

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

J. HARVEY MacLEAN

Grievor

and

TREASURY BOARD
(Revenue Canada - Customs, Excise & Taxation)

Employer

Before: Donald MacLean, Board Member

For the Grievor: Yvette Michaud, Counsel, The Professional Institute of the Public Service of Canada

For the Employer: Harvey J. Newman, Counsel

Heard at Halifax, Nova Scotia,
June 29, 1998

DECISION

This case involves the grievance of Harvey MacLean against his suspension in June 1996. The employer originally imposed a 20-day suspension on Mr. MacLean. At the third level of the grievance process the employer reduced the length of that suspension to 15 days.

Mr. MacLean is a Business Auditor (AU-2) with Revenue Canada in Halifax, N.S. His primary duties relate to taxation audits of small and medium sized businesses. His supervisor and team co-ordinator is Herb Minard. At the time of the incidents Mr. MacLean was also acting as a "basic file" auditor (AU-3). For the basic file workload he was reporting to Angus MacGillvary.

A letter dated June 28, 1996, from his manager, James McNeely, Assistant Director of Verification & Enforcement for the department in Halifax, sets out the background to this case. The letter to Mr. MacLean reads in part (exhibit 1):

During the period of 22 March 1996 and 10 April 1996 you departed yourself in such a manner that your actions were extremely disruptive to the work environment. In particular, your written comments regarding managers fundamentally and grossly offended the respect for authority and workplace conduct which are the foundations of the employer-employee relationship. Further, some of your actions implied a threat to the personal safety of a number of employees and / or were attacks on their personal competency. This is the second time in less than 24 months that you have exhibited this type of behaviour. You are aware that this type of behaviour is totally unacceptable within Revenue Canada as you have been formally advised of the departmental standard.

... If you continue to act in this manner you will be subject to more severe disciplinary action up to and including discharge. ...

In his response to the grievance at the third level, Daniel Tucker, Assistant Deputy Minister, Regional Operations, Atlantic, on April 15, 1997, wrote in part (exhibit 4):

... Upon receipt of Health Canada's fitness for work determination dated May 30, 1996, the Department obtained further clarification from Health Canada that your workplace behaviour was not attributable to a medical condition. Recent information provided by your personal physician was also referred to Health Canada who have again confirmed that a detailed specialist report in May of 1996 indicated that you were fit to return to work at that time

Having determined that your workplace behaviour was within your control, management considered subsequent disciplinary action to be both appropriate and warranted.

This being said, I am satisfied that you have made a significant effort to deal with this situation by seeking counselling which includes anger management. In recognition of this effort, I feel it appropriate to reduce your suspension from 20 to 15 days. You will consequently be reimbursed 5 days salary subject to normal deduction.

The incidents that bothered the employer began on March 26, 1996, in a memo from Mr. MacLean to Mr. McNeely. In the letter he expressed concerns that Angus MacGillvary had been involved in letting a company delay the department's audit of it for six months. Herb Terris had allowed the six-month delay after the comptroller of the company who made the request told him that she was about to go on maternity leave.

Mr. McNeely informed Mr. MacLean that Mr. Terris was acting for him, as assistant director, when he granted the six-month delay.

Mr. MacLean's response was to send (exhibit 9) to Mr. McNeely his opinion of Mr. Terris regarding the request for a delay. He said, "if Terris became involved it would get screwed up for sure." The reply to the comptroller's request by "chicken" Terris was "typical sneaky back biting of Terris. You were insisting this audit be done now so I insisted to (the company comptroller) it be done. Then Terris gets involved and screws it up."

On March 27, 1996, Mr. MacLean sent a letter to Mr. McNeely to register a complaint against Mr. Terris and questioning the delay in the audit because (exhibit 10):

I am registering a formal complaint against Terris for interfering in this audit by giving a six month or more delay in start time due to one person going on maternity leave.

This company does over \$100 million in revenue and now audit is delayed at least until November.

Terris did this so as to stop my acting AU-3. It pisses Terris off that I received acting AU-3.

His motive was to stop it.

Consider this a formal complaint against Terris for his conduct. ...

Mr. McNeely testified that this letter was unprofessional. There was no evidence that Mr. Terris was trying to interfere with Mr. MacLean as an acting AU-3. Furthermore, delays such as the one granted in this instance are not unusual.

Mr. McNeely met with Mr. MacLean on March 29, 1996, to discuss his concerns about the audit delay. Mr. McNeely informed Mr. MacLean that there was no threat to his acting AU-3 authority. He told Mr. MacLean to contact Herb Minard, his team co-ordinator and supervisor if situations of conflict arise in the future. When the meeting ended the issues were considered to be both resolved and closed. Mr. MacLean would not be filing a complaint against Mr. Terris.

On March 29, 1996, Mr. MacLean sent a sarcastic letter to Bob MacGillvary (exhibit 12), the senior auditor in charge of large case files. It was tongue in cheek concerning audit delay practices in cases of pregnancy. (He sent it as a "joke".) On April 1, 1996, Mr. MacLean sent an e-mail letter to "Pat Cookson, Brain Dead, Inhuman Resources".

Mr. McNeely again met with Mr. MacLean on April 3, 1996. Mr. McNeely invited Angus MacGillvary to sit in on the meeting. The purpose of the meeting was to discuss management's concerns about Mr. MacLean's letters to Ms. Cookson and Bob MacGillvary. Mr. McNeely told Mr. MacLean that the comments to Ms. Cookson and Bob MacGillvary were both unprofessional and unappreciated. He warned Mr. MacLean that he must stop these types of letters, or he could find himself being disciplined. Mr. McNeely considered this type of jocularity as neither normal nor respectful.

During the meeting, Mr. MacLean informed Mr. McNeely that personnel had sent him a statement of qualifications for an AU-3 position in French. There was no cover letter to show who had sent it. Mr. MacLean also indicated that his application for the AU-3 position was not on file in personnel. It was missing. He had sent it to them some two weeks earlier.

Mr. MacLean maintains that the letter to Bob MacGillvary was a joke because he did not agree with the granting of a six-month delay. Of the memo to Ms. Cookson calling her "brain dead," Mr. MacLean maintained that she was the person responsible for the personnel section. Mr. McNeely noted that Ms. Cookson was not the one in personnel dealing with the AU-3 competition. Instead, it was another employee, Terry Wright.

During the meeting Mr. McNeely informed Mr. MacLean that Ms. Cookson had apologized for sending the French qualifications. Nevertheless, Mr. MacLean let it be known that it was "tough" for both Ms. Cookson and Bob MacGillvary, if they were upset with his memos.

Mr. MacLean replied to the April 3 meeting with Mr. McNeely and Angus MacGillvary by sending Mr. McNeely a memo on that same date (exhibit 16). In his memo Mr. MacLean expressed his frustration that his most recent AU-3 application still could not be found. He added to his "brain dead" reference to Ms. Cookson, suggesting that "You should do what hospitals do to the brain dead-unhook their life support systems." Mr. MacLean felt that in an earlier AU-3 competition in 1991, Mr. Terris and Bob MacGillvary had padded the marks. Without proof that the marks were padded, Mr. McNeely felt that Mr. MacLean's comments were unprofessional, offensive, and defamatory in nature.

In a letter on April 3, 1996, to Mr. MacLean, Ms. Cookson apologized for the language error on the qualifications. She went on to characterize his letter to her as "extremely offensive and unprofessional." She urged that any further correspondence remain work related and totally professional.

The following day, Mr. MacLean's reply to Ms. Cookson (exhibit 18) indicated that he was not at all impressed with her performance. "If you want to be treated as a professional then I suggest you change your ways and start acting as one." He insinuated that she was working in personnel because she could not tell the difference between French and English. Any other work would be too complicated for her.

On April 10, 1996, Mr. MacLean wrote to Mr. McNeely that he was no longer going to report to Angus MacGillvary. He added that (exhibit 19):

This is to inform you that I am not going to report to Angus MacGillvary so you are going to have to change my reporting.

Don't know why you put this character in this group anyway.

Group was running smooth and MacGillvary is a fuck up.

He fucks up anything and everything.

...

5 days of Angus Mr. MacGillvary is more than I could stand of this character.

So change my reporting or MacGillvary will need his long term disability.

I am not reporting to Angus MacGillvary!

Mr. McNeely again considered this letter to be unprofessional. The reference to LTD implied a threat to Mr. MacGillvary. Mr. McNeely again met with Mr. MacLean on April 10, 1996, about the latest letter. He informed Mr. MacLean that Mr. MacGillvary should only have to be contacted in regard to his "Basic File" workloads. Mr. McNeely added that if Mr. MacLean was firm in not wishing to report to Mr. MacGillvary, he would have no choice but to reassign any basic files that Mr. MacLean had. That would result in Mr. MacLean's losing his acting AU-3 pay. On hearing these remarks, Mr. MacLean got up and left the meeting. Mr. McNeely subsequently sent Mr. MacLean his notes on the meeting.

Mr. Tucker sent a memo on April 10, 1996, to Don Gibson, the Director of the Halifax Tax office. In it he addressed concerns with a memo of March 15, 1996, from Mr. MacLean to Mr. Tucker. The thrust of Mr. MacLean's memo focussed on his on-going divorce and custody dispute and Mr. MacLean's prior suspension. Mr. Tucker's memo stated in part (exhibit 22):

I am again concerned about Mr. MacLean's well being given the nature of the attached and again must question if there are underlying health-related reasons which account for his actions. If not, I would be left with no alternative but to consider the attached to be insubordination on the part of Mr. MacLean as well as a violation of explicit instructions to him following a previous instance of his having issued correspondence of this nature.

Mr. McNeely testified that the Tax office in late March had also received three cartoons: one from a newspaper with Peanuts characters, another depicting Sesame Street characters, and the third a newspaper cartoon with altered text. They depicted current and former employees of Revenue Canada in an unflattering and threatening manner. The most disconcerting was the newspaper cartoon of the then Premier of Nova Scotia with the altered caption: looking for Paul Reynolds "... me and my Uzi..." Mr. Reynolds is a senior Taxation staff officer. Mr. MacLean later admitted that he sent the cartoons.

Mr. McNeely called in the police because of the implied threat of violence in the memos (the LTD reference to Angus MacGillvary) and the depictions in the cartoons. He met with the police on April 10 and 11, 1996. The conclusion of that meeting was that there would be no charges laid. Mr. MacLean would be sent home with pay and he would be referred to Health Canada for evaluation.

Mr. McNeely and a police officer met with Mr. MacLean on April 11, 1996. Mr. McNeely informed Mr. MacLean that his behaviour at the workplace was considered erratic and irrational. He expressed concern that Mr. MacLean's behaviour might be health related. He ordered him to leave the building and to go home. Mr. McNeely had the police escort him out of the building.

Mr. McNeely's letter to Mr. MacLean on April 12, 1996, confirmed that he was being sent home with pay, and that he would be referred to Health Canada for evaluation. In addition, on the same date, Mr. Tucker formally notified Mr. MacLean under the **Protection of Property Act**, that he was no longer permitted on premises occupied by Revenue Canada.

On May 30, 1996, Karen MacDonald, medical officer-in-charge, for Health Canada in Halifax, informed Mr. McNeely that Mr. MacLean was fit to work. However, it was important that

Mr. McNeely clearly spell out to Mr. MacLean the expectations regarding Mr. MacLean's behaviour at work. Furthermore, she advised Mr. McNeely to define the acceptable boundaries of behaviour and the consequences of non-compliance to Mr. MacLean.

In a subsequent letter Dr. MacDonald clarified her conclusion on Mr. MacLean's ability to work. He was not considered to be dangerous or violent. It was possible that the ideas previously stated by Mr. MacLean could surface periodically. This was why Mr. McNeely had to spell out to Mr. MacLean what was expected of him in terms of work performance and his acceptable behaviour.

Mr. McNeely informed Mr. MacLean on June 25, 1996, that, in light of his recent behaviour and his medical evaluation that he was fit to work, he could be subject to discipline. He scheduled a meeting for June 28, 1996.

At that meeting Mr. McNeely, and Mr. Wright from personnel, met with Mr. MacLean, who, in turn, was accompanied by Ed Sweet, a representative of PIPSC. Mr. McNeely considered that a 20-day suspension was merited because it was the second incident of discipline in 24 months for similar behaviour. He noted that Mr. MacLean had been considered fit to work. In addition, he had been previously informed of the department's standard of conduct. Mr. McNeely felt that Mr. MacLean's letters were unprofessional and disruptive to the workplace. His actions had to be taken seriously. He characterized the 20-day suspension as being corrective, and not punitive.

Mr. MacLean was supposed to return to work on July 29, 1996, after his suspension. However, he went on sick leave and did not return until September 16, 1996. In total Mr. MacLean was off work for five months: two and one-half regarding Health Canada, one month for the suspension, and one and one-half months as sick leave.

During his sick leave, Mr. MacLean met with David Pilon, Ph.D., a psychologist. Mr. MacLean says that he went to Dr. Pilon to identify his problems at work and to learn how to deal with them. Dr. Pilon considered that Mr. MacLean's behaviour could have been related to the stress he was under from strained relations, both at work, and with his ex-wife.

Mr. MacLean had been on sick leave with bowel problems from March 11 to March 13, 1996. He was not feeling well at the time. This factor added to his stress.

During his testimony, Mr. MacLean acknowledged that some of his language in his memos was not appropriate. He also apologized for calling Ms. Cookson "brain dead". He testified that he would not be acting again as he had in the past. He said that he did not really consider his actions to be serious at first, but that things got a little off track. He must have got into a bit of a roll. Things sort of snowballed. He said that his offensive behaviour had been confined to a short period of time. He sees himself as the type of person who says what is on his mind. Besides, some things that he said about his supervisors are true. Mr. MacLean stated that, if his supervisors are disrespectful to him, he is going to be disrespectful right back.

Mr. MacLean maintained that although some of what he has said or written should not have occurred, it was only meant to be sarcasm. It was his way of questioning what was going on at work, regarding the six-month delay in the audit, the French qualifications and the missing AU-3 application, and his confrontations with Mr. Reynolds. He said that he did not mean for all his memos and his cartoons to be taken literally. He was retaliating for some past wrongs done to him.

Summary of the representations on behalf of the Parties

Argument for the Employer

Counsel for the employer argues that the 15-day suspension in this case is for the same type of behaviour for which Mr. MacLean had received a suspension in December 1994. Mr. MacLean had notice in 1994 of management's expectations as to his insubordination and disruptive actions. His behaviour is unacceptable.

Mr. MacLean has shown an escalation of irrational and unusual behaviour. Mr. MacLean sent unprofessional memos that were abusive, sarcastic, demeaning, belittling and unprofessional to various people in the workplace. The cartoon of a man holding a gun (Uzi) looking for Mr. Reynolds would leave the reasonable person to conclude that he threatened physical violence.

Mr. MacLean is a sophisticated employee with more than thirty years experience in the Public Service. He has a responsibility to deal with the public in a tactful manner.

Mr. MacLean does not appreciate the problems that he has caused at the workplace. Management tried to do the right thing in 1994 by suspending Mr. MacLean for three days. In the grievance and adjudication process they reduced that suspension to one day. That reduction of his suspension in 1994 did not correct the situation and neither would a reduction in the instant situation.

Mr. MacLean acted in a completely unacceptable manner by sending abusive, defamatory and threatening memos and by disseminating the cartoons. He does not exhibit sincere concern about upsetting other people at work and seems to think that defaming people is okay.

Mr. MacLean should have known that his behaviour would land him in trouble. Mr. MacLean does not recognize that he is the one who is causing problems in the workplace. He has chosen his own type of self-help solutions. From his demeanour, he has put his own negative spin on his contacts with other people.

Mr. MacLean has no appreciable health problems that would negate his actions. Many employees may feel that their co-workers are out to get them, but this does not exempt them from responsibility for their actions. Mr. MacLean is an intelligent man who is sensitive to his own feelings, but he is not sensitive to the feelings of others.

He realizes that he has to treat the public deferentially, but he reserves his vile for those in the office who cross him.

We are living in dangerous times with such things as child massacres in the schools, and persons "going postal" to settle differences. In short, threats of violence must be taken very seriously. The cartoon that Mr. MacLean had displaying a man with a Uzi looking for Mr. Reynolds is not to be considered a joke. Any reasonable person could conclude that Mr. MacLean

might be capable of acting out some type of fantasy, such as that which was depicted by the cartoon.

Mr. MacLean has a problem with anger management and interpersonal relations at work. He is his own worse enemy. He must get a handle on his problems at work. Otherwise, management will have to react with more serious discipline, even though there is no problem with the quality of Mr. MacLean's work.

It is important that the adjudicator send a clear message regarding acceptable boundaries of behaviour at work and the consequences of non-compliance. Mr. MacLean may take this message more seriously if it comes from an adjudicator than he did from management.

Counsel argues that Mr. MacLean has acted with reckless abandon especially in regard to the insults and the threatening cartoons. He hopes that Mr. MacLean has learned from his mistakes. The adjudicator should reinforce the lessons learned by maintaining the suspension. Mr. MacLean should be kept in line for his own good and the good of the office. He did not care who saw the cartoons. They were Mr. MacLean's retaliation against those who he felt were out to get him. His apology for his actions does not exhibit sincere contrition. It would be dangerous to overlook Mr. MacLean's actions.

Counsel argues that retaliation and police escorts are serious concerns for management. Management accepts that Mr. MacLean could be under stress and that frustrated employees could write the type of letters in question. However, Mr. MacLean has to live with the stress associated with work. He must be responsible for his actions.

Mr. MacLean was assessed "fit to work" before the employer imposed the suspension. The health professional advised management to keep him in line administratively. The suspension was aimed to help Mr. MacLean take charge of himself.

Mr. MacLean is not beyond redemption. The adjudicator could salvage Mr. MacLean's career by dismissing the grievance. Mr. MacLean is on the verge of losing everything. Management was only following the suggestion of the medical officer to handle any further

difficulties administratively. Management has taken all mitigating circumstances into consideration, such as: Mr. MacLean's employment record; his years of service; his previous discipline; and his apology.

If a strong message is not sent to Mr. MacLean, we will see him again in a case of discharge. In light of Mr. MacLean's long service, that would be a shame.

Counsel argues that Mr. MacLean's misconduct has been proven. The suspension was both moderate and appropriate. It would be counterproductive to disturb the suspension,

Mr. Newman asks that the grievance be denied.

- **Argument for Mr. MacLean and the Union**

Counsel for Mr. MacLean submits that Mr. MacLean has only been disciplined once since he became a Public Service employee in 1965. He was disciplined in 1994.

The incidents in this instance span a relatively short period of time, from March 22, to April 10, 1996.

Mr. MacLean was on sick leave with bowel problems from March 11 to March 13, 1996. Therefore, he was not feeling well at the time.

The correspondence from Mr. MacLean to Mr. Tucker and the subsequent memorandum from Mr. Tucker to Mr. Gibson (exhibit 22) referred to an incident before March 22, 1996. In his letter, Mr. MacLean advised Mr. Tucker that he would find out some information through ATIP about his (Mr. MacLean's) dispute with his wife.

The first letter from Mr. MacLean to Mr. McNeely expressed Mr. MacLean's concern about the time extension granted by Mr. Terris in the audit of a taxpayer. That letter is nothing more than a complaint.

The other letters could be considered offensive, but they were not at all threatening. For example, Mr. MacLean complained to Ms. Cookson. He was upset that his application for an AU-3 position was not received by personnel, and he was perturbed that the statement of qualifications

for the AU-3 position was in French. In her reply Ms. Cookson indicated to Mr. MacLean that she received his offensive memo. However, she does not appear threatened or intimidated by his memo.

Mr. MacLean had sent a letter to Mr. McNeely on April 3, 1996, (exhibit 16) in which he explained his frustration in dealing with Mr. Terris and Ms. Cookson. He met with Mr. McNeely and Mr. MacGillvary to discuss their concerns about the letters. At that time Mr. McNeely agreed to provide Mr. MacLean with a copy of a letter that would extend his acting AU-3 assignment.

The first three or four memos sent by Mr. MacLean establish his state of mind that something was bothering him. The cartoons were sent to the office. They were just comic strips of Sesame Street and Charlie Brown, and a political cartoon that he had modified. They were not addressed to anyone in particular. Mr. MacLean did not send them to the people to whom he referred (Mr. Squires, Mr. Tucker, or Mr. Reynolds).

The cartoons ended up being part of the memos sent between March 22, 1996, and April 10, 1996. At most, the cartoons can only be considered as annoying. The culminating memo was on April 10, 1996. Mr. MacLean sent a memo to Mr. McNeely in which he said that he did not want to work with Mr. MacGillvary. Subsequent to that memo, Mr. MacLean apologized to Mr. MacGillvary and stated that he did not mean any threat of physical harm. Mr. MacGillvary is a big man, at over 300 pounds.

Counsel argues that his department considered that Mr. MacLean was irrational because he wrote a number of memos. He was suspended from work with pay until they received a report stating whether he was fit for work. The police escorted Mr. MacLean from the workplace. He was not permitted on the premises for a period of time. Mr. MacLean was treated like a criminal as a result of management's heavy-handedness.

The department was so convinced of its view of Mr. MacLean's health situation that they questioned Health Canada's evaluation that he was "fit to work". This exchange between Health Canada and Mr. McNeely extended Mr. MacLean's suspension with pay, by a month. After Health

Canada reported that Mr. MacLean was fit to work, management proceeded to discipline Mr. MacLean with a 20-day suspension. The 20-day suspension also meant that Mr. MacLean lost two days of vacation pay for that month.

Mr. MacLean followed the advice of Health Canada to seek medical help. He attended a number of sessions with Dr. Pilon. Dr. Pilon suggests that the emotional stress that Mr. MacLean was under (strained relations at work and marital difficulties with his ex-wife) could have had a negative impact on Mr. MacLean's judgement and behaviour. Thus, Mr. MacLean's stress led to his behaviour during the incidents in question.

Mr. MacLean's stress led him to go on sick leave beyond the date on which the employer said he could return to work. He did not return to work until September 16, 1996. Mr. MacLean's stress was due to health and work-related factors. The combination of all the factors led to his irrational behaviour. Accordingly, he should have been on sick leave from July 1, 1996.

Management did not consider all of the mitigating factors in this instance. Counsel argues that: (1) taken individually, most of the memos were not serious; (2) all the memos occurred during a short period of time; (3) Mr. MacLean apologized in writing; (4) he testified that he should not have sent the memos and will not do it again; (5) he is an able worker with long service with Revenue Canada; and (6) he does not have a substantial history of discipline.

There is no suggestion that Mr. MacLean is a violent man. The doctor for Health Canada does not foresee any violent behaviour in the future. Mr. MacLean simply wrote letters to management, when he was frustrated.

He is a respected employee. Counsel acknowledges that Mr. MacLean has acted strangely; yet the situation has been resolved. Mr. MacLean has apologized both in writing and during his testimony. His fellow employees were annoyed by Mr. MacLean's actions. Regardless, they did not feel threatened by Mr. MacLean's actions. Mr. MacLean's sarcasm was intended to get a message across. That is what Mr. MacLean thought that he was doing at the time.

In conclusion, counsel adds that Mr. MacLean has not sent any more questionable memos to fellow employees since the incidents in question. She argues that because Mr. MacLean's

erratic behaviour was stress related, this behaviour does not merit anything more than a reprimand.

In the alternative, the incidents in question in this case should only lead to a three- to five-day suspension at the very most. A 15-day suspension is for incidents of fist fighting or drinking on the job.

Counsel referred to the following authorities and cases:

- (1) **Marineau**, Board file 166-2-26226.
- (2) **Tanciau**, Board file 166-2-27712.

Mme Michaud requests that the grievance be allowed. She asks that the suspension be dropped and sick leave substituted therefor, or reduced to a lesser penalty.

Conclusion and reasons for the decision

The facts in this case are not in question. The primary issue is whether Mr. MacLean's actions deserve any discipline. If they do, the question turns to the length of the suspension and whether the employer had just cause to impose that suspension.

The original suspension was for twenty days because he sent offensive memos to fellow employees and supervisors. His suspension was subsequently reduced by five days at the third level of the grievance process.

The reasons for the reduction were, in part (exhibit 4):

I am satisfied that you have made a significant effort to deal with this situation by seeking counselling which includes anger management. In recognition of this effort, I feel it appropriate to reduce your suspension from 20 to 15 days. You will consequently be reimbursed 5 days salary subject to normal deduction.

Counsel for Mr. MacLean asks me to substitute sick leave for Mr. MacLean's 15-day suspension, or to reduce the suspension further. She maintains that the 15-day suspension represents an excessive penalty in all the circumstances. In support of her contention she cites the decision of **Marineau**, supra, where an employee was suspended for only three days for writing nasty comments to the employer.

This is not the first time that Mr. MacLean has been suspended for this type of behaviour. The employer suspended him in December 1994 for similar reasons.

The following are relevant portions of Mr. Tucker's 1994 letter to Mr. MacLean. It sets out some of the foundation for my decision (exhibit 6):

Revenue Canada has over the years established a work place in which employees can expect to be productive in an environment free of threatening or disruptive behaviour. This is based on standards of conduct founded upon the normal expectations that management will respect staff and their rights, that employees will respect management and its prerogatives and finally that employees at all levels will likewise show appropriate consideration for their colleagues and their rights as well.

As indicated during our meeting, your September 21, 1994, correspondence to a number of your fellow employees included insubordination to management. These letters were disruptive to many of the employees who received them as well as to others in the workplace once their contents became known. Your November 18 letter failed to provide either an acceptable rationale for your actions or any information which could lessen your culpability. It has additionally been determined that there is no health or related cause that mitigates your behaviour in having sent this correspondence.

I consider this insubordination to management and the disruption you have caused in the workplace to be serious breaches of workplace discipline. Accordingly, pursuant to authority delegated to me by the Deputy Minister under the Financial Administration Act, you are to be suspended from your duties without pay for a period of three days: the period of suspension will be from December 13 to December 15, 1994 inclusive.

You are cautioned that if you fail to meet the expectations set for you by your supervisor in a memo to you dated November 15, 1994, on the subject of your future conduct in this regard, you will be subject to more severe disciplinary action up to and including termination as appropriate.

After that suspension was referred to adjudication, the employer agreed with the grievor and the bargaining agent to reduce it to a one-day suspension. Still this letter is important for two reasons. First, it shows that Mr. MacLean has already been disciplined for sending insubordinate memos to fellow employees. Secondly, management has clearly communicated their expectations, and the consequences for non-compliance, to Mr. MacLean in the past.

At this point I will examine some of the memos that Mr. MacLean sent to his fellow employees and his superiors in order to demonstrate what the employer was complaining about.

In exhibit 9, one of the early e-mail memos, Mr. MacLean does not mince his words. He refers to Mr. Terris as "chicken". He uses terms such as "if Terris became involved it would get screwed up for sure", and "typical sneaky back biting of Terris", when he refers to the six-month delay in the audit.

In exhibit 10, he alleges that Mr. Terris is trying to over step Mr. MacLean's authority in regard to the audit delay. "It pisses Terris off that I received acting AU 3." In exhibit 11, he writes a sarcastic letter to Mr. MacGillvary describing how a business can delay an audit in case of pregnancy. In exhibit 12, he refers to Pat Cookson as "Brain Dead, Inhuman Resources". In exhibit 16, he alleges the padding of marks for a 1991 AU-3 position. He adds "Cookson is brain dead. You should do what hospitals do to the brain dead-unhook their life support systems." In exhibit 18, he tells Ms. Cookson that "If you want to be treated as a professional then I suggest you change your ways and start acting as one. If you cannot tell the difference between French and English I suppose that is why you are in personnel. Anything else would be too complicated." In exhibit 19, he refers to Mr. MacGillvary as being a "fuck up." He says that if his reporting relationship were not changed that Mr. MacGillvary would need his long term disability. Finally, in exhibit 23, there are the offensive cartoons, including the one that depicts a figure with a Uzi looking for Paul Reynolds.

In my opinion the only person who acted in an unprofessional manner in this case was Mr. MacLean. Indeed, the employer has shown a remarkable degree of restraint in dealing with him. If Mr. MacLean thinks that his sarcastic comments and vulgarities are indicative of a professional individual, he is drastically mistaken. They are not. He is the one who has to change his ways and start acting as a professional.

When I consider the tirade in his letters, together with the number of incidents and the breadth of the language used in his comments, combined with the fact that Mr. MacLean had already been disciplined for a similar situation, I cannot but conclude that Mr. MacLean had to realize that his actions were going to annoy his fellow employees and cause problems for himself. This is especially so when I note the fact that Mr. McNeely intervened on one occasion during this letter avalanche to inform Mr. MacLean that his actions were considered offensive and they could result in disciplinary measures, if he continued.

Mr. MacLean has been an employee with the department for 31 years. His supervisor described him as a productive worker. He has extensive experience in the department, with his fellow workers and with the public. He knows how to conduct himself. I believe that he should not have allowed things to turn out as they have. Although Mr. MacLean has apologized for some of his actions, I do not feel that this obviates him from responsibility for what he did.

While a certain amount of jocularly is acceptable in the workplace, the instant case exhibits the problem of an employee who does not know when to stop. To paraphrase Mr. MacLean, things just started rolling and kind of snowballed. They certainly did. Without management's intervention, no one knows how long the incidents would have continued.

The incidents in question are classic examples of why employees must realize that they have one job to do while management has another. Both management and employees must respect each other for what their job requires of them. Furthermore, they must allow each other the freedom to perform their respective tasks effectively.

When there are differences of opinion on how things should be done, for example, the six-month delay of the audit, there are proper channels to follow to voice one's opinions. An employee should not feel that he can take it upon himself to send rude, offensive, sarcastic or otherwise unprofessional letters to his supervisors or fellow employees. This just does not promote a harmonious and secure working environment. He can get his point across without resorting to unprofessional comments.

I accept that Mr. MacLean may have been under some stress because of his job and in his personal life. This stress could in some way have been related to sending of the offensive memos. As much as I sympathize with Mr. MacLean for this stress, I also believe that Mr. MacLean has to accept responsibility for his actions. The stress may explain to some extent why he engaged in his conduct. It does not absolve him of responsibility for his conduct.

Mr. MacLean has been deemed both a productive worker and a person fit to work. He has not displayed any further incidents of offensive behaviour from the date of his suspension. It appears that he has learned from his mistakes. I commend Mr. MacLean for this improvement in behaviour.

However, I emphasize that it is up to Mr. MacLean to remain vigilant in this resolve. If not, it would be a tragedy to see Mr. MacLean throw away 30+ years in the Public Service for what appears to be a controllable behaviour pattern.

In conclusion, I concur in the remarks of counsel for the employer that the one-day suspension and warning that he got in 1994 did not impress upon him that he should not engage in similar conduct.

However, I have misgivings about the length of the suspension in the instant case.

I note at this stage that I do not share the opinion of counsel for Mr. MacLean that a three-day or five-day suspension would be more appropriate. That sort of gesture would be tantamount to a mere slap on the hands for what Mr. MacLean did.

The employer wants its response to be corrective, and not punitive. They want the suspension to be effective. It could be said that they are giving him another chance. In my opinion a 10-day suspension will drive home to Mr. MacLean that he has to change his attitude. It will also force him to change his manner of interacting with the rest of the employees and supervisors, if he intends to remain with the department. He has to realize that one does not have to get down in the gutter, use sarcasm, or imply threats to express his disapproval of actions by others. If he does not get such a message with a 10-day suspension, he will not get the message with a lengthier one either.

The employer does not need to resort to a 15-day suspension to get the desired result from Mr. MacLean. If a 10-day suspension does not bring him up short, nothing will, and he will slide down the slippery slope into oblivion and out of the department of his own accord.

I believe that it is more reasonable that the grievor's suspension be reduced to 10 days from 15 days. A suspension of 10 days still tells Mr. MacLean and the rest of the employees that his actions are not tolerated. It will give him a relatively severe suspension. Yet, it still tells him that he has another chance to get his act together. It demonstrates that the employer has limits on the degree of misconduct that it is willing to tolerate and beyond which it will institute disciplinary action.

It is my conclusion, therefore, that the 15-day suspension is too harsh in the circumstances. A more reasonable response would be a 10-day suspension of Mr. MacLean.

In the result the grievance is allowed in part. I order that a 10-day suspension be substituted for the 15 days imposed at the third level of the grievance procedure. The employer shall reinstate to Mr. MacLean the five-days' pay and other benefits that were withheld from him.

**Donald MacLean,
Adjudicator and board member.**

Moncton, January 7, 1999.

