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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

DIANE BUSET

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Before: [Guy Giguère, Board Member](#)

For the Grievor: [Luc David, Public Service Alliance of Canada](#)

For the Employer: [Robert Lindey, Counsel](#)

Heard at Thunder Bay, Ontario,
November 7 to 9, 2000.

DECISION

[1] On July 16, 1997, Diane Buset, a Senior Collections Officer at the PM-2 level, was suspended without pay by Wolf Stockhecke, then Director of the Thunder Bay Tax Services Office (TSO). This suspension was for an indefinite period pending the result of an investigation into her unauthorized computer accesses to taxpayer information. On the same day, Mrs. Buset grieved the indefinite suspension, asking to be reinstated with full pay and benefits. When the investigation was concluded, Mr. Stockhecke asked Mrs. Buset to report back to work on August 1, 1997.

[2] On September 10, 1997, Mr. Stockhecke informed Mrs. Buset that, after reviewing the Internal Affairs Division's report, he was suspending her for 20 days without pay for failing to file her 1993, 1994 and 1995 income tax returns on time and for her accessing of her own account, of her husband's account and possibly those of other family members without the employer's authorization. As she had been suspended during the investigation for 11 days without pay, only nine days of suspension without pay remained to be served on this 20-day suspension. Mrs. Buset again grieved this discipline, asking that she be reinstated immediately with full pay and benefits.

[3] On March 5, 1999, Lee Delorme, now Director of the Thunder Bay TSO, suspended Mrs. Buset without pay for an indefinite period pending an investigation into her tax affairs for the 1996 and 1997 taxation years, as well as her conduct on an ongoing tax audit of her affairs.

[4] On June 25, 1999, Mr. Delorme informed Mrs. Buset that she was discharged from employment with Revenue Canada for misconduct. He explained that her refusal to file her 1996 and 1997 income tax returns prior to the legal deadline constituted two repeated acts of misconduct. Her conduct during the tax audit and the results of the audit were also an act of misconduct because she did not conduct herself and her tax affairs in an exemplary manner. On the same day, Mrs. Buset grieved her indefinite suspension of March 5, 1999 and the termination of her employment, and requested that both her suspension and termination be overturned and that all pay and benefits be reinstated. As the employer denied all of the grievances, they were referred to adjudication on May 24, 2000, and are the subject of the present hearing.

[5] An Agreed Statement of Facts was produced at the beginning of the hearing. In it, Mrs. Buset conceded that she had accessed several computerized tax accounts, including her own, without the employer's authorization and had failed to file her tax returns for 1993, 1994, 1995 and 1996 on time.

Evidence

[6] Diane Buset started working with Revenue Canada, Taxation, on May 9, 1979 and on January 3, 1987, she resigned to raise her young children. She was later contacted by a former Team Leader and rehired on January 26, 1989 as a Review and Control Officer at the PM-1 level. Following a competition, she was appointed, on May 6, 1993, to the PM-2 level as a Senior Collections Officer and has been employed since then at that level at the Thunder Bay TSO.

[7] Mrs. Buset testified that around Christmas 1993 a friend, Sylvie Monteith, moved in with her family. As Ms. Monteith wanted to repay the Busetes for staying at their house, Mrs. Buset proposed that Ms. Monteith prepare her 1993 income tax return and by doing so Ms. Monteith would learn how to prepare tax returns, which could be a source of income in the future. Mrs. Buset stated that afterwards, Ms. Monteith, without notice, left the house with Mrs. Buset's 1993 income tax documentation. Mrs. Buset could not locate Ms. Monteith because she was an itinerant person.

[8] Mrs. Buset testified that she did not file her 1993 tax return because Ms. Monteith had left with her documentation. Mrs. Buset explained that she was not worried about not filing her income tax return because she knew some money would be returned to her by Revenue Canada upon the filing of her 1993 tax return. She declared that in a voluntary taxation system, filing comes into play much more when you owe money to Revenue Canada than when you are owed money. Mrs. Buset also explained that, as she had a new rental property in 1993, there was a need to calculate the capital cost adjustment and she was not sure how Ms. Monteith had done this, if she had filed her tax return for 1993. Since these calculations would affect the capital cost adjustment (CCA) for the later years, she did not file her 1994 and 1995 income tax returns either. Mrs. Buset acknowledged that this was definitely an error in judgement, as already acknowledged at different points, but that there was never an intention of misrepresentation on her part.

[9] With the help of Mrs. Buset's sister Madeleine, who was also a friend of Ms. Monteith, Mrs. Buset was able to talk to Ms. Monteith's foster mother in 1996. Her foster mother informed Mrs. Buset that Ms. Monteith was ill and that she would try to get her to come home and that she could then return Mrs. Buset's 1993 income tax documentation. About two weeks later, Mrs. Buset received a telephone call from Ms. Monteith's foster mother informing her that Ms. Monteith had died and that she was able to retrieve a box containing the 1993 documentation. Mrs. Buset received the box at the end of 1996.

[10] In February 1997, as part of a routine enforcement action, it was noted that an employee of the TSO, Diane Buset, had not filed income tax returns for 1993, 1994 and 1995. It was brought to the attention of Mr. Stockhecke and the Audit Division became involved, as it related to an employee of the Thunder Bay TSO. Mrs. Buset's 1992 income tax return was reviewed and the auditor noted that she declared joint rental income with her husband, Claudio Buset. The auditor then reviewed Mr. Buset's account; he had filed returns for 1993, 1994 and 1995. The auditor noticed that attached to Mr. Buset's 1994 return was a Revenue Canada printout of his income bearing Mrs. Buset's user ID.

[11] Mr. Stockhecke and Frank Talarico, the Assistant Director of the Audit Division, met with Mrs. Buset on April 10, 1997. They asked her if she had filed her income tax returns and she answered that the returns had recently been filed with the Sudbury Tax Office. Mr. Stockhecke indicated to Mrs. Buset that she might be in contravention of the Department's Standards of Conduct Guidelines (Exhibit E-3), which require employees to comply with the tax legislation and have exemplary behaviour. A subsequent check indicated that the tax returns had not been filed. A decision was made to issue requirement letters to Mrs. Buset to file her income tax returns for 1993, 1994 and 1995. These letters (Exhibit E-4) required Mrs. Buset to file her tax returns with Frank Talarico at the Thunder Bay TSO on or before the 10th day of June 1997.

[12] Mrs. Buset testified that there were some documents missing from the box that Ms. Monteith had containing her 1993 tax documentation. Therefore, in order to complete her 1993 tax return, she accessed her own account from her computer desk and got some T4 information. According to the Agreed Statement of Facts, Mrs. Buset accessed her own account on April 17 and on April 29, 1997. Mrs. Buset was asked by her representative, Luc David, if she had been the only employee to access her own

account in 1997 in the Thunder Bay TSO and she replied that she had not been the only one. Mrs. Buset added that, when she was notified that it was improper, she stopped those accesses.

[13] On May 9, 1997, Mr. Stockhecke asked Internal Affairs in Ottawa to conduct an audit trail search for all system accesses by Mrs. Buset for the period January 1, 1996 to May 9, 1997 (Exhibit E-1B). Internal Affairs sent back a printout of all accesses by Mrs. Buset and this printout was given to Lee Main, Assistant Director, Collection, Thunder Bay TSO, to determine if there were any unauthorized accesses. Mr. Stockhecke stated that it is the policy of the Department (Exhibit E-5) that access to tax information by employees is restricted to a need-to-know basis and is for official use only. Employees are advised of this on their computer screen. As well, the Computer Information Access Form (Exhibit E-5), which was signed as read and agreed to by Mrs. Buset, specifies that access is limited to official use only. A yearly memorandum/bulletin from Mr. Stockhecke also reminded employees that they are not permitted access to protected information pertaining to their family members or friends (Exhibit E-7). These bulletins indicate that employees could view only some online tax information pertaining to their own individual accounts (Options I and C). This policy, however, was changed by a bulletin dated February 1997 informing employees that they were not authorized to access their own account information.

[14] Mr. Stockhecke met with Mrs. Buset on Monday, June 13, 1997. Mrs. Buset filed her tax returns with him even though the requirement letters asked Mrs. Buset to file her tax returns by Friday, June 10, 1997. Mrs. Buset referred to their meeting in April and said that the tax returns that she had filed in early April had been sent back to her because of insufficient postage. Mr. Stockhecke pointed out to her that this could not be because the tax returns that she was now filing with him were dated June 10, 1997. Mrs. Buset replied that she was so upset after receiving the requirement letters that she had completed new returns.

[15] Mr. Stockhecke then sent the returns to the Sudbury Taxation Centre to have them stamped as received and audited. Mr. Talarico reported to Mr. Stockhecke on June 20, 1997 (Exhibit E-8) that, when he examined Mrs. Buset's tax returns, he noted that attached to the returns were Revenue Canada system printouts with the user ID blacked out. Mr. Stockhecke noted that this was contrary to the bulletin that had been issued on the use of personal tax information by employees and Mrs. Buset was late in

filing her tax returns. He therefore wrote a memorandum to H el ene Beauchemin, Acting Assistant Deputy Minister (ADM), Northern Ontario Region (Exhibit E-9), requesting the use of tax information relating to Mrs. Buset for the purpose of discipline in accordance with paragraph 241(4)(h) of the *Income Tax Act*. This authorization was granted on July 8, 1997.

[16] On July 8, 1997, Mr. Main reported to Mr. Stockhecke (Exhibit E-10) that Mrs. Buset had accessed her own information on July 15, August 27 and September 25, 1996, as well as on April 17 and 29, 1997. There were also two instances of accessing the names of people who could be relatives. Mr. Stockhecke then advised Mrs. Buset that he wanted to meet with her on July 15, along with her union representative, Cosimo Crupi, as well as Mr. Main and Sheryl Ball, the Assistant Director of Human Resources. Mrs. Buset was also informed on July 8, 1997 (Exhibit E-10) that Ms. Beauchemin had authorized access to her income tax returns for 1993, 1994 and 1995 for possible disciplinary action.

[17] Mr. Stockhecke testified that Mrs. Buset admitted at the meeting of July 15, 1997 that she was negligent in filing her returns late but felt this did not create a conflict in discharging her duties. She explained to Mr. Stockhecke that a friend was to prepare the returns on her behalf but had not done so. Mr. Stockhecke asked for the name of this friend but Mrs. Buset refused to provide it because this friend was now deceased. Mr. Stockhecke asked her why she had filed the returns on June 13, 1997 instead of June 10, 1997, as specified in the requirement letters. Mrs. Buset explained that the requirement letters indicated that she was to file the returns with Mr. Talarico but he was unavailable on June 10. Mr. Stockhecke commented on this at the hearing, saying Mrs. Buset could have had filed them on time with him on June 10, 1997 or with other managers who were also available on that date. Mr. Stockhecke asked Mrs. Buset about any unauthorized accesses to taxpayer information. At first she denied any, but when he persisted, she admitted to possibly having accessed her own file; her response was vague. After being asked more questions by Mr. Stockhecke, she acknowledged that she herself or a colleague in the office had accessed her husband's tax information and produced the printout that was used in his 1994 tax return. She was asked about accessing the tax information of relatives. She replied that she was not sure but that she may have done so. After seeing the printout of the departmental system accesses, she identified some of these individuals as relatives. She explained that she accessed her father's, her mother's, her

sister's and her brother's accounts to help them retrieve some information they were seeking. Mrs. Buset refused to provide Mr. Stockhecke with her brother's name.

[18] At the end of the meeting on July 15, 1997, Mr. Stockhecke asked Mrs. Buset if she had accessed, for unofficial purposes, computer files of individuals other than her relatives. Her response was: "Maybe. I can't remember." Mr. Stockhecke explained that he became very concerned that she had accessed files other than those of her relatives; therefore, he requested an investigation (Exhibit E-16). Mrs. Buset was suspended without pay on July 16, 1997 (Exhibit E-12) for an indefinite period pending the result of the investigation into unauthorized computer accesses.

[19] In cross-examination, Mrs. Buset stated that she was not forthright with Mr. Stockhecke because she felt intimidated by him.

[20] Mrs. Buset testified that there was no financial gain as a result of those different accesses and they were done just to relay to her relatives information that was their own. Mrs. Buset also explained that she had received written authorization from her husband to access his tax account.

[21] As for her brother, her explanations were that he is a writer and to supplement his income he does different jobs. Because the Department advised him that some T4's were missing, he telephoned her at the office and asked if she could help him. He explained to her that he could not get through to the Edmonton office to get this information. Mrs. Buset told him that she would call him back. She explained, at the hearing, that employees in the Thunder Bay TSO were told by management that if they could answer general inquiries instead of transferring them then they should do so. Since she could provide T4 information to the public, she felt that she could answer her brother's question. She phoned him back a few days later, but by then he had already received the information from the Edmonton office.

[22] André St-Laurent, the Assistant Director of the Internal Affairs Division in the Security Directorate, conducted an investigation in July and August 1997, as Senior Investigator. Mr. St-Laurent testified that through his investigation he found that Mrs. Buset had accessed her own account on five different occasions between July 15, 1996 and April 29, 1997, and her husband's account on 11 different occasions between March 11 and December 3, 1996. He also concluded that she had accessed the tax accounts of her father, mother, brother, sister and mother-in-law. Mrs. Buset

acknowledged these accesses to the investigator and conceded that they were contrary to the Thunder Bay TSO bulletins. Mr. St-Laurent also found out during his investigation that several employees were still accessing their personal tax information but using only the I and C options authorized before February 1997.

[23] When Mr. Stockhecke read Mr. St-Laurent's report, he was reassured that there were no accesses other than the relatives' accounts and her own. Therefore, Mr. Stockhecke decided to lift the indefinite suspension and asked Mrs. Buset to report back to work on August 1, 1997. After consulting with Staff Relations in Ottawa, Mr. Stockhecke decided that a 20-day suspension was appropriate in the present circumstances. Mr. Stockhecke explained that the biggest factor in imposing this discipline was Mrs. Buset's failure to file her 1993, 1994 and 1995 tax returns on time. As an employee, she was responsible for collecting taxes but she put herself in a peculiar position by not complying with income tax legislation herself. In addition, her unauthorized accesses were not limited to her own account but extended to her relatives' accounts, which therefore warranted further discipline. Mr. Stockhecke informed Mrs. Buset of her 20-day suspension in a letter dated September 10, 1997 (Exhibit E-15). In his letter, Mr. Stockhecke noted that Mrs. Buset's 1996 income tax return had not been filed as of September 10, 1997.

[24] On January 16, 1998, a TX1 request to file the 1996 tax return was issued to the grievor by the Sudbury Taxation Centre. On March 6, 1998, a TX14 requirement to file the 1996 tax return was issued to the grievor by the Sudbury Taxation Centre. Mrs. Buset, along with all TSO employees, received the ethics and values training and acknowledged receipt (Exhibit E-29) of the Standards of Conduct (Exhibit E-3) and Conflict of Interest booklets on March 16, 1998. On March 20, 1998, Mrs. Buset mailed her 1996 tax return to the Sudbury Taxation Centre. On April 7, 1998, Ms. Beauchemin, the ADM for the Northern Ontario Region, denied, at the third level of the grievance procedure, the grievances filed by Mrs. Buset against her indefinite suspension and her 20-day suspension. In her reply, Ms. Beauchemin warned Mrs. Buset that the 20-day suspension imposed on her was regarded as very lenient and that any further infractions of this nature could result in more severe disciplinary action up to and including discharge.

[25] When Mr. Talarico reviewed Mrs. Buset's 1993, 1994 and 1995 returns, he requested, on July 14, 1998, that the Sudbury TSO audit these returns. Linda Schlaepfer was charged with auditing Mrs. Buset's tax returns. Ms. Schlaepfer testified that it was decided to include the 1996 tax return in the audit since it had been filed in March 1998.

[26] Ms. Schlaepfer wrote to Mrs. Buset on September 3, 1998 (Exhibit E-17) informing her that she was auditing her income tax returns for 1993, 1994, 1995 and 1996 and that she needed some additional information about rental property and that that information was to be provided to her within 30 days. Mrs. Buset telephoned Ms. Schlaepfer a week later, on September 10, 1998, indicating that the requested information would be gathered and sent in. Mrs. Buset called back on October 5, 1998 requesting a 30-day extension since the information requested had not yet been received from the bank. Ms. Schlaepfer granted the extension. Mrs. Buset called back on October 30, 1998 requesting a second 30-day extension since not all banking information was available. That extension was granted as well.

[27] At the end of November, Mr. Talarico advised the Director of the Thunder Bay TSO, who was now Mr. Delorme, that Mrs. Buset was being audited and that she was late in providing the records that had been requested. Mr. Delorme testified that Mr. Talarico also apprised him of the discipline that Mrs. Buset had received in September 1997 for two acts of misconduct. On December 1, 1998, Mr. Delorme was informed of Ms. Schlaepfer's unsuccessful attempts in obtaining information from Mrs. Buset to complete her audit. Mr. Delorme therefore asked Mr. Talarico to keep him informed of the situation, as it appeared that the issuance to the grievor of an official requirement to file might be necessary in this case (Exhibit E-23).

[28] On December 21, 1998, Mrs. Buset informed Ms. Schlaepfer that the requested information had been sent the previous week. On December 31, 1998, Ms. Schlaepfer left a message on Mrs. Buset's voice-mail informing her that she had not received the information. On January 4, 1999, Mrs. Buset left Ms. Schlaepfer a message advising her that the documents had been sent by regular mail, but if Mrs. Schlaepfer had not received them by the end of the day, Mrs. Buset would resubmit them by registered mail. As nothing was received by January 5, 1999, Ms. Schlaepfer left a message for Mrs. Buset to send them by registered mail. On January 11, 1999, Mrs. Buset left Ms. Schlaepfer a message informing her that she had a problem accessing the letter

she had previously prepared for Ms. Schlaepfer on her computer and that she would be sending it by registered mail the next day. Ms. Schlaepfer kept notes of all the contacts that she had with Mrs. Buset and these notes were tabled as Exhibit E-18. As she testified, the telephone discussions continued for several months and Ms. Schlaepfer never received the requested information. When Ms. Schlaepfer did not receive the registered mail, Mrs. Buset said that the information would be faxed. When the fax was not received because, as Mrs. Buset explained, the fax machine was not working, she told Ms. Schlaepfer that she would send it by internal mail but, as Ms. Schlaepfer testified, these packages were never received and never found. It reached the point where, in March 1999, Ms. Schlaepfer felt that the Director needed to issue a letter of requirement to the grievor.

[29] Mrs. Buset testified that during the audit period, her husband was away for several weeks, working up north on a reserve, and she had to care for the children by herself. As it was very difficult to gather the information at the same time, she procrastinated. She telephoned the bank and they said they would help in trying to obtain the information. Mrs. Buset then phoned the auditor and told her that she would be receiving the information shortly thereafter by mail. Mrs. Buset explained that, in retrospect, she should not have promised that the information would be forthcoming. In doing so, she got herself in what she called a “whole ball of wax” where “I had to make excuses because I didn’t have the information, but there was never intent on my part to obstruct, to be dishonest”. In cross-examination, Mrs. Buset did reiterate that she had sent the requested information to the auditor by registered mail, by fax and then by internal mail. In January 1999, Mr. Delorme became concerned because Mrs. Buset had still not filed her 1997 income tax return. He was also worried, as a result of the 1997 disciplinary incident, that she might still be making unauthorized computer accesses. He therefore wrote to Ms. Beauchemin, the ADM for the Northern Ontario Region, requesting (Exhibit E-25) permission to use Mrs. Buset’s tax information for possible disciplinary action, in accordance with paragraph 241(4)(h) of the *Income Tax Act*. Ms. Beauchemin granted this request on January 14, 1999.

[30] On March 5, 1999, Mrs. Buset, accompanied by her union representative, Cosimo Crupi, attended a meeting called by Mr. Delorme to discuss her tax affairs. Mr. Delorme asked Mrs. Buset about her failure to provide the auditor with the requested documentation for the 1993, 1994, 1995 and 1996 tax returns. Mrs. Buset

explained that the money to build those houses had been borrowed from her in-laws and it was difficult to obtain the records from the bank and that she had sent the returns by regular mail, by registered mail, by fax and then in an economy envelope, but they were never received by the auditor.

[31] Mr. Delorme asked if, after the disciplinary action taken on September 10, 1997, she had made any unauthorized computer accesses. Mrs. Buset replied that nothing had been accessed improperly. She was asked by Mr. Delorme why she had not responded to the TX11 request to file her 1996 return, dated January 16, 1998. Mrs. Buset replied that she was not sure when the return was filed, but she was under the impression that it was sooner.

[32] Mr. Delorme then asked Mrs. Buset why her 1997 tax return had still not been filed 10 months past the due date for filing. He reminded her that Ms. Beauchemin had warned her, on April 7, 1998, in her reply to her grievances, that further incidents would result in severe disciplinary action up to and including discharge. He also informed her that she had received, prior to the filing deadline for the 1997 tax return, a copy of the Standards of Conduct which clearly outline an employee's obligation to file the necessary returns on time. To Mr. Delorme's surprise, Mrs. Buset explained that she had filed her 1997 tax return on April 30, 1998 and had given a cheque in the amount of \$228.51 to the cashier at the Thunder Bay TSO. However, Mrs. Buset could not recall the cashier's name, nor did she receive a Notice of Assessment from the Department, which is normally issued by the Department within four weeks of the date of filing. Mr. Delorme asked her about the TX11 request to file the 1997 tax return, which was issued on February 12, 1999 (Exhibit E-29). Mrs. Buset explained to Mr. Delorme that she replied to the TX11 by indicating on the request that her 1997 return had been filed in the Thunder Bay TSO on April 30, 1998. She produced a copy of the TX11 as well as her tax return for 1997 (Exhibit E-33).

[33] Mr. Delorme testified that he later verified if the cheque had gone to the Thunder Bay TSO, as Mrs. Buset reported, and found that that was untrue, that the cheque went to Sudbury. He also checked Mrs. Buset's account and saw on the computer printout (Exhibit E-34) that the cheque was listed as an instalment (INS). Mr. Delorme testified that, if it had been attached to her tax return, it would have indicated POF instead of INS.

[34] Before the meeting, Mr. Delorme had asked that letters of requirement (Exhibit E-30) be prepared pursuant to the provisions of section 231.2 of the *Income Tax Act*. These letters were to request that Mrs. Buset provide a complete and signed tax return for 1997 and specific information and documents for the audit of her 1993, 1994, 1995 and 1996 income tax returns. Mr. Delorme did not give Mrs. Buset the letter concerning her 1997 income tax return because she produced it at the meeting, but he did give her the letter concerning the audit.

[35] On the same day, March 5, 1999, Mr. Delorme informed Mrs. Buset by letter (Exhibit E 35) that she was suspended without pay for an indefinite period pending the result of an investigation into her tax affairs for 1996 and 1997, as well as her conduct during an ongoing tax audit. Mr. Delorme indicated that a review of her computer accesses since September 1997 would be done and that the suspension would be effective March 8, 1999.

[36] On March 9, 1999, Mrs. Buset wrote to Mr. Delorme to apologize for the delay in complying with the auditor's request (Exhibit E-36) stating that she realized "the importance of the standards that must be adhered to" and that this "will not happen in the future". On the same day, Mr. Delorme received photocopies of the information sent by Mrs. Buset to the auditor. Mr. Delorme testified that, regardless of this apology, the bond of trust had been broken because he had clear evidence of repeated acts of misconduct relating to the tax returns for 1996 and 1997 and the tax audit.

[37] On March 11, 1999, Ms. Schlaepfer wrote to Mrs. Buset (Exhibit E-20) requesting additional information, which was provided on March 31. The auditor was then able to complete the audit, which resulted in a reassessment of \$4,850 plus interest and a late filing penalty. Ms. Schlaepfer testified that the main reason for this reassessment was that Mrs. Buset had claimed capital costs depreciation on the value of the land, which does not depreciate. In cross-examination, Ms. Schlaepfer testified that in the end she signed off by thanking Mrs. Buset for her cooperation.

[38] On May 3, 1999, Mr. Main reported to Mr. Delorme that he had reviewed Mrs. Buset's computer accesses for the period October 1, 1997 to January 31, 1999 and found no improper accesses (Exhibit E-37). Mr. Delorme testified that he then reviewed the evidence and consulted with several people at the local, regional and national levels and then decided to terminate Mrs. Buset's employment. He had a situation where an employee of Revenue Canada had not filed a tax return on a voluntary basis

for the past five years. Mrs. Buset did not keep proper records and books in support of amounts reported in her tax returns and therefore had to rely on third party documentation for some of the construction costs of rental properties and financial transactions involving loans from her relatives. Mrs. Buset did not cooperate with the auditor and a requirement letter had to be issued to her. Once the audit was completed, she was reassessed but Mr. Delorme testified that in these types of audits of rental income he expects 20 to 25 percent to produce no reassessment and an employee should be within this margin.

[39] Mr. Delorme testified that these incidents constituted serious misconduct. The taxation system is based on voluntary self-assessment and, as an employee of Revenue Canada, the grievor was responsible to administer the tax system. Mrs. Buset did not conduct her own tax affairs in an exemplary fashion. Mrs. Buset was clearly in violation of the Standards of Conduct of employees.

[40] He considered her ability to work for the employer in the future, but he found that the bond of trust was no longer there. Mr. Delorme could not trust this employee, whose job was to collect money and to collect taxes when returns were not filed. Mr. Delorme considered rehabilitation, but this clearly was not possible since Mrs. Buset had been disciplined in September 1997 for two acts of misconduct and a year and a half later she had two more acts of misconduct with the late filing of her tax returns being a repeated offence.

[41] He met with Mrs. Buset and her union representative, Mr. Crupi, on June 25, 1999, at which time he informed her that she was discharged. She was given a letter outlining the reasons for the termination of her employment and the results of the internal investigation (Exhibit E-39). Essentially, Mrs. Buset's employment was terminated because of her failure to file her 1996 and 1997 income tax returns prior to the legal deadlines and as a result of her conduct during the tax audit. As well, the audit results showed that she had failed to conduct herself and her tax affairs in an exemplary manner.

[42] On the same day, Mrs. Buset grieved her indefinite suspension of March 5, 1999 and the termination of her employment. Mrs. Buset explained that, when she was suspended, she anticipated that she would be reinstated; therefore it came as a surprise when her employment was terminated. Thereafter, she applied for unemployment insurance (U.I.) and from November 1999 to July 2000, she worked for

a collection agency. She is currently working in a management position in a marketing company.

Arguments

For the Employer

The 1997 Grievances for the Indefinite Suspension and the 20-day Suspension

[43] The employer submitted that the evidence showed repeated accesses to taxpayer information by Mrs. Buset contrary to the bulletins issued in the Thunder Bay TSO and the Computer Information Access Form, which she signed. In relation to her own account, Mrs. Buset went beyond the I and C options. She ignored the policies on access and, instead of going to Client Services, she decided to print the T4 and T5. As for her relatives, she gave them preferential access to their tax information.

[44] There is clear evidence that she did not file her 1993 to 1995 tax returns on time. Mrs. Buset testified that she wondered about the necessity of filing a return when a credit was owed, but under section 150 of the *Income Tax Act* you have to file. She received notification to file but ignored the TX11 and T14(d) forms sent to her. Mrs. Buset was unsure if in 1993 she had received a request to file, as she was moving, but she did admit that in all probability she received the others. She explained that she did not file because she had left her 1993 tax documentation with a friend who later disappeared with that documentation. Mr. Lindey submitted that she could have gone to the Taxation Office and requested her T4 and T5 and reconstructed the information missing for the rental properties from the tax return that she had filed in 1992. She could have approached the Taxation Office with her problem regarding the cost of the new rental property. It had nothing to do with Ms. Monteith's disappearance because she had to get an appraisal of the market value of this property in order to file her tax return for 1993. Mrs. Buset also claimed that she had not filed because she was afraid of double filing if Ms. Monteith had already filed her tax return. What would have been the consequences if she had? It would have been easily explainable by Mrs. Buset, since one tax return would have borne her own signature and the other one Sylvie Monteith's, an itinerant person.

[45] Mrs. Buset knew that there was a necessity to file, as the Taxation Office issued a bulletin every year reminding employees to file and providing them with a telephone number if they required assistance. It was not until 1997, when she was issued a requirement letter, that she finally filed returns for the 1993, 1994 and 1995 taxation years. Mr. Lindey argued that a tax collector should not need to be issued a requirement letter to file her own tax returns when her duties with Revenue Canada are to enforce tax collection.

[46] Mrs. Buset explained that she had already filed her returns in April 1997 but they were returned because of insufficient postage. Then when a requirement letter was issued, she waited until the last day, June 10, 1997, to give the returns to Mr. Talarico, who happened to be away from the office. Mr. Lindey submitted that Mrs. Buset's explanations are illogical.

The 1999 Grievance for the Indefinite Suspension and Termination

[47] Mr. Lindey submitted that in the discipline letter of September 1997, Mr. Stockhecke only pointed out to Mrs. Buset that her 1996 tax return had still not been filed. In March 1998, she attended an information session where the standards of conduct were discussed and specifically the necessity to file tax returns on time. Yet, Mrs. Buset did not file her tax returns on time. In April 1998, Ms. Beauchemin, at the third level reply to her grievance, warned Mrs. Buset that any further infraction of this nature could result in more severe disciplinary action, up to and including discharge.

[48] Mrs. Buset maintained, at the meeting of March 5, 1999, that she had filed her 1996 tax return on time and it was not until the Agreed Statement of Facts was prepared for the present hearing that she admitted to filing it late. It took her an additional six months to file her 1996 return.

[49] Mr. Lindey argued that as for her 1997 tax return, the evidence showed that it is unlikely that it was filed on time. Mrs. Buset's evidence that it was filed was a copy of the 1997 tax return and the reply to the TX11 where she wrote that she filed it on March 29, 1998. In reality, if she had filed her tax return with a cheque, she would have been given a receipt and the computer would have identified the amount of \$228.51 as a payment (POF) instead of an instalment (INS). Mrs. Buset was not given a Notice of Assessment, which, as she knows, is standard procedure. She took no action

when she received the TX11. We therefore can only assume that the disciplinary penalty in September 1997 had no effect on the grievor.

[50] Mr. Lindey indicated that he was astounded to hear Mrs. Buset maintaining that she had sent the required documents to the auditor by mail, fax, internal mail and registered mail. This contradicted her earlier explanation that she was caught up in “a whole ball of wax”, where she had promised some documents that she admitted she did not have and got into an embarrassing situation with the auditor.

[51] Mr. Lindey argued at this point that the credibility of the grievor has worn off. One instance where a document could be lost in the mail could be explained, but all the series of losses are beyond belief and it calls into question all statements made by the grievor in support of her position.

[52] Mr. Lindey submitted that Mrs. Buset did not co-operate and was untruthful about sending the material requested, which resulted in an obstruction of the audit until the requirement letter was issued. Mr. Lindey argued that Mrs. Buset’s reassessment was additional evidence that she did not conduct her tax affairs in an exemplary fashion.

[53] The employer has established that the bond of trust is broken and that rehabilitation is unlikely as this is a second offence.

[54] In support of his arguments, counsel for the employer relied on: *Nolan* (Board file 166-2-17111); *Ward* (Board files 166-2-16121 and 16122); *Lau* (Board file 166-2-15388); and *Yensen* (Board file 166-2-28949).

For the Grievor

The 1997 Grievances for the Indefinite Suspension and the 20-day Suspension

[55] Concerning the unauthorized accesses to taxpayer information, Mr. David submitted that the information that was accessed could have been accessed by any taxpayer. The information that Mrs. Buset accessed through her desktop computer is referred to as a “tombstone” screen since it cannot be changed. As reported by Mr. St-Laurent, there was widespread accessing of their own tax information by employees in the Thunder Bay TSO. Mr. St-Laurent testified that he did not find any accesses by Mrs. Buset that went beyond her relatives’ or her own tax information.

[56] Mrs. Buset explained that she is a procrastinator and that is the reason why she got into this situation. The investigator did not find any fraud resulting from her actions. Mr. David also submitted that when Mrs. Buset met with Mr. Stockhecke on April 10, 1997, she was not offered the opportunity to be accompanied by a union representative. This was a meeting of a disciplinary nature, contrary to what Mr. Stockhecke had explained. A taxpayer would never be confronted with the Standards of Conduct Code.

The 1999 Grievance for the Indefinite Suspension and Termination

[57] Mr. David argued that the chronological sheet was prepared by Ms. Schlaepfer to obtain the letter of requirement and it depicts Mrs. Buset in an unfair manner. Mrs. Buset is a procrastinator and had difficulty obtaining the information requested by the auditor. That is how she got into a situation which she called a “whole ball of wax”. Some of the information requested was old or hard to obtain or not important, but in the end there were some answers. Ms. Schaefer reported at the end that all had been resolved and she signed off by saying “Thank you for your cooperation.”

[58] Mr. David submitted that the late filing of the 1996 return was addressed in the September 1997 discipline imposed by Mr. Stockhecke. Mr. Delorme decided to make it into a new offence even though it had already been considered. Mrs. Buset filed her 1997 tax return with a cheque in the amount owed. Revenue Canada lost the tax return that Mrs. Buset filed and there should be no consequence to Mrs. Buset on this aspect.

[59] Mr. David argued that in dismissing Mrs. Buset, Mr. Delorme acted in bad faith. When he met with her to inform her that her employment was terminated on June 25, 1999, he had already made up his mind. His decision was already made and he did not give consideration to what the grievor was going to say. The employer did not consider seriously any of the reasons given by the grievor for her misconduct. Mr. David pleaded that there were mitigating factors to be considered. Mrs. Buset had long service with the employer; she had no disciplinary record prior to September 1997 and her performance was satisfactory.

[60] In support of his arguments, Mr. David relied on *Matthews* (Board file 166-20-273360) and *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701.

Rebuttal

[61] Mr. Lindey argued that unauthorized accesses to taxpayer information in the Thunder Bay TSO were limited to some employees accessing their own files but never involved the tax information of relatives as in Mrs. Buset's case.

[62] Mr. David contended that the employer did not take into account the information submitted by Mrs. Buset. Mr. Lindey replied that this information was provided only when a requirement letter was issued and was not provided on a voluntary basis.

[63] As for Mr. David's submission that the 1996 return had been covered by Mr. Stockhecke's disciplinary letter of September 1997, in reality Mr. Stockhecke just pointed out that the 1996 return had not been completed and therefore this was not part of the discipline. Mr. Delorme took into account the late filing of the 1996 tax return in the disciplinary sanctions of 1999 because even after the September letter, the tax return was filed after a significant delay.

[64] Mr. Lindey disagreed with the characterization by Mr. David of a power imbalance situation in the dealings with Mrs. Buset by Mr. Delorme. There was no evidence of bad faith provided by Mr. David and, except for one meeting in April 1997 with Mr. Stockhecke, Mrs. Buset was always afforded the opportunity of union representation. At the meeting in April 1997, she was questioned about the lateness of filing and reminded of the standards of conduct for employees. No disciplinary measures were taken at that meeting. Mr. Delorme testified that he gave little consideration to Mrs. Buset's letter of apology because it was too little, too late.

Reasons for Decision

The 1997 Grievances for the Indefinite Suspension and the 20-day Suspension

[65] In the Agreed Statement of Facts, Mrs. Buset recognized that she did access the computerized tax accounts of relatives and her own and she also admitted having failed to file her income tax returns by the deadlines for the 1993, 1994 and 1995 taxation years. Evidence was produced by the employer that several memoranda to personnel authorized only on-line viewing of information pertaining to their own individual accounts (Option I & C), but always underlined that employees were not permitted access to protected information pertaining to relatives or friends. In

February 1997, employees were advised, through an internal bulletin, that they were not allowed to access their own tax return as well as their friends' and relatives' and that this bulletin replaced previously issued bulletins with respect to the same topic. This policy was therefore fairly new when Mrs. Buset accessed her own account. This might explain why Mr. St-Laurent, the investigator, found that several employees in the Thunder Bay TSO were still accessing their personal tax information in the summer of 1997 using only the I and C options authorized by previous bulletins.

[66] Mrs. Buset's access to her own tax information went beyond the I and C options permitted by previous bulletins from 1993 to 1996. It also went beyond viewing only as she printed T4 and T5 documentation. Mrs. Buset's accesses to the computerized tax account of relatives was never authorized by the employer.

[67] When Mr. Stockhecke met with Mrs. Buset on July 15, 1997, she was evasive in some of her answers concerning accesses to her own account, her relatives' and other individuals'. This is why Mr. Stockhecke became very concerned and suspended her without pay for an indefinite period pending the results of the investigation into unauthorized computer accesses. The investigation proceeded rapidly and as soon as he was sure that there were no accesses to computer tax accounts of individuals other than her relatives or her own, he asked Mrs. Buset to report to work.

[68] I therefore find that the indefinite suspension was justified in the circumstances.

[69] Mr. Stockhecke explained that he then considered the appropriate discipline for Mrs. Buset's behaviour. He testified that the biggest factor for him in imposing the discipline was her failure to file her 1993, 1994 and 1995 tax returns on time. In addition, her unauthorized accesses were not limited to her own but extended to her relatives' accounts. He concluded that a 20-day suspension would be appropriate.

[70] I reviewed the jurisprudence submitted by both representatives. In *Yensen (supra)*, Adjudicator Cloutier maintained the termination of an employee who had failed to report income in her tax returns for 1994 and 1995. In the instant case, Mrs. Buset had not filed any returns at all for three years until 1997. In *Ward (supra)*, Adjudicator Brown denied the grievance and maintained the discharge of an employee who had used her access to tax accounts to obtain confidential information on various individuals and a company. The facts are different in the instant case, but both

disciplinary measures were for accessing tax accounts without authorization. In light of this, the 20-day suspension is reasonable as it takes into consideration the mitigating factors surrounding Mrs. Buset's access to computerized records.

[71] This suspension gave Mrs. Buset an opportunity to amend her future conduct and as such was a corrective disciplinary measure instead of a punitive one. This corrective disciplinary approach was successful at least in that afterward Mrs. Buset stopped accessing tax information without authorization. Unfortunately, it was not successful in having Mrs. Buset file her 1996 tax return before March 1998 as she herself admitted.

[72] I find, therefore, that the 20-day suspension is an appropriate disciplinary measure in the circumstances of the misconduct. The two grievances of 1997 filed by Mrs. Buset are denied.

The 1999 Grievance for the Indefinite Suspension and Termination

[73] Mrs. Buset did admit filing her 1996 tax return as late as March 20, 1998. This was six months after the September 1997 disciplinary letter where it had only been pointed out to Mrs. Buset that her 1996 tax return was overdue. She denied filing her 1997 income tax return late and also insisted that she collaborated with the auditor of her 1993, 1994 and 1995 tax returns. She testified that she had tried to send the requested documentation through the mail, by internal mail, registered mail and fax but was not successful. Mr. Lindey argued that one instance where a document could be lost in the mail could be plausible but the series of losses claimed by the grievor are beyond belief. Mr. Lindey submitted that this goes to the credibility of Mrs. Buset's testimony since she repeated those assertions.

[74] The test established by O'Halloran J.A. of the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (see page 357) can be applied here to test Mrs. Buset's credibility. It must be determined whether her version is in 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.

[75] Surely, in the circumstances of this case, a practical and informed person would find the probabilities to be nil that Mrs. Buset could not succeed in sending the requested documentation to the auditor by mail, internal mail, registered mail and fax.

I believe that when Mrs. Buset testified that she got caught up in a “whole ball of wax”, when promising to send documents to the auditor, she was being honest, trying to come clean and tell the truth. However, in cross-examination, she insisted that she had sent the documentation requested by the auditor by mail, registered mail, fax and internal mail and that this information never got to the auditor. I believe she got caught up again in a “whole ball of wax”, where she had given explanations in the past to her employer but found it too difficult to admit on the witness stand that these explanations were not truthful.

[76] The unlikelihood of her explanations goes to the credibility of all her testimony. I find it hard to believe her explanation that she did not complete her income tax returns for the years 1993, 1994 and 1995 because Ms. Monteith, an itinerant, was supposed to prepare her income tax return but had disappeared with her information and then died. Her explanation that she sent her income tax returns by mail in April 1997 but that they were returned because of insufficient postage then becomes harder to believe.

[77] Is she now telling the truth when she says she filed her 1997 tax return on time? At this point, I find her credibility so low that it is as well unlikely that she is telling the truth about filing her 1997 tax return. She says she filed her 1997 tax return in the Thunder Bay TSO and gave a cheque to the cashier. However, she cannot remember who the cashier was. Also, the cheque actually went to Sudbury and is recorded as an instalment TX11. Even though she has a copy of her income tax return stamped as filed in March 1998, there is no electronic record of her filing and no Notice of Assessment was issued. She received a request to file her 1997 tax return and she took no action. She had been disciplined in 1997 for not filing her tax return on time, but ignored a request to file and did not attempt to clarify the matter. Therefore, I find on the balance of probabilities that she did not file the 1997 tax return on time.

[78] Mr. David submitted that the information was old, difficult to obtain, but that in the end the information was provided. I disagree as I find that her conduct during the audit was totally inappropriate. If she had difficulty in obtaining the information, she should have said so to the auditor. In the end, she provided the information after a letter of requirement was issued. Her lack of cooperation and the excuses that she gave to the auditor resulted in an obstruction of the audit.

[79] Was an indefinite suspension followed by termination just and reasonable in the circumstances? Employees of Revenue Canada, now the Canada Customs and Revenue Agency (C.C.R.A.), have a unique obligation to their employer and it is to conduct their tax affairs in an exemplary manner. This can be found in the Standards of Conduct of Revenue Canada and different memoranda and policies of the employer. Paragraph 241(4)(h) of the *Income Tax Act* specifically provides for use by the employer of tax information for supervision, evaluation and discipline of an employee of Revenue Canada, now C.C.R.A. This obligation is also recognized throughout the jurisprudence of the P.S.S.R.B.

[80] Back in September 1997, Mrs. Buset was reminded by Mr. Stockhecke's discipline letter of her obligation to conduct her tax affairs in an exemplary fashion and he specifically noted that her 1996 tax return had still not been filed. On April 7, 1998, Ms. Beauchemin, in her reply at the third level of the grievance procedure to the 20-day suspension and indefinite suspension of 1997, warned Mrs. Buset that any further infractions of this nature could result in more severe disciplinary action, up to and including termination. She still filed her 1996 and 1997 tax returns late and failed to cooperate in a straightforward fashion with the auditor of her 1993, 1994 and 1995 tax returns. This conduct is inexcusable and it is clear that she failed in her obligation to conduct her tax affairs in an exemplary fashion.

[81] I find no evidence of bad faith on the part of the employer as argued by Mr. David. I have considered all the other arguments submitted by Mr. David but I find none that convince me to overturn the discipline imposed on Mrs. Buset by the employer. I therefore find that, for all these reasons, the indefinite suspension was warranted under the circumstances and her discharge was for just cause.

[82] I have reviewed the mitigating factors but find they are clearly insufficient in the circumstances to allow me to alter the termination of employment. Mrs. Buset was given a second chance when the corrective disciplinary approach was used in 1997 in giving her a 20-day suspension. She also ignored several warnings that she received from the employer. It is the second time that she is disciplined for filing late. Her lack of cooperation with the auditor is inexcusable.

[83] Mrs. Buset repeated during her testimony the excuses that led to her discharge. I am convinced that she is still caught up in a “whole ball of wax” and has shown no rehabilitative potential. The employer has established that the bond of trust between the employer and the employee has been broken and cannot be repaired.

[84] I therefore find that there are no reasons to allow the grievance of 1999.

[85] For all these reasons, the grievances of Diane Buset are denied.

**Guy Giguère,
Board Member**

OTTAWA, March 14, 2001.