occurred while Dr. Grover was out of the workplace.

[28] Dr. Grover grieved the three-day suspension. Among other things, he raised a concern that the discipline was contrary to the NRC's policy because there had been no investigation and he had not been interviewed.

[29] The NRC responded that a meeting at the final level of the grievance process was scheduled in July but that Dr. Grover declined to attend. The discipline was confirmed.

B. Events leading to the 5- and 10-day suspensions

[30] Dr. Hackett left his position. He was replaced by Dr. Andrew Woodsworth, Acting Vice President, Research. While Dr. Grover was absent from the workplace, he learned that his section was to be divided and that the part that he would continue to direct was to move to the IMS, the Institute that he had been moved out of as a remedy to the finding of discriminatory treatment in 1994. In response to the announced change, Dr. Grover wrote an immoderate letter dated November 4, 2004, to Dr. Woodsworth. Dr. Grover alleged, among other things, that the restructuring was a discriminatory act and that the removal of responsibility for half of his former section was a repetition of the discrimination he had suffered earlier and was in violation of the remedies granted to him. Most seriously, from the NRC's perspective, Dr. Grover wrote the following:

...

I would like to remind you that the Radiation Standards and Optics Section was organized following the orders made by the Canadian Human Rights Tribunal and the Federal Court of Canada to remedy the racial discrimination to which the NRC had subjected me. The NRC offered me the choice to be

appointed at an institute of my choice among several institutes, including IMS. The IMS was totally unacceptable to me on the basis of its more hostile and unfriendly atmosphere. This atmosphere continues to exist at IMS. I have knowledge that its managers have been making disparaging comments about me; several of its personnel gave evidence before the Tribunal and presented distorted views concerning myself; and several INMS staff members who made false allegations against me were transferred to IMS. Furthermore, I believe that Dr. ["A"], Director General of IMS, is biased against me because of her critical views about me and my case of racial discrimination against the NRC.

I ask you to reconsider your decision to dismantle my Section and move me to IMS.

[31] Dr. Woodsworth, Dr. Grover's superior, to whom the letter was sent, testified that the NRC was concerned about the whole of the letter, but in particular the allegations of bias against Dr. "A", because she would be Dr. Grover's superior after the reorganization. In a letter dated November 16, 2004, Dr. Woodsworth wrote to Dr. Grover that "I am greatly disturbed by your assertion that Dr. ["A"] is biased against you. . . ." Dr. Woodsworth directed Dr. Grover to provide any information in support of the allegation, including dates and locations and the specific comments made. Dr. Grover responded that he did not want to advance a complaint and therefore that he did not believe it necessary to forward the information requested. A further exchange on the same lines continued with the employer threatening disciplinary action. On December 14, 2004, Dr. Grover wrote, "I withdraw all of my comments regarding Dr. ["A"], that were not made in the context of the restructuring of INMS." Dr. Woodsworth testified that the retraction was not absolute, but the employer decided to close the issue and write to Dr. Grover. The December 17, 2004, letter from Dr. Woodsworth, however, was not conciliatory in indicating that:

. . .

. . . I reiterate that your disparaging remark concerning Dr. ["A"] was inappropriate and clear on its face. . . It is clear by your decision to withdraw your comment that you had no factual basis for making such a claim against Dr. ["A"] and I find it unfortunate that you exercised poor judgment in having done so. In accepting your decision to withdraw this comment, I now consider this matter closed. However, you are placed on formal notice that the NRC will not tolerate any employee casting aspersions on others and that such conduct will be subject to disciplinary action. While

you have the right to iterate your concerns about the workplace without reprisal, you are to refrain from making personal and disrespectful comments about others.

...

[32] Not surprisingly, that did not end the matter. Dr. Grover responded on December 31, 2004:

...

...I have withdrawn my comments regarding Dr. ["A"] because these issues have been raised with NRC senior management in the past. This cannot and should not be construed to mean that there is no factual basis to my comments. I have provided you with sufficient information in this regard in my correspondence.

...

[33] The NRC responded with a further request for Dr. Grover to provide details in support of the allegations and to identify the member of senior management with whom he had discussed the issue in the past. Dr. Grover answered with a list of persons against whom the Tribunal had made critical findings (which did *not* include Dr. "A") and complained that none of them had been the subject of discipline but that he was being threatened with discipline for declining to provide information about Dr. "A".

[34] Further exchanges of letters continued. Finally, on February 16, 2005, Dr. Grover was given a five-day suspension for failing to comply with repeated demands to provide details to substantiate the complaint that Dr. "A" was biased against him. The employer outlined Dr. Grover's disciplinary record, which contained a written reprimand dated April 26, 2004, and a three-day suspension dated June 1, 2004, given for insubordination. Dr. Grover's refusal to provide details to justify his complaint against Dr. "A" was characterized as a further act of insubordination. In the letter of suspension, Dr. Grover was again told to provide details for the basis for his concerns about Dr. "A", with the following warning: "Failure on your part to comply with this instruction will result in the imposition of additional and more severe discipline."

[35] In a letter dated February 23, 2005, Dr. Grover provided information pursuant to that directive. To be clear, Dr. Grover had no direct information that Dr. "A" had

made negative comments about him. He related a conversation he had had with a colleague in January 1994 about the general reaction to his human rights complaint. The colleague told Dr. Grover that many believed that the discrimination did not occur and that many “. . . had been expressing these critical views.” Dr. Grover wrote that the colleague “. . . provided me with the names of several NRC colleagues, including Dr. ‘A’ and indicated that women, in particular, had been upset with me.”

[36] After receiving that letter, the employer wrote to Dr. Grover on March 17, 2005, indicating that he had not provided any details about what Dr. “A” was alleged to have said nor the names of other employees who were present. Dr. Grover was given a “last opportunity” to provide information and documents to substantiate his allegations. Dr. Grover was warned that “. . . failure on your part to comply with this instruction will result in the imposition of more severe disciplinary action for having made an accusation you cannot substantiate to my satisfaction.” Dr. Grover wrote that he had no more information to provide, but he gave clarification about the context of his conversation in 1994 with his colleague.

[37] Dr. Grover was invited to a disciplinary meeting. He declined to attend. In a letter dated March 30, 2005, he wrote that he was not going to be “. . . attending any meetings until the NRC has formally allowed me to return to work.”

[38] On April 7, 2005, the employer wrote a detailed letter to Dr. Grover setting out the history of the correspondence about the allegations against Dr. “A”. The NRC criticized Dr. Grover for having made an accusation that he was not able to substantiate: “Passing on hearsay obtained from another source will not suffice.” The employer concluded:

. . .

I must now address your inappropriate behaviour in having made an unfounded accusation against your supervisor. That you have made such an unsubstantiated and spiteful charge of bias against Dr. [“A”] was both disrespectful and unprofessional. Such behaviour will not be tolerated by any employee.

. . .

[39] Dr. Grover was suspended for 10 days for his failure to substantiate the allegations against Dr. “A”.

III. Summary of the arguments

[40] The NRC submitted that it imposed the three-day suspension only after making clear to Dr. Grover that he must run a selection process for the group leader position. The correspondence makes it clear that the employer was making a direction. The correspondence equally makes it clear that Dr. Grover was not obeying the direction. The case law that the employer noted specifies five elements to be used in assessing discipline for insubordination: Was a clear order made? Was it within Dr. Hackett's power to make the order? Did Dr. Grover disobey? Was there a legal basis to disobey? Considering all the circumstances, is discipline justified?

[41] A clear order was made, the employer argued, and if it was not clear before Dr. Hackett's letter of March 5, 2004, it was crystal clear after the letter. The employer said that as both vice president and acting director general, Dr. Hackett was Dr. Grover's superior and possessed the power to tell Dr. Grover to run a selection process. If there was any doubt in Dr. Grover's mind about Dr. Hackett's authority, it was dispelled by Dr. Carty, President, in his letter of January 28, 2004. Dr. Grover disobeyed the order. He did not run a selection process. Instead, he appointed himself group leader. There was no legal justification for the disobedience. The employer asks me to find that a three-day suspension is justified. At no point has Dr. Grover shown remorse, or that he has learned anything from the process to this point. Given that he was in a senior position and that his refusal to follow a clear direction was open, flagrant and abusive, the three-day suspension should stand.

[42] Counsel for Dr. Grover argued that a clear order was never made. Instead, Dr. Hackett made requests, sought updates and engaged in discussions with Dr. Grover about the selection process but never made a direct order. Counsel for Dr. Grover submitted that Dr. Hackett did not take Dr. Grover's history with the human rights complaint and its remedy into account when assessing Dr. Grover's conduct. Had Dr. Hackett been more sensitive and taken more time to understand that history, he would have appreciated Dr. Grover's perception that he was losing one of the powers as director that had been granted him as a remedy. Dr. Grover, counsel argued, was asking Dr. Hackett appropriate questions about whether the selection process was being implemented elsewhere and how it might impact his role as director. Dr. Grover was not receiving answers to his relevant questions, and his concerns were not being properly addressed. It must also be remembered, counsel argued, that Dr. Grover perceived that Dr. Hackett was harassing him and that Dr. Hackett had been placed in

his position to “deal with” Dr. Grover. All of those beliefs, counsel argued, affected how Dr. Grover reacted to Dr. Hackett’s proposed changes. Dr. Grover’s conduct, counsel submitted, did not display defiance or insubordination but, instead, a continued effort to have his concerns addressed.

[43] In any event, counsel argued, the NRC’s failure to follow its discipline policy is fatal. The NRC did not investigate the events and did not interview Dr. Grover before imposing discipline, both of which are elements of the policy. In reply to the assertion that failing to follow the policy is fatal, the employer argued that the policy is only a guideline. In this case, Dr. Grover was treated fairly. Moreover, Dr. Grover chose not to attend the grievance meeting held July 8, 2004, resulting in the discipline being affirmed. If Dr. Grover was sincerely concerned about having an opportunity to explain his position, he would have availed himself of the grievance meeting.

[44] With respect to the 5-day and 10-day suspensions, the employer noted that the misconduct occurred only months after the 3-day suspension and for the very similar action of refusing to obey a clear direction. The NRC argued that Dr. Grover engaged in very serious misconduct. First, he made serious allegations of bias against a colleague who was to become his supervisor but refused to provide any information to support the allegation. Then after the 5-day suspension was imposed, Dr. Grover provided information that was nothing more than 8-year old hearsay, providing the employer with ample justification to impose a 10-day suspension for the offence of making a spurious allegation of bias.

[45] Counsel for the employer noted that each time Dr. Grover is confronted with a management decision that he does not like, he alleges bias and harassment. Such conduct is deeply troubling. The employer was obliged to take Dr. Grover’s allegations about Dr. “A” seriously because she was going to become his supervisor, and if there was a basis to conclude that bias existed, then the NRC was obliged to rethink its plan to reorganize. In *Sotirakos v. Canada Customs and Revenue Agency*, 2002 PSSRB 38, and adjudicator of the Public Service Staff Relations Board upheld the imposition of a one-day suspension on an employee for insubordination for failing to substantiate a complaint of misconduct against her supervisor. At paragraph 37, the adjudicator wrote the following:

[37] The grievor's admission during her testimony that she could not substantiate her allegation because she did not have the details (other than the name of the person who had passed on the allegation to her) does not mitigate her misconduct. She is accountable for her accusations and, having chosen to proffer them, should have been prepared to substantiate them to the employer's satisfaction. Passing on hearsay obtained from another source . . . will not suffice.

[46] Counsel argued that the facts in this case are remarkably similar and that the same result should follow. The discipline should be upheld because no employee should be able to make serious allegations of misconduct against a superior and face no consequences. In this case, the employer argued, Dr. Grover has never unequivocally withdrawn the assertions.

[47] In response, Dr. Grover's counsel again relied on the employer's failure to follow the NRC's discipline policy. Counsel repeated his contention that a failure to follow the policy is fatal to the employer's imposition of discipline.

[48] Alternatively, counsel for Dr. Grover argued that an employee ought not to be disciplined for making a complaint in writing about bias where that complaint was made in confidence. There is no suggestion that Dr. Grover made any public statements or disclosed his allegations in the workplace. If employees cannot make confidential complaints about bias or other workplace concerns and ask their employer to investigate without fear of discipline, then an inappropriate chill will be imposed on employees. In this case, context is very important. Dr. Grover was concerned about the restructuring within the INMS with respect to the remedy he was granted in his human rights complaint. The location of his future workplace was important to him in 1994 and was spelled out in his agreement with Dr. Carty, which became an order of the Tribunal. The NRC's reorganization plans would have changed his workplace, and Dr. Grover was understandably concerned about it. Counsel for Dr. Grover asks that the discipline be revoked.

[49] Counsel for Dr. Grover also asked me to order the NRC to treat the days of the hearing as workdays for Dr. Grover and to order the employer to pay his regular wages for those days.

IV. Reasons

[50] It is worth setting out at the very beginning of these reasons that there is nothing in the Tribunal's order, dated May 21, 1996, that precludes the NRC from running its organization, managing its staff, directing its workforce and disciplining employees where appropriate. The order appoints Dr. Grover to the position of Director of Radiation Standards and Optics in the INMS. The order sets out that the section Dr. Grover will direct will be composed of Ionizing Radiation Standards, Photometry and Radiometry, Photonics and the Optics Group. Not surprisingly, the order does not speak to the future and certainly does not speak to the future eight and nine years after the order.

[51] I appreciate that Dr. Grover was strongly attuned to events and communications that impacted his position as Director of Radiation Standards and Optics and its location within the INMS. Dr. Grover achieved that directorship as a remedy for a serious violation of his human rights. The goal of the remedy was to put Dr. Grover in the position he would have been had his rights not been violated. However, the achievement of the directorship as a remedy does not render Dr. Grover immune to control from NRC management. Dr. Grover does not occupy a position isolated and protected from the normal rules that apply to NRC employees.

[52] It does appear that for some time, Dr. Grover was exempted from certain practices. For example, unlike others, Dr. Grover was granted merit increases without preparing a proper performance plan. The NRC's failure to "manage" Dr. Grover is understandable. I have read the highly articulate but provocative correspondence Dr. Grover generates. It would be all too easy for management to practice conflict avoidance.

[53] When the employer decided to initiate the seemingly innocuous step of implementing a selection process for group leaders, with the first of two happening in the INMS, it faced what seems like a disproportionate amount of opposition from Dr. Grover. However, the employer persisted.

[54] Dr. Grover brought to his assessment of the organizational change his perception that the Tribunal's order granted him complete autonomy within his area, a perception that was reinforced by several years of the NRC not providing much oversight of Dr. Grover's decisions. For example, it seems nonsensical that no one

intervened when Dr. Grover appointed himself as group leader for two of the four sections he directed. However, having left Dr. Grover to fill (or really, not fill) those positions as he saw fit, Dr. Hackett's intervention in the selection of group leader would have seemed like a fundamental change.

[55] The NRC was entitled to reimpose Dr. Hackett's right to properly direct Dr. Grover. From October 2003 until March 2004, Dr. Hackett, with Ms. Jacobs' support, listened to Dr. Grover's reasons for not implementing a group leader selection. As set out above, I find that a meeting was held on November 12, 2003, to discuss Dr. Grover's concerns, and considerable resources were expended after that to encourage, cajole and assist Dr. Grover to follow Dr. Hackett's wishes. I expressly reject Dr. Grover's assertion that the NRC did not respond to his concerns. Dr. Grover's consistent expectation is not just that his employer respond to his concerns, but that his employer concede to his position. That expectation is best exemplified in the January 20, 2004, letter from Dr. Grover to Dr. Carty, set out at paragraph 16 of this decision. Dr. Grover does not just want to be consulted; he expects to be deferred to.

[56] In Dr. Hackett's March 5, 2004, letter, he made a clear direction to Dr. Grover to run a selection process. Any confusion or question Dr. Grover might have had about whether Dr. Hackett was imposing a direction must, on a reasonable view of the letter, have been resolved. Moreover, by that time, Dr. Grover had Dr. Carty's letter of January 28, 2004, which supported and confirmed Dr. Hackett's authority, and Dr. Grover's reaction to the March 5, 2004, letter convinces me that he knew an order had been made. Dr. Grover chose to make an "end run" around Dr. Hackett's order by appointing himself group leader and then claiming harassment when Dr. Hackett maintained his direction.

[57] To put it simply, I do not know what more the employer could have done. It engaged in an extensive dialogue with Dr. Grover, enduring offensive responses. I conclude that Dr. Hackett made a clear order on March 5, 2004. Dr. Grover not only disobeyed the order but defied it in appointing himself group leader. I see no reason to interfere with the three-day suspension.

[58] I reject Dr. Grover's assertion that a failure to follow the NRC's discipline policy voids the discipline. Such a result would require treating the discipline policy as a contract, whose benefits Dr. Grover was entitled to receive. There is no basis for treating this management document as such.

[59] I turn now to the conduct that resulted the 5- and 10-day suspensions. There is nothing in the evidence before me, including documents and Dr. Grover's testimony, that could possibly form a reasonable basis for an investigation, much less a conclusion, that Dr. "A" was biased against Dr. Grover. Dr. Grover, as the correspondence I have excerpted shows, regularly accuses people of harassment, bias, intimidation and discrimination. Those charges are serious, and to be accused so readily, without particulars, is offensive. It is difficult to expect anyone to act with equanimity when such charges are launched, particularly when they are made to fend off an appropriate exercise of management's rights. Dr. Grover's own description in his January 20, 2004, letter of how he openly challenged Dr. Hackett's authority in a meeting with other directors, then accused Dr. Hackett of "mistreatment," is breathtaking. Dr. Grover does not appreciate that his aggressive confrontations with management are provocative and that they make it very difficult for NRC managers, who are human, to react with restraint.

[60] However, management must act with balance and restraint. Dr. Grover raised his concerns about Dr. "A" in confidence. After asking Dr. Grover to provide the basis for his assertions, and reviewing what was provided, management should have made its own assessment about whether there was any reason to investigate further. It would have reasonably concluded that there was no foundation to the assertions of bias. The NRC should have told Dr. Grover that there was no basis for his allegations and cautioned him not to make such an allegation publicly. Then the matter should have ended.

[61] I disagree with the proposition, set out in *Sotirakos*, that an employee is accountable for accusations of wrongdoing and that he or she "should [be] prepared to substantiate them to the employer's satisfaction." To be clear, I am referring only to accusations made privately, as is the case before me. Employers control workplaces and are responsible for making them safe and productive. It is unreasonable to expect an employee to know and provide evidence to meet the legal test for workplace harassment or bias. Consequently, in my view it is not appropriate to discipline an employee who makes an accusation of bias in good faith but who fails to provide a reasonable basis for the employer to either investigate the matter or to conclude, after an investigation, that bias had been made out. If an allegation is made, it is for the employer to seek details from the accuser and for the employer to make its own determination about whether and how to proceed based on the information it receives.

If the employer determines that the information is inadequate or otherwise so unhelpful (i.e., it is stale, unreliable or too vague) as to cause the employer not to proceed further, then the accuser should be advised, and no further steps taken. However, in my view, disciplining the accuser is inappropriate. The risk of discipline will discourage employees from bringing real concerns to employers. And, discipline is unnecessary for controlling unfounded allegations of misconduct. The employer retains the right to decide what to investigate.

[62] In this case, Dr. Grover provided the employer with all of the information that he possessed to substantiate his concerns of bias, in a timely manner. He did not have much evidence to offer, and that should have been evident from an early point. But the failure to substantiate the complaint is not a reason to attract discipline. Since both the 5-day and 10-day suspensions were assessed for what the employer saw as 2 incidents of failing to substantiate a complaint, I conclude that there was no misconduct to justify either the 5- or 10-day suspensions.

[63] I do not have jurisdiction to order the employer to compensate Dr. Grover for his attendance at the hearing. It is not typical for employers to pay employees for time spent litigating grievances. As counsel for Dr. Grover pointed out, some bargaining agents have negotiated such a benefit in collective agreements. That such benefits must be negotiated highlights that employers are not generally expected to finance grievance litigation. The NRC has a policy which provides paid leave for employees who are summonsed as witnesses, but provides only unpaid leave for employees who bring the litigation themselves. The NRC has treated Dr. Grover like a litigant, and provided unpaid leave. In the absence of a collective agreement or other contractual obligation to require the NRC to pay Dr. Grover for the time spent attending these hearings, I conclude that I have no basis to direct the employer to pay.

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

(The Order appears on the next page)

V. Order

[65] I dismiss the grievance regarding the three-day suspension.

[66] I grant the grievances regarding the 5- and 10-day suspensions. I order the employer to compensate Dr. Grover for any loss of pay with respect to the 5-day and 10-day suspensions and to remove any reference to that discipline from his file.

July 18, 2008.

**Mary Ellen Cummings,
adjudicator**