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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

RUSSELL BRADLEY

Grievor

and

TREASURY BOARD
(Revenue Canada, Customs and Excise)

Employer

Before: [Joseph W. Potter, Deputy Chairperson](#)

For the Grievor: [Tom Hamilton, Public Service Alliance of Canada](#)

For the Employer: [Caroline Engmann, Counsel](#)

Heard at Toronto, Ontario,
July 31 to August 3, 2000.

DECISION

[1] On April 20, 1999, Russell Bradley, a clerk (CR-04) with Revenue Canada at Pearson International Airport in Toronto with 27 years of service, received a letter from Barbara Hébert, Director, Customs Border Services – Inland, Southern Ontario Region, terminating his employment. Mr. Bradley filed a grievance that same day requesting reinstatement. The letter which terminated his employment reads as follows:

[...]

On February 1, 1999, you were assigned to less sensitive duties pending the outcome of an internal investigation regarding the unauthorized release, at Pearson International Airport, Commercial Operations, of a commercial shipment of goods.

The investigation has been finalized and you were provided with a copy of the investigation report, about which you were given the opportunity to provide to Management written and oral comment and rebuttal, which you did.

The information gathered during the investigation demonstrates that you, without authorization, released a shipment which you knew had been targeted for inspection by Departmental authorities. Further, you were untruthful with the investigator when you were questioned about your actions. The Department views these as serious acts of misconduct and breaches of trust of such significance that your trustworthiness and effectiveness as a public servant have been irreparably damaged. For these reasons, as per the authority delegated to me under Section 12(3) of the Financial Administration Act, and pursuant to Section 11(2)(f) of the Act, I am terminating your employment with Revenue Canada, effective Tuesday, April 20, 1999, at the close of business. As per Section 91 of the Public Service Staff Relations Act, you have the right to grieve your termination of employment.

[...]

[2] At the hearing, a request was made, and granted, for the exclusion of witnesses. I heard from 12 witnesses and the parties agreed on the admissibility of an affidavit of Doris Oliver, a clerk employed in the Commercial Operations Branch at Pearson International Airport (Exhibit E-5). A total of 22 exhibits were submitted on behalf of the employer, and none on behalf of the grievor.

Evidence

[3] In January 1999, Wilson Doan, Acting Chief of Intelligence and Contraband with Revenue Canada, Customs and Excise (now the Canada Customs and Revenue Agency), received a telephone call, followed by a facsimile, to say that a shipment of tobacco had been intercepted in Halifax (Exhibit E-1). The tobacco had been found secreted in a container of dry goods destined for a company which will be referred to as “Company X” throughout this decision. The tobacco was not declared on the manifest.

[4] There were 1,790 kilograms of tobacco discovered, and the significance of not listing the product on the manifest was that the importer might be attempting to avoid the payment of duty and taxes.

[5] It is only when the importer goes to the Customs’ office to pick up the goods and lists the contents of the container that it is definitely known whether or not the importer is attempting to avoid payment of the requisite duty and taxes.

[6] With this in mind, Mr. Doan ran a check on the company (Exhibit E-2) and learned it had imported goods many times before, but had never declared tobacco as a content.

[7] The container was destined for Toronto; however, before leaving Halifax, the tobacco was removed by Customs officials and the remaining contents went forward to Toronto.

[8] In order to track the movements of the container and, in this case, ensure the container was not released directly to the importer, a Customs official put what is known as a “target” on the shipment. This is simply a computer entry that tells the customs inspector that the shipment in question can not be released to the importer until a further check is done.

[9] Customs Inspector Bev Herd, who worked in Cargo Building “B” at Pearson International Airport, put the target on the shipment (Exhibit E-10). The targeting instructions read:

PLEASE REFER ENTRY PACKAGE TO BEV HERD IN T.A.U. FOR PERUSAL. GOODS HAVE BEEN EXAMINED IN HALIFAX AND 2 TONS OF TOBACCO HAS BEEN REMOVED. SEIZURE ACTION MAY HAVE TO BE TAKEN. FOR FURTHER DETAILS PLEASE CONTACT ME....

[10] The effect of putting this target in the system was that, when the importer came to claim the goods, the customs inspector processing the necessary paperwork would enter the transaction number and see the above instructions. The goods would not be released, but instead a check would be done and it would then be known what the importer officially declared he was bringing into the country.

[11] If the importer officially declared the tobacco, duty and taxes would be paid and the tobacco would be shipped to him. If he did not declare the tobacco, he would be subject to the provisions of the *Customs Act* and might be charged with a violation thereof.

[12] Inspector Herd placed the target in the system on or about January 19, 1999, and monitored it daily to see what was happening with the shipment.

[13] At about 8:00 a.m. on January 22, Inspector Herd checked the progress of the above-noted shipment on her computer and saw there was a transaction number, indicating the shipment had gone to secondary inspection.

[14] Inspector Herd left her office and proceeded to the main area to retrieve the paperwork that the importer would have filled out. This paperwork is known as an “entry”.

[15] An office diagram was introduced as Exhibit E-6. The “entry” should have been in a location marked “Area E” on Exhibit E-6, but Inspector Herd could not find it anywhere. A check of the previous day’s cash entries showed there was no record of duties or taxes having been paid by the importer on this shipment.

[16] The coding had indicated Customs Inspector Rachel Garraway had referred the shipment to secondary inspection; consequently, Inspector Herd asked Inspector Garraway if she had the entry.

[17] Inspector Garraway stated that the grievor, Russell Bradley, had given her the necessary paperwork the previous day and she had entered the transaction number into the system. She noted there was a target on it and told Mr. Bradley. He stated he would take the entry to secondary inspection, and that was the last she had seen of it.

[18] A thorough search of the Cargo Building "B" was conducted to try to find the entry, but to no avail. An example of what they were searching for was entered as Exhibit E-7. It consisted of approximately seven pages, four of which are bound together by a yellow sticky piece of paper. This is known to customs inspectors as a yellow wrapper entry, and is so designated for accounting purposes. This differentiates it from other entries, as they lack this yellow wrapper.

[19] Shortly after 9:00 a.m. on January 22, Inspector Herd spoke to an employee who processed documents for CN Rail and inquired about the disposition of the goods in question. Inspector Herd was handed a single sheet of paper, which was the cover page from the yellow wrapper entry for the shipment in question (Exhibit E-8). The documentation was stamped and had the number 113 on it.

[20] All customs inspectors are issued a release stamp when they first become inspectors. Exhibit E-12 (a physical exhibit which was not retained on consent of the parties) was identified as the release stamp bearing number 113 and it was assigned to Customs Inspector Patricia Venneman. She testified the stamp was assigned to her in 1987, and she has had it ever since.

[21] Exhibit E-8 shows the yellow wrapper entry cover page for the shipment stamped "released" and the stamp number 113 is visible. The stamp means the cargo can be released to the importer. No accompanying documentation could be found.

[22] Without the accompanying documentation, Mr. Doan explained that it was not possible to conduct any further investigation into the importation of the tobacco. Although there was no record of any duty or taxes being paid on the shipment, without the necessary documentation it could not be proven that the tobacco had not been declared by the importer.

[23] After Inspector Herd had obtained Exhibit E-8, she showed it to the Acting Chief of Client Services, Julie Bennett. Ms. Bennett, who knew about the target on this shipment, inquired as to the whereabouts of the entry. Inspector Herd stated that the grievor was the last person to have it.

[24] Ms. Bennett went to see Mr. Bradley and asked him if he had the entry for the shipment to "Company X". He said he left it in the secondary inspection area, and more specifically, in the bullpen area ("Area E" on Exhibit E-6).

[25] The bullpen area was searched thoroughly by Ms. Bennett, as well as the surrounding area. All areas, including shredding areas, garbage bags and the like, were searched. The entry was not located.

[26] Ms. Bennett said entries never go missing, and yellow wrapper entries in particular are closely guarded.

[27] Ms. Bennett then asked Inspector Venneman if she had stamped the entry.

[28] Inspector Venneman stated she processes between 30 to 40 entries per day, and it would be unlikely she would forget one by the next day. She told Ms. Bennett she had not processed that entry, and noted it was a yellow wrapper entry. She was not working the yellow wrapper desk on January 21, the day the entry was released.

[29] Inspector Venneman testified she keeps her release stamp on its ink pad on her desk while she works. There was no other office item on her desk on January 21, 1999.

[30] After she finishes for the day, Inspector Venneman locks her stamp away. While on break, she puts it in her drawer which is not locked. However, If she leaves her desk to assist someone, she will not put her release stamp away.

[31] Inspector Venneman, when shown Exhibit E-8, testified that, although the stamp bears her number, she did not stamp the document. Someone had used her release stamp to stamp the document.

[32] Ms. Bennett testified it was her job to find out what happened to the entry and, consequently, she gathered as much information as she could and decided to call in the Internal Affairs Division to investigate.

[33] On January 25, 1999, Jim Wardhaugh, Senior Investigator with Internal Affairs, travelled to Toronto to commence his investigation into the disappearance of the entry. Mr. Wardhaugh has been with Internal Affairs since 1989, and has received departmental training as an investigator. He handles between 15 to 35 investigations per year, depending on their complexity.

[34] Mr. Wardhaugh began by speaking to Ms. Bennett, who gave him an overview of what had taken place, including the names of the various people involved.

[35] Interviews were set up and Mr. Wardhaugh interviewed Mr. Bradley on January 26, 1999. A copy of the notes taken by Mr. Wardhaugh was introduced as Exhibit E-15. The grievor was given an opportunity of reviewing the notes at the end of the interview and did so. His initials appear at the bottom of each page. In cross-examination, Mr. Wardhaugh stated he did not keep a copy of the questions he posed to the grievor.

[36] Mr. Wardhaugh gave Mr. Bradley a copy of Exhibit E-8, the cargo control document bearing release stamp number 113, and Mr. Bradley was asked what he knew about it. Mr. Bradley's recitation to Mr. Wardhaugh of the events that took place on January 21, 1999 are contained in Exhibit E-15.

[37] Mr. Bradley testified that some time in the morning of January 21, he received a telephone call from a company official from "GEO Logistics" requesting a duplicate copy of a cargo control document. He took down the information and stated he would fax a copy to the company and send a hard copy later.

[38] Mr. Bradley had to ask a fellow employee to print out the required document, which he did, and Mr. Bradley faxed the document to GEO Logistics at 11:49 a.m. on January 21.

[39] Mr. Wardhaugh spoke to a representative from GEO Logistics and obtained a copy of the fax, which is Exhibit E-16.

[40] The grievor testified he obtained two copies of the document, faxing one to the company and retaining the other to get it date stamped. He then went to lunch.

[41] Shortly after returning from lunch, Mr. Bradley was told that there was someone waiting to see him in Client Services.

[42] The affidavit submitted from Doris Oliver (Exhibit E-5) states that Arash Missaghi had entered the customs office and asked to see Mr. Bradley.

[43] Mr. Bradley testified he has known Mr. Missaghi for about 10 years through his work, and more particularly through importing on previous occasions.

[44] Mr. Missaghi, representing "Company X", had his entry documentation and gave it to Mr. Bradley, asking the grievor to have it keyed into the computer for him as he was in a hurry. Mr. Bradley agreed and took the yellow wrapper entry to a data operator and requested it be keyed in. This was done, and the printout was given to the grievor and attached to the yellow wrapper entry. Mr. Bradley then took the entire package to the yellow wrapper customs inspector, Rachel Garraway.

[45] The grievor testified that, by handling the entry himself and walking it to its various required locations, he did what was known as a "walk through". He testified his supervisor, Customs Inspector Patrizia Giolti, had asked him to do walk throughs on two previous occasions, but he could not recall for whom.

[46] Inspector Giolti testified she had never asked Mr. Bradley to perform a walk through before, as it was not part of his normal duties.

[47] Customs Inspector Garraway testified she received the yellow wrapper entry documentation from Mr. Bradley and keyed in the information, as per his request. She knew Mr. Bradley was a Customs employee, but she did not know in what capacity he was employed; she thought he was a customs inspector.

[48] It was not unusual for another customs inspector to bring a yellow wrapper entry to Inspector Garraway, although usually she would pick it up herself from a specially marked bin.

[49] Inspector Garraway processed the necessary tombstone data and the computer screen displayed the fact the entry was a target. Exhibit E-10 is a copy of the data Inspector Garraway found, and it shows the time this took place as being 1401 hours on January 21.

[50] Inspector Garraway told Mr. Bradley the entry was a target and showed him the computer screen, indicating the shipment could not be released; instead, it had to be referred to secondary inspection. The procedure called for the documentation to be

taken to the secondary inspection area, where the officers on duty there would follow up.

[51] The grievor testified he told Inspector Garraway that he would take the yellow wrapper entry to the secondary inspection area and leave it there. Inspector Garraway said that was fine and Mr. Bradley left with the yellow wrapper entry.

[52] Investigator Wardhaugh's report (Exhibit E-17) lists the individuals he interviewed. In cross-examination, he stated that, as far as the secondary inspection area was concerned, he only interviewed those officers who were responsible for examinations during the day of January 21, 1999.

[53] Up to this point, there was no serious dispute with respect to what had taken place. This was about to change.

[54] Mr. Bradley testified he went to the secondary inspection area and left the yellow wrapper entry there. He said he had another document with him, which was the hard copy of the fax he had sent to GEO Logistics that morning. After leaving the yellow wrapper entry in the secondary area, the grievor testified he returned to the customer services area (Area "B" in Exhibit E-6) and met Mr. Missaghi.

[55] Mr. Bradley testified he told Mr. Missaghi that another inspector was now looking after his entry and Mr. Missaghi could wait for her to return to her desk or he could come back later. Mr. Missaghi decided not to wait, and left the area. Mr. Bradley testified that, as he still had the GEO Logistics document, he took a yellow wrapper and put it around the pages, to ensure it stayed together, located a date stamp and stamped the yellow wrapper around the hard copy of the document. In cross-examination, Mr. Bradley stated that he spoke to a female employee and asked her for a port date stamp. Exhibit E-15 also states he told Investigator Wardhaugh that he asked a female employee for a date stamp.

[56] Customs Inspector Cheryl Brown's work location is beside that of Inspector Venneman (Area "B" in Exhibit E-6). Inspector Brown knew Mr. Bradley from work and thought he was a customs inspector as well.

[57] Sometime between 1:30 and 3:30 p.m. on January 21, Inspector Brown observed Mr. Bradley walk over to Inspector Venneman's desk while Inspector Venneman was momentarily away assisting another importer, and use Inspector Venneman's release stamp.

[58] Customs Inspector Brown observed Inspector Venneman's release stamp sitting on her desk, on its ink pad, and saw Mr. Bradley pick it up and stamp a document. She stated it was not a date stamp that she observed being used.

[59] Inspector Brown stated she heard no sound when Mr. Bradley stamped the document, and she would have heard a sound if it had been a date stamp used as it makes a loud plunging sound.

[60] In cross-examination, Inspector Brown was asked to demonstrate the use of the date stamp and the release stamp.

[61] In the demonstration, it was noted that the use of the release stamp did make an audible sound, and the date stamp made what the parties described as a plunging sound.

[62] Inspector Brown testified she did not see a date stamp on Inspector Venneman's desk, but she did see the release stamp sitting on its ink pad.

[63] Mr. Bradley went to work on January 22 and sometime before 9:00 a.m., Ms. Bennett approached him and inquired about the yellow wrapper entry for the shipment for "Company X". He stated to Ms. Bennett that he had left the entry in the secondary inspection area for Inspector Jeffries. Ms. Bennett then left to search for the documentation.

[64] Shortly thereafter, other inspectors inquired as to the location of the entry and, ultimately, Inspector Giolti asked Mr. Bradley to submit a report on his actions the previous day with respect to the entry. He did, then left for home at the end of the workday.

[65] On Monday, January 24, Mr. Bradley was told he was to meet with Internal Affairs regarding the lost entry. This meeting took place on January 25.

[66] Mr. Bradley was accompanied by Anne Allen, the chief shop steward for the local union. In spite of Ms. Allen's advice to Mr. Bradley that he not participate in the interview, the grievor decided to discuss the events with Investigator Wardhaugh. Mr. Bradley did so in spite of the fact he questioned whether or not Investigator Wardhaugh could be unbiased in this case, because Mr. Bradley had previously been interviewed by Investigator Wardhaugh on an unrelated matter.

[67] Shortly after the interview was completed, the grievor was reassigned by the employer to what was felt to be a less sensitive area pending the results of the investigation (Exhibit E-19).

[68] After interviewing a number of witnesses, Mr. Wardhaugh analyzed the information and prepared his report.

[69] In spite of an objection by the grievor's representative that the investigative report was replete with hearsay evidence and therefore should not be admitted, I allowed it in. It was filed as Exhibit E-17. My ruling was made on the basis that the report was written by Investigator Wardhaugh and was being introduced through him, as his report, and it forms the basis of the employer's decision to terminate the grievor's employment. Whether I agreed with his findings or not would be up to me to decide based on the evidence I heard.

[70] Investigator Wardhaugh concluded that Mr. Bradley had released the targeted shipment.

[71] The Regional Director, Barbara Hébert, reviewed the investigator's report and had a copy sent to Mr. Bradley for his comments.

[72] Mr. Bradley submitted a rebuttal to the report (Exhibit E-18).

[73] Ms. Hébert had a copy of the rebuttal sent to Investigator Wardhaugh for his comments. After reviewing the rebuttal, nothing changed Investigator Wardhaugh's view with respect to his above noted conclusion.

[74] Ms. Hébert concluded that Mr. Bradley was guilty of serious misconduct. More specifically, she testified that she concluded Mr. Bradley had exceeded his authority. He is not a customs inspector and he undertook duties which are assigned to customs inspectors. Furthermore, the shipment he released was targeted for examination and

by releasing it without an examination, there was a potential for a serious breach of the *Customs Act*.

[75] On deciding what the appropriate penalty would be, Ms. Hébert testified she took into account factors such as the seriousness of the misconduct, the grievor's age, length of service, and the fact he was not forthcoming with the investigator.

[76] On April 20, Ms. Hébert called Mr. Bradley and his representative, Ms. Allen, in to a meeting and issued to him the letter terminating his employment.

Arguments

For the Employer

[77] Counsel for the employer introduced a book of authorities to which she would be referring (tabs 1 to 14).

[78] Counsel submitted that Mr. Bradley exceeded his authority by performing duties not assigned to him, namely, releasing cargo which a customs inspector should be doing. In so doing, the grievor caused the release of goods that had been targeted for referral to secondary inspection, and thereby jeopardized a legitimate covert Customs operation.

[79] Although the evidence is largely circumstantial, no conclusion can be drawn other than that the grievor did release the targeted shipment.

[80] Credibility is at issue here, and I was referred to the decision of the British Columbia Court of Appeal in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (book of authorities, tab 3).

[81] The evidence of customs inspectors Venneman, Brown and Garraway about their observations on the afternoon of January 21 is more credible than that of the grievor. Where there is a conflict in the evidence, the testimony of the employer's witnesses should be preferred over that of the grievor.

[82] The grievor admitted he handled the customs entry in question, and he admitted he did so between 2:00 and 3:00 p.m. on January 21, 1999.

[83] Inspector Brown said she saw the grievor in her area between those hours and the grievor admitted he was there, near Inspector Venneman's desk.

[84] Inspector Brown said she saw the grievor use a release stamp from Inspector Venneman's work location and stamp a document. The grievor admitted he was in the area and used a stamp. He stated he used a date stamp.

[85] The grievor stated he date-stamped a hard copy of a fax he had sent to a company that morning. He did this in spite of the fact the fax had the date, time and place it was faxed from on it via the fax machine.

[86] Counsel for the employer suggested that what actually happened was the grievor took the yellow wrapper entry to Inspector Garraway in order to process the documents. She did this task and in doing so noticed there was a target on the shipment. She informed the grievor of this fact.

[87] The grievor said he would take the documents himself to secondary inspection, and he left Inspector Garraway's area. He then went by Inspector Venneman's work area and used her release stamp to stamp the cover document (Exhibit E-8).

[88] Counsel suggested Mr. Bradley then took Exhibit E-8 to the CN/CP Rail bin and dropped the stamped cover page into the bin. He then met with Mr. Missaghi.

[89] Counsel submitted the employer's version of the events is more plausible.

[90] There was a lot of activity on the morning of January 22 trying to find the entry, and the grievor was asked by a number of people where he had put it. He was the last person to be seen with the entry. He never offered to go and look for the document, in spite of the fact it was obvious something serious had taken place.

[91] The employer can no longer trust the grievor and, after considering all mitigating factors, Ms. Hébert concluded that the only appropriate action was the termination of his employment. In the event I did not support the termination of the grievor's employment, counsel requested she be allowed to make submissions on compensation in lieu of reinstatement.

For the Grievor

[92] The decision to terminate Mr. Bradley's employment was made on the basis of the investigator's report, a report that was biased.

[93] The report draws a conclusion that there was some collusion involved between the grievor and the importer (see page 8 of Exhibit E-17). There was no evidence to suggest this was so. What may have occurred was that the importer planned to use the grievor to get the shipment through Customs, but there was no collusion.

[94] Mr. Wardhaugh testified he did not keep a record of the questions which he asked, which suggests the answers were taken out of context.

[95] Mr. Bradley stated he left the yellow wrapper entry in the bullpen area. While Mr. Wardhaugh interviewed the employees who worked at that location during the day shift, he did not speak to anyone who worked there during the evening shift. It is possible someone who worked the evening shift picked up the document.

[96] Mr. Wardhaugh made no attempt to track down the hard copy of the document sent to GEO Logistics with the date stamp on it. If he had found the document and a date stamp was seen on it, it would support the grievor's version of the events.

[97] The grievor testified as to his actions on January 21, 1999, and the only direct evidence to contradict him came from Inspector Brown, who said she heard no sound when the stamp was used. During the demonstration, a sound was clearly heard when the release stamp was used.

[98] Inspector Venneman said she puts her release stamp away when she leaves her desk for any length of time; therefore, it would not have been sitting out for the grievor to use.

[99] The document in question was lost and there are any number of reasons why this could have taken place. The rule in *Hodge's Case* (paraphrased at tab 2, page 3-82, of the employer's book of authorities) is that, if the only evidence is circumstantial, such evidence is not proof of the fact unless the evidence points conclusively to the inferences drawn and is incapable of supporting any other inference.

[100] What may have happened was, in fact, that Inspector Venneman did release the entry. She testified she processed between 25 to 30 entries on January 21, and it is possible she simply forgot she processed the one in question.

[101] Another possibility is that someone in the bullpen area could have released the entry using Inspector Venneman's stamp and left the documentation for clearance by another inspector.

[102] Another possibility is that the paperwork simply got lost in the shuffle of the vast amounts of paperwork processed every day.

[103] If the grievor was in collusion with the importer, his actions make no sense. If there was collusion, once the grievor was made aware there was a target on the entry he would have taken the documents to the importer and have the importer declare the tobacco. The grievor knows you can not make documents disappear.

[104] In the alternative, I was asked to consider a lesser penalty, if there was a finding of wrongdoing.

Rebuttal

[105] Inspector Brown testified she saw the grievor use Inspector Venneman's release stamp. Inspector Venneman stated her release stamp was sitting on the ink pad. If a document is stamped softly, there will be no noise because the release stamp is already inked.

[106] With respect to the plausible explanations advanced by Mr. Hamilton, Inspector Venneman said she would not have forgotten an entry she processed the previous day. More particularly, she would have recalled the entry in question because it was a yellow wrapper entry and she did not deal with them on January 21. Yellow wrapper entries were another inspector's responsibility that day.

[107] If another officer had released the documents, there would be a trail and there is no such trail here. The document had to be stamped while Inspector Venneman was on duty, because after work her release stamp is locked up. Therefore, if someone else on the day shift stamped the document, the paperwork would exist.

[108] The paperwork does not get lost. Yellow wrapper entries are closely guarded and there is nothing to suggest that paperwork has ever gone missing before.

[109] When Mr. Wardhaugh interviewed GEO Logistics, a hard copy of the documentation, if it had existed, would have been presented and the only document given to Mr. Wardhaugh was the fax.

Reasons for Decision

[110] The grievor's representative has complained of alleged breaches of the rules of procedural fairness by the employer and its investigator. This issue has been dealt with by the Federal Court of Appeal in *Tipple* (Court File No.: A-66-85), wherein the Court states:

Assuming that there was procedural unfairness in obtaining the statements taken from the Applicant by his superiors (an assumption upon which we have considerable doubt) that unfairness was wholly cured by the hearing de novo before the Adjudicator at which the Applicant had full notice of the allegations against him and full opportunity to respond to them....

[111] There is a great deal of the evidence that is not in dispute here.

[112] A particular shipment was targeted by Revenue Canada, Customs and Excise, because a large quantity of tobacco had been discovered secreted inside a container being imported into Canada by "Company X".

[113] A representative of the importer, Mr. Missaghi, met the grievor in the early afternoon of January 21, 1999 at the grievor's place of work.

[114] The grievor agreed to process the necessary paperwork for the importer and took the documentation to the yellow wrapper area, where he spoke to Inspector Garraway.

[115] Inspector Garraway received the documentation and began to input the identification number into her computer. Her screen showed the entry was flagged as a target, and she told this to the grievor.

[116] The grievor took the documentation and said he would personally deliver it to the bullpen area for referral to secondary inspection.

[117] Except for the cover page (Exhibit E-8), the documentation has not been seen since in spite of an exhaustive search by a number of customs employees.

[118] The cover page (Exhibit E-8) was found stamped “released” and it was Inspector Venneman’s release stamp that was used.

[119] The grievor did stamp a document in the afternoon of January 21 at a location on or near Inspector Venneman’s desk.

[120] An investigation was conducted by Internal Affairs into the disappearance of the documentation. The conclusions reached were the basis for the employer’s decision to terminate Mr. Bradley’s employment.

[121] The only area of significance where the evidence differs, as far as I believe, is in relation to the stamping of a document by the grievor.

[122] The grievor stated he stamped a document with a port date stamp.

[123] Inspector Brown’s work location was beside that of Inspector Venneman and Inspector Brown testified she observed the grievor use Inspector Venneman’s release stamp sometime during the afternoon of January 21. This was done while Inspector Venneman was momentarily away from her desk.

[124] There was nothing Inspector Brown said to make me doubt her evidence. She bore no animosity, that I was made aware of, towards the grievor and had no reason to fabricate her evidence. There was nothing I was made aware of that would have obstructed her view, and she was unshaken in her testimony that she saw the grievor use a release stamp.

[125] The fact she heard no noise is not, I believe, of significance since she stated she saw the grievor use the release stamp. In any event, because the release stamp sits directly on an ink pad, I believe it is possible to use the release stamp on a document and make very little, if any, noise if one chooses.

[126] The grievor said he used a date stamp on a document, a copy of which he had sent over by fax that morning as requested by a private company.

[127] A leading case, when dealing with issues concerning the credibility of witnesses, is *Faryna v. Chorny (supra)*. At page 357 of the decision it states:

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

[128] I did not find the grievor's version of this credible, as he said he needed to send a hard copy of the fax with a date stamp on it to the private company. The fax contains the date and time sent (see Exhibit E-16), which is even more than a simple date stamp would provide.

[129] The grievor told Investigator Wardhaugh that he asked a female employee for a date stamp; yet he testified in chief that he located the stamp himself near Customs Inspector Venneman's desk, and stamped the document. In cross-examination, he stated he asked another employee to get a date stamp for him. This, I believe, was a critical piece of the puzzle, so to speak; yet I found the witness to be vague on this point and no witnesses could verify the fact they were asked to provide the grievor with a date stamp.

[130] Based on all of the above, I conclude on the balance of probabilities that the grievor did in fact use Inspector Venneman's release stamp on the documentation. I believe the grievor then dropped the cover page in the bin at the CN Rail location to enable the shipment to be released to the importer and then caused the remaining paperwork to disappear.

[131] Given the above, I must now deal with the penalty aspect. What Mr. Bradley did was extremely serious. Mr. Bradley processed documentation, on behalf of an importer, and was made aware that the goods could not be released. I have determined that he used a customs inspector's release stamp on the documentation when he clearly knew he had no authority to do so. Additionally, I have determined he caused the loss of this documentation (except for Exhibit E-8).

[132] An investigation being undertaken by Customs was compromised to the extent that it had to be abandoned. A potential charge of failure to declare certain imported goods could not proceed because of the lack of documentation needed as proof.

[133] I agree with counsel for the employer that the bond of trust, which must exist in any employment relationship, has, in this case, been severed. This employee is situated in an area where importers can have access to him. The employer and the public are entitled to have such employees be seen to be entirely trustworthy. They are upholding provisions of the *Customs Act* and, when their actions are at odds with the duties they are expected to perform, it is a serious matter.

[134] The employer considered a number of mitigating factors, including the grievor's 27 years of service, before concluding that the events were so serious as to warrant termination of employment. I agree with this conclusion and see nothing in this case to warrant interfering in the penalty imposed.

[135] In light of the above, the grievance is, therefore, denied.

**Joseph W. Potter,
Deputy Chairperson**

OTTAWA, August 31, 2000