

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

STEVEN JOHN TINKHAM

Grievor

and

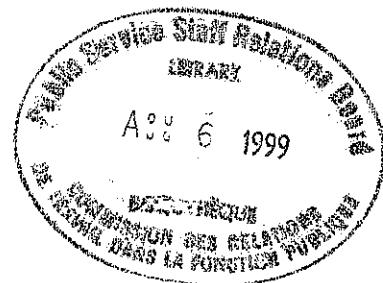
TREASURY BOARD
(Fisheries and Oceans)

Employer

Before: P. Chodos, Vice-Chairperson

For the Grievor: Himself

For the Employer: H. Newman, Counsel



Heard at Victoria, British Columbia,
October 5 and 6, 1998.

DECISION

On March 3, 1996 Mr. Tinkham filed a grievance respecting his termination of employment due to medical incapacity. This grievance was in response to a letter dated February 1, 1996 on behalf of Mr. Tousignant, Director-General, Pacific Region, Department of Fisheries and Oceans, advising Mr. Tinkham of the following:

(Exhibit E-33)

...

The purpose of this letter is to provide you with notice of employment termination.

You have been unable to perform the duties of your Ships' Crew (SC-STD-04) position due to medical incapacity since February 21, 1992 to present. Health Canada medical evaluations and medical certificates from your personal physician confirm that you continue to remain unfit for work. I have reached the conclusion, given that you have been on sick leave nearly four years, that you remain unfit for work and will continue in that status for the foreseeable future with no realistic prognosis for return to work.

Therefore, by the authority delegated to me by the Deputy Minister, I have no alternative but to notify you that your employment with the Department of Fisheries and Oceans will be terminated effective the closure of business Friday, February 2nd, 1996.

...

Mr. Tinkham's grievance was referred to the Board for adjudication on February 28, 1997. The Board scheduled the adjudication hearing for September 30, 1997; by letter dated September 25, 1997, the Public Service Alliance of Canada advised the Board that Mr. Tinkham would be unable to attend that hearing. The Alliance further advised that it would not be representing Mr. Tinkham in this matter. As a consequence, the Board agreed to postpone this hearing. On November 3, 1997, the Board informed Mr. Tinkham by letter that his hearing would be scheduled for March 25 and 26, 1998 in Victoria. This letter also stated that:

...

... Since the Public Service Alliance of Canada is no longer representing you, you may wish to represent yourself or obtain the services of a representative or counsel. If so, you

should provide the Board with the name, address, telephone and fax numbers of the person who will be representing you.

...

By letter dated November 19, 1997, Mr. Tinkham wrote to the Board advising that:

...

At this time, it appears that March 25 & 26 will be acceptable, however, I inform you due to your ultimatum, it is unknown to me as to whether council (sic) will accept these dates for hearing. Council (sic) may decide the matter should be heard by the Courts or may be unavailable.

...

The Board responded by letter dated December 4, 1997 in which it stated that:

...

*The Board has also noted your conditional acceptance of **March 25th and 26th, 1998** as possible hearing dates. You or your counsel are asked to confirm your availability on those dates by no later than **January 23, 1998**.*

...

Mr. Tinkham again wrote to the Board on January 22, 1998 in which he stated the following:

...

I have not yet been able to confirm the availability of proposed Counsel with regard to the above matter on March 25 and 26, 1998, as I have been unable to retain such Counsel.

With regard to the above, I wish to have preliminary matters dealt with by the B.C. Supreme Court, pursuant to the Constitutional Questions Act, in which the said Court has jurisdiction to determine Constitutional matters pursuant to the Constitution Act.

I respectfully request that this matter be adjourned generally until the Constitutional matters have been adjudicated in an appropriate forum, inter alia.

...

The employer objected to the postponement, and the Board advised Mr. Tinkham that it was not prepared to grant the adjournment, and that the hearing would proceed on March 25th as scheduled. Mr. Tinkham wrote to the Board again on March 22nd to advise that he had been diagnosed as having "Post Traumatic Stress Disorder" and that as a result of this illness he was unable to represent himself, nor did he have the financial means to obtain counsel; he again requested an adjournment. The employer again advised that it opposed this adjournment. By letter dated March 23, 1998, the Board notified Mr. Tinkham that it was granting his request for an adjournment on the following terms:

...

As noted in the file, this matter was previously postponed on your behalf on September 26, 1997 in order to allow you the opportunity to obtain representation.

In your letter of March 23 you state that you suffer from a post-traumatic stress disorder that makes it impracticable for you to represent yourself in the adjudication of your grievance and that you are presently financially restrained from retaining legal counsel. You also state that your former employer is withholding monies (severance pay and other benefits) which you claim are rightfully owing to you. It is on this basis that you now request an adjournment of the hearing of your grievance until such time as you receive the monies you claim you are owed or until you are able to pursue action against your union for failure to represent you.

Your request was submitted to the Board and I was directed to inform the parties that, in the special circumstances of this case your request for a postponement is granted. However, since your grievance relates to matters that occurred as far back as in 1992 the Board is not prepared to adjourn the hearing of your grievance indefinitely. Accordingly, your grievance will be re-scheduled for hearing on October 5, 1998 in Victoria. This will allow slightly more than six months, which should be more than ample time for you to prepare for the hearing of your grievance.

In the circumstances, the Board has further directed me to advise you that October 5 is considered to be a firm date and that your grievance will be heard at that time.

...

The hearing commenced as scheduled on October 5, 1998 with Mr. Tinkham in attendance and representing himself. The employer presented its case; however, prior to submitting his case, Mr. Tinkham requested an adjournment of the proceedings to allow him an opportunity to subpoena two witnesses who were not available at that time. The undersigned agreed to adjourn the proceedings, and advised Mr. Tinkham to contact the Board with a view to obtaining the necessary subpoenas. Mr. Tinkham was also advised that he would be informed in due course as to the dates for the continuation of these proceedings.

The Board advised the parties by letter dated October 15, 1998 that the hearing would resume on February 24 to 26, 1999 in Victoria. The parties were asked to advise the Board as to their availability on the proposed dates by no later than October 30, 1998. The employer's counsel informed the Board on October 19 that the dates of February 24 to 26 was acceptable to the employer. A Notice of Hearing dated January 14, 1999 was duly sent to the parties, including Mr. Tinkham. In addition, by letter dated February 9, 1999 the Board advised Mr. Tinkham :

...

Since you have not requested any "Summons to Witness to Attend" forms, you are hereby reminded that it is your responsibility to issue and serve the subpoena to the witness(es) that you require at the hearing. You are reminded that a person who is summoned to attend as a witness and who so attends, is entitled to be paid an allowance for expenses determined in accordance with the fees associated in civil suits in the superior court of the province in which the proceedings are being held which in this case is British Columbia.

...

The Board received a letter from Mr. Tinkham dated February 7, 1999 stating:

...

I regret that I am unable to attend the hearing as scheduled on February 24 - 26, 1999 and hereby request that the matter be adjourned to a later date, as I am medically unable to conduct this hearing particularly without representation on my behalf. Furthermore, I am financially prohibited from attending and do not have the money for attendance, representation or to subpoena (sic) necessary witnesses.

A letter from my physician will be forthcoming.

...

The employer's counsel again advised that it objected to the postponement of the continuation of this hearing. Mr. Tinkham was informed by letter dated February 11, 1999 that his request for an adjournment

...

... is granted subject to the following conditions: the grievor shall comply with its offer to provide a medical certificate on or before February 19, 1999....

A medical certificate was duly provided, and the hearing scheduled for February 24th to 26th was postponed.

On March 18, 1999, the Board wrote to Mr. Tinkham to advise him that the hearing would be re-scheduled for August 25 to 27, 1999. The letter also stated that:

...

... Please note that as the Board has already granted you two postponements, and in view of the fact that a considerable period of time has elapsed since this matter was first referred to the Board, it is most unlikely that a further request for a postponement will be granted.

*Please advise the Board by **no later than April 12, 1999** of your availability and undertaking to proceed on the proposed hearing dates.*

...

Nothing further was heard from Mr. Tinkham concerning either the scheduling of the resumption of the hearing or in respect of any request for subpoenas. The Board again wrote to Mr. Tinkham on April 27, 1999 noting that there has been no response from him concerning the continuation of the hearing on August 25 to 27, 1999. The letter requested Mr. Tinkham to advise the Board, by no later than May 26, 1999, of his availability, and his undertaking to proceed on those dates. Again nothing was heard from Mr. Tinkham and accordingly on May 28, 1999, the Board wrote to Mr. Tinkham noting that:

...

*... unless you inform the Board by **no later than June 14, 1999** of your availability to proceed with the hearing of this matter on **August 25 to 27, 1999**, he [the adjudicator] will proceed to issue a decision terminating the proceedings and closing the file.*

...

As of the date of this decision there has been no further communication from Mr. Tinkham.

In view of the circumstances outlined above, I must conclude that Mr. Tinkham has chosen not to pursue these proceedings any further, and has abandoned his grievance. Accordingly, I direct that the proceedings be terminated and the file closed.

**P. Chodos,
Vice-Chairperson.**

OTTAWA, August 3, 1999.