File: 166-2-28535

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

CHARLOTTE HUTCHINSON

Grievor

and

TREASURY BOARD
(Environment Canada)

Employer

Before: Joseph W. Potter, Deputy Chairperson

For the Grievor: Mike Tynes, Public Service Alliance of Canada

For the Employer: Harvey A. Newman, Counsel

Heard at Dartmouth, N.S.,
February 2 to 4, 1999.

I have been asked to adjudicate the grievance of Ms. Charlotte Hutchinson, an employee of Environment Canada who grieves against the termination of her employment. The letter of termination, dated April 21, 1997, reads as follows (Exhibit E-1, tab 2):

> *This is further to my letter of April 17th in which I advised you that you were required to return to work as of 8:00 a.m., April 21st.*
>
> *While you did return to work as instructed you, for the third time, withdrew your services under the provisions of the Canada Labour Code. This occurred at approximately 12:05 p.m., April 21st, after you had been back to work for approximately four hours.*
>
> *The nature of your employment requires that you are present at a number of locations and types of locations including the Queen Square office, industrial sites, Environment Canada warehouse(s), motels/hotels and/or other accommodations during travel, etc. Over the past years you have consistently indicated that you could not work in Queen Square or, indeed, many other locations as well, due to your health condition. We have tried to accommodate your personal needs by a number of means, however, none of these efforts has proven to be successful.*
>
> *In the above referenced letter I also advised you of the possibility of your employment being terminated under the provisions of the Financial Administration Act – Section 11 (2)(g). On the evidence available it does not appear that you are capable of performing the duties of your position, nor are you likely to be able to resume those duties within the foreseeable future.*
>
> *It is with regret that I must now confirm to you that, under the authority delegated to me and in accordance with the above-noted provisions of the Financial Administration Act [copy of excerpts attached], I am herewith terminating your employment with the Public Service of Canada effective immediately. You will cease to be an employee at the close of business (i.e. 4:00 p.m.) on April 22, 1997.*

> *In accordance with your collective agreement – PSAC Master, Article M-38, you have the right to grieve this decision and, should you decide to do so, you must take that action not later than the 25th day after receipt of this notification.*
>
> *Yours sincerely,*
>
> *Garth Bangay*
> *Director General*
> *Atlantic Region*
> *Environment Canada*

On consent of the parties, an exhibit book was filed (Exhibit E-1) containing some 125 tabs of pertinent documentation. For ease of reference, these will simply be referred to as "tab" followed by the appropriate number or letter.

Jurisdiction

At the outset of the hearing, Mr. Tynes raised a jurisdictional issue. He stated that the letter of termination was signed by the Regional Director General but the departmental delegation of authority document (Exhibit G-1) did not specify this authority was delegated below the Deputy Minister level. More specifically, Mr. Tynes stated this was a non-disciplinary termination and Exhibit G-1 does not contain any delegation for a non-disciplinary termination. There is a heading on page 8 of Exhibit G-1 titled "Discipline"; and there is delegated authority for disciplinary discharge, but as this is a non-disciplinary termination, the delegation of authority document does not contain any authority to delegate the Deputy Minister's responsibility for this action. Mr. Tynes said I was, therefore, without jurisdiction to hear this matter.

Mr. Newman delivered a three-pronged reply.

Firstly, if I were to accept this proposition, the grievor would have no recourse apart from the courts; her employment would remain terminated.

Secondly, the grievance went through all appropriate levels of the grievance procedure, including the Deputy Minister level. If there was a lack of delegation at the time, it has been rectified by a final level reply from the Deputy Minister.

Finally, the delegation document itself does, in fact, contain the delegation to the Regional Director General. Page 9 of Exhibit G-1 specifies that terminations of employment have been delegated. This is a termination of employment. The fact it comes under a heading of "Discipline" does not negate the delegation.

Mr. Newman also stated that he understood the Deputy Minister had given verbal authority to the Regional Director General to proceed with the termination and, if necessary, evidence to that effect could be presented at a later date.

At the hearing, I indicated I would reserve judgment on this issue and I proceeded to hear evidence. I will now rule on the jurisdictional matter.

An adjudicator's jurisdiction is derived from the provisions of the *Public Service Staff Relations Act (PSSRA)*. Subparagraph 92(1)(b)(ii) reads:

> *92.(1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to*
>
> *(a) …*
>
> *(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),*
>
> *(i) …*
>
> *(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or*
>
> *(c) …*
>
> *and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.*

Section 93 reads:

> *93. The Board shall assign such members as may be required to hear and adjudicate on grievances referred to adjudication under this Act.*

It is clear that the subject of the grievance is a matter that falls under subparagraph 92(1)(b)(ii) and this is a proper subject for referral to adjudication. As such, the author of the termination letter does not determine jurisdiction, but rather the provisions of the *PSSRA* do.

The delegation document itself does specify that the Regional Director General has been delegated the authority to terminate employment. The fact there is a heading "Discipline" does not, in my view, alter the clear fact that, for cases involving termination of employment (which this one is), the Deputy Minister has delegated his or her authority to the Regional Director General.

I find I have jurisdiction to entertain this grievance and to determine it on the merits.

Evidence

The grievor's employment with the federal government commenced in 1971 and she eventually went to Environment Canada in 1985 as the Regional Personnel Manager (PE-3). She was located in a building called Queen Square. Ms. Hutchinson stated that after one year in the job she realized there was something seriously wrong with her and in 1987, she took some time off work. In 1988, she found she had an environmental illness and went on disability for two years.

Her claim for disability (tab 3) does not mention environmental illness, but rather it says the nature of illness was "burn out". Ms. Hutchinson stated her own doctor told her she was reacting to the building she was in, and she was referred to specialists in both Toronto and Montreal. She received approval for the long-term disability insurance claim (tab 5) and was off work from 1988 to 1990.

In preparation for her return to duty, Health Canada did a fitness for work assessment on her. Their report (tab 8) states:

> …
>
> *We feel she would be Class "A" – fit to return to a trial back on the job in October, 1990, but it would be advisable for her to avoid air-conditioning, tobacco smoke, and chemical odors if at all possible.*

In seeking to assist her re-entry into the workplace, the Department moved Ms. Hutchinson into an Environmental Engineering Technician (EG-ESS-4) position and provided retraining and salary protection at the PE-3 level (tabs 9, 10 and 11). Her office was located in the Queen Square building and her duties included taking trips out of the city and staying overnight in hotels.

From the time of the grievor's return to work in 1990 until March 1993, her appraisal reports were very positive (tab T). There is no reference to an environmental illness, but nevertheless in 1993 the grievor requested that she go from full-time employment to seasonal work. She said the request was health related. She testified the winter months were not particularly busy; therefore the employer agreed to her request for seasonal work, with December to March being the normal months off.

The 1993-94 appraisal report is also very positive, with no mention of any environmental problems.

The first written record of an environmental problem presented as evidence is a letter written from the grievor to her supervisor dated May 25, 1995 (tab 13). Also, the grievor's performance appraisal for 1994-95 makes reference to this where, at page 2 of the report, Ms. Hutchinson wrote (tab T):

> *…I have been very frustrated (as well as sick on numerous days) over the past 5 ½ weeks because of management's failure to provide me with a safe working environment.…*

The supervisor's comments follow and state, in part:

> *…Charlotte has serious allergy problems which are triggered by scented products etc.….*

The grievor was asked to assist in the promulgation of a "scent-free workplace" policy, and she assisted in the development of an employee survey on scents in the workplace through the Health and Safety Committee.

In June 1995, the Regional Director General, Mr. Garth Bangay, was made aware of the issue of scent in the workplace and the fact that Ms. Hutchinson had a problem with it.

Also, in May and June of that year, the grievor filed numerous "Hazardous Occurrence Investigation" reports claiming a "toxic atmosphere" problem (Tab 14). On June 21, 1995, the grievor wrote to her supervisor detailing the problems she was having in the workplace (tab 16). She wrote:

> *…In the work situation my greatest irritants are scented personal/personal care products, eg. perfume, scented deodorant, scented fabric softeners used by other people….*

The grievor testified that, about that same time, renovations commenced on the Queen Square building. As a result, she was moved to various floors in the building to try to assist her in coping with her environmental concerns. In spite of the fact each floor had a separate ventilation system, Ms. Hutchinson still had difficulties. On May 24, 1995, management told her she was to move to another federal government building (see Exhibit G-2) to help mitigate the problem, but the grievor rejected that proposal on May 25 (see tab 13). The grievor testified an informal arrangement was made with her supervisor to take work home when problems with the environment arose.

However, in an effort to respond to the Hazardous Occurrence reports Ms. Hutchinson had filed, her supervisor wrote her a memorandum on July 11, 1995 (tab 17) and said offices at another federal government building (Bedford Towers):

> *… are scent free and have 100% fresh makeup air and according to… the people working in the office, some of whom are highly sensitive to scented products, have encountered no problems.*

The grievor was asked to move to this new office location on July 12, 1995. She went to this location and stayed for about two hours before finding out the carpets had recently been laid and this caused a negative reaction for the grievor. She returned to Queen Square.

On August 3rd, Ms. Hutchinson's supervisor wrote her a memorandum outlining four options for office space (tab 19). Three options involved different floors in the Queen Square building and the fourth offered another building. Management concluded the best option was a floor in the Queen Square building and the memorandum states that the grievor found this option suitable.

The memorandum also raised the issue of telework and Ms. Hutchinson's supervisor said they were open to this type of suggestion, as long as it met operational requirements. Finally, the memorandum stated they wanted the grievor to be medically examined by a Health and Welfare Canada doctor.

Ms. Hutchinson wrote, on August 8 (tab 20), that she was not looking for telework on a long-term basis and, "Quite frankly, I don't like the idea for a number of reasons…"

On August 23, 1995, the Department wrote to Health and Welfare Canada asking for a medical assessment of Ms. Hutchinson and outlined her difficulties (tab 22). The grievor also wrote to her own doctor asking for a medical assessment (tab 21).

Ms. Hutchinson's personal physician, Dr. J. Patricia Beresford, wrote to the Department on September 7, 1995 (tab 23) concerning the grievor's "deteriorating health status". She wrote, in part:

> *For the last several months, Charlotte has been seeing me complaining of increasing symptomatology. Some of the major triggers seemed to be heavy perfume exposures recurrently, and exposures to renovated areas with new carpets, paints and glues. Further aggravants have been exposures on field trips in hotels where rooms harbour old cigarette smoke, pesticide sprays, etc. As Charlotte has described to you in her letters, she has become increasingly ill causing her to suffer from symptoms of rhinitis, clogging of her nose and throat, chest discomfort, (shortness of breath), brain fog, and inability to think, and increasing fatigue requiring bed rest.*

When this letter came to the attention of the Regional Director General, he testified he thought of this as a different, more serious problem than had been indicated in the past. The reference to the grievor being in a "brain fog" might cause the grievor to make decisions which were adverse to her own interests and to the interests of others, and therefore the grievor might present a danger to herself and/or to other employees.

On September 8, the grievor called her supervisor and stated she was proceeding on indefinite sick leave (tab 24). She did not return to work for the remainder of her 1995 season.

On November 17, 1995, Dr. Karen MacDonald, Health and Welfare Canada, wrote to Ms. Hutchinson's supervisor and said the grievor would be "fit to return to work in the spring of '96 but with limitations". The letter also said: "You may wish to consider a scent-free policy." (tab 29).

In preparation for her return to the workforce, a memorandum to all staff was sent out on March 29, 1996 (tab 30) asking people to be "especially mindful of the potential impact your use of such products may have on your coworkers…and further request that you give serious consideration to not using these products that are scented."

Prior to her return to the workforce, the grievor met with her supervisor and it was agreed the Department would purchase an air cleaner and a respirator for Ms. Hutchinson (tab 32).

After Ms. Hutchinson's first day back at work (May 22, 1996), she wrote to her supervisor and told him how her day went (tab 33). While glad to be back with her fellow co-workers, she wrote that she "suffered greatly from the air on [our] floor…." She also wrote of the variety of personal scents that had posed a problem for her at work.

On June 4, 1996, Ms. Hutchinson wrote another memorandum to her supervisor and suggested the employer could make her "an interim 'safe' office at BIO in some of the space recently vacated by [our] lab staff, while management and Human Resources continue to ponder the problem of what to do with [me] and others like [me]" (tab 35).

Her supervisor issued a reply on June 11, 1996 (tab 39) outlining the efforts made up to that time to deal with Ms. Hutchinson's environmental illness. The memorandum also stated:

> *… you have informed us that you will work at home rather than at Queen Square. In the Department's view, this constitutes telework. It is a management decision as to when and under what circumstances telework is authorized. Up to this time, you have consistently indicated that you do not wish to telework. Should you now wish to apply for telework, management is prepared to consider your application. Until an application is received and approved, telework is not authorized for you.*

Ms. Hutchinson testified she never applied for telework, and she wrote to her supervisor that she did not want to telework (tabs 40 and 43). Her work location continued to be at Queen Square, but the grievor said management was examining other interim work locations.

On June 21, 1996, the grievor's supervisor wrote to Ms. Hutchinson and told her that another location had been found for her (tab 44). This location was identified as Rocky Lake Road and the grievor said she tried it for about one hour on June 25 and left. Later she wrote that the air quality was not suitable (tab 48). In this same letter, she also withdrew whatever offer she had made for working out of her own home.

Mr. Bangay testified that by the end of July, the Department was running out of work location options for the grievor (see tab W for a summary of the locations tried). At the same time, Ms. Hutchinson proposed an office building located at 12 Queen Street across the street from Queen Square. This was not a federally owned building, but was one that Ms. Hutchinson felt met her needs, which included being able to open a window.

Mr. Bangay testified he thought this was a terrible option. He had no control over the people in that building and the location the grievor proposed was on the first floor with car exhaust fumes in close proximity to her open window. It was not scent-free and she may well have encountered people smoking in that location. He rejected this suggestion.

On July 31, 1996, the employer wrote to Ms. Hutchinson (tab 71) and put forward three alternative courses of action. These options were to work at Queen Square; proceed on sick leave; or withdraw her services if she felt it was a safety issue. The letter also told the grievor that a request for telework would be favourably received.

The grievor replied that same day (tab 72) advising her supervisor that she was exercising her right to withdraw her services. She testified she chose this option because it was yet unexplored. She wanted to find out what it would lead to. The matter was investigated by Labour Canada and she was advised by the Safety Officer that no danger existed (see tab 75). The grievor requested the Safety Officer to refer this decision to the Public Service Staff Relations Board (PSSRB) and the matter was decided in a decision of Board Member J. Barry Turner (Board file 165-2-113). The decision, dated September 23, 1996, confirmed the Safety Officer's findings. On September 27, the grievor was told to report to Queen Square on October 1, 1996, to resume her duties (tab 85).

Before returning to work, the grievor wrote to Ms. Heather J. Hay-Scott, a departmental Labour Relations Officer at Headquarters, outlining her situation (tab 86). On the last page of this letter, Ms. Hutchinson wrote:

> *…*
>
> *And could you also deal with management's refusal to consider my recent request to telework from 12 Queen St. at my expense.…*

A reply dated September 30, 1996 was sent to Ms. Hutchinson (tab 87) and it stated, in part:

> *With respect to telework, under the present circumstances management declines to consider the option at this time.…*
>
> *… However, this does not mean that management might not be prepared to reconsider telework at some time in the future.…*

Mr. Bangay testified this refusal to telework related to Ms. Hutchinson's request to telework at 12 Queen Street, and he viewed telework as meaning working from one's home.

The grievor returned to work on October 1, as required, and after remaining at the work site for a short time, she again withdrew her services pursuant to the provisions of the *Canada Labour Code*. She informed her supervisor in writing that she was withdrawing her services (tab 88). She testified she chose this route again

because she had learned a few things from the first work withdrawal that she thought would help in justifying this withdrawal.

Prior to another formal investigation by a Safety Officer, Ms. Hutchinson testified that she met with departmental officials to see if a resolution could be found. On October 2, 1996, the departmental Safety Officer wrote to her and said (tab 90):

> *… management is prepared to consider a teleworking proposal if it is prepared and submitted by you.…*

On October 25, 1996, the grievor wrote to her supervisor instructing him to ensure that, apart from emergencies, she not be called upon to work at home (tab 92).

As this second work withdrawal was done in close proximity to the end of the grievor's normal seasonal employment, she testified she remained off work until April 1997.

On November 12, 1996, the Safety Officer wrote a decision with respect to Ms. Hutchinson's work withdrawal (tab 94). The Safety Officer found:

> *… that a condition in the workplace constitutes a danger to Charlotte Hutchinson while at work:*
>
> *Charlotte Hutchinson suffers from a medical condition that causes the workplace to be unsafe for her.*
>
> *…*

On November 18, 1996, Mr. Bangay wrote to the Safety Officer and requested a review of the decision (tab 95). Ms. Hutchinson was also told that, until the decision of the Safety Officer was reviewed, she would not be required to report to her workplace (tab 96).

On February 17, 1997, the grievor wrote to the Department concerning her scheduled return on April 1st from seasonal lay-off (tab 99). She noted that the Safety Officer's decision was under review, but said she could not work at Queen Square because it made her sick. She also cited numerous other environmental problems she had with her job while travelling to other sites.

Mr. Bangay testified this letter disturbed him because it raised further problems the grievor stated she had which he had not been previously aware of. He felt that the letter indicated her medical condition was escalating. He also noted that in her letter she suggested a medical retirement "would be a welcome option." Mr. Bangay testified that, while he had no opposition to this suggestion, the employee would have to initiate the request and Health Canada would be the one to authorize it. Both the grievor and Mr. Bangay testified no such request was made.

On March 27, 1997, the employer sent Ms. Hutchinson a letter telling her that the seasonal employment was to recommence April 1st, but the review of the Safety Officer's decision had not yet been made. Until it was received, the grievor was instructed to work from her home (tab B). The grievor replied saying the Department could not force her to work from her home (tab C).

On April 16, 1997, the review of the Safety Officer's decision came down and the Regional Safety Officer rescinded the decision (tab D).

On April 17, 1997, Mr. Bangay wrote to Ms. Hutchinson and instructed her to report for work at Queen Square on April 21 (tab E). The grievor was told that, "Failure to do so may result in the termination of your employment. …"

The grievor testified she went to work as instructed on April 21 and remained on the job for the morning. She said she became ill for a variety of environmental reasons and she left after writing her supervisor a note (tab F). She stated she was again withdrawing her services under the provisions of the *Canada Labour Code*.

The grievor testified she thought of Mr. Bangay's April 17th letter when she withdrew her services, but she felt it did not apply to these circumstances because she had in fact reported for work, then withdrew her services. She also said she thought this withdrawal would yield different results from the two previous withdrawals because it was now possible to have a doctor brought to the work site with the employee there to observe the development of any symptoms.

In any event, the grievor said her employment was terminated because of her actions by way of a letter (tab G) dated April 21, 1997. She wrote to Mr. Bangay the next day (tab H) asking that the decision be rescinded, as she was "ready, willing and able to work from a safe office site." Mr. Bangay replied (tab I) saying the decision would not be altered.

Ms. Hutchinson filed a complaint with the PSSRB under section 133 of the *Canada Labour Code* (tab N) which alleged the employer had taken action against the grievor because she withdrew her services, which she had a right to do. Her complaint was dismissed (Board file 160-2-52).

Ms. Hutchinson grieved her termination and that is the issue here.

Arguments

For the Employer

Mr. Newman argued that, while Ms. Hutchinson was a long-term employee, she had a history of medical problems. Mr. Newman pointed out that the employer was not challenging any of the grievor's physical symptoms and said further that the issue really came to a head in the late 1980's when the grievor went on two years' disability. In spite of the fact there was no mention at the time that the reason for the absence was an environmental illness, Mr. Newman stated he did not dispute that it was.

The employer accommodated the grievor's needs by moving her to a less stressful job and maintaining her salary. Her performance appraisals indicate she performed well from 1990 to 1995. It was in 1995 that the grievor's problems escalated. There were renovations going on at the work site of Queen Square and so she was moved a number of times to different floors. Also, the grievor filed a number of Hazardous Occurrence reports and management responded by developing a "no scent" policy at the work site and had air quality reviews done. They offered alternate work sites but problems arose with each one offered. As Ms. Hutchinson had a problem working in a sealed building, Mr. Bangay was not optimistic that there would be a satisfactory location for her to work in.

While management may not initially have been receptive to telework, they did indicate they would be willing to try it. The grievor never applied for it and she was the one who appeared to reject the concept of working at home.

In September 1995, the grievor went on indefinite sick leave and a fitness for work report was written on her. The report (tab 29) said the grievor was fit for work, but with limitations. The report caused Mr. Bangay to have concerns about the grievor's safety, as well as the safety of others she worked with, given the medical opinion that the grievor had "brain fog". Ms. Hutchinson returned to work in May 1996, and immediately there were problems. Again, alternate work locations were tried, but without success.

On July 31, Ms. Hutchinson withdrew her services due to her concerns regarding the safety of the workplace. A Safety Officer investigated and found no danger, and his decision was supported by the PSSRB.

She was instructed to return to work, and did so on October 1st for about one hour; then she again withdrew her services for what she said were safety reasons. The Labour Canada Safety Officer found that, although the work site was safe, Ms. Hutchinson could not work there as it posed a danger to her. This decision was appealed by the employer and ultimately overturned.

In September 1996, the grievor wrote to Headquarters and said the employer was withholding telework. Mr. Newman stated this was in relation to the grievor's suggestion of working at 12 Queen Street, a non-government building. As the reply (at tab 87) rejected this, Ms. Hutchinson ought to have known, at least by then, that working out of 12 Queen Street was not acceptable to the employer. Nevertheless, she continued to request this option. Mr. Bangay had no reason to believe the grievor's suggestion of working out of 12 Queen Street would actually work. It was a non-governmental building and there were health and safety concerns, as well as insurance issues.

In 1997, the grievor was asked to perform her duties from her home but she did not accept this request. Ms. Hutchinson was instructed to report for work, and she was warned of the consequences if she did not do so.

She reported, as required, then withdrew her services again. Mr. Newman said there was no reason to believe this would end on a rational note unless the grievor's employment was terminated.

There was nothing more management could reasonably have done, and there had to be closure to the issue. All indications were that the grievor could not function in the workplace, therefore management was left with no option but to terminate her employment.

Mr. Newman referred to the following cases: *Michael Joseph McCormick and The Attorney General of Canada* (Federal Court file T-371-96); and *Scheuneman* (Board file 166-2-27847).

For the Grievor

Mr. Tynes argued that this was a termination of employment for incapacity and there is no medical evidence to show the grievor is medically incapacitated. He argued that cases such as this need supporting medical evidence before taking action, and here the employer does not have any.

In these types of cases, Mr. Tynes said that the employer must show that an employee's inability to report to work is based on medical evidence, and furthermore that the employee cannot perform his or her duties in the foreseeable future. There is no such evidence here, and the employer's decision was based on opinion, not fact.

This was a situation where, initially, the parties had a reasonable dialogue but matters deteriorated. Ms. Hutchinson was becoming increasingly frustrated with the conditions at Queen Square and her inability to cope with them. Environmental sensitivities presented new issues and both management and the grievor were initially trying to find ways to deal with them.

While alternative work sites were tried, in the end none were found suitable for a variety of reasons. However, the grievor continued to look for an alternate work site, and indeed she felt she found one at 12 Queen Street. She was even willing to pay the rent; yet the employer did not accept this option.

Mr. Tynes stated the grievor never actually received a reply from the employer rejecting 12 Queen Street and he suggested if she had, maybe she could have moved on to other options. She continued to raise this possibility up to and including the day of her termination.

As far as telework was concerned, the grievor viewed it as a last resort. While she did not rule it out forever, her stated position was that it was not an option to be considered at that time. However, the grievor would have been willing to do telework if nothing else could be found to be a suitable work site.

Mr. Tynes argued that the grievor thought she was complying with Mr. Bangay's warning letter of April 17, 1997 telling her to report for work (tab E). She did not think her employment would be terminated for withdrawing her services after reporting because the warning letter did not address this specific occurrence.

Finally, Mr. Tynes suggested more could have been done to obtain professional medical opinions.

Reply

Mr. Newman stated the employer was not relying on medical reports to say the grievor could not work. The medical reports (found at tabs 8, 23, 29 and 45) all indicate that, while there are environmental medical problems, the grievor can work within limitations. The problem arose with these limitations, as they could not be met.

The grievor knew early on that 12 Queen Street was not an acceptable alternative, but continued to pursue it anyway. There was no choice for the employer but to take the course of action it did.

Reasons for Decision

At the outset of the hearing, both counsel stated this was a sad case. I agree. Ms. Hutchinson was employed for some 25 years, had a discipline-free work record and good performance reports. Unfortunately, she suffers from very extreme environmental sensitivities that precluded her from working at her work location of Queen Square.

The summary of evidence indicates that alternative work sites were explored, but ultimately none were suitable for a variety of reasons. Tab W outlines the various locations which were suggested, and I need not restate them here. Both sides acknowledged that efforts were made to find suitable, alternate work locations but to no avail.

Mr. Tynes suggested the grievor never really knew that her suggestion of working at 12 Queen Street was not acceptable to the employer. I disagree. Ms. Hutchinson wrote to Ms. Heather J. Hay-Scott, a Labour Relations Officer in the Department's Headquarters, on September 29, 1996 (tab 86). In that letter, she said: "… could you also deal with management's refusal to consider my recent request to telework from 12 Queen Street…."

It is clear to me that the grievor knew that her proposal of working at 12 Queen Street was rejected.

In cases such as this, the employer has a duty to accommodate. However, the employee also bears a duty.

As Justice Sopinka wrote in *Central Okanagan School District No. 23* v. *Renaud*, [1992] 2 S.C.R. 970, beginning at page 994:

> *The search for accommodation is a multi-party inquiry. Along with the employer and the union, there is also a duty on the complainant to assist in securing an appropriate accommodation.*
>
> *...*
>
> *To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.*

While myriads of options were pursued, it appeared to me, following presentation of all the evidence, that telework would have been the best option for the grievor. Even this may have eventually proven to be unsatisfactory given Ms. Hutchinson's stated desire to be near her co-workers and the need to meet, from time to time, in Queen Square. Also, the grievor's job required fieldwork and her

environmental sensitivities made staying in hotels/motels very difficult. However, at the very least, telework was worth a try. Ms. Hutchinson had to apply for it, but she never did. No one can force that option on her, and I certainly have no jurisdiction to impose it.

The facts here show that Ms. Hutchinson could not work at her work location of Queen Square. By her own admission, when she went to work at the Queen Square building, she became ill. For a variety of reasons, all other options for a work location were not acceptable.

The grievor was told to report back to work on April 21, and she was warned what the consequences would be if she failed to comply. I do not believe her when she stated she did not think anything would happen to her because she reported for work, then withdrew her services. When she reported for work on April 21, there were no other possible work sites being discussed; accordingly, there were no other options for Ms. Hutchinson to pursue, save and except for telework. She had rejected that option through a variety of correspondence cited in the evidence. As telework could not be forced upon her, the employer was left with no alternative but to issue its termination of employment letter.

Given all the circumstances of this case, I find that the employer's actions were reasonable. The employer has demonstrated that it tried to accommodate the grievor's medical needs. There were no other reasonable options presented to me, which the employer could have considered.

Given this, I find the employer's decision to terminate Ms. Hutchinson's employment, while unfortunate, was warranted. The grievance is therefore denied.

Joseph W. Potter,
Deputy Chairperson.

OTTAWA, March 10, 1999.