

**Files:** 166-2-27608,  
166-2-28503,  
166-2-28504,  
149-2-172



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**GERALD A. THOMAS**

Grievor

and

**TREASURY BOARD**  
**(REVENUE CANADA – Customs, Excise and Taxation)**

Employer

***Before:*** Donald MacLean, Board Member

***For the Grievor:*** Michael Tynes, Public Service Alliance of Canada

***For the Employer:*** Asha Kurian, student-at-law

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Heard at Saint John, New Brunswick,  
March 15, 1999

## **DECISION**

This adjudication involves three grievances. All the grievances concern Gerald A. Thomas, an employee of the Saint John office of Revenue Canada.

Mr. Thomas began his employment with the Customs and Excise Branch of 6th Department on Campobello Island, New Brunswick, in June 1985. He started as a PM-1 Customs Inspector initially on a seasonal basis. Eventually he got an appointment to a full-time position at the border crossing in Ste. Croix, New Brunswick, in October 1986.

In August 1991, Mr. Thomas requested a transfer to the Department's office in Saint John, his hometown. He has been employed as a PM-1 Customs inspector (border services), in the Saint John offices since 1991.

The matters before the Board occurred between May 1995 and April 1997. The employer disciplined him for three separate incidents. They suspended him without pay for one day, three days, and six days respectively. Mr. Thomas grieved the three suspensions imposed by the employer. He wants the discipline to be removed from his record and reimbursement of his lost pay.

In dealing with the three grievances, I will review each incident separately, before I render my decision on each of them.

### **1. *Grievance 166-02-27608***

The first incident involves the grievor and his attendance at the office of Global Convention Services Ltd. ("*Global*") in Saint John, on May 29, 1995.

Mr. Thomas had instructions to inspect a shipment of goods at *Global*. The shipment was going to a trade fair in the U.S.A. His task was to cancel a remission permit for the goods that were going out of the country. He was to check the serial numbers of the goods in the shipment against the shipping manifest.

Brenda Gaudet, an employee of *Global*, was his contact at the *Global* office. The contact person at *Global* who normally deals with Customs' inspections was out of the office at the time. Ms. Gaudet was filling in for the absent manager. She was under time

constraints to get the goods inspected, ready for pick up by the transport company, and out to the trade fair.

On the other hand, Mr. Thomas had problems locating where the shipment was. He had been told that it was at the transport company warehouse. He had gone there at first.

According to Ms. Gaudet, the grievor was irate and frustrated with her and other staff of *Global* immediately upon his arrival at the warehouse. After a short introduction, he indicated to Ms. Gaudet that “he didn’t have time to do this...” He would tap his watch.

The grievor had to take a fellow employee back to the office. He indicated to Ms. Gaudet that he had to leave for a few minutes, but he would return shortly.

After he returned to *Global* Mr. Thomas continued to speak in a loud, demeaning tone. He again noted that “he had no time in his day to deal with this” and began to quote articles and sections of the Custom regulations. Ms. Gaudet felt intimidated, abused, mistreated, and harassed. Ms. Gaudet is in customer service in *Global*. She felt that his reasons for mistreating her did not excuse his lack of professionalism towards her.

Ms. Gaudet was not familiar with the warehouse, or where the shipment was located. She managed to find the boxes, but they were not open. This further frustrated the grievor.

He did, nevertheless, complete his task and left *Global*’s offices.

Mr. Thomas’ actions and comments had left Ms. Gaudet very upset. She contacted Jamie Bastarache, Mr. Thomas’ supervisor at the Department. She wanted to make a complaint. She sent him a written summary of the incident.

Mr. Bastarache arranged for a formal investigation of the matter by the area manager. In due course the complaint was substantiated.

Upon receiving the results, Mr. Bastarache concluded that discipline was warranted. He examined the grievor’s file. Mr. Bastarache noted that the grievor had been both disciplined and counselled for similar behaviour in the recent past.

Mr. Bastarache considered the grievor's previous record, his previous conduct at the workplace, the need for employees to be polite and courteous to the public at all times. He reviewed the departmental standards of professional conduct. Mr. Bastarache also noted that the grievor did not take any responsibility for his actions. He showed no remorse. Accordingly, he concluded that a one-day suspension of Mr. Thomas was warranted.

The evidence of Mr. Thomas differed from that submitted by the employer. The grievor indicated that he and Gary Powers, (the other Customs agent) were instructed to conduct the inspection of *Global's* goods. At the same time, however, they were also told to return to the office by 4:30 p.m., so that Mr. Powers could relieve another employee who was ending his shift.

Unfortunately, somebody relayed the wrong information for the location of the shipment. As a result, Mr. Thomas had to make a couple of stops and inquire where he could find the goods for inspection. They were finally directed to the *Global* offices on Bayside Drive.

When he arrived at *Global*, he did not tap on his watch. He does not recall speaking loudly. In contrast, he thought that Ms. Gaudet appeared upset when he arrived. She had an "attitude" when warehouse employees could not be located to open the boxes for inspection.

While he was rushed and he was under pressure to return to the office, he says that he was not upset. He simply left for a few minutes, and later, he returned to the *Global* offices to complete the inspection.

After he got back to *Global*, the inspection took only a few minutes. The grievor believed that he was being polite and helpful. He did, however, feel resentful towards Ms. Gaudet. He felt that "she had her back up" because of his attendance at her office.

## **2. *Grievance 166-02-28503***

The second matter involves an incident at the Saint John Airport on November 10, 1996. Mr. Thomas and Matt Ridgeway were the two Customs inspectors who were assigned to clear airline passengers "through Customs" on their arrival in Canada. As the result of an incident, an employee of Air Atlantic wrote up a complaint against the grievor.

Judy Pike, was a customer service representative for Air Atlantic during the evening of November 10, when one of their planes arrived on a flight from Boston. It was enroute to Halifax. It had almost a full complement of passengers. The Customs officers had to clear the 27 passengers and their luggage through the usual customs' procedures. Included in the passenger list were Premier Frank McKenna, his wife Julie McKenna, Derek Oland, the president of Moosehead Breweries, and a basketball team from Halifax. The plane had a scheduled departure time of 30 minutes after its arrival at the gate.

Along with the passengers, several pieces of luggage had to be checked and cleared, including many sports' bags. To facilitate the clearance of the baggage, Ms. Pike requested and received permission from the other Customs agent, Mr. Ridgeway, to process the sports' bags through the side door. (This was not, however, the normal passage for inspection.)

Within a few minutes, Mr. Thomas noticed the bags for the basketball team had been placed through the side door. His job that evening was on the secondary inspection spot to inspect the luggage. He asked Ms. Pike in a loud voice: "What are you doing?" He told her that the bags that had gone through the side door had to be returned for inspection. Despite the fact that Ms. Pike was only four or five feet away from the grievor, the grievor was speaking in a demanding, authoritarian voice. He was loud enough to bring the customs area to complete silence. Passengers, including Premier McKenna and Mr. Oland, stopped their activities to see what had happened.

While Ms. Pike complied with the grievor's request and returned the bags, she was embarrassed for herself, for Air Atlantic, for the grievor, for the Customs' service, and for the passengers.

Ms. Pike was very upset by this incident. She wrote a letter to her manager, who, in turn, forwarded the complaint on to Mr. Bastarache. She thought that the actions of Mr. Thomas were inappropriate, and that they adversely affected the service of Air Atlantic. For Air Atlantic employees, customer service is a nice introduction to the company. It allows for a fluid transition through the ticketing and the boarding process, and it becomes a nice goodbye as the passengers continue on their way.

Mr. Bastarache testified that he was contacted by James Kendall, Air Atlantic's service manager at the airport (and Ms. Pike's supervisor). Mr. Kendall was concerned about the incident. In particular, he was unhappy that the reputation of the airline had been affected and that his employee had been mistreated.

In response, Mr. Bastarache asked the regional office to conduct an investigation. He also contacted the grievor and asked him to respond in writing. In addition, Mr. Bastarache spoke with Mr. Ridgeway about the incident.

Within a couple of weeks, Mr. Bastarache received the report of the investigation. It confirmed the events of November 10, as described by Ms. Pike. Accordingly, he was concerned that the grievor was not taking his behaviour or previous disciplinary matters seriously.

He testified that this incident was embarrassing to the Department. He imposed a three-day suspension on the grievor. He hoped that Mr. Thomas would understand that this type of behaviour was not acceptable.

Again the evidence of the Mr. Thomas was significantly different than that of the employer.

He indicated that, when working at the airport, his job is to inspect luggage for suspicious items. On this particular evening, he noticed that someone had placed a number of sports' bags by the side door. They had not followed the regular inspection path.

Ms. Pike, was six to eight feet away from him. He called out to her "excuse me", for the purpose of clarifying why the bags were there. Unfortunately, she was looking away. He then waved at her. As she approached, he asked her why the bags were by the side door and if Mr. Ridgeway had given her permission to clear the baggage in this fashion. When she did not respond, he just instructed her to return the bags for inspection.

He indicated that his comment was not loud and was only directed at Ms. Pike. The noise level in the customs area remained the same. Later, he apologized to Ms. Pike, once he learned that Mr. Ridgeway had given permission to process the bags in the fashion that she did. He felt he was being sensitive to passengers and to the airline and that he was simply doing his job.

During the grievance process the employer raised the issue of timeliness. However, it dropped the issue and did not pursue it at the hearing.

3. ***Grievance 166-02-28504***

The final incident occurred at the reception counter of the Customs Services' Office in Saint John on March 14, 1997. Anik Maisonneuve, an employee from the client services' office of the Department upstairs visited the office. Jewel Graves, had taken her to the pamphlet rack, just outside of the office. Ms. Maisonneuve drew attention to the fact that there were no French passport applications in the information rack of the Customs' office. She said that, if there were no French passport applications, the English ones could not be displayed either.

At the same time, the grievor was also in the reception area. He did not appreciate the fact that the English applications had to be removed from the rack. He was upset and began waving his arms. He was loud. As he turned to go to his desk he muttered: "Gestapo tactics".

Sheri Bartlett was at her desk close to the reception area. It was apparent to her that the grievor was agitated and upset as a result of the conversation that had transpired. He was pacing in the lobby, and waving his arms. His tone was inappropriate.

Immediately following the incident, Ms. Bartlett took a short break. During her break she met Ms. Maisonneuve coincidentally. They talked. Ms. Maisonneuve asked why Mr. Thomas had been so agitated and frantic. Ms. Maisonneuve had heard the grievor use the word "Gestapo," but she did not understand the context. Ms. Bartlett apologized for the grievor's actions and filed an incident report.

At the time of the incident Mr. Bastarache was in his office. He heard noise from the counter in the reception area. From his desk he could see Mr. Thomas and other employees at the counter. He heard Mr. Thomas say the word "Gestapo." A customer (Ms. Maisonneuve) was also in the reception area, he saw her face "go white," and she quickly left the office.

Within a few minutes, Mr. Bastarache called Mr. Thomas into his office and spoke to him about the incident. When asked what had transpired and why he had used the word

“Gestapo”, according to Mr. Bastarache, the grievor responded that “everyone knows his philosophical views on the French policy”, and that he had enough of this “French crap”. The grievor did not apologize and did not see his behaviour as being a problem. When Mr. Bastarache asked him if he would consider counselling to deal with his behaviour, Mr. Thomas indicated that he would simply file a grievance.

Because he was a witness to the incident, Mr. Bastarache did not request the regional office to investigate the details of the matter. Nevertheless, he concluded that discipline was warranted and that a six-day suspension of the grievor was appropriate in the circumstances.

Mr. Bastarache also testified that none of his other Customs inspectors had acted in the fashion that Mr. Thomas did to the public. For example, in his 16 years with the Department he has never seen any conflict with a customer who requests an inspection for remission of duties for goods going out of the country. He and the staff are available to serve the public. The inspectors are trained to treat everybody with respect. They have to be professional, sensitive, polite and courteous at all times. You cannot treat individuals the way that the grievor did. He had to change his behaviour. He had to get serious about how he treated others. Mr. Thomas has participated in a number of courses sponsored by the employer. At those sessions the employer’s message is that: “The client is # 1.”

Mr. Thomas testified that he had not met Ms. Maisonneuve before. He had heard Ms. Maisonneuve explain to Jewel Graves, the Customs employee at the counter, that they had to display both the French and English versions of the passport application. If the French version were not available, the English forms would have to be removed.

The grievor was upset by this comment in particular and the government’s bilingualism policy in general. While walking back to his desk, he said the words “Gestapo tactics” under his breath. He could not recall waving his arms or making any other gesture. He admitted that he was upset. He believes that he has been adversely affected by the government’s current bilingualism policy. He made a conscious decision, however, to remove himself from this situation.

When Mr. Bastarache called him into his office, he voiced his views on the language policy. He was reluctant to talk to Mr. Bastarache because he thought that any discussion of



his involvement in the incident could be used against him. He does not recall being either agitated or angry.

Mr. Thomas acknowledged that he had received a written reprimand about his conduct to a member of the public in June 1993. He also acknowledged that he had been counselled concerning comments that he made to his supervisor in March 1994.

In response to all of these incidents, Mr. Thomas believes that Mr. Bastarache is treating him unfairly. He has a lack of trust in his dealings with Mr. Bastarache.

He believes that he has a good relationship with other employees. In general, his peers in his office banter back and forth with each other.

In the past, he has been under extreme stress and pressure and has had problems focusing at work. He has a low emotional threshold and has seen his physician for medication.

In addition, he has taken other remedial action to deal with his stress at work. He has met with a counsellor through the employee assistance program (EAP). He also has been seeing a psychiatrist since September 1997. He continues to see him every two months, for assistance and medication.

According to his psychiatrist, while Mr. Thomas has a personality disorder and symptoms of depression due to the stress at work, he has been co-operative in dealing with his situation. He has attended a skills' group course (that includes techniques for stress reduction, anxiety, and self-esteem), and an anger management course. He has been "very diligent and enthusiastic in getting help."

**Issues:**

In cases of discipline, a number of issues must be determined for each of the incidents of discipline. These issues include:

Did the grievor engage in the conduct on which the employer relied to invoke the discipline, and if so, was that conduct sufficient to warrant the imposition of some discipline?

If the answer is in the affirmative, was the discipline a just and reasonable response in all the circumstances?

(See *Canadian Labour Arbitration (3d)* by Brown & Beatty 1999 (Canada Law Book) at paragraph 7:4000, at page 7-197, and *Heustis v. N.B. Electric Power Commission*, [1979] 2 S.C.R. 768).

### **Summary of the Representations on behalf of the Parties**

#### **Argument for the Employer**

Counsel for the employer submits that Mr. Thomas' behaviour was inappropriate, especially when dealing with the public. It was harmful to the customers and to the reputation of the employer. While the grievor may have some personality difficulties, his difficulties do not excuse his behaviour. The grievor has expressed no remorse. The seriousness of his behaviour must be considered.

In support of their submission, the employer relies on the decision in *Funnell* (Board file 166-2-25762). In that case an employee was having behavioural problems at work, which, in turn, eventually led to his termination. However, after his termination, new evidence came to the attention of the employer. It revealed that the grievor was suffering from a bi-polar disorder, which was the cause to his inappropriate behaviour in the workplace. This information was never shared with the employer, prior to the termination. Notwithstanding that new evidence, the adjudicator held that the dismissal was justified, and that post-termination evidence could not be used to alter a decision that was justifiable at the time that it was taken.

The employer contends that the discipline in this instance was both fair and progressive in the circumstances. Counsel submits that any discipline must be sufficient to indicate to the grievor that he cannot treat the public in the manner that he did. This is important because of the nature of his employment in the Public Service.

Ms. Kurian submitted that nothing in the report by the psychiatrist for Mr. Thomas "provides the basis for mitigation of the disciplinary action..." There was "no medical evidence to indicate that Mr. Thomas is incapable of controlling his behaviour."

Ms. Kurian requested that the grievances be denied.

### **Argument for Mr. Thomas**

The representative for the grievor suggested that the grievor is required to work under stress. He gets excited quickly. However, he never had any intention to purposely harass his customers or to embarrass his employer. Simply put, these incidents were the result of a breakdown in communication, arising from stressful situations.

The grievor has a low emotional threshold, which should be considered as a mitigating factor in this case. He has a natural tendency to speak loudly. He becomes easily excited. If his behaviour is “non-voluntary”, the grievor is not culpable, and, therefore, discipline is inappropriate.

Further, the actions of Mr. Thomas in each of the cases are attributable to the emotional problems for which he has sought professional help. Perhaps, he should have discussed his difficulties with his supervisor. However, there is an apparent lack of trust between him and Mr. Bastarache. The grievor also feared that any discussion of this nature would be used against him.

In conclusion, the grievor’s representative requests that the grievances in all three matters be allowed; that help be provided to Mr. Thomas; and that he be permitted to continue in his employment as a productive public servant.

### **Conclusion and Reasons for the Decision**

I intend to review the issues as outlined earlier in this decision (at page 8), and then decide what impact they have on my decision.

1. Did the employer have just and reasonable cause to impose some form of discipline on the grievor?

At the outset, I must determine for each of the three occasions: Did the grievor do what the employer alleged? Moreover, if he did the actions, was it just and reasonable to impose discipline on him?

I have considered all the relevant evidence presented at the hearing. I have considered the circumstances of each incident and I have come to the following conclusions for each of the incidents.

On the first incident I believe that Mr. Thomas did treat Ms. Gaudet at *Global* in a humiliating manner. I accept and prefer her characterization of his actions that the grievor was loud, demeaning, impatient, unprofessional, and irate with her. But for the grievor's conduct, she had no axe to grind. She just wanted to have someone from Customs to verify the serial numbers. She was trying to do what was needed to allow them to see the goods. Her testimony was consistent throughout.

His purpose for going to *Global* was to check that the serial numbers of the goods that were going out of the country matched a listing that he had. It was supposed to be a simple non-confrontational task. By his attitude and actions the grievor turned it into an unpleasant, distasteful and embarrassing event. He was wrong to do so. He deserved to be disciplined.

I prefer Ms. Pike's recollection of the "airport" events where it is at odds to that of the grievor. Her evidence was straightforward, and without exaggeration. Her concerns were not for herself, but how the grievor's conduct reflected on the reputation of her company and on that of the Customs service. I conclude that during the incident Mr. Thomas was loud and demeaning to Ms. Pike. The passengers from the Air Atlantic plane noticed the incident. They fell silent. It was an embarrassment for Ms. Pike and for Air Atlantic. It was an embarrassment for which Mr. Thomas was responsible. He deserved to be disciplined.

Thirdly, I conclude that Mr. Thomas' use of the word "Gestapo" at the office had no other intention than to call into question the very reason why Ms. Maisonneuve was at the office. It was not warranted. Regardless of his personal views on the government's bilingualism policy, he had no right to import into his protest the word "Gestapo". It was a detestable comment and totally unwarranted in the circumstances. He deserved to be disciplined for that.

In reaching my conclusions, I have considered the fact that stress can arise in the workplace. I am also mindful of the fact that employees may be subject to demands from

the public while they are at work. However, in his time with the Saint John border services' office he has not discussed his personal shortcomings with his employer.

Notwithstanding these latter factors, I conclude that the employer did have cause for discipline, in each of the three incidents. The evidence is that Mr. Thomas becomes quickly excited and agitated when dealing with stressful situations. Yet, his behaviour, on each of these occasions, has negatively impacted on the employer and the employer's reputation to serve the public.

In addition, all of these incidents could have been avoided, had the grievor been prepared to deal in a respectful and patient manner with the public. Unfortunately, in each incident he consistently demonstrated a lack of personal restraint. I reject any suggestion that he was unable to control himself, or that his actions were non-voluntary. His psychiatrist did not suggest that that was so. He had recommended that Mr. Thomas attend the skills' courses.

When his supervisor questioned him, he did not express any remorse or accept any responsibility for his actions. Even in the adjudication hearing, he was at pains to ascribe wrongdoing to others, while at the same time not accepting any blame for himself.

Given the nature of his employment, it is my opinion that discipline was appropriate for all three incidents. Mr. Thomas has to understand that he has to change his attitude and his actions. He refuses to believe that others in the Department can tell him that he has misconducted himself. If what it takes is my characterization of his actions, he has it in no uncertain terms. He was wrong in all three incidents. The employer tried other means to correct him. When that failed, they had the right to discipline him for all three incidents with a view to correcting his future behaviour.

2. Were the disciplinary measures imposed on the grievor, just and reasonable in the circumstances?

In considering this issue, I am mindful that Mr. Thomas was required to provide his customers with courteous and effective service. "Service" is a core and basic objective for this organization. To display rude or aggressive behaviour in public is simply unacceptable.

I also note that the grievor has shown little remorse for his behaviour. He exonerates himself from any blame or liability. He does not acknowledge that his behaviour might have been inappropriate. Despite the consistency of the evidence and the complaints that have been made, the grievor finds fault with his supervisor, with Ms. Gaudet, Ms. Pike, and Ms. Maisonneuve. He adds that the stress in his environment and his low emotional tolerance contributed to why the incidents occurred.

Without question, patience and care are required when working with the public. Clients are often stressed when they meet a Customs officers, who may have high demands on their capabilities, and their work environment may be a demanding one. In my opinion, Mr. Thomas has improperly reacted to stress and to opinions or attitudes that differ from his own. However, his behaviour on all three occasions was unacceptable for a person in the Public Service.

Unfortunately, the grievor has emotional problems for which he sought professional assistance. He did not, however, advise his employer of his problems, nor did he seek a modification of his job duties. The employer based the disciplinary action on the evidence that was available at the time. I accept and adopt the rationale of the decision in *Funnell (supra)*, that says that post-disciplinary evidence to explain behaviour cannot be used to alter the employer's decision that was just and reasonable.

While I respect and encourage the grievor to continue seeking professional help, his emotional problems do not excuse his behaviour. In fact, I agree with the employer's argument that while his doctor's report may explain his behaviour somewhat, it does not absolve him for his blameworthy conduct.

Finally, I find that the discipline imposed in each of the three incidents was appropriate. To be effective discipline must also be progressive. When previous counselling, reprimands, and suspensions fail to obtain the objective to correct the grievor's behaviour, the employer correctly reacted by increasing the penalty on each occasion. Having done so, the employer, in my view, correctly chose progressive and appropriate discipline in the circumstances.

It is my opinion that the employer had just cause to impose the discipline that it did on Mr. Thomas for each incident.

I find no reason to allow these grievances.

I hereby dismiss all three grievances for the reasons herein contained.

**Donald MacLean,**  
Adjudicator and Board Member.

Moncton, New Brunswick.

November 5, 1999.