File: 166-2-27769

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

ED TREVENA

Grievor

and

TREASURY BOARD
(Revenue Canada, Taxation)

Employer

Before: Joseph W. Potter, Board Member

For the Grievor: Derek Dagger, Public Service Alliance of Canada

For the Employer: Jock Climie, Counsel

Heard at Regina, Saskatchewan,
February 23 and 24, 1998.

DECISION

The grievor is a PM-02 in the Tax Services Branch of Revenue Canada, in Regina. He is grieving a 20-day suspension imposed for the reasons specified in the letter of suspension dated November 9, 1995 from Mr. Dave Marshall, Assistant Director, Revenue Collections, Regina Tax Services Office (Exhibit E-6), which reads:

> *I have completed an investigation of a complaint against you from the public and have concluded that you made telephone calls to Ms. Glenda Patterson and her solicitor's office (Goldsman & Ritzen) in July of this year.*
>
> *These calls were made with malice towards your former supervisor, Mr. Andrei Fedunyk, and for your own personal interest or gain. Your conduct has served to discredit our department in the eyes of the complainants and Ms. Patterson's solicitor.*
>
> *The information you disclosed concerning Mr. Fedunyk's "retirement package" was confidential information obtained through your employment here and is a violation of the "Oath of Office and Secrecy and the Standards of Conduct" you had made with our department.*
>
> *The use of the department's telephone to make these calls is inappropriate use of government equipment and has resulted in unnecessary costs to our department.*
>
> *For these reasons you are immediately suspended from duty and such suspension will be for a period of twenty (20) working days. During this time period you are not to return to the workplace. You will return to work on Dec. 8/95.*
>
> *Your denial of making these telephone calls and your absence of remorse have been taken into consideration in determining the severity of the discipline.*
>
> *In the future I expect you to conduct yourself in such a manner as to not discredit the Federal Government or our department.*
>
> *Confidential Information obtained through your employment is not to be disclosed to the public as stipulated in your "Oath of Office and Secrecy".*
>
> *Office equipment is to be used solely for purposes related to the performance of your duties with this department.*

> *This complaint was received in confidence and you are advised not to discuss this matter or the related disciplinary action with anyone other than your union representative or management personnel involved in this matter.*
>
> *Failure to adhere to the above instructions could lead to further and more severe disciplinary action, up to and including termination of employment.*

Six witnesses testified, 17 exhibits were filed and the parties submitted a joint statement as to what another witness, who could not attend, would say. An exclusion of witnesses was requested and granted.

Evidence

Mr. Andrei Fedunyk testified that, for one year immediately prior to taking early retirement on July 14, 1995, he was the grievor's supervisor. At work there was not a great deal of interaction between the witness and the grievor, but Mr. Fedunyk did meet with Mr. Trevena in mid-June 1995 to discuss the grievor's performance. Mr. Fedunyk indicated he imparted some negative comments about the grievor's performance in the meeting. As Mr. Fedunyk had no knowledge about taking early retirement at that time, he suggested to Mr. Trevena that the work situation be monitored until September, at which time a formal evaluation would be done. Mr. Fedunyk testified that the grievor said the evaluation was unacceptable and, further, that dirt could be found on Mr. Fedunyk in Edmonton if need be. Mr. Fedunyk testified he mentioned the grievor's remarks the next day to his own supervisor, Mr. Marshall, as an implied threat.

In cross-examination, Mr. Fedunyk admitted he did not take this threat seriously. Mr. Trevena testified he never made this comment and denied there was any animosity between he and his supervisor. The grievor stated he was not upset at Mr. Fedunyk for the performance evaluation meeting, as nothing had come of it.

Ms. Judy Ryan was the Acting Director, Human Resources, at the Regina Tax Office during the period in question. She testified that she sent Mr. Fedunyk a "Request for Early Retirement" form (Exhibit E-12) in late June, early July 1995. This would have been the first occasion Mr. Fedunyk was offered early retirement. The request form outlined his entitlement if he left prior to July 15, and his entitlement was based on his weekly salary at that time. Mr. Fedunyk had testified that there was

office talk about the generalities of his early retirement, but not about the specific offer. Mr. Fedunyk left under the early retirement provisions.

Mr. Dave Marshall, the Assistant Director, Revenue Collections, for the Regina Tax Office, testified that, on August 10, 1995, he received a telephone call from Mr. Fedunyk. The information provided was that one of Mr. Marshall's employees, Mr. Ed Trevena, had called Mr. Fedunyk's ex-wife in Edmonton and divulged confidential information concerning Mr. Fedunyk's early retirement package. Mr. Fedunyk and his ex-wife were in the process of finalizing a divorce settlement. A written statement outlining the complaint was sent to Mr. Marshall on August 18 and this was identified as Exhibit E-4.

Upon receipt of this information, Mr. Marshall immediately commenced an investigation into the matter. Mr. Kreway, an internal auditor with Revenue Canada, was asked to obtain a record of the long-distance telephone calls Mr. Trevena had made from his workstation telephone in July, and this record was introduced as Exhibit E-1. Mr. Fedunyk's ex-wife, Ms. Patterson, was asked to submit a written statement concerning the details of the calls, and she did so on August 18, 1995. This was identified as Exhibit E-3.

The telephone records revealed that, on July 20, 1995, three non-business-related long-distance telephone calls were made from the grievor's workstation telephone. The first was at 7:17 a.m. to Montreal and it lasted for 3.7 minutes. Although not related to the complaint, it did form part of the investigation. The investigation revealed the number was for *Avon*, and Mr. Trevena testified he sold *Avon* products for his daughter in the office, but not during office hours. When Mr. Marshall became aware the number was for an *Avon* office, he suspected the grievor of making that call as well, due to Mr. Trevena's known involvement with that company. The grievor testified he initially denied making the call to Montreal, as it was not a number he recognized. He was never told during the investigation that it was to *Avon;* consequently, that was why he did not recognize the telephone number. In cross-examination, the grievor stated it was the one and only time he had ever made a phone call to *Avon* and that is why he did not recognize the number initially when management provided it. He stated he did eventually recognize

the Montreal number as being the *Avon* number but was never given an opportunity to admit he made the call.

The second call on July 20 was at 2:57 p.m. to Ms. Patterson at her residence in Edmonton and it lasted 4.9 minutes. Ms. Patterson stated she received a telephone call at her home from a male who initially did not identify himself but stated he had some information about a buy-out package that Mr. Fedunyk was receiving. Ms. Patterson testified she tried to find out who the caller was and, finally, after two or three requests for the caller's name, he said it was "Ed" and that he was calling from the Regina office and that he had worked with Mr. Fedunyk. The caller told Ms. Patterson that her ex-husband, Mr. Fedunyk, was going to receive between $60,000 and $70,000 in a buy-out package with the Government, and suggested that Ms. Patterson inform her lawyer of this fact. The caller stated Mr. Fedunyk was "jerking him around" and should not be allowed to get away with all this money. The caller wanted to speak to Ms. Patterson's divorce lawyer about this, so Ms. Patterson gave him the name and telephone number of her lawyer. The grievor testified he did not make this call to Ms. Patterson.

The third call on July 20 was at 3:03 p.m. to Ms. Patterson's lawyer who was also in Edmonton and it lasted 4.5 minutes. Ms. Susan Shedden testified that she is a legal secretary with the Edmonton law firm of Goldsman & Ritzen and they were representing Ms. Patterson in her divorce. Ms. Shedden testified that, at approximately 3:00 p.m. on July 20, 1995, she received an anonymous telephone call from a male who wished to provide some information on Ms. Patterson's divorce. The caller stated Mr. Fedunyk was entitled to an early retirement package from the Government and it would amount to some 65-weeks pay. Ms. Shedden testified that the caller said this should be looked into in order to determine if Ms. Patterson was entitled to receive any of it. The caller stated he would call back in a couple of days to speak directly with the lawyer handling the divorce to ensure the information was understood. Ms. Shedden wrote a memorandum to the lawyer handling the divorce specifying the contents of the telephone call and this memorandum was introduced as Exhibit E-5. The grievor testified he did not make this call.

On July 21, two non-business-related telephone calls were made from the grievor's workstation telephone; the first was at 3:15 p.m. to Ms. Patterson's lawyer, lasting half a minute, but Ms. Shedden did not speak with the caller at that time. The grievor testified he did not make this call.

The second call was at 3:23 p.m. to a Mr. Murphy, who is a Revenue Canada employee in Saskatoon. The employer said it was not business related, and this call lasted eight minutes. Mr. Murphy was not called as a witness but the parties were able to speak to him during the proceedings and agreed as to what Mr. Murphy would have said had he attended. The Saskatoon telephone number was what was termed an "informant line" and could be answered by eight to ten people. It was highly unlikely Mr. Murphy would have been in the office on July 21, 1995. The grievor testified he did not make this call. If he had called Mr. Murphy, the grievor stated he would have used another telephone upstairs, and did in fact speak to Mr. Murphy some time prior to July 21.

Finally, on July 27, three non-business-related calls were made from the grievor's workstation telephone. The first, at 11:08 a.m., was to Mr. Murphy again. This call lasted 1.0 minutes and the grievor denies making this telephone call. Mr. Murphy was in Calgary on July 27. Mr. Murphy did receive a message from the grievor that could have been left on July 21 or 27 saying he would call back within a week. Mr. Murphy did talk to Mr. Trevena sometime in this general time frame about a non-business-related issue, possibly in the week following July 27.

The second call on July 27 was at 11:09 a.m. to Ms. Patterson at her residence. This call lasted 8.5 minutes. While the grievor denies making this call as well, Ms. Patterson testified that the call came from "Ed", and much the same information was once again provided.

The third call, at 11:47 a.m. on July 27, was to Ms. Patterson's home again. Ms. Patterson did not speak to the caller on that occasion, consequently no evidence was adduced with respect to this call. The grievor, however, denies initiating that call as well.

It was these series of telephone calls, coupled with the grievor's denial of making them, that prompted the 20-day suspension.

Ms. Patterson testified that she and Mr. Fedunyk first separated in September 1993 and their divorce became final in legal terms in August 1995. However, their divorce settlement was completed in late May or early June 1995. She knew, when she received the telephone calls in July, that it would be too late to use the financial information in her settlement package and she was quite upset about what she initially felt was a lack of candor in Mr. Fedunyk not revealing this income to her. She and Mr. Fedunyk were trying to work out an amicable resolution of their divorce and this information caused her to question the minutes of settlement they had arrived at. It caused her great bitterness, according to the testimony.

In cross-examination, Ms. Patterson maintained that, when she settled her divorce proceedings at the end of May or early June, she had no idea her ex-husband was going to receive a severance package. She testified she felt the divorce arrangements arrived at were acceptable to her and the information in the telephone calls cast doubts in her mind about the honesty of these arrangements.

Mr. Marshall stated he concluded Mr. Trevena had indeed made these calls. He based this, in part, on a discussion he had with Mr. Murphy. Mr. Marshall testified that he asked Mr. Murphy whether or not he (Mr. Murphy) recalled receiving a telephone call from the grievor on July 21 or 27. Mr. Murphy replied that the grievor left him a telephone message on July 21, then had spoken to him on the 27th about a personal matter. Mr. Marshall concluded that, as the grievor could then be identified as having made the call at 11:08 a.m. on July 27, 1995 to Mr. Murphy, lasting 1.0 minutes, the probability the same person made another call at 11:09 a.m. to Ms. Patterson from the same workstation phone on that day was very high. The parties agreed that, when Mr. Marshall spoke to Mr. Murphy, two to three months after the July phone calls, Mr. Murphy recalled the two calls in question, and said he was out of the office on one of the two calls. It was only subsequent to the discussion with Mr. Marshall that Mr. Murphy checked his records and noticed he was in Calgary on July 27, and highly likely he was out of his Saskatoon office July 21. In other words, it was not likely he spoke to the grievor on July 21 and certainly did not on July 27.

In arriving at the conclusion Mr. Trevena made the calls, Mr. Marshall also considered the office layout itself (see diagram, Exhibit E-2). There would be a high number of individuals walking by in very close proximity to the grievor's workstation and Mr. Marshall stated, if someone else had made those calls on the grievor's workstation phone, this would have been noticed by other staff.

On the other hand, the grievor testified there were many people who came into his workstation and dropped off literature (Exhibit G-4), cheques or orders for *Avon* products and the like. The grievor stated any one of these people could have used his workstation telephone. In addition, the grievor testified that "if you wanted to make a personal call, you would more than likely use someone else's phone." I asked him if that were the case, why did he use his own workstation phone for the personal call to Montreal and he replied that he did not think a 15¢ call would be an issue.

In cross-examination, Mr. Marshall stated he did not ask the other staff if they had made the phone calls. He stated he did interview one other employee in the investigation but that individual had no knowledge of the incidents.

Mr. Marshall also identified, in cross-examination, Exhibits G-1 and G-2 as being Treasury Board news releases to the public concerning the Government's Early Retirement and Early Departure Incentives.

Mr. Trevena testified that he has worked in the Public Service for 19 years and has never had a disciplinary incident. He also stated he did not know Mr. Fedunyk had been married and, in fact, thought he might be gay. He had never heard of Ms. Patterson in July 1995, and never called her phone number. Furthermore, he had no way of knowing what Mr. Fedunyk actually received in severance, so he had no basis to pass this information along to anyone.

In reviewing Exhibit E-1, the grievor acknowledged that some of the listings showed work-related calls made from his workstation phone and, when asked in cross-examination if someone else had made those particular calls, he stated "no". He could not recall if he was in the office or not at the time the calls to Ms. Patterson and her lawyer were made. He stated he is out of the office for coffee breaks and lunches and estimated he spends one-half of his working day at his workstation. At other times, other people could be using his workstation phone.

Arguments

The employer's case is circumstantial but Mr. Climie stated the employer has met the rule in the *Hodge's* case (referred to in *Canadian Labour Arbitration*, by Messrs. Brown and Beatty, Third Edition, at paragraph 3:5100). More specifically, the evidence cannot support any rational conclusion other than it was Mr. Trevena who made the telephone calls to Ms. Patterson and to her lawyer's office.

Given the continued denial by the grievor, credibility is an important issue here and I was directed again to *Canadian Labour Arbitration* (supra), at paragraph 3:5100. Counsel asked me to review the preponderance of evidence in this matter and decide in favour of the employer where any testimony was in conflict with that of the grievor.

Counsel suggested the evidence itself, when reviewed, supports the employer's case far more than the grievor's. When pressed, the caller identified himself to Ms. Patterson as Ed from Revenue Canada in Regina. If someone were trying to frame Mr. Trevena, as he himself suggested, counsel asked why that individual would not give the full name. Indeed, he did not give his name at all to the lawyer's office. As the information passed along was thought to be likely of benefit to Ms. Patterson, counsel speculated that Mr. Trevena would not have thought this matter would reach the level it did.

The phone records themselves indicate that five calls were made, between July 20 and 27, 1995, to Ms. Patterson's home and to her lawyer's office. If we add the two calls to Mr. Murphy, we have seven calls in total that the grievor denies making. It is reasonable to assume that, if in fact someone else made the calls, that person would have been seen by somebody. Such is not the case.

The close proximity in time to the July 27 call to Mr. Murphy (11:08 a.m.) and to the call to Ms. Patterson (11:09 a.m.) suggests it is one and the same individual who made the calls. There was somewhere between 22 and 27 seconds between calls, about enough time to look up the number, dial it and have it ring.

The fact that Mr. Murphy himself did not receive the two calls from the grievor does not exculpate Mr. Trevena. We know Mr. Trevena was trying to contact Mr. Murphy and it is likely Mr. Trevena left a message on July 21 saying he would call

back within a week. The phone records show another call was made to Mr. Murphy on July 27 and the fact Mr. Trevena did at some point contact Mr. Murphy supports the proposition the grievor made these two calls as well as the others. The grievor has no evidence to suggest any other rational inference. It is preposterous to suggest the employer should interview all other employees when the phone records provide a *prima facie* case that Mr. Trevena made these calls. It is incumbent on the grievor to rebut the strong evidence that he made these calls and no contrary evidence has been proffered.

Mr. Climie argued motive has been shown. There was an implied threat uttered from Mr. Trevena during discussions concerning the grievor's performance evaluation. The testimony of Mr. Trevena indicated he did not like Mr. Fedunyk and it is likely he made this threat, then he carried it out.

Also, Ms. Patterson's notes indicate the caller said Mr. Fedunyk was "jerking him around" and Ms. Patterson said she wrote down exactly what the caller said. This, counsel argued, was a direct link between the grievor and Mr. Fedunyk.

Counsel stated no one will ever know how Mr. Trevena got the information he did, but the fact the program itself was of general knowledge, coupled with the office talk, suggests Mr. Trevena had a general idea with respect to the settlement. We also will never know how the grievor discovered Ms. Patterson's phone number, but he could have had an acquaintance look it up or done so himself.

In the case here, counsel argued it does not matter how the information was received. We know someone received it, and the information was passed along. In order to do so, the individual had to be an employee of Revenue Canada. He simply would not have all the details he had unless this was so. The general public would have no way of knowing the manner of departure for Mr. Fedunyk.

The information given was confidential and at the very least Mr. Trevena violated the standards of conduct. However, counsel submitted, the grievor also contravened his oath of office.

Counsel argued the actions of Mr. Trevena were callous, malicious and cowardly. He tried to do damage to Mr. Fedunyk and had the possibility of doing damage to Ms. Patterson. In this case, counsel stated we have what amounts to a victim-impact statement and the calls caused great discomfort to Ms. Patterson.

Furthermore, counsel stated the actions were done in retaliation for Mr. Fedunyk simply doing his managerial duties. With an apparent lack of remorse evident, counsel urged me to sustain the penalty.

Counsel for the employer referred me to the decision in *Johnson* (Board file 166-2-26107).

The grievor's representative stated that the employer's case is entirely speculation. Furthermore, Mr. Dagger suggested the information that was divulged was not confidential in nature and the early retirement programs were contained in the Order-in-Council documents, which were public. However, with respect to the specific information that was passed along, Mr. Dagger stated there was no evidence to suggest the grievor had knowledge of the figures to pass along to anyone in the first place. In order to have been able to pass the figures along, Mr. Trevena would have had to know them and there is not even speculation as to how he would have that information, let alone evidence he had it.

The onus is on the employer in this case and Mr. Dagger argued that heavy burden has not been discharged. Mr. Trevena was not privy to the information concerning Mr. Fedunyk's separation entitlement. Mr. Trevena did not know Mr. Fedunyk's personal situation about the divorce. We also know that Mr. Trevena never made contact with Mr. Murphy on either July 21 or 27. The employer looked at no one else but the grievor, in spite of the fact the grievor had insisted he did not make those calls. In fact, we have seen from the evidence it is common place for other people to go into Mr. Trevena's office and leave documents (see Exhibit G-4). There are any number of people who could have made these telephone calls.

We simply do not know why someone else made the calls, according to Mr. Dagger. It was, he suggested, possibly a charitable act but the person did not want to use his own workstation phone. When pressed, the person said his name was "Ed".

Insofar as the evaluation report meeting is concerned, Mr. Dagger stated the evidence is contradictory on the issue of whether or not the statement attributed to the grievor was in fact ever uttered. There was nothing for Mr. Trevena to be upset about because there never was a formal evaluation report.

Mr. Dagger suggested that, at best, what was discussed in the telephone conversations with Ms. Patterson and the law office was merely office gossip. In no way would this violate the oath of office. There was no release of confidential information and I was asked to find that this action, regardless of who did it, was acceptable in a labour relations setting.

I was asked to conclude that the action cannot be tied to the grievor and that the action itself does not fall within the description of the offense as outlined in the disciplinary letter.

In the alternative, Mr. Dagger urged me to alter the penalty in regards to the fact the grievor was a 19-year-service employee with a clear disciplinary record.

In reply, Mr. Climie stated that we know someone had the knowledge to impart in the telephone calls, and we know that person called from the grievor's workstation phone. How the knowledge was arrived at is not at issue.

The fact that someone spent a few seconds dropping a document on the grievor's desk (Exhibit G-4) does not prove he remained there to make numerous telephone calls on various days.

Decision

The issue for decision here is whether the employer has established, on a balance of probabilities, that Mr. Trevena made telephone calls to Ms. Patterson and her legal firm and whether he acted inappropriately in doing so. A finding on this issue will, to a large extent, turn on the investigation and its findings on the one hand, and the conflicting evidence put forth by the grievor on the other.

Ms. Patterson said she received a call on July 20 from someone in Revenue Canada in Regina but the person did not want to say who he was. If, as Mr. Dagger suggested, the call was made by someone who had charitable intentions, I simply

cannot believe that person would want to remain anonymous. When pressed, the caller identified himself as "Ed" to Ms. Patterson but did not divulge his name in the call to the lawyer's office. Surely, as Mr. Climie suggested, if someone else were making the calls with the intent of putting the blame on the grievor, that person would not have tried to remain anonymous and would likely have given the grievor's full name.

Mr. Marshall said it would be virtually impossible for someone to be at another desk, using another phone, for an extended conversation without being observed. I accept that. The likelihood of someone else going to Mr. Trevena's desk, using his workstation phone in a lengthy personal telephone call without being observed is negligible. If someone were to do that and not want to be detected, I find it more likely such a person would impart the information quickly, then leave the area as quickly as possible. There is no evidence the caller did that.

The grievor stated, in direct evidence, "If you wanted to make a personal call, you would more than likely use someone else's phone." First of all, to accept this statement at face value would mean the entire office is dishonest in that they all go to someone else's phone to make personal calls. I am simply not prepared to accept this on the basis of the grievor's comment alone. I would need a much broader representation of the workforce telling me this before I accept such a statement and no one else was put forth. However, there was ultimately no denial that it was the grievor who made the call to Montreal, and this was a personal call. Why then did he not make it from someone else's phone if this was, as he suggested, the office practice? I found his answer to this to be most interesting. He said he did not think a 15¢ call would be an issue. How would he have known the call would be of minimal value when he said it was the one and only time he called *Avon*? He would not likely have been aware, when he placed the call, what delays he would encounter and how long the call itself would ultimately last. If, in fact, people went elsewhere to make personal calls, I find the grievor would likely have done so for his call to *Avon.* He didn't. In this regard, I believe Exhibit E-1, the telephone records, supports a finding that the grievor made the call. The grievor also admitted that other work-related calls specified on Exhibit E-1 were made by him. The only ones he says were not made by him are the calls to Ms. Patterson, her lawyer's office and to Mr. Murphy.

The issue of credibility of witnesses was canvassed in *Faryna v. Chorny* [1952] 2 D.L.R. 354, where, at page 357, Mr. Justice O'Halloran of the British Columbia Court of Appeal enunciated the following:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions....*

In applying these principles, I find the probability that someone other than the grievor made the calls from his workstation to be negligible.

Having arrived at the conclusion that, on a balance of probabilities, the series of telephone calls were made by Mr. Trevena, I must now address the second area raised by Mr. Dagger and that is that the information was not of a confidential nature and the caller did nothing wrong in a labour relations context.

I was not provided with sufficient evidence to find that the information released was confidential in nature. However, I do not find anything of significance turns on the issue of whether or not the information was confidential. What I find significant in this case is the appropriateness of the calls made by the grievor. The grievor's motives in relaying information on Mr. Fedunyk's separation package were, I believe, fully intended to cause some financial discomfort to Mr. Fedunyk. The issue of making an inappropriate non-business-related telephone call was canvassed in *Re City of Burnaby and Burnaby Firefighters' Association, Local 323* (1997), 66 L.A.C. (4th), 169, where Arbitrator Devine was faced with a two-day suspension and six-month loss of privileges because the grievor telephoned a member of the public, while on duty, and complained about a letter to the editor which had appeared in the local newspaper. Concerning the action of making the call, Arbitrator Devine writes, at page 180:

> ... [The grievor] *did not seem genuinely concerned about his conduct in calling a member of the public at his private home while he was on duty to harangue the individual about his point of view. This conduct was clearly wrong. It had potentially serious consequences for the fire department's public reputation.*

So too was the action of Mr. Trevena wrong. He used office equipment for purposes other than the performance of his duties and, more specifically, with some degree of malice directed towards his former supervisor.

The purpose of the call can be seen in the written submission of Ms. Patterson (Exhibit E-3). The caller wanted Ms. Patterson to have the information in order to require Mr. Fedunyk to pay more in his divorce settlement. I find it was not aimed so much at benevolence to Ms. Patterson as it was at retribution directed at Mr. Fedunyk.

Unbeknownst to the caller was the fact that an amicable resolution had been reached on the divorce settlement in May by Mr. Fedunyk and Ms. Patterson. The call caused great personal distress to Ms. Patterson and their daughter, again as seen in Exhibit E-3. While I do not believe the caller deliberately intended to cause such discomfort to Ms. Patterson, it was, nevertheless, the outcome. I believe the caller fully intended to cause some financial discomfort to Mr. Fedunyk.

For these reasons, I find the calls were worthy of some disciplinary response on the part of the employer.

With respect to penalty, I must attempt to balance the act of making the calls and the continued denial with the complete lack of any disciplinary record and the grievor's long service. The grievor had a 19-year discipline-free history with the Public Service. This was his first offense.

Disciplinary action is designed to be corrective, not punitive. I believe a significant penalty in this instance would be a 12-day suspension. It is a reflection of the seriousness of divulging the information, whether confidential or not, with the intent of causing some measure of discomfort to the grievor's former supervisor. It is also a reflection of the lack of candor which I found in the grievor in this case. However, I believe it also takes into account the complete lack of a disciplinary record

and the length of service, and I would hope it has the desired corrective effect in this case.

To this extent, the grievance is sustained.

Joseph W. Potter,
Board Member

OTTAWA, April 6, 1998.