

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

MANON ROSE

Grievor

and

TREASURY BOARD
(Revenue Canada, Customs and Excise)

Employer

Before: [Marguerite-Marie Galipeau, Deputy Chairperson](#)

For the Grievor: [Pierre Boulé, Counsel](#)

For the Employer: [Agnès Lévesque, Counsel](#)

Heard at Montreal, Quebec
October 21, 22, 23, 24 and 25, 1996

DECISION

This decision is issued pursuant to the hearing of two grievances that were submitted for adjudication by Manon Rose, Customs Inspector (PM-01). Until the termination of her employment, Manon Rose was employed by Revenue Canada, Customs and Excise, at the Major Area Postal Plant (MAPP) in St. Laurent, Quebec.

On May 2, 1995, Manon Rose was suspended indefinitely pending an investigation by the Department's Internal Affairs Division into her alleged "involvement in a case of smuggling".

On August 23, 1995, Manon Rose's employment was terminated (Exhibit E-22) for the following reasons:

Further to my letter of May 2, 1995, the inquiry of which you were the subject has been completed. The evidence gathered shows that you were aware of the drug-trafficking activities of your fellow employees, Daniel Drapeau and Manuel Soares. Moreover, the fact that you accepted money from these people in exchange for future considerations makes you an accomplice of this narcotics-importing ring.

The grievances seek the reversal of those two decisions.

At the request of counsel for Manon Rose, witnesses were excluded from the hearing room.

EVIDENCE

Following in summary form are the main facts of this case.

In 1994, the Royal Canadian Mounted Police (RCMP) launched an investigation into a drug-trafficking ring. The investigation focused on the activities of a criminal organization operating out of St. Sauveur and Piedmont. The members of this organization were involved in importing cocaine from the Dominican Republic.

In the course of its investigation, the RCMP discovered the existence of a second organization, some members of which were customs inspectors who were employed at the Major Area Postal Plant (MAPP) at St. Laurent.

Several people were arrested and accused of violations of the Criminal Code. Among them were two work colleagues of Manon Rose, namely Daniel Drapeau, a

customs inspector, and Manuel Soares, a customs truckman, who were accused, among other things, of conspiracy to import narcotics.

According to the senior investigator, Gilles Michaud, Daniel Drapeau pleaded guilty to the charge of conspiracy to import narcotics and to a charge of possession of the proceeds of crime (money laundering), and he received a sentence of three and a half years. Manuel Soares is still awaiting trial.

During its investigation, the RCMP intercepted private communications and drew up a list of suspects. Until such time as a decision was taken not to lay charges against her, Manon Rose was considered one of the suspects.

On May 1, 1995, Manon Rose was questioned by two RCMP investigators. It was the answers she gave during that questioning that served as the basis for her termination. As stated in the letter of termination (exhibit E-22), the employer accuses Manon Rose of having been aware of the drug trafficking carried on by her fellow employees, and of having accepted money from them in exchange for “future considerations”.

There follows a more detailed summary of the facts in evidence.

1. Events prior to the interrogation of Manon Rose on May 1, 1995

During its investigation, the RCMP intercepted the conversations of several persons, including those of Customs Inspector Daniel Drapeau and Customs Truckman Manuel Soares. Their conversations were intercepted over a period of six months.

Counsel for Manon Rose opposed introduction of the transcripts of electronically intercepted conversations on the grounds that they constitute only hearsay.

I admitted these transcripts (Exhibits E-1 to E-5) as evidence, pursuant to the powers conferred on me by articles 25(c) and 96.1 of the Public Service Staff Relations Act. Authorization was duly obtained for these interceptions (Exhibit E-1, E-2 and E-3) and Officer Hadley confirmed that the typewritten version accurately reflects the conversations. These conversations are pertinent to the case, since when added to the testimony of Officer Hadley, they substantiate one of the means by which the investigators were able to identify the persons involved in the narcotics trafficking ring and they demonstrate that Daniel Drapeau and Manuel Soares intended to pay

money to certain persons, including one “Manon” or “Manoune”. This is the information that led RCMP investigators to meet with Manon Rose.

Two conversations in particular aroused suspicions with respect to Manon Rose. They took place on February 25, 1995 (Exhibit E-4) and on March 25, 1995 (Exhibit E-5), between Daniel Drapeau and Manuel Soares.

In the first conversation (Exhibit E-4), on February 25, 1995, Daniel Drapeau says to Manuel Soares: “...I’ll give you that ...” and a little further on, “... OK, I’ll give you the same thing, uh, for Jean, uh, for Michel, and then for Manon”.

In the second conversation (Exhibit E-5), on March 25, 1995, Manuel Soares tells Daniel Drapeau that he has given “*nine (9) salmons*” and he names certain people to whom he has given them: “*Forfay, Manoune*”.

Upon hearing these names, “*Forfay*” and “*Manoune*”, the officers (Gary Hadley, Daniel Lemay, Gilles Michaud) pressed ahead with their investigation and discovered that Daniel Drapeau and Manuel Soares worked with a person named Manon Rose, and that moreover the name “*Forfay*” is the nick-name of Michel Johnson, a customs officer in the information division. This discovery led them to interrogate Manon Rose on May 1, 1995. An account of this interrogation is given below. For the moment, it is worth noting what happened after the conversation between Daniel Drapeau and Manuel Soares was intercepted on March 25, 1995.

On April 26, 1995, the RCMP seized 90 kilograms of hashish at the workplace of Daniel Drapeau, Manuel Soares and Manon Rose, i.e. at the MAPP St. Laurent. This hashish was divided into nine bags (Exhibits E-6 to E-10), known as “M” Bags, originating in the Netherlands. The bags had cleared customs on the same day at the Customs section of the MAPP St. Laurent. Each “M” bag contained a box, and inside each box there were six books. Inside five of these books were hidden two kilos of hashish, per book. According to the senior investigator, Gilles Michaud, the bags seized on April 26, 1995, were cleared through customs by Manuel Soares, whose stamp is found on the “M” bags.

The RCMP suspected that Daniel Drapeau, Manuel Soares, Jean Demenezes, Manon Rose and Michel Johnson facilitated the customs clearance of these packages and their delivery to their addressees.

The hashish seized at the MAPP St. Laurent was addressed to two fictitious companies. On April 28, 1995, the RCMP made a controlled delivery to the addresses shown on the tags attached to the “M” bags.

On May 2, 1995, four other “M” bags were seized at the Canada Post offices on Papineau Street in Montreal, where they were awaiting delivery to one of the two fictitious companies whose addresses were shown on the tags attached to the “M” bags.

On May 3, 1995, another seizure was made at the MAPP, St. Laurent. This time, the seizure involved an “M” bag containing a box, inside which were eleven kilograms of hashish. This was also addressed to one of the two fictitious companies.

In total, 151 kilograms of hashish were seized. Of these 151 kilos, 141 kilos were seized in “M” bags that had passed through customs at the MAPP St. Laurent. The remaining ten kilos were seized in a truck belonging to one Daniel Sansregret, at 5048 Papineau.

As a result of these seizures and supervised deliveries, the following persons were arrested: Daniel Drapeau, Manuel Soares, Jean Demenezes (all of whom were employed by Revenue Canada, Customs and Excise), as well as Daniel Sansregret, Jean-Jacques Sansregret, Alain Panneton, Jacques Desjardins and Luigi Vitale.

According to the senior investigator, Gilles Michaud, the master mind of the organization to which Daniel Drapeau and Manuel Soares belonged was Jacques Desjardins. At the time of his arrest, he was in possession of a personal diary. This diary contained codes and yellow stickers (Exhibit E-25). These codes were examined and compared to the codes used by Luigi Vitale, Daniel Drapeau and Manuel Soares during their intercepted telephone conversations, and with similar codes used by Jacques Desjardins during conversations by radio receiver.

Deciphering these codes allowed the investigators to locate the narcotics. It was thus that they went to the MAPP St. Laurent on April 26 1995 to search the “M” bags that had been cleared there.

In the seized diary, the first column of numbers (Exhibit E-25, first page) corresponds to the date of shipment of the packages from the Netherlands. (It was determined on the basis of information obtained through electronic surveillance that the dates referred to the month of April.) The second column indicates the addresses for delivery of the packages (“46” means 6837 St. Denis, Montreal, and “45” refers to

5048 Papineau, Montreal). The third column indicates the quantities of hashish. The final column shows the dates on which the hashish was received. The spaces in parentheses in the final column are empty, since the packages were never received. These are the packages that were seized by the RCMP.

As to the yellow stickers, the first column of figures (Exhibit E-25, second page) indicates the dates of shipment from the Netherlands for the hashish that was never received (referred to on the first page of Exhibit E-25). The second column shows the number of “M” bags in question, the third column shows the destination of the bags (the above-mentioned addresses), and the fourth column indicates the bags that have not passed through Customs.

The investigators based their conclusions, as well, on the intercepted conversations between Daniel Drapeau, Manuel Soares and Luigi Vitale, in which the number of bags cleared through Customs was discussed.

During these conversations, the exchange of money was also discussed. From three conversations (Exhibits E-28, E-26 and E-27) intercepted by the RCMP on March 22, 1995, and on April 13, 1995 (at 15:53 and 17:04 hours) as well as from the investigators’ findings at the scene, it was confirmed that money had changed hands.

In the March 22 conversation (Exhibit E-28), Daniel Drapeau refers to the fact that some of his “uncle’s things” (“M” bags) are missing. In the first conversation (Exhibit E-26) of April 13, Daniel Drapeau invites Manuel Soares to come and see his barbecue. In the second conversation (Exhibit E-27) of April 13, Daniel Drapeau confirms with Manuel Soares that he will come to see the “charcoal”.

On the same day, while Daniel Drapeau was away, the investigators went to inspect his barbecue. They found a bag containing 71 bundles of 20-dollar bills, each bundle secured with a bank band marked “\$2,000”. There was one more bundle of 20-dollar bills tied with an elastic, and the same thickness as the other bundles. Finally, there were three bundles of 10-dollar bills, each secured with a bank band marked “\$1,000”. According to Inspector Gilles Michaud, the bills amounted to a total of about \$26,000.

The investigators left the money in the barbecue and returned to their surveillance post. Some moments later, they saw the wife of Manuel Soares, Huguette Soares, enter the patio where the barbecue stood, and return with a white bag like the one the inspectors had just seen with the money in it. (According to

Inspector Michaud, the officers also intercepted a conversation during which Manuel Soares asks his wife, Huguette, to go to Daniel Drapeau's place.)

2. Interrogation of Manon Rose, May 1, 1995

1. Preparation of the interrogation report and conduct of the interrogation

On May 1, 1995, investigators Gary Hadley and Daniel Lemay questioned Manon Rose at her place of work, as one of the suspects. The interrogation took place in the office of the director, Robert Emond. The interrogation began at 14:54 and ended at 18:25 (Exhibits E-11 and A-4).

Gary Hadley states that he proceeded as follows to record the interrogation in writing: he took only a few notes at the start of the questioning of Manon Rose, namely the notes entered against the times 14:54, 15:33 and 18:20 (Exhibit A-4); the remaining handwritten notes (Exhibit A-4) were written during the evening after he had questioned Manon Rose, and had visited her home and had had supper, i.e. at around 10 p.m. on the same evening. When Gary Hadley wrote his notes, he did so from memory, and by his own admission, not necessarily in chronological order. It was only two days later, on May 3, 1995, that he entered the summary report on the interrogation of Manon Rose (E-11) in his computer, drawing upon his handwritten notes (Exhibit A-4).

According to Manon Rose, however, Gary Hadley made no entry in the notebook he had before him during the interrogation, apart from noting the time, "14:54", at which the questioning began.

According to Gary Hadley, he informed Manon Rose at the outset of the interrogation that she was suspected of participating in a conspiracy to import narcotics, and of a breach of trust. He told her that she could call a lawyer. He read her rights to her from a small card on which they were printed.

During her testimony, Manon Rose confirmed more than once that Gary Hadley had read her rights, and she declared that she herself, as a Customs Inspector, had a card that she used to read people their rights in the line of her duties. She did not however remember whether Gary Hadley had mentioned the crimes of which she was suspected, and she added that she did not really pay attention to what was being said to her. According to her, it was only at the end of the interrogation, when she saw the words "conspiracy to

import” on a statement (Exhibit A-2) which she was asked to sign, that she understood herself to be one of the suspects. It was at that moment that she decided to contact a lawyer (which she did in the absence of the investigators, who left the office for the duration of her conversation with the lawyer). On the advice of the lawyer, she decided not to make a written statement.

She did not leave the office where the questioning was taking place at any time during the interrogation (i.e. from 14:54 to 18:27). She was not told that she could leave the room, nor did she ask to do so. At about 15:15, she expressed the desire to telephone her daughter. According to her version, she was told that she had a choice of calling her daughter or her lawyer, but since conversation was re-engaged with Officer Lemay at this point, she forgot about her daughter for the moment. Officer Hadley, for his part, does not recall having offered her such a choice. He recalls that she asked to telephone a lawyer, but then changed her mind.

At about 4 o’clock, Manon Rose telephoned her daughter. Later, she telephoned a lawyer by the name of “Marchildon”. Officer Hadley dialed the lawyer’s number for her.

According to Officer Hadley, it is possible that at the end of the interrogation, Manon Rose was told that she might have to spend the night at Tanguay (a women’s prison). Gary Hadley adds that he and his colleague were considering taking her there, depending on what they learned during the interrogation. For her part, Manon Rose confirms that it was at the end of the interrogation, when the police officers announced that they were going to her home to seize the money, that the word “Tanguay” was first mentioned. Moreover, she alleges no threats, nor promises, nor pressure. She does however say that the atmosphere was “tense”.

Officer Hadley admits the possibility that he may have told Manon Rose she was lying because she changed her story in the course of the interrogation. He maintains however that there was no shouting, no insult, nor any threat on the part of himself or his colleague, Officer Lemay.

2. Statements of Manon Rose during the interrogation

The report on the interrogation of Manon Rose (Exhibit E-11 and Exhibit A-4), and the testimony of Gary Hadley who interviewed her, accompanied by Officer Daniel Lemay, are in disagreement on some points with

the testimony of Manon Rose. Consequently, I relate each version in the following paragraphs.

2.a) Gary Hadley's version

This version is supplemented by Gary Hadley's summary report (Exhibit E-11). According to Gary Hadley's testimony, on May 1, 1995, Manon Rose stated that she had only learned that same morning of the arrest of Manuel Soares and Daniel Drapeau. She said that Daniel Drapeau was a close friend and confidant. She said he had occasionally bought her meals and a beer. A little later in the conversation, she said that on two occasions she had accepted \$100 from Daniel Drapeau. When asked why, she did not give a precise answer, but said it was for "future considerations".

When she was asked why Daniel Drapeau was so generous with her, she said that Daniel Drapeau was "a high roller" [*il "roulait gros"*]. She did not know why that was so.

She said that Daniel Drapeau gave her the nickname of "Minoune" or "Manoune".

Forty-five minutes later, after asking to telephone her lawyer and then changing her mind, and when the officers told her that the amounts she named (two times \$100) did not fit with what they had heard through their electronic interception, Manon Rose admitted that she had accepted a amount of \$1,000 from Daniel Drapeau, on two occasions (i.e. two times \$1,000).

When she was asked about where the money came from, she replied that about January, 1995, Daniel Drapeau had spoken of a sure way to make money, and that was to import narcotics through the "M" bag system.

According to Gary Hadley, every time Manon Rose was asked what she had to do to get this money, she replied that it was for "future considerations". She did not mention any loan. She even said there was no agreement between her and Daniel Drapeau about paying the money back.

She stated that she had had a love affair with Daniel Drapeau three years before.

She denied that the money she received had anything to do with blackmailing Daniel Drapeau, and denied that Daniel Drapeau and

Manuel Soares were trying to buy her silence. She kept coming back to the same point, which was that the money was for “future considerations”.

Clearing the “M” bags through customs was part of her duties. She was not assigned to such duties permanently, however. In the past, she had performed this work with Manuel Soares (who is awaiting trial), as well as with Jean Demenezes (against whom charges were laid, and later withdrawn).

When she was asked why she accepted such large sums (\$1,000, twice) from Daniel Drapeau, she stated that she needed the money to meet lawyer’s fees in connection with obtaining legal custody of her daughter.

The investigators then pressed ahead and told her that their investigation showed it was not \$2,000 but \$3,000 that she had received from Daniel Drapeau. She admitted this to be true. (According to Gary Hadley, this amount was what was mentioned and overheard electronically.)

After admitting that the amount was really \$3,000, she said that she still had some of this money at home.

She stated that she had received \$2,000 from Daniel Drapeau (i.e. \$1,000 on two occasions) and that she had received \$1,000 from Manuel Soares. Manuel Soares had given her the \$1,000 at work, in the MAPP, in a bundle of 20-dollar bills. This had taken place two weeks previously. On that day, Daniel Drapeau was not at work.

She admitted that she did not inform her superiors of the fact that Daniel Drapeau had told her about a sure way to import narcotics.

When asked whether she believed she had broken her official oath, she responded affirmatively. According to Gary Hadley, this response referred as much to her knowledge of Daniel Drapeau’s plan as it did to having accepted money from Daniel Drapeau. Manon Rose also declared that she was not dishonest. She offered to take a lie-detector test.

During cross-examination, Gary Hadley stated that it was possible that Manon Rose had spoken of “gifts” when, at the beginning of the interrogation, she mentioned having received \$100 twice from Daniel Drapeau.

Gary Hadley maintains that the words “at first” in his handwritten notes (Exhibit A-4, p. 2) refer only to the \$100 amounts mentioned by Manon Rose at the beginning of the interrogation.

As to the words “future considerations”, Gary Hadley does not recall who used them first. It could be that they were first uttered by himself, or by his colleague, or by Manon Rose. He admits that this expression is ambiguous. It was used both by himself and by his colleague Daniel Lemay, as well as by Manon Rose. Since the officers were unable to learn from Manon Rose what she was expected to do in return for the money (\$3,000) that she had received from Daniel Drapeau and Manuel Soares (she said at one point, “*Say what you like ...*”), the phrase “future considerations” was used alike by the officers and by Manon Rose. According to Gary Hadley, the expression “future considerations” reflected the meaning of what Manon Rose was saying. According to Gary Hadley, if Manon Rose was not the first to use the expression, she nevertheless continued to use it throughout the interview.

As to Daniel Drapeau’s “plan”, Gary Hadley adds that Manon Rose stated that Daniel Drapeau had told her that he had a plan to make money, that it was impossible to get caught [*se faire pigner*], and that he had a perfect set-up [*était bien plogué*] for doing it. The words “get caught” and “perfect set-up” were Manon Rose’s own. Gary Hadley recognizes that Manon Rose may have said that Daniel Drapeau had told her that the “M” bags were an ideal way for getting drugs through.

The words “high roller” are not the exact words of Manon Rose. It was Manon Rose who revealed that Daniel Drapeau had a summer cottage.

She also said that Manuel Soares had given her the money (the third \$1,000) for “future considerations”.

Finally, Gary Hadley states that the word “incident” in the last paragraph of his report (Exhibit E-11, page 3) refers both to Manon Rose’s accepting money from Daniel Drapeau, and to the fact that she had known about Daniel Drapeau’s scheme since January, 1995.

2.b) Manon Rose's version

On May 1, 1995, Manon Rose arrived at work to learn that her friend and colleague, Daniel Drapeau, and her fellow worker Manuel Soares, had been arrested. She wept.

At 14:45, Gary Hadley and his fellow officer interrogated her in the office of Robert Emond. She was in the office until 18:35. She was read her rights. Gary Hadley took no notes, except to write down the time, "14:54" (Exhibit A-4). She does not remember clearly whether he told her that she was under suspicion of conspiracy to traffic in narcotics. She was not really paying attention to what was being said to her.

She explained to the police officers that she knew Daniel Drapeau very well. She had met him in 1974 when they were both CR-05 clerks. He had become her confidant. They had had an affair in 1974. From 1975 to 1980, they had lost sight of each other. Then, they saw each other again several times. In 1991, they were once again colleagues. This time, they were both customs inspectors. They had a brief new affair. Manon Rose confided her problems to Daniel Drapeau. She was going through a difficult separation from her ex-husband, and there were disagreements between them about custody of their child and about paying the mortgage for a house that they owned.

When the officers asked whether Daniel Drapeau had given her any money in the past, she replied: "*\$1,000, twice, as a gift*".

She also said that prior to the last three months, she used to go to a restaurant once or twice a week, and Daniel Drapeau would buy her lunch and a beer. Daniel Drapeau often bought lunch and beer for other colleagues as well. Manuel Soares was Daniel Drapeau's great friend, and was a member of the group of employees who lunched together.

She maintains that before telling the officers that Daniel Drapeau had given her \$1,000 on two occasions, she had told them that he had given her two gifts of \$100 each. She does not recall telling them that the gifts were for her birthday, but that was the case: once in January, 1992, and once in January, 1994.

As to the two occasions when Daniel Drapeau had given her \$1,000, these were loans. At first, she did not tell the officers that they were loans. Later on, she told them that Daniel Drapeau had lent her some money.

This loan was given about February, 1995. She told Daniel Drapeau that she needed \$2,000 or \$3,000 to pay the lawyer's fees in connection with the legal custody of her child, and for making payments on the mortgage. There was no mention of paying it back. Daniel Drapeau had simply said to her, "*Go take care of your problems, honey, and we'll look after all that*".

Daniel Drapeau handed \$1,000 over to her at work, during the week of February 28 to March 3, 1995. The money was in 20-dollar bills, bundled together with an elastic band.

He gave her another \$1,000 at the same place, towards the end of March, 1995.

The officers asked Manon Rose if Daniel Drapeau had come to see her at her place in Beauharnois. She replied no. They told her that she was lying. She apologized in reply, and said that in fact he had been to her place once in 1995. The officers said that they knew this, because they were following Daniel Drapeau.

According to Manon Rose, Daniel Drapeau was a big spender.

The officers asked Manon Rose if she had a nickname. She said no. When they asked her if Daniel Drapeau called her "Manoune", she said he gave people nicknames, like "*la rousse* [redhead] and Manoune". According to Manon Rose, her colleagues did not call her "Manoune". She admitted that Daniel Drapeau called her "Minoune".

When the officers asked her why Daniel Drapeau had given her money, Manon Rose said it was agreed that it was a loan.

The officers suggested to her that it was for "future considerations". Manon Rose acquiesced in that expression. She does not know why she acquiesced in the expression "future considerations", which came up several times during the conversation.

At about 15:15 - 15:30, she asked to telephone her daughter. They told her that she could call either her daughter or her lawyer. The conversation

then went on, and she forgot about her daughter, since she was answering officer Lemay's questions. She finally called her daughter at 16:00.

According to Manon Rose, in January, 1995, Daniel Drapeau did not tell her that he had a "plan" for making money by bringing in "dope" via the "M" bags, as Gary Hadley had written in his report (Exhibit E-11, page ...).

What happened instead, was that Daniel Drapeau had told her, in front of several colleagues (Jean Leduc, Richard Lamoureux, Serge Cardinal) working on a production line, that the "M bags" system leaked like a sieve.

According to Manon Rose, Daniel Drapeau was looked on as something of a hero because he had made more seizures than any other customs inspector. Daniel Drapeau was frustrated because he felt that other inspectors were too apt to let the bags through without examination. One month before his arrest, Daniel Drapeau and Manon Rose had seized some cocaine in a pouch, in their work as customs inspectors. Manon Rose denies that she used the words "*bien plogué*" [perfectly set-up] during the interrogation. She testifies however that Daniel Drapeau may possibly have said, "*dope, why you can bring that in as easy as anything*".

Manon rose testifies that at some point, the officers called her a "liar", and told that from their electronic surveillance they knew it was not \$2,000 but \$3,000 that Daniel Drapeau had given her. When she heard this, she said that about mid-April, 1995, Manuel Soares had given her \$1,000 at work, on behalf of Daniel Drapeau.

Manon Rose testifies that she did not think to mention this third \$1,000 because the officers were talking about Daniel Drapeau and it was Manuel Soares who had given her the third \$1,000. Manon Rose also states that if she failed to mention the third \$1,000 right away when she was asked about money she had received, it was because she had forgotten it. She can't understand how she could have forgotten this.

Manon Rose testifies that two weeks before the meeting with the police officers, Manuel Soares had given her an envelope with \$1,000 at work, on behalf of Daniel Drapeau , and that he had told her, "*you're lucky to have a pal like that*". The thousand dollars was in 20-dollar bills. If it was Soares who had

given her the money, that was because on that day Daniel Drapeau was on holiday.

Manon Rose testifies that she knows it does not “look good” for one employee to accept money from another, and that the code of conduct deals with the subject.

She adds that she did not speak to her common-law husband of the fact that Daniel Drapeau was lending her money, because she was afraid of how he might react. She suspected that he might become jealous.

Manon Rose admitted to the officers that she had broken her official oath. As she sees it, she broke it by accepting a loan from Daniel Drapeau . On the other hand, she does not believe that she broke it by not reporting Daniel Drapeau's “plan”, since she had no knowledge of any such plan to report.

Following the interrogation, and after speaking to the lawyer, Marchildon, she told the officers, on the lawyer's advice, that she would not make a written statement.

3. Events subsequent to the interrogation of Manon Rose on May 1, 1995

During the interrogation, Manon Rose stated that she still had at home some of the \$3,000 she had received. She then gave her consent (Exhibit E-12) for the police officers to come to her home and seize that money.

When she returned home, she gave \$2,630 to the officers. (If it was decided not to bring charges against her, the money would be returned to her (Exhibit A-1).)

Manon Rose testifies that she gave the police officers the money she had received from Daniel Drapeau in different denominations from those she had received it in, because in the meantime she had loaned the money to her husband, and he had subsequently replaced the money in different-sized bills, in the box where she kept her money.

On May 30, 1995, her husband made a sworn statement (Exhibit E-29) in which he claims that the money belongs to him.

Subsequently, after submitting her grievances, Manon Rose produced before her employer, during the fourth grievance procedure level, the sworn declaration

(Exhibit E-29) from her husband, in which he claims that the money belongs to him. Manon Rose did not explain to her employer that this was the money that she had received from Daniel Drapeau and that it was she who had given the money received from Daniel Drapeau to her husband.

She cannot explain why she produced this declaration (Exhibit E-29) before her employer, and she recognizes that she should perhaps not have done so.

Manon Rose admits that in May, 1995, she no longer owed any lawyer's fees for custody of her child (Exhibit E-30, signed by H. Ste-Marie).

Manon Rose has not repaid to Daniel Drapeau the money that he gave her.

Before terminating this review of the evidence, it is useful to summarize the pertinent facts that arise from the testimony given by the Department's internal investigator, Henri Samson, by the Director of the Montreal Metropolitan District, Réjean Ross, and by Customs Inspector Serge Cardinal.

Once the RCMP investigation was completed, Henri Samson, an internal investigator at Revenue Canada, Customs and Excise, proceeded to conduct an internal investigation, for which he submitted his report (Exhibit E-16) on August 3, 1995. In July, 1995, he was in communication with Manon Rose, with a view to obtaining her version of the facts. At this point, she had a lawyer. This lawyer informed Henri Samson that he would rather wait to see whether criminal charges were to be laid against his client, before deciding whether to advise her to make a statement to her employer. Unable to meet with Manon Rose, therefore, Henri Samson used the RCMP documents (Exhibit E-11) as the basis for summarizing Manon Rose's situation in his report (E-16).

Director Réjean Ross is the person who wrote the letter of termination (Exhibit E-22). He based his decision to terminate Manon Rose's employment on the statements (Exhibit E-11) of Manon Rose, as reported by Gary Hadley (RCMP), and on the report of Henri Samson (Exhibit E-16).

Despite her 21 years of seniority, despite her clean disciplinary record and her fully-satisfactory performance, despite her age, he [Réjean Ross] concluded that these factors could not outweigh the serious misconduct of which she was accused. According to him, integrity, honesty, reliability and loyalty are essential qualities for working as an inspector. An inspector must control, i.e. examine and sometimes seize, goods that are being imported or exported. An inspector administers 60 laws

on behalf of many government departments. Among other things, he or she must gather evidence of violations of the Customs Act and the Criminal Code of Canada (Exhibit E-18). In particular he or she is expected to intercept and seize prohibited goods such as narcotics, and grant customs release. Réjean Ross stresses the point that when Manon Rose worked in the “M” bags section, she was the only inspector on the scene, even though she was assisted in her work by a customs truckman.

Manon Rose received 14 weeks of training (Exhibit E-19) in the laws and regulations that she was supposed to enforce. In particular, she took the Customs course (Exhibit E-19) covering the anti-drug campaign. This course dealt with identification of narcotics, their seizure and interrogations.

Manon Rose took an oath of allegiance, and oath of office and of secrecy, and an oath as a “customs appraiser” (Exhibit E-20). She swore, among things, to do everything in her power “to prevent any form of fraud or subterfuge by which these laws might be evaded ...”

A Customs Inspector is governed by a Code of Conduct (Exhibit E-21). Moreover, he or she serves as a Peace Officer. Under the Code of Conduct (Article 9) an inspector’s conduct must be beyond reproach and must set an example in the eyes of the public.

Réjean Ross concluded that Manon Rose accepted money from members of a narcotics smuggling ring, and that she failed to report violations of which she was aware.

According to Réjean Ross, these facts, when added to her admission that she broke her official oath, constitute on the part of Manon Rose behaviour incompatible with the duties of her position as customs inspector, first among which is to eliminate smuggling and to prevent the importation of prohibited goods. The fact that she did not declare at the beginning of the interrogation that she had received \$3,000 is an additional factor. In short, according to Réjean Ross, the relationship of trust has been destroyed and cannot be restored.

Réjean Ross proceeded to terminate Manon Rose's employment without knowing whether criminal charges would be brought against her, because, as he explains, the burden of proof is not the same when it comes to grounds for termination of employment. In addition, Manon Rose and her co-workers (Drapeau, Soares, Demenezes, Johnson) had been suspended without pay. He signed letters for the termination of employment of these five persons on August 23, 1995.

The RCMP investigation was reported in the newspapers (Exhibit E-24), as were the arrests and the fact that narcotics had been imported thanks to the complicity of customs officials. Réjean Ross believes that Manon Ross should have told her employer about the facts of which she was aware concerning this drug trafficking ring, and that she contributed by her silence to a situation that has tarnished the image of the Department. Counsel for Manon Rose has objected to the admission of press clippings as evidence. I have allowed them to be introduced. This evidence is admissible in light of the fact that Articles 25(c) and 96.1 of the Public Service Staff Relations Act allow an adjudicator to accept in evidence any exhibits he deems appropriate, whether or not they would be admissible in a court of law. In this case, the evidence is pertinent, while in a sense limited. In fact, the press clippings do not constitute proof of the facts as reported; however, they do prove that the involvement of customs officials in this drug affair has gained a degree of notoriety.

Réjean Ross adds that the inspection of “M” bags was rather lax, since they were considered a “low-risk” sector, and attention was focused on “higher-risk” sectors.

Before concluding this review of the acts, there remains the testimony of Serge Cardinal.

He has been a customs inspector for 27 years. He is also a colleague of Manon Rose. He testifies that one of Manon Rose’s nicknames was Manoune. Daniel Drapeau, Manuel Soares and other inspectors called her by this nickname. Serge Cardinal himself addressed Manon Rose by this name, although rarely.

According to Serge Cardinal, Daniel Drapeau made many seizures, especially of narcotics. He was a big spender who would “treat” his co-workers at the restaurant. Manon Rose and Daniel Drapeau were very close. They seemed like “a long-time couple”.

ARGUMENT OF THE EMPLOYER

Counsel for the employer reviewed the evidence. According to her, the evidence shows that the dates (February 25, March 25, April 13) on which certain telephone conversations were intercepted (Exhibits E-4, E-5 E-26) correspond within a few days to the dates on which Manon Rose received money from Daniel Drapeau and Manuel Soares (“*between February 28 and March 3, 1995*”, “*towards the end of March, 1995*”, “*about mid-April, 1995*”, according to Manon Rose). It is also clear that, by her own admission, Manon Rose received money from the hands of Daniel Drapeau and

Manuel Soares in 20-dollar bills. And we see, according to Inspector Michaud, that in the money hidden in Daniel Drapeau 's barbecue there was a bundle of \$1,000 in 20-dollar bills.

The testimony of Manon Rose concerning the interrogation of May 1, 1995, needs to be weighed carefully. She claims that her rights were not respected, but she admits that she did not pay attention to what was said to her. She says she was confused, but she claims to be certain that she mentioned at the beginning of the interrogation that Daniel Drapeau had given her \$2,000.

According to Gary Hadley, it was only later that Manon Rose finally admitted the figure of \$2,000 as the money received from Daniel Drapeau, and still later that she admitted a further \$1,000, received this time from Manuel Soares. She claims that Manuel Soares was only the messenger for Daniel Drapeau and she cannot explain how she could have forgotten to mention the money that Soares gave her.

She gives various explanations as to why she accepted these sums of money. She claims the money was a loan. She cannot explain the repayment details, however. She claims that she intended to repay Daniel Drapeau but she has never done it. She claims that she no longer has the means do so. She has not given him back the \$2,630 that the police finally returned to her. She claims that her reasons for accepting the "loan" were the financial difficulties she was having with her bank, the legal difficulties in connection with custody of her child, and the purchase of a new house together with her present husband. Yet she never mentioned anything to her husband about the "loan" from Daniel Drapeau .She was afraid he would be jealous. And yet, she gives him the money. And he gives it back. And then, one year after the events, on March 20, 1995 [sic], in the fourth level of grievance procedures, she submits to her employer a sworn statement from her husband, in which he claims to be the owner of that money. In submitting this statement (Exhibit E-29), she must surely have wanted it to be believed that its contents were true.

The version of police officer Gary Hadley is the one that must be accepted. We must therefore conclude that Manon Rose accepted money from Daniel Drapeau and from Manuel Soares, that this was a form of insurance for them, since Manon Rose (like them) worked at the MAPP, was a customs inspector, and could serve as their lookout when they were absent. We must conclude that she was a participant by omission in a drug trafficking ring, and that she was aware of the system that Daniel Drapeau and company had set up within the customs section.

We must try to put ourselves in the position of Daniel Drapeau and Manuel Soares. These two customs officers were involved in a drug trafficking ring. They were taking a chance, but we may assume that they thought the reward was worth the risk. We may well wonder: would these two customs officers be willing to share their loot with someone who took no risk at all? It is hard to see how Manuel Soares could agree to give Manon Rose money simply because she was a friend of Daniel Drapeau.

Even if we accept that she was acting in good faith when her memory failed her during the interrogation, and that she was perhaps nervous as well, the fact remains that one year later, Manon Rose took a step about which she had plenty of time to reflect, and presented to her employer a sworn statement (Exhibit E-29) from her husband, for the purpose of convincing her employer that this money was the property of her husband, whereas it was really the funds she had received from Daniel Drapeau and Manuel Soares.

According to her own version, Manon Rose accepted \$1,000 on three occasions from Daniel Drapeau and Manuel Soares, at her place of work. It was not just one isolated act.

Manon Rose admits that she broke the Code of Conduct, yet she claims to be an honest person. As a Customs Inspector and Peace Officer, Manon is in a position to inspect, audit, assess, seize and release goods. She can detain people and undertake personal searches. Consequently, honesty is an essential quality.

We may conclude that the following articles of the Code of Conduct (Exhibit E-21) have been violated: 8, 9, 10 (c)(2), 11 a) and b), 12, 13, 26 (1), 28, 29, 30, 31, 34, 41, 42, 44 and 53.

8. This responsibility must be discharged with integrity, efficiency and in such a way as to command a high degree of trust, confidence and respect on the part of other departments and agencies.

9. Accordingly, employees will not engage in conduct which is in conflict with this Code. While all Customs and Excise employees are expected to conduct themselves at all times in a way that reflects credit upon the Department, those employees who are classified as Peace Officers have an added responsibility to conduct themselves in a way that is not only above reproach but which is demonstrably above reproach in the eyes of the general public.

10. c) *Sensitivity and responsiveness*

(2) In the face of unlawful conduct or extreme provocation, employees will deal with the situation in a firm, professional manner within the scope of their authority. Where that is deemed insufficient to resolve the problem encountered, employees will request assistance as is necessary under the circumstances including assistance from local law enforcement agencies in order to bring the situation under control. In such cases, employees and management representatives or supervisors will ensure that adequate reports are prepared in case they are required.

...

Unacceptable conduct

11. The following conduct violations are amongst those which could form grounds for disciplinary action up to and including discharge:

a) Dishonesty, Misuse of Authority, Legislative Violations (General)

(1) Any departmental employee who intentionally under-values goods being imported into the country, improperly or illegally imports goods into the country, accepts a bribe, or any benefit or special consideration for the improper performance or nonperformance of his or her duties, who is in possession of a narcotic or prohibited drug in contravention of the law, who improperly takes money or property from the Department, or engages in any dishonest conduct could be subject to immediate discharge.

(2) Any departmental employee who engages in any form of collusive activity for personal gain, who submits or approves false claims for refund of duty and taxes or who intentionally violates the legislation which the Department has the mandate to enforce could be subject to immediate discharge.

(b) Application of Laws and Regulations administered by the Department

Employees of Customs and Excise and their relatives or friends returning to Canada or importing goods into Canada are subject to the same regulations as the

general travelling public. Employees will not attempt to obtain or receive any favourable treatment from government employees in this or any other Department. Employees of Customs and Excise are specifically required to declare all goods purchased, acquired or repaired while abroad when returning to Canada and to render themselves subject to any primary or secondary examination deemed necessary by responsible officials of this or any other Department. Failure to act in such a manner will be considered misconduct which may result in serious disciplinary action.

...

Responsibilities of Customs and Excise Employees to Report Violations of the Law

12. In accordance with the Departmental Policy and Procedures on Internal Investigations, employees will promptly report through supervisory channels, any allegation or information that they may receive concerning the possible violation of this Code, of the Laws and regulations administered by this Department or of other criminal Laws, which occurs at the work place, whether or not the person or persons responsible are employees of the Department, In addition, section 92 of the Financial Administration Act (FAA) requires every person connected with the collection, management or disbursement of public money who has knowledge of a violation of the FAA, associated regulations or any revenue law or of fraud against Her Majesty, to report it in writing to a superior officer. Any supervisor being informed of a violation will immediately make a formal report outlining all details to the appropriate Regional Collector, Regional Director or, at Headquarters, the appropriate Director or Director General, as the case may be.

13. In relation to the foregoing, the following known or alleged violations must be reported immediately:

- a) solicitation or acceptance of any gratuity or bribe in connection with any Customs and Excise activity.*
- b) unauthorized outside employment or business activity;*
- c) solicitation or acceptance of contributions, gifts, or favours from the public served by the Department either for use by the employee or for use by anyone else;*

- d) *improper association with importers, brokers, licensees, claimants for refund and others who have regular or recurring business with the Customs and Excise service, which could violate ethical standards or be in violation of rules of conduct;*
- e) *unauthorized or negligent use of official vehicles and other department equipment or utilities (telephone, etc.);*
- f) *embezzlement or misuse of government funds;*
- g) *false statements, misrepresentations or fraud in completed official documents;*
- h) *unauthorized disclosure of information to the public;*
- i) *improper use or possession of narcotics or controlled drugs;*
- j) *participation in illegal gambling at the workplace;*
- k) *issuance of worthless cheques or other improper or questionable financial transactions at the workplace which could lead to the disrepute of the Department;*
- l) *negligence in performing duties especially if revenue has or may have been endangered, or creating a possibility of a failure either by action or lack of action to enforce any of the laws or statutes which are administered by Customs and Excise;*
- m) *any fraudulent act or omission that occasions loss of money or property to Her Majesty whether through malfeasance, willful neglect of duty or gross negligence;*
- n) *unauthorized use or misuse of government credit cards;*
- o) *unauthorized use of title, identification or office.*

Note: This list is not all-inclusive and is issued as a guide in relation to activities which are deemed to be unacceptable conduct on the part of a Customs and Excise employee.

...

26. b) *Borrowing*

- (1) *Employees will not either directly or indirectly lend to or borrow substantial sums of money from other employees.*

27. *A conflict of interest may be defined as one in which employees' private interest, usually of a financial or material nature, conflicts with their public duties and responsibility. The conflict is of concern whether it is real or apparent.*

28. *It is not sufficient for an employee to act within the law. There is an obligation not only to obey the law, but to act in a manner so scrupulous that it will bear the closest public scrutiny.*

29. *In order that honesty and impartiality may be beyond doubt, employees should not place themselves or their family under obligation to any person or organization which might benefit from special consideration or favour on their part or seek in any way to gain special treatment from them. Equally, public servants should not have a financial or material interest that could conflict in any manner with the discharge of their official duties.*

30. *No conflict should exist or appear to exist between the private interests of employees and their official duties. Upon joining the Department all employees are expected to arrange their private affairs in a manner that will prevent conflicts of interest from arising.*

31. *Employees must exercise care in the management of their private affairs so that they or members of their immediate family do not benefit, or appear to benefit, from the use of information acquired during the course of their official duties, where such information is not generally available to the public.*

...

34. *All employees are expected, after discussion with their supervisor, to provide him or her with details in writing of all the business, commercial, or financial interests of themselves and their immediate family where such holdings and interest might conceivably be construed as being in actual or potential conflict with their official duties. For employees on the payroll at the time of issuance of the Guidelines on Conflict of Interest by the Cabinet, this disclosure had to be made not later than June 30, 1974.*

...

41. *In the interest of maintaining the integrity and good repute of Customs and Excise as a whole, the acceptance by an employee of any gift, loan, benefit, advantage, social invitation, free or shared trips and/or accommodation within*

or outside the country, or any other favour, will not be tolerated except to the extent provided for in this section. Employees must be aware that the acceptance of favours from the public is not only unethical and prejudicial to the reputation of all Customs and Excise employees, but may be illegal under the Criminal Code. It should be noted that even the mere giving or taking of gifts can expose the giver and receiver to a charge under the Criminal Code.

42. Employees will not solicit or accept any gifts, gratuity, favour, entertainment, meals and/or refreshments, loan or any other thing of monetary value either directly or indirectly from a prohibited or outside source. A prohibited or outside source is defined as a person, firm, corporation, association, or other organization which:

a) has or is seeking to obtain business relations of any sort with Customs and Excise.

b) has interests that may be substantially affected by the performance or non-performance of the official duty of any employee of Customs and Excise.

...

44. Included in "gifts, loans, benefits, advantages or other favours" the acceptance of which is prohibited, are:

a) outright presents of cash or goods or services;

b) reduced prices for goods or services;

c) work done gratuitously about one's property;

d) preferred treatment of any sort in a business enterprise;

e) loans of money, material or equipment of any kind;

f) any other favours granted, offered or made available by persons who have business dealings with the Department to employees merely because they are departmental employees, to members of the employees' family, or to other persons on the employees' behalf.

...

53. Employees may not, except as may be necessary in connection with an official assignment, associate with individuals or groups of individuals who are believed or

known by the employee to be connected with criminal activities when the association tends to discredit directly or indirectly the character or reputation of the employee or of Customs and Excise.

Manon Rose did not alert her employer to the fact that the “M” bag system could be used as a vehicle for smuggling drugs.

As to her suspension, the employer was entitled to suspend Manon Rose, because she was suspected by the RCMP of conspiracy to traffic in drugs, and of having committed a breach of trust. Consequently, the employer could not run the risk of having her remain in the workplace. Moreover, it must be noted that two days after the interrogation of Manon Rose, on May 3, 1995, there was another seizure of drugs in “M” bags on those same premises.

A customs inspector may perform many kinds of tasks, but given the breach of trust, there was no position that could be entrusted to Manon Rose. Such a move would have required a check of every package released by Manon Rose.

The excerpts from the electronic surveillance are pertinent, because they demonstrate the close correspondence between the dates on which the drugs were delivered and those on which the money was received.

The breach of trust incurred by Manon Rose is irreparable.

The following cases are cited as precedents:

Lucien Charbonneau and Treasury Board (Board files 166-2-25889 and 166-2-25890); Gérard Laplante and Treasury Board (Board file 166-2-18001 and Federal Court of Appeal file A-175-89); Stéphane Laparé and Staff of the Non-Public Fund, Canadian Forces (Board file 166-18-22492); Hugh I.A. Dashney and Treasury Board (Board file 166-2-14177); Allan R. Francis and Treasury Board (Board file 166-2-24111); E.B. Charles and Treasury Board (Board file 166-2-6434); C. Edis A. Flewwelling and Treasury Board (Board file 166-2-14236).

ARGUMENT OF MANON ROSE

The argument presented by counsel for Manon Rose can be summarized as follows:

Manon Rose was suspended pending an investigation by the Division of Internal Affairs into the question of her “*involvement in a smuggling case*” (Exhibit E-

23), and her employment was terminated for having been “*aware of narcotics trafficking*” perpetrated by her co-workers, and for having “*accepted money from those persons in exchange for future considerations*” (Exhibit E-22). We see that the internal investigation by Henri Samson was not able to establish these facts, since the investigator, Samson, limited himself in his report (Exhibit E-16) to repeating the conclusions of the RCMP. Réjean Ross stated that the termination of Manon Rose's employment was based on Henri Samson's report (Exhibit E-6), and on the report of the interrogation of Manon Rose (Exhibit E-11). We must therefore assess the worth of these documents as evidence.

The notes (A-4) that were used to prepare the report were written only after the interrogation. During the interrogation, Manon Rose was alone in her boss's office, with the police officers. At one point, the word “Tanguay” was uttered. She was not told that she was free to leave the room.

The summary of Manon Rose's statement is of doubtful chronology. The document lacks internal consistency. The words “future considerations” are mentioned twice in Gary Hadley's notes (Exhibit A-4); by contrast, they appear five times in the summary report (Exhibit E-11). How can this difference be explained?

Gary Hadley was unable to say who had first mentioned the words “future considerations”. It is true that Manon Rose acquiesced in use of this expression. These words gave rise to a certain atmosphere. It was important that their meaning should be determined, since Réjean Ross took these “future considerations” as proven, and concluded from them that Manon Rose was guilty of conspiring to traffic in narcotics. The employer would have had to determine that these words meant something like turning a blind eye with some illegal intent.

It is incomprehensible that Gary Hadley did not take notes during the meeting, and in particular that he made no note of the fact that Daniel Drapeau had spoken to Manon Rose about “his plan”, as we find in the summary report (Exhibit E-11). We must conclude that he was both negligent and inventive. He was so eager to “drive in the nail” that he was illogical in his testimony, and claimed that the words “this incident” (Exhibit E-11, page 3, final paragraph) referred as much to the plans of Daniel Drapeau as to the money that Daniel Drapeau and Manuel Soares gave to Manon Rose. Even at face value, the summary of Manon Rose's statement contains contradictions, as well as doubtful chronology and terms like “future considerations” for which we do not know the real author.

Even if Manon Rose was mentioned in the intercepted conversations (Exhibits E-4 and E-5), this is mere coincidence. Daniel Drapeau took advantage of the fact that he had money available to have Manuel Soares give some to Manon Rose. This is circumstantial evidence. Moreover, there is no evidence that Manon Rose committed any illegal act in the service of the traffickers.

Even if we admit that the goal of Daniel Drapeau in lending money to Manon Rose was perhaps to seek her eventual cooperation, we cannot presume that she would have agreed.

Between Gary Hadley's testimony and summary report and the testimony of Manon Rose, it is the latter that must be accepted. We must remember that we are speaking of an employee with an excellent record of service, and no previous disciplinary action.

Manon Rose admits that she received a loan from a colleague, something prohibited by the Code of Conduct (Exhibit E-21). We must understand that in the workplace intimate relationships can be formed that may occasionally lead an employee to transgress one or another norm. It would be hard to understand how Manon Rose could accept a loan from someone who was not her friend, but we can certainly understand a loan from an intimate friend. Even of the Code of Conduct (Exhibit E-21) prohibits this kind of transaction, termination is surely too severe a measure of discipline.

Manon Rose deserves appreciation of her credibility, and an examination of her explanation as to why she accepted money through Manuel Soares, and why she submitted the affidavit from her husband (Exhibit E-29).

In dismissing Manon Rose in August, 1995, at the same time as her colleagues (Demenezes, Soares, Johnson, Drapeau), the employer did not listen to Manon Rose's version, but relied exclusively on her statement (Exhibit E-11) as summarized by RCMP officer Gary Hadley. If the employer had waited to find out whether criminal charges would be brought against Manon Rose, it would have given her an opportunity to explain herself once the decision was taken not to lay charges against her. In this case, the employer respected neither the rule of *audi alteram partem* [hear the other party] nor the "duty to act fairly".

Moreover, if Manon Rose has never repaid the "loan" to Daniel Drapeau, this cannot be held against her: after all, she has lost her job, she has no more income, and she may well feel that it was Daniel Drapeau who got her into this situation.

REPLY BY COUNSEL FOR THE EMPLOYER

In rebuttal, counsel for the employer points out that officer Gary Hadley did not know Manon Rose, and had no personal interest in seeing charges brought against her. As to the claim that the rule of *audi alteram partem* was violated by failing to hear Manon Rose's version before terminating her employment, whatever the merits of this claim, these adjudication proceedings concerning her termination of employment have cured the defect. (Counsel for the employer refers to the Tipple case, Federal Court record A-66-85). Moreover, it must be remembered that Manon Rose's version was heard during her interrogation, and she is well familiar with interrogation procedures as a result of her training as a customs inspector.

GROUNDINGS FOR DECISION

In the present case, the burden of proof rested with the employer. Since this was a civil matter, it was not a question of proving Manon Rose guilty beyond all reasonable doubt, as would be the case in a criminal matter, but rather of establishing certain actions that Manon Rose is alleged to have committed, against the balance of probabilities test. I consider that the employer has discharged its obligation to meet this test.

Manon Rose's employment was terminated largely on the basis of the revelations and explanations that she gave during an interrogation (Exhibit E-11) conducted by two officers of the RCMP. That interrogation resulted from the discovery of a narcotics smuggling ring that involved some of Manon Rose's colleagues.

Having seen and heard RCMP investigator Gary Hadley, on one side, and Manon Rose on the other, I am inclined to give more weight to the deposition by investigator Hadley, as I shall explain below.

Moreover, I am of the opinion that Manon Rose's statement was given freely and voluntarily, and that she understood that she was suspected of conspiracy to import narcotics, and of breach of trust. I am equally convinced that she was aware of her rights, since not only were they read out to her, but she was familiar with interrogation procedures by reason of her duties and training as a Customs Officer.

I believe it would have been preferable if Investigator Hadley had set down Manon Rose's statements on paper at the time of the interrogation, rather than waiting to do so from memory (Exhibit A-4) later in the evening, after the

interrogation was over, and then writing his final version two days thereafter. Nevertheless, his omission does not destroy the evidentiary value of his report of the interrogation. In fact, Investigator Hadley's testimony, and in particular his willingness to admit that the expression "future considerations" did not necessarily originate with Manon Rose, but might have been used first by himself or his fellow officer, heightens the credibility of Officer Hadley, and consequently of his report of the interrogation (Exhibit E-11).

Moreover, during her testimony, Manon Rose herself confirmed the employer's argument and Officer Hadley's testimony with respect to several key points, thus further strengthening Officer Hadley's credibility. In particular, she corroborated Officer Hadley's testimony to the effect that it was not she, but rather the two RCMP officers, who brought out the fact that the amount of money she had received was not \$2,000, but \$3,000. I shall return to this point. In short, I am of the opinion that Officer Hadley's credibility has been well established.

On the other hand, I find that Manon Rose failed to establish her own credibility. Manon Rose was unable to explain several important elements in the case. Thus, she admits to having acquiesced in the use of the expression "future considerations", but she cannot explain why she so acquiesced. She admits not having told the officers that she had also received \$1,000 from Soares. She claims that this was an oversight that she cannot explain. She admits having sent the employer a sworn statement (Exhibit E-29) from her husband, but she cannot explain why she did so.

Furthermore, Manon Rose contradicted herself in the course of her testimony. At the beginning, she spoke of "gifts" that she had received from Daniel Drapeau, and later of "loans". In short, when I compare the degree of reticence and forgetfulness in her testimony, together with her own admissions and the existing circumstantial evidence, against the testimony of Officer Hadley, I am obliged to grant greater weight to the latter.

I have taken all of the evidence into account in arriving at my conclusions as to the facts of the case.

Manon Rose received \$2,000 from her co-worker and former lover, Daniel Drapeau. She received \$1,000 from their colleague, Manuel Soares.

She received the \$2,000 from Daniel Drapeau in two instalments: \$1,000 during the week of February 28 to March 3, 1995, and \$1,000 at the end of March, 1995.

She received \$1,000 from Manuel Soares in one instalment at about mid-April, 1995.

We do not know exactly what she was supposed to do in return for these payments. But what is the circumstantial evidence surrounding these payments?

The three payments took place on dates very close to five telephone conversations between Daniel Drapeau and Manuel Soares that were intercepted electronically on February 25, 1995 (Exhibit E-4), March 22 (Exhibit E-28), March 25 (Exhibit E-5) and April 13 (Exhibits E-26 and 27).

What emerges from these conversations, and from the explanations supplied by Officer Hadley, is that Daniel Drapeau intended to give “that” to “Manon” (Exhibit E-4), and a “salmon” to “Manoune” (E-5), and that he had money hidden in his barbecue (Exhibits E-26 and 27) that was to be picked up by the wife of Manuel Soares, Huguette Soares. Moreover, from the testimony of Officer Hadley it emerges that on April 13, 1995, after having intercepted these telephone conversations, RCMP officers saw \$20,000 in Daniel Drapeau ‘s barbecue and they also saw Manuel Soares’ wife take that money away.

In the first place, it is clear to me that this “Manon” or “Manoune” mentioned in the intercepted conversations is Manon Rose. She admits that Daniel Drapeau called her thus, and Serge Cardinal confirms that this was her nickname. Moreover, the police officers learned through their electronic surveillance that the famous “Manon” had received \$3,000 and Manon Rose finally admitted that it was \$3,000 that she had received.

Secondly, I find that the close correlation of timing between the payments made by Daniel Drapeau and by Manuel Soares to Manon Rose, and the telephone conversations that revealed the intent of Drapeau and Soares to pay certain persons, and during which one “Manon” or “Manoune” is mentioned, was more than mere coincidence. The proximity between the payments to Manon Rose and the telephone conversations between Drapeau and Soares is an element of proof that by itself is not conclusive, but that, when added to the statements and the silences of Manon Rose during her interrogation, serve to convince me that the three payments made by Drapeau and Soares to Manon Rose were not the actions of disinterested parties, as

Manon Rose would have us believe, but rather illegal transactions intended as remuneration or compensation for some service or services already rendered or to be rendered by Manon Rose, or some kind of assistance on her part.

I do not believe Manon Rose's statement that these were loans. While Daniel Drapeau may have been a "friend", Manuel Soares was not, and I cannot accept that he simply decided one fine day to lend Manon Rose \$1,000, any more than I can believe Manon Rose's claim that Soares was merely a "messenger" for Drapeau.

These payments must be considered in light of the rest of the evidence. Manon Rose admitted to Officer Hadley (Exhibit E-11) that she was aware of Daniel Drapeau's scheme to make money by smuggling "dope" in the "M" bags. (On this point, I must accept Officer Hadley's testimony, the more so since none of the other people present when Drapeau talked of this subject, according to Manon Rose, has come forward to corroborate her testimony.)

In short, I start from the premise that Manon Rose was aware of Daniel Drapeau's plan. Then, when she was questioned, she was evasive, and the facts had to be dragged out of her. She started by talking about hundred-dollar gifts, then an hour later she admitted having received \$1,000 on two occasions from Daniel Drapeau; she volunteered no mention of the money received from Manuel Soares, and it was only when directly confronted that she finally admitted having received \$1,000 from him. She said that Daniel Drapeau did not come to her place in Beauharnois, and again, when her memory was refreshed for her, she admitted that he had been there once in 1995. Why was she so reluctant to reveal all of the facts at the outset? I cannot believe that this was a case of innocent forgetfulness.

I think that if the \$3,000 paid to Manon Rose had been paid under purely innocent circumstances, she would not have been so reluctant during her interrogation to reveal all at the outset, and she would not have failed to mention the money received from Soares. I think that she kept quiet about the money from Soares because she realized that if she revealed that payment, her argument that the moneys received from Daniel Drapeau were "loans" would lose some credibility.

To these considerations, we must add the fact that neither Drapeau nor Soares has come forward to confirm that the money they gave to Manon Rose represented a loan or loans, nor have they confirmed that Soares was only a messenger for Drapeau.

During her testimony, Manon Rose claimed that the money she had received from Daniel Drapeau was a loan, and that in giving her the third instalment, Manuel Soares was merely the messenger of Drapeau. How can we reconcile this portion of her testimony with her statement to Officer Hadley during the interrogation? Even if we accept as given that she did not originate the expression “future considerations”, she did acquiesce in its use during her interrogation as an explanation of why she had accepted the money. I cannot believe that she would have accepted this expression, and even used it herself (here I rely on the testimony of Officer Hadley) if, as she claims, they were simply loans. Taking all the evidence into account, I conclude that these were not “loans”, and that Manon Rose tried to hide the true nature of the three payments. I also conclude that she acquiesced in the expression “future considerations” solely because that expression relieved her to some extent from having to be more precise about what she was expected to do in return for the three payments.

I have considered the question of whether, before dismissing Manon Rose, the employer should have taken steps to determine precisely what “future considerations” meant, i.e. what was it exactly that Manon Rose was to do in return for the three payments from Drapeau and Soares. I have concluded that, under the circumstances of this particular case, it would be unreasonable to insist on such evidence.

The fact that Manon Rose voluntarily mentioned Drapeau’s “plan” to the RCMP investigators, the fact that she stated she was aware of Drapeau’s scheme to make money by smuggling “dope” by using the employer’s property (the “M” bags), the fact that she did not report this scheme to the employer, the fact that she accepted a significant sum of money (\$3,000) from two co-workers involved in a narcotics smuggling ring, at the very time when conversations were being intercepted that referred to payments to certain persons including one Manon, and when drugs were being seized in “M” bags, the fact that she did not of her own accord admit having also received money from Soares but that it was necessary to extract from her that information about the money she had received from Soares- all of these are facts that had to be taken into account by the employer in assessing the degree of trust it could place in Manon Rose. In the final analysis, I find that Manon Rose’s actions were a sufficient cause of concern that her employer could no longer have confidence in her, and was entitled to terminate her employment without necessarily having to establish precisely what she was to do in return for the three payments.

In addition to the actions that I have just enumerated, we must consider, at least from the viewpoint of assessing her credibility, the fact that Manon Rose presented to her employer during the fourth level of grievance procedures a statement (Exhibit E-29) from her husband claiming that most of this money belongs to him. I share the view of counsel for the employer that this was a calculated act. When she was cross-examined, Manon Rose could offer no reason to explain why she sent this document to the employer. Given her inability to supply any rationale, I must conclude that she was trying in a rather clumsy fashion to mislead the employer and to distance herself from the money that she had received from Drapeau, and that had cost her her job. In short, this behaviour subsequent to her termination of employment, and the fact that she could not explain it during cross-examination, is consistent with her reticence during the RCMP interrogation about revealing that she had also received \$1,000 from Manuel Soares.

In conclusion, I find that the employer has proven the facts that it alleges against Manon Rose in the termination letter.

Throughout this affair, Manon Rose's conduct has been such as to undermine her credibility and to cause irreparable damage to her integrity in the eyes of the employer and of the public. In failing to report Daniel Drapeau's "plan" to use the Ministry's bags to traffic in narcotics, she violated her official oath (Exhibit E-20) and the Code of Conduct by which she is bound (article 12, Exhibit E-21), as well as her duties as a Peace Officer, and failed to respect the spirit, if not the letter, of the duties set forth in her job description (Exhibit E-18).

By accepting in return for "future considerations" a sum of \$2,000 from this same Daniel Drapeau, a co-worker and a drug trafficker, and \$1,000 from Manuel Soares, another co-worker who is awaiting trial on the same charge of drug trafficking, she has failed in her duty of integrity (articles 8, 9, 11(a) of the Code of Conduct), she has placed herself in a conflict of interest (articles 27, 28, 29 and 30 of the Code of Conduct), and she has maintained relations with persons involved in criminal activities (article 53 of the Code of Conduct). It should be noted that, even if I had accepted Manon Rose's version to the effect that the money payments were "loans", I would still have to conclude that she violated the Code of Conduct, since: 1) the Code of Conduct (article 26(b)(1)) prohibits borrowing substantial sums of money from other employees, and 2) Manon Rose admits having violated her official oath (Exhibit E-20). Under the circumstances in which these "loans" were made, I

would be led to conclude in any case that they are grounds for termination of employment.

Finally, I do not believe that Manon Rose's 21 years of service and her clean disciplinary record can be held to tip the balance in her favour.

For these reasons, the grievances are dismissed.

Marguerite-Marie Galipeau
Deputy Chairperson

OTTAWA, December 16, 1996.

Certified true translation

Serge Lareau