

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

ED TREVENA

Grievor

and

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

Employer

Before: Ken Norman, Board Member

For the Grievor: Barry Done, The Public Service Alliance of Canada

For the Employer: Ronald Snyder, Counsel

Heard at Regina, Saskatchewan,
October 6 & 7, 1998

DECISION

The substantive question in this case is whether Revenue Canada had just cause for dismissing Ed Trevena on June 6, 1997. The grounds for termination were set out in a letter of that date by Al Kellett, then director of the Regina Tax Services Office. [E-31] As a result of complaints from two taxpayers it was determined, on circumstantial evidence, that Ed Trevena was responsible for sending out an anonymous letter which "... raised serious concerns with regard to the confidentiality of their own tax information and the integrity of the departmental tax system". Mr. Kellett's letter went on to note that he had taken "... into account your lack of cooperation with management's efforts to determine the circumstances surrounding the origin and distribution of the anonymous letter." It also advises that "I have taken into account your record of discipline which includes a recent 20 day suspension for similar serious misconduct that was also damaging to the reputation of the Department." The conclusion reached by Mr. Kellett was that this serious misconduct was "... incompatible with your involvement in the ongoing operations of the Department."

The anonymous letter [E-2] was mailed by Ed Trevena near the end of April. That is now beyond doubt. He admitted to this activity for the first time during the course of his evidence before me. The letter sought the taxpayer's consent "in order to use the ... information legally to defend our client". The letter began with this sentence:

*In attempts to resolve a grievance issue for a Collection Officer employed by Revenue Canada **your taxpayer information was used by management to support their allegations against that officer and subsequently communicated this information to the general public.***

[Emphasis added]

The letter went on to advise that any questions could be put to Blaine Pilatzke of the Public Service Alliance of Canada [PSAC]. A self-addressed envelope, bearing PSAC's Regina address, was enclosed for the taxpayer's written consent. As it turned out, Blaine Pilatzke had nothing to do with the anonymous letter's creation or distribution. It had been drafted by Ed Trevena's lawyer and mailed by Mr. Trevena against Mr. Pilatzke's caution that the matter ought not to go beyond and outside the grievance process.

The grievance which started this ball rolling was filed by Ed Trevena on June 5, 1996. [E-22] It was against a letter of reprimand authored by his team leader, Betty Duff, of May 22, 1996. In the end, management conceded this grievance and removed the letter of reprimand from the grievor's file. But, this was not enough to satisfy Ed Trevena. The corrective action sought by his grievance was a complete retraction, to be attached to the letter of reprimand and "maintained on my file." Ed Trevena explained to me that his reason for pursuing his grievance, beyond the Employer's concession at third level, was to keep the record complete as called for in the corrective action. This was necessary because he was being singled out for harassment by his team leader, Betty Duff, and by Dave Marshall, assistant director of collections, whose joint objective was to fire him. Thus, though Blaine Pilatzke and PSAC considered the grievance settled and the file closed, Mr. Trevena took the matter of his battle with management to his lawyer. Hence, the anonymous letter was drafted in order to obtain taxpayer consents for the use of certain information.

What is more than a little bit odd about the anonymous letter are the above-emphasised words. Why alarm the taxpayer by saying that Revenue Canada had communicated the taxpayer's personal information to the general public? I never did receive a good answer to this question from Ed Trevena. The information in question was provided to Ed Trevena and to his union representative, Blaine Pilatzke, at the disciplinary interview which led to the first grievance. Mr. Pilatzke is with PSAC and is not employed by Revenue Canada. However, Ed Trevena admitted under cross-examination that he understood that Mr. Pilatzke would keep confidential any information which came his way as a union representative in such a meeting. By the way, I learned during the course of the hearing that Revenue Canada obtained a legal opinion that Mr. Pilatzke was not a member of the **general public** within the meaning of the *Act*. Yet Ed Trevena apparently convinced his lawyer to waive the red flag of the above-emphasized words in the faces of the affected taxpayers.

It came as no surprise to me that, in the immediate aftermath of the anonymous letter being mailed, on the morning of May 1, the first such taxpayer, Mark Catterall, placed a call to Mr. Pilatzke. He was referred to Dave Marshall. In the course of his testimony, Mr. Marshall sought to rely on his notes of the phone conversation which he had with Mr. Catterall in the early afternoon of May 1. [E-1] Barry Done objected to these notes being admitted as an exhibit on the ground that

article 33.04 of the master agreement stood in the way. He served notice that he would have a similar objection to other such documents which he expected the employer to tender. I will now address this admissibility objection.

Evidentiary Issue

The documents impugned by Mr. Done's objection are three sets of telephone notes taken by Dave Marshall concerning conversations with Mark Catterall [E-1], Blaine Pilatzke [E-7] and Leslie Goyan [E-13]. As well, there was an objection taken to minutes of a meeting of May 2 with Ed Trevena [E-2]. Article 33.04 provides:

The Employer agrees not to introduce in a hearing relating to a disciplinary action any document from the file of an employee the content of which the employee was not aware of at the time of the filing or within a reasonable period thereafter.

Mr. Done's contention was that none of these documents could be relied upon at the hearing because their contents were not disclosed to Ed Trevena at the time or shortly thereafter. Mr. Snyder's reply took two forms. First, with regard to Dave Marshall's notes, he submitted that these documents are not subject to the requirements of article 33.04 because they were not part of Ed Trevena's file. They were made by Mr. Marshall to aid his memory, as part of the investigation process. Second, with regard to the minutes, as Mr. Trevena was present at this meeting, they are admissible. He relied on *Dupuis v. Treasury Board* (File No. 166-2-9397) (Moalli) in support of this contention.

I am persuaded by both of Mr. Snyder's arguments. First, the notes of the phone conversations were never placed on the grievor's file. As noted in *Dupuis*, at p. 11, such documents are memoranda written either for personal use or for the use of superiors concerning certain incidents. "Custody of these documents may be entrusted to the authors for future use..." As for the minutes of the May 2 meeting, in the terms used in *Dupuis*, Ed Trevena has not been taken by surprise or placed at a disadvantage by their admission. He was present at the meeting.

Arguments on the Merits

Mr. Snyder submitted that Ed Trevena's action in mailing the false and misleading anonymous letter to a number of taxpayers produced an irreparable

breach of trust such that nothing short of dismissal was an appropriate disciplinary response. Two taxpayers immediately brought forward their concerns about their private tax information having been published to the general public. But, the test is not the depth of their concern. Rather, as noted in *Re Workers' Compensation Board and Compensation Employees' Union* (1997), 64 L.A.C. (4th) 401, at p. 414, it is up to the adjudicator to exercise his or her own judgment as to what a fair-minded and well-informed member of the public might think about the effect of the anonymous letter. Mr. Snyder submitted that, among governmental departments, Revenue Canada is especially challenged to establish and maintain the public's confidence. In light of this, the anonymous letter amounts to a most serious act of misconduct.

As for mitigation, there is nothing to warrant reduction of the ultimate penalty. Ed Trevena engaged in a fundamental breach of his employer's trust during a time when a lengthy suspension (20 days reduced on adjudication to 12) for another breach of employment confidence was still on his record. He made no admission during the course of the investigation. And, though he acknowledged that he did mail the anonymous letter in his testimony before me, he made no statement of contrition and showed no remorse. And, when asked in cross-examination if he would consider any adjudicatory outcome short of full vindication, reinstatement and compensation to be an injustice, he answered that he would indeed. (See, *De Vito v. Macdonald Dettwiler & Associates* (Quicklaw) (June 27, 1996) (B.C. Supreme Ct., Drost J.); *Parsons* (File Nos. 166-2-27006 & 7) (Chodos); & *Deigan* (File Nos. 166-2-25992, 3 & 161-2-743) (Simpson).

Mr. Done submitted, on Ed Trevena's behalf, that his 21 years of service ought to weigh in his favour. In addition, only one of the two concerned taxpayers seemed really upset by the receipt of the anonymous letter. And, Ed Trevena had the right to pursue his earlier grievance to the fourth level in order to get the remedy he sought, even if the union considered the file to be closed once it was cleansed. Mr. Done noted that Mr. Pilatzki had not told Mr. Trevena not to send the letter, all he had said was the he considered the file closed and the grievance at an end. So, it was understandable that Mr. Trevena would want to pursue his case with a proper evidentiary base. In his opinion, this required consents, pursuant to section 239(2.3) of the *Income Tax Act*, from the taxpayers whose records had been disclosed to some extent in the grievance hearing. In effect, this incident was blown out of all

proportion by the Employer because several managerial minds had already been made up, during the course of the earlier suspension investigation and grievance process, that the best outcome would be for Revenue Canada and Ed Trevena to part employment company.

Decision

I am satisfied that Ed Trevena understood that the mailing of the anonymous letter was a provocative and unnecessary act striking directly at the reputation of Revenue Canada.. He admitted in testimony that he knew that the taxpayer information provided to his union representative, Blaine Pilatzki, would be kept confidential. Thus, he knew that the **general public** was not involved at all. Yet, he permitted, I suspect advised, his lawyer to insert this inflammatory phrase in the anonymous letter. If taxpayer consent under section 239(2.3) was really all that the letter was designed to obtain, there would be no need for the reference to the general public.

So, I conclude that, while a lengthy suspension for breaching confidence, which damaged Revenue Canada's reputation, was still on his file Ed Trevena chose to engage in further such action. He has shown no remorse for either act at any point in time. And, during the course of the investigation into this matter he made no admission. I have been given no reason to believe that an order of reinstatement would produce a fresh start for Ed Trevena and Revenue Canada. The bond of confidence between employer and employee has been permanently broken. Ed Trevena's long service cannot overcome all of this. Nor does it alone warrant a compensatory award in lieu of reinstatement.

Accordingly, this grievance is dismissed. For the reasons which I have given, I am persuaded that the Employer had just cause to dismiss Ed Trevena for his wilful actions aimed at damaging Revenue Canada's reputation.

Ken Norman,
Board Member

SASKATOON,
November, 25,