

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

A.B. (HEIDI) HANF

Grievor

and

**TREASURY BOARD
(Citizenship and Immigration Canada)**

Employer

Before: J. Barry Turner, Board Member

For the Grievor: David Conn, Counsel

For the Employer: Ann Margaret Oberst, Counsel

Heard at Toronto, Ontario,
January 23, 1998.

DECISION

Heidi Hanf, an Expulsions Officer, PM-02 classification level, Citizenship and Immigration Canada (CIC), Detention and Removals Unit, Mississauga, Ontario is grieving a five-day suspension without pay. Her grievance reads:

Suspension without pay from 04 Dec 1995 to 08 Dec 95 inclusive.

The employer's letter of suspension (Exhibit E-4) written by M.J. Molloy, Regional Director General CIC, Ontario Region, dated November 30, 1995, reads:

I am writing you regarding the recent administrative investigation into the allegation of forging a health certificate at the Detention and Removals section of Citizenship and Immigration, Ontario Region.

On October 23, 1995, at my request, a committee began an administrative investigation into this allegation. The investigation has been completed, and I have reviewed the findings. In your capacity as an Expulsions Officer, you were a key participant in preparing a fraudulent document to facilitate a deportation. By your action, you have undermined the public's confidence in the public service. In addition, you could have jeopardized the well-being of officers who may have used this document in the performance of their duties and could have discredited the Department's reputation as well as Canada's international image.

Your actions constitute misconduct on your part and warrant disciplinary action. Therefore, by the authority delegated to me, I am suspending you from duty without pay for five days from 4 December to 8 December 1995 inclusive. During this time, you are not permitted on departmental premises without prior authorization from me or the Manager, Detention and Removals Unit. A copy of this letter will also be placed on your personal file in accordance with your collective agreement.

I must emphasize to you the importance of the professional conduct expected of you as a federal public servant. As an employee involved in the enforcement of a federal statute, it is crucial that you behave in a manner that is beyond reproach. This was a serious breach of conduct and further repetition of conduct of a similar nature may result in more severe disciplinary action up to termination of your employment with the federal public service.

You are entitled to present a grievance in accordance with the Public Service Staff Relations Act if you feel this disciplinary action is unwarranted.

Ms. Hanf is requesting as corrective action:

The discipline to be rescinded, to be re-instated to position, to be paid back any loss of benefits, to be made whole and to have all records regarding the discipline to be destroyed.

The initial letter of suspension from duty for five days was reduced to three days by Mr. Molloy on April 23, 1996 (Exhibit E-5).

I am being asked to decide if the employer's action was justified under the circumstances.

The hearing lasted one-half day with two witnesses testifying and seven exhibits submitted into evidence.

Summary of Evidence

The following Agreed Statement of Facts was submitted by the parties.

AGREED STATEMENT OF FACTS

ADJUDICATION HEARING 166-2-27693

RE: A.B. (HEIDI) HANF

The parties have agreed upon the following facts:

A.B. Hanf [hereinafter referred to as "the appellant"] has worked for Immigration Canada since April 13, 1971.

From October 1990 to the present, the appellant has been employed as a PM-02 Expulsions Officer at the Detention and Removals Unit, CIC Mississauga.

An expulsions officer is responsible for facilitating the removal of persons from Canada who have removal orders issued against them. The general duties of an expulsions officer include arranging for travel documents, scheduling flights, arranging for medical or security escorts, acting as escorts, acting as liaison with jails or other holding facilities and acting as liaison with consulates.

The appellant was responsible for removals to Africa during the relevant time, and was assigned to handle the removal arrangements of Mr. Prince Daniel Bryant to Liberia.

Mr. Bryant was scheduled to be removed on May 12, 1995. In the morning of that day, the appellant received a fax from an Immigration Control Officer in Abidjan, Ivory Coast. Later in the morning, the appellant spoke on the telephone

with the Immigration Control Officer who confirmed that in order to transit Mr. Bryant through the Ivory Coast, he needed a Yellow Fever Vaccination and a WHO certificate to prove it.

The appellant had never had to deal with a situation like this before and, to her knowledge, the vaccination certificate was not actually required.

The appellant and Christine Nakamura, who was the acting Manager at Detention and Removals, discussed what they should do. It was decided that they would make up a vaccination certificate. The appellant photocopied a valid International Certificate of Vaccination form and inserted Mr. Bryant's name into the appropriate areas on the form.

A copy of this photocopied vaccination certificate is contained in the Department's investigative report in Appendix "N".

Sometime later in the day on May 12, 1995, the appellant received notice from the Federal Court that Mr. Bryant's application for a stay of his removal was dismissed and the removal could proceed.

Ms. Nakamura and the appellant then spoke to Tony Trombacco, who was one of the escort officers assigned to the removal, and gave him the vaccination certificate they had prepared. Mr. Trombacco was made aware that a vaccination certificate might be needed, and was told that it was a photocopy. Mr. Trombacco was asked if he felt comfortable going on the trip with the photocopied vaccination certificate and he raised no concerns.

According to Departmental and RCMP investigations, before leaving the country, Mr. Trombacco and the other escort officer, Mr. Lorne Deason agreed not to use the vaccination certificate. At no time during the trip did any official ask to see the vaccination certificate and at no time did the escort officers use the vaccination certificate.

Four months later, on September 12, 1995, Lorne Deason informed Bruce McAdam, Manager at Detention and Removals, of the incident and of the forged vaccination certificate.

On October 19, 1995, the appellant was charged by the RCMP.

The employer conducted an investigation and on November 30, 1995 the appellant was suspended without pay for 5 days. The appellant served her suspension from December 4-8, 1995.

In March of 1996, the appellant plead guilty and was convicted under section 97 of the Immigration Act and was given an unconditional discharge.

On April 23, 1996 the employer unilaterally reduced the suspension to 3 days.

On July 31, 1996, the employer unilaterally decided to remove the disciplinary letter from the appellant's file.

Dated this 13th day of January, 1998.

The Agreed Statement of Facts does not mention, contrary to the evidence before me, that Mr. Trombacco and Mr. Deason were aware, prior to the deportation escort trip, the photocopied vaccination certificate was a false document. Mr. Trombacco and Mr. Deason have not been disciplined with regards to this incident.

I noted that the Agreed Statement of Facts was signed by Ms. Hanf and not by her counsel, Mr. Conn. This did not present any concern to Mr. Conn. It was also signed by Ms. Oberst.

Ms. Oberst entered a memorandum dated June 28, 1996 from Mr. Molloy (Exhibit E-1) that indicates Ms. Hanf's letter of suspension was removed from her file on July 31, 1996; an extract from the *Immigration Act* 1985 (Exhibit E-2); court documents showing an absolute or unconditional discharge granted to the grievor on March 25, 1997 (Exhibit E-3). Mr. Conn objected to Exhibit E-2. Ms. Oberst said it only substantiated the Agreed Statement of Facts reference to the granting of the unconditional discharge. I indicated I would lend little weight to Exhibit E-2. She also entered a copy of the Report of Investigation into Allegations of Misconduct at the Detention and Removals Section of Citizenship and Immigration, Toronto, Ontario, October 26, 1995 (Exhibit E-6).

1. Reinhard Mantzel has worked for CIC since 1971 and is now Director, Enforcement and Controls, Ontario, managing an office with approximately two hundred employees. He first became aware of the forged health certificate attached to Exhibit E-6 in late summer, 1995. He felt if an infraction had in fact occurred, and, since he directly supervised the grievor's supervisor, that such a serious situation should not be handled by his office; so he forwarded his information to headquarters in Ottawa.

Mr. Mantzel felt that, since renewed enforcement efforts were under close media scrutiny, and hence close public scrutiny, the production and subsequent public disclosure of a false document would undermine public confidence in the CIC and weaken his efforts to deal with foreign consulates in Canada. He added, Mr. Roger Tassé, a former federal deputy minister, was hired as an extraordinary measure to review the departmental procedures to see if improper activities were widespread. Mr. Tassé's review determined there was no systemic problem in the CIC.

The witness added the preparation of health documents for persons being deported was done to protect such persons, and the production of a false document was of great concern.

Mr. Mantzel testified that discipline for such an incident ranged from little or no discipline up to termination. A five-day suspension, later reduced to three days, was decided upon for the following reasons: the health certificate was not really needed and was not used during the escort; there was no cover-up by the grievor and no effort to retrieve the false health certificate; there was no personal gain to Ms. Hanf; she was an exemplary employee who had provided good service to the department. Mr. Mantzel felt the bond of trust between Ms. Hanf and the department was not broken and she should not be terminated, but, for an experienced person, she had made a serious error in judgement. Her action was therefore not acceptable, especially in light of negative media coverage of the incident in the fall of 1995.

During cross-examination, Mr. Mantzel said he retrieved the false health certificate from one of the two escorting officers, either Mr. Tony Trombacco or Mr. Lorne Deason, in late August or early September 1995. At the time he raised his concerns about the lateness of being made aware of the situation with Mr. Trombacco. Mr. Mantzel's opinion was sought in the disciplinary process.

During re-examination, he added that he acted immediately upon learning of the situation.

Ms. Oberst entered the Code of Conduct for Commission and Departmental Staff (Exhibit E-7) that was in effect in 1995 to demonstrate that the then section 98 of the *Immigration Act* (now section 97 in Exhibit E-2) applied to the grievor in 1995, adding

that Mr. Molloy was unfortunately out of the country and could not testify. Mr. Conn objected. I pointed out that Exhibit E-7 was a public document and accepted it.

2. Heidi Hanf, began working with the department in 1971. She became an Expulsion Officer in 1990 and now deals with deportees. The incident that led to her suspension occurred on Friday, May 12, 1995 when she received what she described as an illegible fax from the Ivory Coast that indicated a deportee, Mr. Bryant, would require a yellow fever vaccination certificate to enter Liberia. She questioned the need for this certificate, but, in the midst of a panic because Mr. Bryant was scheduled for deportation on May 12, she falsified a yellow fever vaccination certificate in Mr. Bryant's name. The deportee left Canada on May 12 with two escorts, Mr. Tony Trombacco and Mr. Lorne Deason. Both knew about the false certificate according to the investigation report (Exhibit E-6). When Mr. Trombacco returned a few days later, she asked him if he had needed the false certificate to which he responded: "No."

Ms. Hanf next heard about the false certificate around mid-September 1995, after Mr. Deason told someone about it. She was suspended for two months with pay, was charged under the *Immigration Act* and not the *Criminal Code* in October 1995, and disciplined on November 30, 1995 by Mr. Molloy (Exhibit E-4). She pleaded guilty in March 1996 and received an absolute or unconditional discharge assuring her of no criminal record. Ms. Hanf added, as a result of the entire incident, she was off work a lot and at times "wanted to die". She was distraught that Mr. Trombacco and Mr. Deason have not been disciplined for the incident. Her working relationship with them was frustrating since she was sent on deportation escort trips with them after the court date. Ms. Hanf added she did not object to being disciplined, but felt Mr. Trombacco and Mr. Deason could also have ruined Canada's reputation.

During cross-examination, Ms. Hanf admitted that she felt the need to create the false health certificate in case the two escorting officers needed it in Liberia.

Argument for the Employer

Ms. Oberst reminded me the grievor admitted she falsified the health certificate that caused negative media coverage and embarrassment for the department, that ended up with a review of some CIC activities by a former deputy minister,

Roger Tassé. The need for this review was looked upon very seriously by the department, since the incident caused by the grievor could have undermined public confidence in the CIC. She argued Mr. Mantzel concluded that some discipline was warranted even though Mr. Mantzel still had trust in Ms. Hanf. Ms. Hanf's motive was not for personal gain and was not malicious, since she had good intentions. But, as Ms. Oberst concluded, the grievor's poor judgement in this matter required discipline, since the CIC cannot appear to be condoning the falsification of a health certificate, for any reason. Counsel also argued that discipline or lack of discipline to other employees involved in the entire incident is not at all relevant before me.

Argument for the Grievor

Mr. Conn argued that the issue before me is one of reasonableness. He agreed the CIC's image must be protected, but not just at the expense of Ms. Hanf. He argued Ms. Hanf was bitter in that other officers who had knowledge of the false document were not disciplined, especially since the employer found out about the incident four months after it happened, when Mr. Deason brought it to the attention of manager Bruce McAdam, as is indicated in the Agreed Statement of Facts.

Counsel concluded that I must address the entire issue and not just the discipline given to Ms. Hanf. Mr. Conn said: "The department shot Ms. Hanf to show all the others involved that it took action." Mr. Conn referred me to *Dayton Tire Canada Ltd. and United Rubber Workers, Local 494* (1980), 25 L.A.C. (2d) 74.

Rebuttal by the Employer

In rebuttal, Ms. Oberst reminded me, since there are no facts before me regarding discipline of other employees and such discipline of other employees is not part of the grievance, I cannot address this. Counsel also referred me to *Allen* (Board file 166-2-25656).

Decision

The grievor's five-day suspension was reduced to a three-day suspension (Exhibit E-5), and the disciplinary reference was removed from her personnel file long before the normal two-year waiting period (Exhibit E-1).

The grievor however seems to be less disturbed about her three-day suspension than she is about the fact that two of her colleagues, who knew about the false certificate before they left for Liberia, were not disciplined as well. Ms. Oberst is correct however when she argues the role in the deportation by Mr. Trombacco and Mr. Deason is neither before me factually, nor is it part of the grievance I have been asked to adjudicate.

Mr. Mantzel made it clear, when he described the mitigating factors the employer took into account when it determined the quantum of discipline that would be imposed on Ms. Hanf, that the bond of trust between the grievor and her department had not been broken. He in fact described her as an "exemplary employee", but her serious error in judgment necessitated some form of discipline. I agree. As in *Allen* (supra), Ms. Hanf admitted throughout this entire incident, including in court, that she made a mistake by falsifying the health certificate. In spite of her good intentions and her honesty, some discipline was warranted, particularly when one looks at the bigger picture and the need to assure that all employees maintain the level of public confidence in that the CIC is doing the job expected of it by the people of Canada. I trust this decision will bring closure to an emotional and difficult chapter in Ms. Hanf's otherwise excellent career at the CIC.

Since the employer has already reduced the original five-day suspension to three days, I see no reason to reduce it further.

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

OTTAWA, February 16, 1998.