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File: 166-2-31749

Citation: 2004 PSSRB 131



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

WILLIAM D. CONSTANTINI

Grievor

and

TREASURY BOARD  
(Department of National Defence)

Employer



***EXPEDITED ADJUDICATION DECISION***

***Before:*** Guy Giguère, Deputy Chairperson

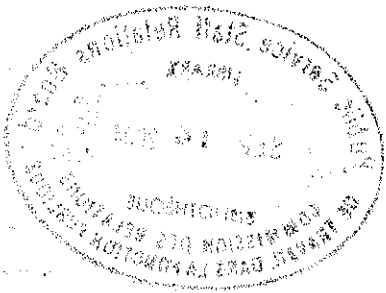
***For the Grievor:*** Cécile La Bissonnière, Public Service Alliance of Canada

***For the Employer:*** Robert D. Downey

**Note:** The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

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Heard at Ottawa, Ontario,  
August 27, 2004.



[1] William D. Constantini is a firefighter with the Department of National Defence (DND) Fire Service at CFB Halifax, Nova Scotia. At the beginning of the hearing, I was provided with an agreed statement of facts and evidence that is summarized in the following decision.

[2] On October 11, 2001, Mr. Constantini reported for his regular shift, at 1800 hrs. He informed his supervisor that he would not carry out his full range of duties and he would only respond to emergencies. His supervisor expressed concern for his well being, as this was unusual behaviour. The supervisor removed him from his regular workplace and assigned him to work on the Fire Boat, hoping that Mr. Constantini would reconsider his actions.

[3] On October 12 and 14, 2001, Mr. Constantini refused again to carry out his full range of duties. On Saturday, October 13, 2001, he did not report to work, as he was on leave for family-related reasons.

[4] On October 11 and 12, 2001, Mr. Constantini was warned by his supervisor that there could be disciplinary measures taken against him if he continued to refuse to perform his duties. His supervisor gave Mr. Constantini a direct order on October 14, 2001, to perform his duties, which Mr. Constantini disregarded.

[5] On October 15, 2001, Don Howard, the acting Base Fire Chief, met the grievor in the presence of his supervisor and a union representative. Once again, Mr. Constantini stated that he would not carry out his full range of duties. Mr. Howard told him that this was unacceptable behaviour and out of character for him. At the time, Mr. Constantini had been employed in his position for 21 years and had no prior discipline record. Mr. Constantini was offered the services of the Employee Assistance Program (EAP), which he declined.

[6] On October 16, 2001, Mr. Howard contacted Mr. Constantini by telephone in an effort to resolve the situation. It was explained to Mr. Constantini that he was required to perform his full range of duties. Mr. Constantini was offered the opportunity to take some leave and use the time to reconsider his actions to date and was urged again to seek the assistance of the EAP and his union. There were extensive discussions concerning Mr. Constantini, which took place at the urging of the Union of National Defence Employees (UNDE) representative, Ms. Charron. The employer granted

Mr. Constantini paid sick leave, pending a medical assessment to determine his fitness for duties.

[7] A disciplinary hearing was held on October 19, 2001. Mr. Constantini again stated that he would refuse to carry out his full range of duties. He was given a one-day suspension, which took effect on October 29, 2001.

[8] On October 26, 2001, Mr. Constantini filed the instant grievance, stating abuse of authority and harassment and asking for the disciplinary action to be withdrawn and lost pay to be returned to him.

[9] Cécile La Bissonnière explained at the hearing that Mr. Constantini had refused to perform all his duties in October 2001, because of his frustration and disappointment when a fellow firefighter told him that he had been given answers prior to a competition. Mr. Constantini felt that this placed him at a great disadvantage, as he participated in that competition process, which involved a promotion.

#### Decision

[10] I cannot pass judgment on the allegations that were made by Mr. Constantini, which involved cheating during a competition process, as they are not the subject of the instant grievance. However, I can certainly understand how he must have felt when he learned this.

[11] Nevertheless, there is an old maxim in labour law that applies here and it is: "Obey now and grieve later." Proper course of action for Mr. Constantini when he learned of these allegations could have been to contact his bargaining agent, file grievances and complaints if he wished, and at all times continue to perform his duties. If he was not able to perform his duties because, psychologically, he could not see himself working with some of his coworkers, then he should have taken leave and sought assistance from the EAP.

[12] Mr. Constantini was given a direct order to perform all his duties. He had been given many warnings by the employer that if he refused to perform his duties, disciplinary action would follow. As well, the nature of Mr. Constantini's duties as a firefighter makes it especially important that he perform all his duties, such as the

maintenance of equipment. Failing to perform his duties could have had serious consequences had a fire occurred, or any other emergencies.

[13] I have considered the mitigating factors but find that a one-day suspension was warranted under these circumstances. The grievance is therefore denied.

**Guy Giguère,  
Deputy Chairperson**

OTTAWA, September 3, 2004.

