

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**FLOYD D. JOSS**

Grievor

and

**TREASURY BOARD**  
**(Agriculture and Agri-Food Canada)**

Employer

***Before:*** [Rosemary Vondette Simpson, Board Member](#)

***For the Grievor:*** Himself

***For the Employer:*** Ronald Snyder, Counsel

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Heard at Lethbridge, Alberta,  
April 15, 1997.

## DECISION

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Dr. Floyd Joss is a VM-02 with the Department of Agriculture in Lethbridge, Alberta. He holds degrees in veterinary medicine and a master's degree in epidemiology. On June 8, 1995, he received a letter of suspension from his employer which reads as follows (Exhibit E-19):

*Further to our telecom of today, attached is a personal harassment complaint filed by Mr. Basil Simmons which alleges that you have harassed him. As explained to you, it is my responsibility to ensure a harassment free workplace, which is the reason why you and Mr. Simmons were separated at the workplace as described in Dr. Kiley's July 25, 1994 letter to you. As this separation has not mitigated the continuation of harassment complaints, I am taking further measures to ensure a harassment free workplace by immediately suspending you with pay pending investigation. This suspension is not a disciplinary action and you will continue to receive your regular pay and benefits during this period.*

*While on suspension pending investigation, you are not to appear on client or Departmental premises without prior permission from myself. Should you wish to communicate with the Department you may do so by calling myself directly at 403-292-5671. You are not to have any contact with Mr. Simmons.*

*As you will be a participant in the investigation, I will need to be in direct contact with you regarding this matter, and therefore direct that you be available during normal working hours for such contact. I will call you at home as required, and will give you reasonable notice of any meetings or interviews that you may be required to attend.*

*I will endeavour to expedite this investigation as much as possible, so as to finalize your period of suspension with pay as early as possible. Any approved leave as of this date is hereby cancelled, and any requests for leave during this suspension period must be approved by myself in advance.*

*I will be in contact with you as soon as possible to advise you of the details of the investigation.*

The action which Basil Simmons considered to be harassment was the posting by Dr. Joss of the minutes of settlement relating to an adjudication hearing between Dr. Joss and the employer which arose out of discipline imposed on Dr. Joss as a result of a finding by a Mr. Barlow that Dr. Joss had on three occasions harassed Basil Simmons.

Dr. Joss grieves his indefinite suspension with pay (Exhibit E-20):

*I grieve the suspension served me by way of a letter dated June 8/95 and signed by W. Outhwaite. This suspension is disciplinary, unfair, unjust, unreasonable, embarrassing and hurting my reputation and affecting my health.*

*I am further aggrieved by the employer's unjust, unreasonable instructions and restrictions issued to me while on suspension.*

By way of corrective action, he asks:

*I ask that the suspension letter and all other related correspondence be removed from all files and given to me to destroy.*

*That all pay and benefits denied me by this process be credited to me.*

*That all legal fees and other expenses incurred by me because of the employer's actions be reimbursed/credited to me.*

*That I receive a public apology from the employer.*

### Summary of Evidence

Evidence was led regarding the background to the present grievance.

On February 7, 1994, Mr. Basil Simmons, a meat inspector with Agriculture Canada who reported to Dr. Joss, filed a grievance about being approached by National Health and Welfare about a medical assessment. A month later, on March 15, 1994, Mr. Simmons filed a harassment grievance setting out six allegations of harassment against Dr. Joss.

An investigation was conducted by Mr. Vince Barlow, a human resources advisor with Agriculture Canada, who concluded that of the six allegations, three were founded.

In his report, Mr. Barlow found that Dr. Joss had: (1) made threats about Mr. Simmons' job security; (2) had inappropriately commented on his lunch - "smells like cat food" -; and (3) had inappropriately attempted to use a tape recorder while speaking to Mr. Simmons.

The discipline which was imposed on Dr. Joss as a result of those findings was dealt with by way of settlement just prior to the scheduled adjudication hearing of the matter in June 1995.

By way of background to the present grievance, Dr. Joss, in his evidence, totally denied any harassment of Mr. Simmons and offered explanations of the incidents complained of.

(1) On September 8, 1993, he had been appalled to find Basil Simmons in the parking lot leaving work one-half hour early on the same day as he had been given two hours off to attend medical appointments earlier in the day. Bearing in mind the fact that Mr. Simmons had already showered and changed, the grievor did not know how much earlier he had really stopped working. Also bearing in mind that Mr. Simmons had in 1988 been placed by his employer on a special protocol regarding his sick leave by which he was required to bring a medical certificate every time he was absent from work, the grievor felt that as the veterinarian in charge he should comment on Mr. Simmons' early leaving. His reference to future lay-offs was not a threat to Mr. Simmons but advice about facts that might be taken into consideration when decisions were made about lay-offs.

(2) The remark about the canned food on the table was an attempt to be jocular and friendly and not intended to be offensive.

(3) He had a legitimate reason for using the tape recorder in order to accurately record the meeting with Mr. Simmons, but he never turned it on when Mr. Simmons objected to it.

After the finding of harassment against Dr. Joss in the Barlow Report, the Department decided to separate Dr. Joss and Mr. Simmons by transferring Dr. Joss to the Lilydale Plant and leaving Mr. Simmons at the Burns Plant. Dr. Joss' duties regarding the allocation of staff duties were taken away from him.

On August 22, 1994, Dr. Joss filed two grievances challenging the actions taken against him (Exhibits E-10 and E-11).

On April 18, 1995, Mr. Simmons' lawyer wrote to Mr. Barlow as follows (Exhibit E-13):

Re: Basil Simmons

*As you may recall, there was a grievance filed by Mr. Simmons with regard to harassment on the part of Dr. Floyd Joss. The investigation report regarding same was completed in about July of 1994 and it was found that Dr. Joss did, in fact, harass Mr. Simmons on three separate occasions.*

*We would advise that we have been retained by Mr. Simmons as it would appear Mr. Joss's harassment continues.*

*Specifically, Mr. Simmons cites two examples as follows:*

- 1) Two employees at Lakeside Packers in Brooks were questioned by Dr. Joss regarding their recollection as to any time they had worked with Mr. Simmons when he may have "abused the system" by taking unauthorized time off.*
- 2) Dr. Joss secured an office appointment with Mr. Simmons' physician, Dr. Simpson, under the pretence that he was there to consult with regard to a certain disorder when, in fact, Dr. Joss was there simply to try to obtain further information regarding Mr. Simmons. In this regard, we enclose herewith a copy of correspondence from Dr. Simpson to Dr. Joss.*

*In our estimation, Dr. Joss is going to continue to harass Mr. Simmons and this is simply intolerable. Mr. Simmons has filed a grievance which was successful and we understand, as a result of that Dr. Joss was sanctioned, however, even this does not have an effect on Dr. Joss' behaviour.*

*We are hoping that stronger measures may be taken to ensure that this harassment stops once and for all.*

On April 26, 1995, Basil Simmons filed another complaint alleging that Dr. Joss, while no longer his supervisor and without direction from management, made an appointment with Mr. Simmons' doctor to question him about the legitimacy of Mr. Simmons' absences. He also alleged that Dr. Joss was asking Mr. Simmons' peers if they recalled Mr. Simmons taking any improper time off. At the time that this second complaint was launched in April, an adjudication hearing had already been scheduled for June 1, 1995 to hear Dr. Joss' grievance of the five-day suspension

imposed on him as a result of the finding by Mr. Barlow that Mr. Simmons' three harassment complaints were founded.

On June 1, 1995, the parties reached the following settlement (Exhibit E-17):

*IN THE MATTER OF THE PUBLIC SERVICE STAFF RELATIONS  
BOARD;*

*AND IN THE MATTER OF THE GRIEVANCE OF  
FLOYD D. JOSS BEING #166-2-26277 & 166-2-26372.*

*IT IS HEREBY AGREED THAT:*

*The Employer recognizes that Dr. Floyd Joss' expression of dissatisfaction with Basil Simmons arises from a sincere sense of duty and diligence to Dr. Floyd Joss' position and concern for Mr. Simmons' excessive use of sick leave, and further they recognize that Dr. Floyd D. Joss has expressed his concern that bias existed in the investigatory process conducted by Vince Barlow;*

*And further they recognize that Dr. Floyd D. Joss has not pursued his legal right to a full grievance hearing which would allow mitigating circumstances of the events surrounding this grievance to be brought to the attention of the Adjudicator;*

*And in the interests of amicably settling the matter between all the parties, Dr. Floyd D. Joss is to have his disciplinary action reduced from five (5) days suspension to a Letter of Reprimand which is to be placed on his file for a period not to exceed two (2) years from the initial grievance decision of July 24, 1994, and thereafter it shall be removed as per the collective agreement.*

*It is agreed that this document shall be attached as an addendum to the Letter of Reprimand.*

*Contents reviewed and consented to this 1st day of June, A.D. 1995.*

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*Lyndsay Jeanes  
Counsel for P.S.S.R.B. (sic)*

*AND:*

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*Peter J. Keebler  
Counsel for Floyd D. Joss*

On June 7, 1995, Basil Simmons reported that he was filing another harassment grievance as a result of Dr. Joss posting the minutes of settlement at the plant.

Mr. Vince Barlow, Human Resources Advisor, Agriculture Canada, explained the nature of the four meat plants in the Lethbridge area: “Burns” and “Lilydale” for red meat; “Tabor”, a turkey plant; and “Fort McLeod” for horse slaughtering. Dr. Joss was a VM-02 at the Burns Plant who performed the basic duties of his job description but in addition had been given the task of being an “allocations officer” which meant that he performed the daily tasks of assigning the meat inspectors (PPI’s) to the plants. Dr. Joss had a number of meat inspectors reporting to him and he in turn reported to Dr. Sturm. Dr. Joss was made an allocations officer in 1991 and continued to perform this function until he was reassigned to the Lilydale Plant to separate him from one of the employees, Basil Simmons, a meat inspector, who had until then reported to Dr. Joss. Mr. Simmons had grieved that he was being asked to participate in an assessment by National Health and Welfare which he felt was unwarranted as he had always complied with management’s instructions to bring in a medical certificate for each absence. It was concluded that he had always complied and therefore there was no basis for seeking a National Health and Welfare assessment.

Mr. Barlow explained that, when he reviewed Mr. Simmons’ grievance, he noted that in this material there were discussions of incidents which went beyond the scope of the grievance he was presenting. He did not urge Mr. Simmons to file a harassment grievance but simply noted to him that the material he had filed in connection with his grievance would more properly be the subject of a separate harassment grievance. Mr. Barlow explained that he investigated Mr. Simmons’ harassment complaints against Dr. Joss and found harassment in three incidents. He submitted his report (Exhibit E-8).

Dr. Joss had been seeking clarification from Dr. Simpson about whether or not Basil Simmons had actually attended Dr. Simpson’s office on September 8, 1993, the day that he lost two hours work for medical appointments. His attempt to get this information included a visit to Dr. Simpson’s office.

Mr. Barlow said that at that stage Dr. Joss had no justification for seeking any information from Dr. Simpson because he was no longer responsible for Mr. Simmons' sick leave since the latter no longer reported to him.

Mr. Barlow stated that he was present with Mr. Wayne Outhwaite when the latter spoke by speaker phone with Dr. Joss about the posting of the settlement document just prior to the decision to suspend him. Mr. Barlow also indicated that he had prepared the draft of the suspension letter for Mr. Outhwaite (Exhibit E-19).

Mr. Wayne Outhwaite, the Director of Operations and the person to whom Dr. Joss directly reported as of June 8, 1995, testified that he had no intention of disciplining Dr. Joss when he suspended him after the posting of the settlement document. He cited as his reasons for the removal of Dr. Joss from the workplace: (1) some of the harassment complaints were found to be founded; (2) that he experienced a sense of frustration that the previous separation of Dr. Joss and Mr. Simmons in two separate plants had not prevented further complaints; and (3) that Dr. Joss, in his telephone conversation with him, with Mr. Barlow present in the room, indicated that he "did not feel that he had committed any wrong" in posting the settlement document. Mr. Outhwaite's obligation as a manager was to ensure a harassment-free workplace. He testified it was decided to end the suspension after nine days on the advice of staff relations even though the investigation was not complete because the investigation might be lengthy.

Dr. Joss testified that there had been a background of animosity between Vince Barlow and himself prior to the original harassment investigation of Mr. Simmons' allegations. Mr. Barlow had been the technical advisor in a competition which was later found to be flawed on appeal. This competition was for the position of "Special Projects Officer" (VM-03). Dr. Joss had participated in the competition and was not selected. The chairperson of the appeal board, in her report dated October 29, 1993, commented on the fact that she found the evidence of two members of the selection board, Dr. Sturm and Mr. Hepburn, to be conflicting and she stipulated, if a new selection board was to be established, Dr. Sturm and Mr. Hepburn should not be part of that board. She also concluded that the screening board set arbitrary screening standards and did not conduct a proper evaluation of the



candidates' experience. The last two pages of the appeal decision read as follows (Exhibit G-14):

*I am unable to conclude with any certainty that bias played a role in the selection of Dr. Bradley. Dr. Joss presented no evidence in support of his theory that Dr. Anderson pressured Dr. Sturm and Mr. Hepburn into manipulating the selection process to ensure the appointment of Dr. Bradley other than to indicate that Dr. Bradley was encountering financial difficulties at the time he was appointed to the public service. It is not reasonable to conclude from this fact that Dr. Anderson improperly interfered with the competition.*

*The alterations to the documents do not overly concern me. Given the findings I have made in this case, it is not crucial when the classification document was signed or when the facsimile in question was sent. In other words, these matters do not have a bearing on the outcome of the appeal. I find the conflicting evidence of Dr. Sturm and Mr. Hepburn to be disturbing. I will deal with this below.*

*There is no need for me to comment on the screening board's deliberations with respect to Dr. Joss's experience and the allegation that Dr. Joss possessed the requisite experience. I have already concluded that the screening board set arbitrary screening criteria and did not conduct a proper evaluation of the candidates' experience. It is not my role to evaluate Dr. Joss's experience. The evaluation must be carried out by a screening or selection board paying appropriate regard to the qualifications and duties of the position.*

*I will now turn to the issue of the requirement for high linespeed inspection experience. The department was entitled to establish the qualifications for the position. The statement of qualifications calls for "significant experience in...food inspection (traditional and streamlined)". Having heard no evidence or submission to the contrary, I assume that "streamlined" is the same as "high linespeed" food inspection. That being the case, the selection board was correct in requiring candidates to possess such experience. An Appeal Board does not have jurisdiction to inquire into the establishment of qualifications and therefore I make no ruling on whether or not the requirement was a bone fide qualification.*

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*With respect to the evaluation of the candidates' experience and other qualifications, I am compelled to comment that I share the appellant's concern that it will be difficult for persons who have not had the advantage of Dr. Bradley's lengthy acting experience to compete for the position. Although it is beyond my jurisdiction to prescribe corrective measures, I would recommend that should a selection board be established to evaluate the qualifications of the candidates in accordance with this decision, the selection board should proceed carefully in this regard. I would also recommend to the Public Service Commission that if a new selection board is struck, Dr. Sturm and Mr. Hepburn not be part of that board given that the inconsistencies in their evidence have not been satisfactorily explained. I note that Mr. Sigvaldason, in addressing the allegation of the veracity of the witnesses's evidence wrote: "These are serious charges and the Department is quite prepared to answer for its actions...". I am uncertain whether this is an admission on the department's part or merely a concession that it recognizes a problem exists with the evidence. In any event, the more prudent course of action, especially given the acrimonious tone of this appeal, would be to have a newly constituted board evaluate the candidates.*

*In summary, and for the foregoing reasons, the appeal of Dr. Floyd Joss is allowed.*

Subsequent to the appeals, the competition was cancelled and Dr. Joss had to abandon his quest for the position. Dr. Joss was upset by the way this competition was held and allocated a share of the blame to Vince Barlow. From the time of the competition and through two subsequent appeals, one of which was allowed and the other in which Dr. Joss' position was largely upheld, and to the date of the present hearing, relations between Mr. Barlow and Dr. Joss were quite acrimonious. In addition, Dr. Joss testified that he heard Vince Barlow suggest to Mr. Simmons that he should submit the harassment grievance. Because of this background and this relationship with Mr. Barlow, Dr. Joss felt that Vince Barlow should not have investigated Basil Simmons' first harassment complaint against him.

Dr. Joss testified that when he had pursued the matter of Mr. Simmons' sick leave with his physician, Dr. Simpson, and made inquiries of his colleagues, it was not for the purpose of harassing Mr. Simmons but to gather information to defend himself at his adjudication hearings. Dr. Joss stated that a number of his co-workers had been subpoenaed to give evidence at his June 1, 1995 adjudication hearing. The

hearing did not take place. Instead, there were a number of private discussions between the lawyers and between the Treasury Board lawyer and Mr. Simmons. While these discussions were going on, the subpoenaed witnesses were, of course, not a party to the proceedings. Back at work, after the settlement had been reached and signed, some of Dr. Joss' co-workers, especially those who had received subpoenas but had not been called on to testify, approached him and wanted to know what was going on. Dr. Joss testified that he was afraid to get into any discussions with them. He thought the safest method of proceeding was to post the settlement and let the document speak for itself without further input from him. The document was not confidential. Posting the document was not self-serving in any way. In reality it was embarrassing to him because the document plainly showed that he had accepted a disciplinary penalty, albeit a reduced one.

Dr. Joss testified that he was devastated to have to tell his peers at work, his wife and teenage sons that he had been sent home on an indefinite suspension. It was an extremely difficult situation for him to handle. It was shocking and a stunning blow to him, the emotional effects of which still remain with him.

On the last day of the hearing, Basil Simmons, Primary Products Inspector, was called to testify by Dr. Joss. Mr. Simmons testified that, although he had met with Ms. Jeanes, the lawyer for Treasury Board, prior to the signing of the settlement document, he had never seen the settlement document. He did, however, agree that Ms. Jeanes had discussed the settlement terms with him.

When he saw the settlement document posted he was very bothered and suffered severe stress. He placed a call to the regional office and spoke to Mr. Outhwaite. He thought Mr. Barlow was present with Mr. Outhwaite. He told them that he had never seen the document before.

Mr. Simmons also denied that he had ever been told by Vince Barlow to file a harassment grievance.

Mr. Peter Keebler, Dr. Joss' lawyer, testified that the settlement that he had negotiated on behalf of Dr. Joss was not a confidential document. He also testified that, after the signing of the settlement document, he had tried to arrange a meeting between Dr. Joss and Mr. Simmons to "calm the waters". However, this could not be arranged because Mr. Simmons did not feel up to a meeting at that time.

#### Argument for the Grievor

Dr. Joss argued that according to the rules of natural justice he had the right to gather evidence in order to defend himself. His inquiries of Dr. Simpson and of his colleagues regarding Mr. Simmons' use of sick leave were not intended to harass but were necessary in order to prepare for his own grievance hearings and his adjudication case. His action of posting the settlement document was a neutral way of answering the questions of co-workers.

#### Argument for the Employer

Counsel for the employer argued that the employer was placed in an untenable situation when faced with Mr. Simmons' complaint. It had to provide a harassment-free workplace and removal of Dr. Joss with pay would give the employer time to determine how to best deal with the situation. He was brought back to the workplace within days.

Other complaints had been received from Mr. Simmons in April 1995 and at the time of the suspension on June 7, there had only been a few days since management had settled an adjudication case with Dr. Joss.

#### Reasons for Decision

The first question for me to decide is whether or not I have jurisdiction to rule on Dr. Joss' indefinite suspension which was terminated after nine days away from his workplace. If the suspension was disciplinary in nature, I have jurisdiction.

I have determined in the circumstances that the suspension was disciplinary and I accept jurisdiction. The grievor had already been disciplined by the employer for harassing Mr. Simmons. The employer's subsequent suspension of the grievor to

allow it to investigate another allegation of harassment made by Mr. Simmons against the grievor clearly had a disciplinary component.

After considering the reasons given by the employer as to why it was felt that Dr. Joss needed to be suspended immediately upon hearing of Mr. Simmons' complaint against him, I have concluded that such a drastic step was unnecessary. Certainly no irreparable harm was being done to Mr. Simmons. He and Dr. Joss were already in separate work locations. There is no evidence that Dr. Joss' presence in the workplace would impede the investigation. A suspension, even with pay, was not just a paid holiday for Dr. Joss. It was a shock to him to receive it and it involved much anxiety for him and concerns about what his peers and subordinates in the workplace must be thinking. Because of the senior position that Dr. Joss holds in the plant as a doctor of veterinary medicine, for him to be sent home was demeaning and humiliating for him in the extreme. He had a position to maintain and any loss of respect by the people he worked with would be harmful. His indefinite suspension was all the more stressful for that reason.

It was argued that Dr. Joss' action in posting the settlement document was inappropriate. On the other hand, Dr. Joss' position was that there were many misapprehensions, misunderstandings, in the workplace as to what had taken place at the adjudication hearing the week before and employees, especially those who had been subpoenaed to the hearing but had not been called to give evidence, had questions. Rather than try to explain the contents of the settlement, he decided that the fairest thing to do was simply post it and let the document speak for itself. There was no prohibition against publication. I accept Dr. Joss' evidence that there was no intent to harass anyone. It was a neutral act intended to clarify the situation for concerned people in the workplace. It does not present Mr. Simmons in a bad light, anymore than it does Dr. Joss. It is simply a settlement document.

Based on the evidence I received at the hearing, I do not find that Dr. Joss' posting of the settlement document was a blameworthy act in any way. At that time, feelings were still running high after the cancelled adjudication hearing and Mr. Simmons saw harassment of him in the posting of the settlement where he should not have. At this stage, intervention by management to de-escalate emotions would have been desirable, especially in light of the fact that the parties had not found it

necessary to proceed with a full adjudication hearing the week before and had reached a settlement. It was time to build on that settlement and positively encourage a better labour relations environment between management and Dr. Joss and between Basil Simmons and Dr. Joss. Instead, management over-reacted and ordered Dr. Joss out of the workplace. There is little evidence that they considered other alternatives.

I must, therefore, declare that the action of the employer in imposing a nine-day suspension with pay (which started as an indefinite suspension) on Dr. Joss was unjustified and must therefore be rescinded. I direct the employer to remove all reference to the indefinite suspension from the grievor's file. As the grievor failed to establish that he suffered any loss of pay or benefits as a result of the suspension, I am not awarding him any compensation therefor. Finally, I would not be inclined to award Dr. Joss the other remedies which he requested even if I had the authority to do so.

Accordingly, for all these reasons the grievance is allowed to the extent indicated.

Although this is not an essential part of my decision, I would like to add that in examining the background leading to this grievance I have concluded that many mistakes have been made by different people. For example, the competition which Dr. Joss lost and his successful appeal before the Public Service Commission, only to have the competition ultimately cancelled, have added to Dr. Joss' sense of grievance. Similarly, the fact that Vince Barlow, who had been the technical advisor in the above competition and who had suggested that parts of Mr. Simmons' original grievance would be more appropriate in a separate grievance and this turned into the original harassment grievance, should be investigating the harassment grievance outraged the grievor's sense of justice. It appears to me that Dr. Joss is not unjustified in his concerns about the choice of Mr. Barlow to investigate Mr. Simmons' grievance against him. In the particular circumstances of this case, considering the acrimonious relationship between them, I believe that allowing Mr. Barlow to determine the validity of Mr. Simmons' harassment grievance against Dr. Joss certainly gives the appearance of bias. This original decision which found some allegations founded set in motion a train of very serious events. Dr. Joss' single-minded pursuit of his remedies and his outspokenness, which were apparent at the hearing, have exacerbated problems in

work relationships with a number of people and created resentments. I would recommend that the parties make positive efforts to lower the level of acrimony between them and find a way of resolving their differences that would allow them to make a fresh start. To do so, changes would be required on both sides.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, September 22, 1997.