

**Date:** 20000125

**File:** 166-2-28949

**Citation:** 2000 PSSRB 6



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**SHELLEY LYNN YENSEN**

Grievor

and

**TREASURY BOARD  
(Revenue Canada – Taxation)**

Employer

***Before:*** [Jean Charles Cloutier, Board Member](#)

***For the Grievor:*** [Barry Done, Public Service Alliance of Canada](#)

***For the Employer:*** [Carole Bidal, Counsel](#)

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Heard at Sudbury, Ontario,  
November 2, 1999.

## DECISION

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[1] The employment of Shelley Lynn Yensen, a term CR-04, acting PM-01, in the T1 Processing Unit at Revenue Canada, was terminated for cause by G.J. Baronette, Director, Sudbury Tax Services Office, on July 7, 1997. The termination letter reads as follows:

*RE: Discipline*

*On June 9, 1997, you were informed that Mr. Robin Glass, Assistant Deputy Minister, Northern Ontario Region, had authorized access to your Income Tax Returns for the 1994 and 1995 taxation years, for the purposes of supervision, evaluation or discipline in accordance with Section 241(4)(h) of the Income Tax Act. An investigation was conducted by Mr. Jack Suski - Manager, TI Processing, Individual & Estate Returns Division.*

*I have reviewed the investigative report concerning your actions regarding undeclared income. The investigation has revealed that you failed to declare income on your Income Tax Return in the amounts of \$2100.00 and \$8400.00 for the 1994 and 1995 taxation years respectively. Your actions are seen as major misconduct in light of your employment history with the Individual and Estates Division; while occupying the position of TI Processing Clerk as well as other duties assigned, you are charged with the responsibility of examining, verifying and correcting Individual Income Tax returns, to ensure their accuracy and therefore you had full knowledge of reporting requirements.*

*The report also indicates that prior to the conclusion of this review and independent of this investigation, it was brought to Mr. Suski's attention that you were the subject of a recent Security Incident and that you contravened local office directives with respect to Authorized Access to Tax Information. On May 27, 1997 you accessed your own tax information. Your behaviour has breached the trust between Revenue Canada and you as an employee.*

*The trust that has been placed upon you to carry out your duties in a responsible, efficient and effective manner has been violated by your actions.*

*Based on the foregoing and the authority delegated to me in accordance with Section 11(2)(f) of the Financial Administration Act, you are hereby terminated for cause, effective at the close of business July 7, 1997. You should also be advised that I will initiate actions to revoke your reliability clearance.*

*Since you are an employee at the time of these actions being taken, you have the right to seek redress through the Departmental grievance procedure in accordance with Section 91 and 92 of the Public Service Staff Relations Act.*

*You will receive correspondence from our Compensation Section with regards to the pay and benefits implications of this action.*

[2] On July 7, 1997, Ms. Yensen grieved against the termination of her employment in the following terms:

*I grieve the employer's decision to terminate my employment with Revenue Canada Taxation.*

[3] As corrective action, she requested the following:

*That I be made whole. That I recover any lost pay or benefits as a result of the termination. That I be given any redress based on the recommendations of my union representative.*

[4] Nineteen months later, the employer replied to the grievance. On January 27, 1999, Robin D. Glass, Assistant Deputy Minister, Human Resources Branch, replied as follows:

*This is in reply to your grievance regarding management's decision to terminate your employment.*

*I have reviewed the information available and considered the points raised by your Union of Taxation Employees representative. As a result of this review, I have come to the conclusion that your misconduct warranted your termination of employment. Therefore, I see no reason to intervene in this matter.*

*In view of the foregoing, please be advised that your grievance is denied and the corrective action requested will not be forthcoming.*

[5] Ms. Yensen referred the grievance to adjudication on March 31, 1999.

[6] The facts in this case are largely not in dispute and have, for the most part, been set out in a joint “Agreed Statement of Facts” prepared by the parties (Exhibit E-3<sup>1</sup>). The Agreed Statement of Facts states:

### **AGREED STATEMENT OF FACTS**

*The facts leading to this adjudication hearing are set out as follows, and are hereby submitted to the Board on consent of both parties:*

#### **Introduction**

*Shelley Lynn Yensen (hereinafter referred to as the “Grievor”) is grieving her termination for cause from Revenue Canada - Sudbury Tax Services Office, dated July 7 1997.*

- *Tab 1: Grievance presentation*
- *Tab 2: Disciplinary letter dated July 7 1997*

#### **Employment History**

*Prior to her termination, the Grievor had held various term positions with the Employer in the Individual & Estate Returns Division since March 1, 1988. In 1997, the Grievor’s substantive position was that of a TI Processing Clerk at the CR 04 level. However, at the time of her discharge, she held an Acting PM 01 position as TI Processing & Resource Officer.*

- *Tab 3: Summary of the Grievor’s employment history*
- *Tab 4: Job description for TI Processing Clerk, CR 04*
- *Tab 5: Job description for TI Processing & Resource Officer PM 01*

#### **Failure to Report Child and Spousal Support**

*In August of 1996, the Grievor’s 1995 T1 Return came up for review for verification of Child Care Expenses and Equivalent-to-Spouse amounts. Through contact with the Winnipeg Tax Services Office where the Grievor’s ex-spouse had filed his tax returns, the child and spousal amounts for the 1994 and 1995 taxation years were verified. Subsequently, the Grievor’s returns for 1994 and 1995 were reviewed for the reporting of child and spousal support. Based on the information received, the TI Processing Review Section concluded that the Grievor had not reported child and spousal support payments in the amounts of \$2100.00 and \$8400.00 respectively. The Grievor was given the*

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<sup>1</sup> The Agreed Statement of Facts was labeled Exhibit E-3 and 12 attachments form part of this statement.

*opportunity to explain the omissions, and did so in a letter dated April 3<sup>rd</sup> 1997. As a result of the review, the Department obtained permission to access the Grievor's 1994 and 1995 Income Tax Returns for purposes relating to discipline, and proceeded to do so.*

- *Tab 6: Letter from Processing Review Section dated August 15 1996*
- *Tab 7: Letter of proposal dated March 14 1997*
- *Tab 8: Grievor's letter of reply dated April 3<sup>rd</sup> 1997*
- *Tab 9: Letter dated May 13 1997 requesting access to Grievor's returns*
- *Tab 10: Letter dated June 09 1997 granting such request*

### ***Unauthorised access to file***

*During this time, a separate investigation known as an On-Line Audit Trail Search (OATS) revealed that on May 27 1997, the Grievor had accessed her own individual account on Option G. During subsequent interviews, the Grievor confirmed the access. A Memorandum titled On-Line Accesses, dated February 12 1996 and distributed to "All Staff, Sudbury Tax Services" permitted persons having been issued a Password to access to certain Options pertaining to their own individual account. However, Option G was not one of the permitted Options.*

- *Tab 11: Rapid Activity Listing of Grievor's On-Line Accesses for May 27 1997*
- *Tab 12: Memorandum dated February 12 1996*

### ***Result of the Investigation***

*A security investigation was conducted into these two allegations. As a result of the investigation, the Employer issued a letter of discipline on July 7<sup>th</sup> 1997, terminating the Grievor's employment for cause.*

[7] The Key Activities listed in the job description for a T1 Processing Clerk (Tab 4) are the following:

#### ***KEY ACTIVITIES***

*-The T1 Processing Clerk is first and foremost a team player and also a continuous learner who builds and maintains a trusting relationship with other team players.*

*-Examines T1 Individual Income Tax returns and all attached documentation and makes necessary corrections to ensure that the returns have been accurately completed.*

*-Verifies that deductions claimed by the client are allowable according to Tax Law.*

*-Contacts clients for supporting documentation and additional information.*

*-Verifies claims identified for processing review and completes any necessary adjustments.*

*-Corrects errors identified by the computer and messages related to financial/non-financial transactions.*

*-Determines and calculates penalties and interest in respect of Individual Returns.*

*-Provides clients with an explanation of changes.*

[8] The Key Activities listed in the job description for a T1 Processing and Resource Officer (Tab 5) are the following:

#### *KEY ACTIVITIES*

*-The T1 Processing and Resource Officer is first and foremost a team player and also a continuous learner who builds and maintains a trusting relationship with other team players.*

*-Examines complex and priority T1 returns and returns rejected more than once by the computer system and all attached documentation.*

*-Completes the manual processing of T1 Returns which can not be processed using the computer system.*

*-Assists the Coordinator in monitoring the quality of work completed by the team members.*

*-Corrects errors identified by the computer and messages related to financial/non-financial transactions.*

*-Determines and calculates penalties and interest in respect of Individual Returns and provides the client with an explanation of the effects of financial transactions.*

*-Contacts clients, their representatives and representatives of the Department, in order to obtain or provide further clarification.*

*-Verifies that deductions claimed by the client are allowable according to Tax Law by requesting supporting documentation and additional information (i.e. processing review).*

*-Researching and interpreting on behalf of the entire team, complex and/or contentious technical issues stemming from[sic] legislative, processing, procedural or policy decisions/anomalies.*

*-Providing training and contributing to the development of other team members.*

[9] The grievor's letter of reply dated April 3, 1997 (Tab 8) reads as follows:

*Jack*

*In the 1994 tax year the support received came in a lump sum with the buyout I had received from my ex-spouse. I didn't realize this amount was included until I spoke with my ex-husband and my lawyer recently. Therefore the amount of \$2100.00 should be included in income for 1994.*

*Regarding the 1995 income tax return, as I had discussed with you earlier, the wrong return was saved on the disk and filed. So, the alimony income of \$8400.00 should be included in my 1995 return.*

*I'm sorry about any inconvenience that this may have caused. It was my mistake.*

[10] Counsel for the employer filed eight exhibits and called three witnesses. The grievor's representative did not file any exhibits and called one witness (the grievor).

### Evidence

[11] The evidence from both parties can be summarized as follows.

[12] Witness Gloria Steele, Manager T1-T3 Processing, identified an E-mail dated June 29, 1995 (Exhibit E-1), which clearly states that "...clerks have been told on 3 different occasions to be careful not to action alimony, ..." The witness explained that "not to action alimony" meant not to verify in depth or inquire further than what is declared on the form. The witness confirmed that all staff were informed of this, either by circulation of a memorandum or at meetings. All employees were informed through work instructions, but she was not in a position to confirm that specifically the grievor knew.

[13] The second witness was Lorianna Bailey who was the Security Manager and was responsible for enforcing security awareness; her responsibilities required her to investigate and inform employees on security matters. The witness identified Exhibit E-2, which is a document dated March 5, 1996 signed by the grievor and other employees confirming their attendance at a security information session, which dealt with various items, one being the way of processing alimony payments. Tab 12 of Exhibit E-3 is a memorandum to all staff of the Sudbury Tax Services Office confirming authorization to view on-line data pertaining to the employee's own individual account on five specific options (I, C, R, S and W). Tab 11 of Exhibit E-3 demonstrates clearly that the grievor did access her own tax return twice under the unauthorized option G.

[14] The last witness called by the employer was G.J. Baronette, Director, Sudbury Tax Services Office, who signed the letter terminating the grievor's employment. The witness considered that the failure to declare income, and specifically alimony, was major misconduct for an employee of Revenue Canada due to the yearly planning project in place which he is convinced that all employees concerned, including the grievor, were well informed of. The "Standards of Conduct" (Exhibit E-5) was filed and Exhibit E-6 confirms that the grievor received a copy. The Standards of Conduct are quite clear on the following:

- (a) An employee must declare all revenue.
- (b) Signing a false return is a serious offense.

[15] *The Income Tax Act* (Exhibit E-7) was tabled to demonstrate that an official (an employee) is not knowingly to use any taxpayer information, other than in the course of the administration or enforcement of the *Act*.

[16] In cross-examination, the witness said that he had considered suspending the grievor rather than terminating her employment but had rejected such an option due to the seriousness of her misconduct. The grievor had no previous disciplinary record. The grievor had been a term employee since 1988, on the call-back list each year, and was considered to be a good employee.

[17] The grievor, Shelley Lynn Yensen, stated that after her divorce, she received a check in the amount of \$2100 from her lawyer and she testified that she did not know that this represented her alimony for 1994. Concerning the sum of \$8400 for 1995,



she stated that she completed, by computer, two versions of her income tax return; one version included the \$8400 and the other did not. The grievor confirmed that she did not realize that the \$2100 for 1994 was an alimony payment due to the fact that it was sent to her by her lawyer and it was one of many other amounts due to her.

[18] The grievor stated that she pressed the wrong button when filing her 1995 tax return through electronic mail (E-mail). In April 1997, she was informed by her supervisor that these two amounts had not been declared on her income tax returns.

[19] The grievor stated that she never verifies her bank statement with her bank book - i.e. deposits, withdrawals or the balance.

[20] As for the two accesses to her taxpayer information, they were done to avoid going through the normal procedure because she knew the employees in that section. This was a way for her to keep her personal affairs private.

[21] The Minutes of Settlement of the Ontario Court (General Division) (Exhibit E-8) between the grievor and her former husband indicate that the child and spousal support payments totalled \$700 per month, which are exactly the amounts (\$2100 and \$8400) not declared by her in 1994 and 1995.

### Arguments

#### For the Employer

[22] The argument made by counsel for the employer can be summarized as follows:

- a) The grievor had been working for Revenue Canada for 10 years in the T1 Processing Unit as a term employee (less than nine months a year).
- b) The grievor knew that the amount of \$2100 for the 1994 year was a lump-sum payment covering three months of alimony.
- c) The grievor prepared two income tax returns for 1995 and claimed that she pressed the wrong button on the computer. This is difficult to believe.

- d) The grievor never verifies the deposits, withdrawals or the balance in her bank account; this is also difficult to believe.
- e) The grievor accessed her own tax return, which is an unauthorized access. The explanation which she gave is not a valid one.
- f) The grievor committed a breach of trust by not declaring all income received, which is to be considered as misconduct.
- g) The factors to be considered for the penalty are the following:
  - i) ensuring that all income is declared by taxpayers is an integral part of the grievor's duties (job description);
  - ii) twice income (alimony) was not declared by the grievor and two unauthorized accesses to her own file are repeated breaches of trust;
  - iii) if publicized, this could cause taxpayers to lose trust in the institution (tax law).
- h) For all the above reasons, discharge is the only appropriate penalty.

[23] Counsel referred me to the following cases: *Lau* (Board file 166-2-15388) and *Re Outboard Marine Corp. of Canada Ltd. and United Steelworkers, Local 5009* (1973), 4 L.A.C. (2d) 82.

#### For the Grievor

[24] The arguments made by the grievor's representative may be summarized as follows:

- a) The employer has the burden of proof and it did not meet such a burden.
- b) Consideration should be given to the fact that the grievor has demonstrated remorse.
- c) The grievor was always considered a good employee.
- d) The grievor was informed of the alleged misconduct in March and no action was taken until July. This clearly demonstrates that the employer did not consider that there was a breach of trust during that period.

- e) The grievor's divorce during this period explains the mental and physical stress that may have caused certain reactions, which would likely not have happened in normal circumstances.
- f) If misconduct occurred, it was done as a taxpayer and not as an employee.
- g) The unauthorized access to her taxpayer records was a lapse in her good judgement and this is surely not a criminal act due to the fact this information was available to her via other avenues.
- h) This employee was promoted during her 10-year term with the Department and had never been disciplined.
- i) These events are not major misconduct that warrant a discharge, but rather a minor suspension.
- j) There are many mitigating circumstances that led the grievor to do these actions and they should be taken into consideration.
- k) The undeclared income was processed outside working hours.
- l) These incidents were not publicized and had no major impact on the Department or the Public Service.

#### Reasons for Decision

[25] There is no dispute as to the basic facts of this case. It is clear and accepted by both parties that the grievor did not declare income (alimony payments) for 1994 and 1995. The only issue is whether she did this intentionally, as alleged by the employer, or inadvertently, as alleged by the grievor.

[26] I understand that the alimony payment of \$2100 for 1994 could have been forgotten by the grievor in her income tax return. It is evident that she could have failed to report this income due to personal stress, changes in lifestyle and so forth. If this were the only incident of the grievor's failure to report income on her tax return, I might not have been prepared to find, on the balance of probabilities, that she had done so intentionally.

[27] However, I do not believe that the grievor inadvertently omitted the \$8400 from her 1995 tax return. It is inconceivable to me that such a good employee whose duties require her to process income tax returns would have made the same mistake twice in two succeeding years. Unfortunately, this second failure to report income establishes a pattern of conduct which casts serious doubt on the validity of her explanation for her failure to report income on her 1994 tax return.

[28] On the balance of probabilities, I am satisfied that the evidence establishes that the grievor intentionally failed to report income on her 1994 and 1995 income tax returns. This is serious misconduct on the grievor's part and is incompatible with the continued performance of her job functions. Notwithstanding the fact that the grievor was a long-service employee with a previously clear discipline record and the fact that she had been suffering personal stress at the relevant times, I believe that discharge is the appropriate penalty under the circumstances.

[29] The grievor also admits that she twice had unauthorized access to her own tax information. While this is less serious misconduct, the grievor's failure to appreciate the inappropriateness of this behaviour supports my conclusion that the penalty of discharge should be upheld.

[30] For all these reasons, this grievance is denied.

**Jean Charles Cloutier,  
Board Member**

OTTAWA, January 25, 2000.