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**File:** 166-34-30227

**Citation:** 2001 PSSRB 95



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**TOM EASTON**

Grievor

and

**CANADA CUSTOMS AND REVENUE AGENCY**

Employer

***Before:*** Joseph W. Potter, Vice-Chairperson

***For the Grievor:*** Gail Owen, Public Service Alliance of Canada

***For the Employer:*** Harvey Newman, Counsel

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Heard at Vancouver, B.C.,  
August 21 and 22, 2001

## DECISION

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[1] The grievor, Tom Easton, is an Appeals Officer with the Canada Customs and Revenue Agency (C.C.R.A.). On January 25, 1999, he grieved the imposition of a three-day suspension for according preferential treatment to a family member in relation to her tax affairs. He requested a reversal of the decision. The matter was referred to the Public Service Staff Relations Board (P.S.S.R.B.) for adjudication on October 16, 2000. It was scheduled to be heard in March, 2001 but both the employer and bargaining agent agreed to a postponement. The matter was then heard in August 2001.

[2] The employer presented three witnesses and introduced eight exhibits. The grievor presented two witnesses and introduced two exhibits.

### Evidence

[3] Mr. Easton commenced working with the C.C.R.A. on March 28, 1990 at the Surrey Tax Office in British Columbia. Prior to that, he taught high school in Winnipeg, Manitoba for over 20 years. At the time of the incident, Mr. Easton was working as an Appeals Officer at the Burnaby Fraser Tax Services Office (B.F.T.S.O.). His work involved GST related issues.

[4] Mr. Easton had a mentally challenged sister living in Winnipeg, and after both of his parents passed away, he was made the Trustee of his sister's affairs. Among other things, he would complete his sister's income tax returns.

[5] Upon finalizing his sister's 1997 income tax return, Mr. Easton discovered an additional T-5 slip. Rather than re-do the whole form, he simply wrote a note to the Winnipeg tax office asking them to add it in when assessing the tax return.

[6] Nothing further happened until December 14, 1998 when Mr. Easton's sister received a Notice of Reassessment (Exhibit E-2 pages 2-4). The notice stated she was being assessed a penalty of \$432.70, and this caused her some distress so she telephoned Mr. Easton to inquire why she owed this money.

[7] Mr. Easton wanted to know what the penalty was for, consequently he had his brother, who lived in Winnipeg, fax him the relevant documents on December 21, 1998 (Exhibit E-2 page 1).

[8] Upon reviewing the documentation, Mr. Easton said his first thought was to approach his supervisor, Tom Chang, for assistance. The two are physically located

close together at work but Mr. Easton said he did not see Mr. Chang at his desk, so he approached a fellow employee, Vic Matties, instead.

[9] Mr. Easton showed the Notice of Reassessment to Mr. Matties and asked what the penalty was for.

[10] Mr. Matties testified he checked on his computer to see what kind of a penalty had been assessed. To do this he had to access Mr. Easton's sister's tax account, something he was not authorized to do. However he did so and learned the reason for the penalty was because of unreported income. Mr. Matties then testified he advised Mr. Easton to file a Notice of Objection with their own tax office. He gave this advice, in spite of the fact the Winnipeg Tax office had issued the Notice of Reassessment.

[11] Mr. Matties told Mr. Easton to file the appeal, bring it into the office and the matter would be handled appropriately. Mr. Matties testified that Mr. Easton never asked him to step outside the rules with respect to the handling of the appeal.

[12] Upon hearing this, Mr. Easton went to the file room and got a form titled "Objection". He completed the form and got his sister, who was visiting him for Christmas, to sign it (Exhibit E-2 page 5). Mr. Easton then brought the forms to work and placed it in a "bin" for date stamping. Under cross-examination, Mr. Easton said he "may have" told Mr. Matties that the forms were in the intake basket. Mr. Easton also said that he now realizes what he did may have been inappropriate.

[13] Mr. Matties testified he did not recall how the documents ended up on his desk, but nevertheless he did process them right away. He admitted, in cross-examination, that he knew there was a six-month waiting time for other appeals to be processed, as they were being done on a first-in, first-out basis. Nevertheless, he processed the appeal from Mr. Easton's sister right away.

[14] In processing the appeal, Mr. Matties interviewed Mr. Easton and then told Mr. Easton that the penalty would be cancelled. This was done on the same day Mr. Easton had brought the Appeal into the tax office, namely December 23, 1998. Mr. Matties' hand-written notes confirm this (Exhibit E-2 page 6).

[15] Mr. Matties completed a document titled "Report on Objection, Negotiated Settlement Report" (Exhibit E-2 pages 7 and 8). He then sent it onward for processing. The document was not reviewed by anyone, in spite of the fact the evidence showed

there was a box titled “reviewed by” and it was normal for the supervisor’s signature to appear here. No signature appears.

[16] An appeals officer, Denise Hartman was inputting the data and noticed some irregularities with the documentation so she brought it to the attention of Shirley Dow, a team leader in the appeals division of the B.F.T.S.O. This was on January 6, 1999.

[17] Ms. Dow reviewed the documentation and stated it appeared irregular to her too. She noticed the taxpayer resided in Winnipeg, which has its own tax office. The work done in the B.F.T.S.O. would not normally include people residing in Winnipeg. Another irregularity was that the objection had been handled within a week of being filed, and at that time, as stated earlier there was about a six-month backlog.

[18] There are certain situations where work could be transferred from one tax office to another in a different part of the country, but in this case, there was no apparent reason why this Notice of Objection was handled by the B.F.T.S.O. rather than the Winnipeg Tax Office.

[19] Ms. Dow noticed that Mr. Matties handled the appeal and that he allowed it in full. After completing the report, Mr. Matties had signed it, but Ms. Dow noticed there was no signature in a box titled “reviewed by” (see Exhibit E-2 page 8). Normally, the supervisor signs in this section.

[20] Following this, Ms. Dow brought the documents to the attention of her supervisor, Devinder Sekhon. She told Mr. Sekhon about her concerns and he asked her to document them. She did so (Exhibit E-3).

[21] Mr. Sekhon testified that, after he reviewed the matter, he had concerns that the Conflict of Interest guidelines (Exhibit E-4) and the Standards of Conduct (Exhibit E-5) had not been complied with. Mr. Easton testified he was aware of and had received a copy of each of these documents. In short, Mr. Sekhon was of the view that the integrity of the tax process at the B.F.T.S.O. had been compromised.

[22] On January 6, 1999 Mr. Sekhon asked Mr. Easton to meet with him to review the matter. Mr. Easton explained the situation saying he had approached Mr. Matties as his team leader had not been available. Mr. Sekhon then told Mr. Easton that the Notice of Objection would be invalidated and the matter would have to go through the Winnipeg Tax Office.

[23] Mr. Sekhon sought guidance from the Head Office of the C.C.R.A. and he received advice on what quantum of discipline was appropriate. The fact that Mr. Easton was a good employee with no disciplinary record was important to Mr. Sekhon and he felt a penalty lower than what had been recommended to him by Head Office was more appropriate. Consequently, he issued Mr. Easton with a disciplinary letter on January 25, 1999 suspending him for three days without pay.

#### Employer's Argument

[24] The essence of the employer's case can be found in the first sentence of the disciplinary letter where it states:

*During the course of an investigation into your conduct, it was determined that you accorded preferential treatment to a family member in relation to her tax affairs.*

[25] This is a serious matter, because if there is corruption in the integrity of the tax system, people will lose confidence in it.

[26] The grievor was aware of the Conflict of Interest guidelines and the Standards of Conduct. He was not an ingenuous or naïve individual and he knew of the problems associated with giving preferential treatment to a family member.

[27] Mr. Easton could not explain why he never told his supervisor, Mr. Chang, about the matter after he discussed it with Mr. Matties. He said his first thought had been to discuss it with his supervisor but he did not see him so he went to Mr. Matties. He could have spoken to his supervisor at any time after speaking to Mr. Matties, but he chose not to. The reason is because he knew what Mr. Chang's reaction would be, and he knew it would not be favourable to what he was doing.

[28] There was a conspiracy between Mr. Matties and Mr. Easton to introduce the Notice of Objection not just into the B.F.T.S.O. system, but out of the ordinary and into Mr. Matties' hands. This clearly short-circuited the system.

[29] Mr. Easton was not seeking special treatment on the decision, but he was seeking preferential treatment in relation to the process.

[30] At the very least, there was an obligation on Mr. Easton's part to bring the matter to the attention of his supervisor, and he chose not to do so.

[31] Both the Conflict of Interest and Standards of Conduct documents were received and well-known to Mr. Easton and he has violated the provisions contained therein. He attempted to get around the system by getting a special benefit.

[32] Mr. Sekhon considered all the mitigating circumstances before deciding on the appropriate penalty, which is within a reasonable range considering the seriousness of the offence. In these situations, adjudicators should not be prone to second-guess the manager's decision.

[33] In *Conte* (Board file 166-2-22281) a similar situation arose in that an employee received a 10-day suspension for a conflict of interest situation. The grievance was denied.

#### Grievor's Argument

[34] The grievor was a GST Appeals Officer and had no expertise in the income tax area. He sought advice from another employee and simply followed that advice.

[35] There is no evidence that a conspiracy took place. The grievor consulted Mr. Matties who decided the case could be handled at the B.F.T.S.O. and it was Mr. Matties who processed the document. All Mr. Easton did was to seek and follow the advice he received.

[36] Mr. Easton has never tried to hide any of the facts related to this case. In fact Mr. Easton has admitted he now realizes he should have done something different, but he did follow the advice he was given.

[37] If the objective of discipline is to be corrective rather than punitive a simple letter of reprimand could have sufficed. While Mr. Sekhon is to be commended for reducing the penalty Head Office recommended, he did not go far enough.

#### Decision

[38] The grievor has acknowledged that what he did was wrong. Based on all the evidence I too find the actions of Mr. Easton were inappropriate, and had an appearance of providing preferential treatment for his sister by having her appeal dealt with through the tax office where he worked. The only question left to be decided is the appropriateness of the employer's response to this misconduct.

[39] Mr. Newman has suggested it is not appropriate for an adjudicator to interfere with a disciplinary penalty, if that penalty is within an acceptable range given the situation. He suggested a three-day suspension is within an acceptable range and is less than what Head Office recommended. Furthermore, he suggested Mr. Sekhon has taken into account all the relevant mitigating circumstances and the penalty should not be reduced further.

[40] While, as a general rule, I do not quarrel with the position Mr. Newman has advanced, in this case I feel the response of the employer is more punitive than corrective given the evidence.

[41] Mr. Easton never asked that the matter be expedited, nor did he ever request that anything untoward happen with his sister's income tax Notice of Objection. While he should have known that there could be an appearance of conflict of interest in having the tax office where he worked handle the matter, he did not ask that anything dishonest occur.

[42] I would classify this at the lower end of the spectrum of misconduct and, as such, if I accept the submission of Mr. Newman that I should not modify this minor penalty, I would in effect be saying that a three-day suspension is an appropriate penalty, even though there is no disciplinary record and the employee is a good performer. I think, in these circumstances, a one-day suspension would be a more appropriate penalty. It sends a message that what Mr. Easton did was wrong and it can achieve the objective of being corrective.

[43] Accordingly the grievance is sustained to the extent that the suspension is reduced from three days to one day. Mr. Easton is to be reimbursed accordingly.

**Joseph W. Potter**  
**Vice-Chairperson**

**OTTAWA, September 17, 2001**