

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**JAMES TAYLOR**

Grievor

and

**TREASURY BOARD  
(Human Resources Development Canada)**

Employer

***Before:*** J. Barry Turner, Board Member

***For the Grievor:*** Georges Nadeau, Public Service Alliance of Canada

***For the Employer:*** Harvey Newman, Counsel

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Heard at Vancouver, B.C.,  
October 9, 1996

## DECISION

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James Taylor, an Unemployment Insurance Agent Two (PM-2 classification level), Sinclair Centre, Human Resources Development Canada, Vancouver, British Columbia, is grieving his termination for cause. His grievance was referred to adjudication in June of 1996.

Mr. Taylor grieves as follows:

*I am in receipt of a letter dated 26 June 95, signed by R.G. Gates. This letter advises me that it has been "decided to terminate" my "employment for cause pursuant to the authority delegated ...". The termination to "take effect at close of business Wednesday, 28 June 1995".*

*I hereby grieve.*

The letter of termination dated June 26, 1995 and signed by R.G. Gates, Director General, B.C. and Yukon Territory Region, reads:

*This letter is further to a recommendation for termination for cause submitted by your manager as a result of his investigation which resulted in a finding that you obtained at least \$93,000 from fraudulently established UI claims. Evidence shows that you negotiated warrants in derivatives of your name at several CIBC branches.*

*I have carefully reviewed the evidence in relation to this matter and have determined that your involvement in these activities is such an affront to the high level of trust, honesty and integrity required of your position as an Agent Two, that you have irreparably damaged the bond of trust that is essential to the continuation of your employment as a member of the Public Service of Canada. You have engaged in conduct that is totally irreconcilable with your duties and responsibilities as a Public Servant and I can find no mitigating reasons why your employment should not be terminated for cause.*

*Consequently, in light of the seriousness of your misconduct and based on the information available to me at this time, I have decided to terminate your employment for cause pursuant to the authority delegated to me by the Deputy Head and in accordance with the Financial Administration Act Section 11(2)(f). The termination of your employment will take effect at close of business Wednesday, 28 June 1995.*

*In accordance with Section 19 of the Public Service Staff Relations Act you may present a grievance against my decision within twenty-five (25) [days] of receipt of this letter.*

Mr. Taylor is requesting the following corrective action:

*That I be reinstated effective 29 June 95 with full pay & benefits.*

*That the above noted letter be removed from all files & records.*

The hearing lasted one day with two witnesses and three exhibits submitted into evidence.

At the outset of the hearing I was advised by Mr. Nadeau that Mr. Taylor was not medically fit to attend. I was given a doctor's note to this effect dated 8 October 1996 (Exhibit G-2). In spite of this, Mr. Nadeau informed me that the grievor had given him clear instructions to proceed in his absence. Mr. Newman had been made aware of this earlier in the day by Mr. Nadeau and had no objections. The hearing proceeded. On consent, Mr. Newman submitted a binder of evidence (Exhibit E-1, Tabs 1-13) and Mr. Nadeau submitted two exhibits: a July 4, 1996 letter from a Dr. Friesen explaining the nature of the grievor's illness (Exhibit G-1) and a note from Dr. Friesen dated 8 October 1996 (Exhibit G-2), that excuses Mr. Taylor from attending the hearing.

#### Summary of Evidence

1. William Harrington, an Investigation and Control Officer for the major fraud unit in Vancouver, Human Resources Development Canada (HRDC), has worked in the fraud unit for eight years after he left the Royal Canadian Mounted Police with twenty-one years of service. He first became involved in the Taylor case on April 26, 1995, when the Canadian Imperial Bank of Commerce (CIBC), Burrard Street, Vancouver, called the Sinclair Centre unemployment insurance (UI) office to check if some UI benefit warrants (warrants are like cheques) were valid for a James Taylor. The bank became suspicious when numerous benefit warrants were deposited and a large withdrawal of money was made by Mr. Taylor during a short period of time. A brief investigation showed that the warrants were from five UI claims at the Sinclair Centre, all with different social insurance numbers (SIN) and all written in variations of Mr. James Taylor's name. All had the same birth date, December 12, 1960, and all were established by the same separation slip from the same employer. The five claims had already paid a collective total of 166 weeks of benefits. Each had been

anti-dated, all paid at once not bi-weekly, and each claim had an address. There were no paper documents in the Sinclair Centre office to substantiate the five claims. This information indicated that a sophisticated and premeditated fraud scheme had been devised. The RCMP were informed and Mr. Taylor was arrested on April 27, 1995. A leather pack sack was found at the grievor's desk with 48 benefit warrants in it totalling \$51,776. not yet cashed. Twelve more warrants valued at \$9,312. were already processed for the grievor at the regional computer center. A further 48 warrants valued at \$36,246. had already been deposited by the grievor via automatic teller machines (ATM's). Large ATM withdrawals were made by him as well.

Mr. Harrington said that when the CIBC asked the grievor where the money came from, Mr. Taylor said the warrants were bonus cheques from the UI Commission for work he had done. He also testified that the grievor rented a mailbox where he had the warrants delivered. I was provided evidence of this in Exhibit E-1, Tab 4. I was also provided with evidence of false UI claims that showed how they were created on the Sinclair Centre computer in Exhibit E-1, Tab 10, and pages of personal notes found at the grievor's desk that show personal bills and various renovations that are assumed to be paid from the false UI claims.

Mr. Harrington also identified a certificate of conviction from a guilty plea by the grievor to one count of fraud against the UI Commission (Exhibit E-1, Tab 9). The witness also said that all monies were recovered from the fraud scheme including an outstanding amount of \$16,059.25 from the return of the grievor's superannuation contributions (Exhibit E-1, Tab 6).

During cross-examination, Mr. Harrington said that all the fraud occurred in the two weeks preceding the grievor's arrest on April 27, 1995. The alert CIBC bank teller was given a citation from HRDC for his action.

During re-examination, the witness said this case was one of the larger known frauds of its kind that he had ever seen and that it required a great deal of thought, especially the generation of the SIN's. He added the computer input was done at different computer stations with different computer passwords. There was no evidence that Mr. Taylor was not acting alone, even though the grievor claimed in a statement that he was blackmailed (Exhibit E-1, Tab 8).

2. Brent McIlveen, Manager, Canada Employment Centre, Sinclair Centre at the time of the incident, has been with HRDC for twenty-four years. The grievor had worked for the witness for seven years and reported directly to a Judy Ksik, who reported in turn to the Assistant Manager who reports to Mr. McIlveen.

He testified that the grievor had been on sick leave in 1994 followed by disability leave. He came back to work in January 1995. Mr. McIlveen was not aware of the specific reasons for these periods of leave but thought it probably related to Mr. Taylor's diabetes. Mr. McIlveen had no reason to be aware of any psychological problems of the grievor.

Mr. McIlveen first became aware of the fraud in the evening of April 26. He said Mr. Taylor's arrest the next morning was very dramatic and caused such anxiety in the office some staff members were crying. The office was closed early that day. On April 27, 1995 he gave the grievor a fifteen day suspension that banned him from the office while disciplinary and criminal investigations were going on.

The witness attended an interview with Mr. Taylor and his union representative on May 18, 1995 to review the evidence before them. Mr. Taylor only read a statement (Exhibit E-1, Tab 8) since he had been advised not to say more by a lawyer and by his psychiatrist. This was the first time that the witness heard the grievor speak about seeing a psychiatrist. Mr. McIlveen was aware that the grievor had had a relationship with another man who died of AIDS, referred to in Exhibit G-1, page 2. Even though Mr. Taylor took eight or nine days of sick leave after he returned between January and March, 1995, Mr. Taylor never presented to the employer any medical evidence relative to his state of mind.

When asked why he recommended that the grievor be discharged (Exhibit E-1, Tab-4), Mr. McIlveen said: Mr. Taylor's statement that he read on May 18, 1995 (Exhibit E-1, Tab 8) was unsubstantiated and he did not provide more information to his employer; the massive fraud was premeditated, organized, and \$51,776. in benefit warrants were found in his leather pack sack at his desk on April 27, 1995; there were no mitigating circumstances; the entire Sinclair Centre office staff were affected; they felt devastated, they felt they would be looked upon badly and felt brandished by the

incident; the setting-up of the fraudulent files was a lot of work. The Disciplinary Report Form (Exhibit E-1, Tab 4) concluded:

*SECTION 9 - MITIGATING CIRCUMSTANCES*

*Mr. Taylor, while hinting at other information in his possession on the case at his interview held May 18/95, refused to comment on any of the information we presented to him at that interview. Therefore, we did not consider any mitigating circumstances in this case, for him.*

*From the perspective of the employer, however, we consider the actions of Mr. Taylor to be extremely prejudicial to our organization and indeed our employees. He has provided absolutely no reasons for his actions. He chooses not to respond to the volumes of evidence linking him to this fraud that was presented to him at our interview held on May 18, 1995.*

*Mr. Taylor has smeared the reputation of all of our employees in the eyes of the public we serve with his calculated acts of fraud.*

During cross-examination, Mr. McIlveen said that he never asked the grievor for a medical assessment of his condition even though he thought the grievor's statement at the May 18 meeting was strange. The witness felt at the time that the grievor's statement was meant to distract the employer from the evidence before it. Mr. McIlveen refused to accept the grievor's resignation letter (Exhibit E-1, Tab 7) because the investigation was still going on. He did not know of any other resignation refusals. He added that the grievor was not well liked by all since he was "still carrying some baggage from the 1991 PSAC strike".

Argument for the Employer

Mr. Newman argued that by any standard the dollar amount of "at least \$93,000." is large scale fraud by someone sworn to protect the integrity of the Unemployment Insurance fund. He characterized the fraud as "a crime of extreme stealth" that required knowledge and precise planning to set up fraudulent accounts using various computers. He reminded me that even though this was a first offence, it was a major crime and the public treasury could be severely hurt if the offence is not dealt with strongly. He reminded me also that the grievor had the nerve to keep

false benefit warrants at his desk in the Sinclair Centre and that the money recovered from Mr. Taylor's superannuation fund was not recovered on the grievor's consent.

Mr. Newman argued there is no evidence of mitigating circumstances, no evidence that Mr. Taylor was lacking in "mens rea", and no evidence he was incapacitated. He concluded that this was not an impulsive act and that the grievor "has to take responsibility for his actions". He said Mr. Taylor created a terrible problem not only for himself but for all the staff and management at the Sinclair Centre. He asked that I therefore deny the grievance and referred me to Moore (Board file: 166-2-23658).

#### Argument for the Grievor

Mr. Nadeau agreed that what is before me is a serious matter but that this incident was only large in terms of the dollar amount not large scale fraud because the grievor acted alone in a short time frame. He described the grievor's action as "suicidal because he would have eventually been caught". He argued that the grievor had evolved a self-destructive personality that Dr. Friesen described in his July 4, 1996 letter (Exhibit G-1) and that the employer should have obtained a mental assessment of Mr. Taylor, especially since Mr. Nadeau felt the grievor's statement (Exhibit E-1, Tab 8) given on May 18, 1995 at his interview was not of a "full minded person". He also argued that Dr. Friesen felt partly responsible as he wrote in Exhibit G-1 that Dr. Friesen's "urgency to see him return to work contributed to his feelings of frustration and sense of being trapped".

Mr. Nadeau argued that if the employer had accepted Mr. Taylor's resignation (Exhibit E-1, Tab 7) there would have been no need to impose discipline. He requested that I reinstate the grievor in order to allow him to resign or to be released for incapacity since he has a mental disorder.

#### Rebuttal Argument

In rebuttal, Mr. Newman argued that it is difficult for a psychiatrist to know what is really going on in someone's mind because psychiatry is not an exact science. He reminded me that Dr. Friesen's letter (Exhibit G-1) was written well over a year after the fraud was committed. He argued that this letter cannot be used as an excuse

for acting in a criminal way since we all have to control some tendencies. He concluded that there is no evidence that the grievor was ever hospitalized, or that he ever attempted suicide. He did not lack mental capacity.

### Decision

After reviewing all of the evidence and testimony before me, I am of the opinion that the employer's decision to terminate Mr. Taylor for cause was justified.

The facts are not in dispute in this case. There is overwhelming evidence of premeditated, planned, deliberate fraud by the grievor. The fraud is not only criminal in nature for which he pleaded guilty and has been sentenced, but also constitutes an extremely serious, irreparable breach of trust between Mr. Taylor and his employer.

I have not been provided with sufficient mitigating circumstances, medical evidence or otherwise, that would allow me to interfere in the employer's decision to terminate the grievor. Dr. Friesen's letter (Exhibit G-1) does not suggest a state of mind which would in any significant way, explain the grievor's conduct. Mr. Taylor stole from the public purse in a calculated way. His conduct is not the result of one untoward incident. When asked by the CIBC about the many benefit warrants and the many different deposit locations, the grievor indicated, as reported in Exhibit E-1, Tab 4, that: "he was receiving retro bonuses from HRDC, his employer, for placement work with large corporate employers. No work or bonus plan of this nature exists within HRDC".

As in the Moore decision (supra), I am of the same mind that Mr. Taylor no longer possesses "the high level of trust, honesty and integrity which is inherent in the duties and responsibilities of an Agent Two".

I trust that this decision will finally quell some staff feelings of anxiety over this incident at Sinclair Centre and restore their self-confidence in the public service that they perform.



For all these reasons, this grievance is denied.

**J. Barry Turner,  
Board Member.**

OTTAWA, October 23, 1996.