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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

NANCY ROY

Grievor

and

TREASURY BOARD
(Health and Welfare Canada)

Employer

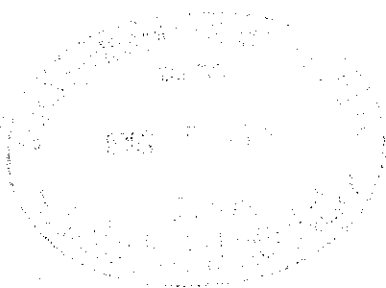
Before: Philip Chodos, Vice-Chairperson

For the Grievor: Herself

For the Employer: Robert Lindey, Counsel



Heard at Kenora, Ontario,
December 15 and 16, 1999.



DECISION

[1] Nancy Roy had been employed at the Sioux Lookout Zone Hospital with the Medical Services Branch of Health and Welfare Canada (MSB) until she was rejected on probation. Following the filing of this grievance, Ms. Roy was offered reinstatement to her position. She accepted that offer; however, prior to recommencing her duties she submitted what the employer maintains is a letter of resignation. Subsequently, however, Ms. Roy decided to pursue her original grievance respecting her termination of employment.

[2] The employer contends that the adjudicator is without jurisdiction to address this matter on three grounds: firstly, a resignation is addressed under the *Public Service Employment Act* and therefore is beyond the jurisdiction of the adjudicator; alternatively, the grievor was rejected on probation, which is also outside the adjudicator's jurisdiction. Lastly, the employer submits that the grievor is attempting to alter the essential nature of her grievance, contrary to the principles enunciated in *Burchill v. Attorney General of Canada* (1980), 37 N.R. 530 (F.C.A.).

[3] The University of Toronto was under contract to Health and Welfare Canada since 1988 to provide medical services at the Sioux Lookout Zone Hospital. In that year the University hired Ms. Roy to perform the duties of an OHIP (Ontario Health Insurance Plan) Billings Co-ordinator. There is no doubt that as a University of Toronto employee Ms. Roy performed her duties very well (ref. e.g. exh. G-7), and was in fact an outstanding employee throughout her tenure with the University. Through her considerable efforts in registering native persons and ensuring that they had OHIP cards, she substantially increased the billings for the hospital (see Exhibit G-1). In fact, Ms. Roy's efforts in this regard went well beyond the call of duty. Dr. Joseph Dooley, the former Medical Director of the hospital, who had worked with Ms. Roy for over eight years testified that she "showed tremendous energy and enthusiasm and was an excellent employee". He noted that Ms. Roy had a superb understanding of the importance of OHIP forecasting for budgetary purposes and played an increasingly larger role in handling OHIP matters during her employment with the University. Dr. Dooley stated that Ms. Roy was given more and more responsibilities in this area and correspondingly less responsibilities was conferred on her supervisor, Ms. Murphy. Eventually, Ms. Roy was reporting directly to the Medical Director.

[4] Dr. Dooley observed that there was a very high percentage of patients at the Sioux Lookout Zone Hospital who did not have proper OHIP numbers; Ms. Roy

undertook to remedy this situation, to the extent of purchasing film out of her own pocket in order to prepare OHIP cards. On one occasion, when she asked the Administrator to reimburse her \$18.00 for the cost of the film she was refused. Nevertheless she continued to provide this service. She also was very successful in developing a strong rapport with native persons, and with organizations such as the Independent First Nations Alliance (IFNA) which take an active role in promoting better health care for the native communities. The General Manager of IFNA, Ms. Grace Teskey, testified that Ms. Roy demonstrated considerable sensitivity to the feelings of native persons and went out of her way to assist them in obtaining health cards.

[5] Throughout 1998 it was apparent that the negotiations between the University of Toronto and the MSB were not going well; it was therefore anticipated that the contract with the University would not be renewed that year, and that alternative arrangements would have to be made to continue to provide medical services at the Sioux Lookout Zone Hospital. Ms. Marjorie Johnson, the Administrative Officer for the hospital, testified that there was a lot of concern expressed by the hospital support staff about their future; the Zone Director, Ms. Janet Gordon, held meetings with staff to advise them that the hospital would continue to require their services, although they may not remain employed by the University.

[6] By May 1998 it was determined that the contract with the University would not be renewed. There was considerable urgency in getting ready for the turnover of medical services from the University to the Branch; there was also much uncertainty concerning the future operations of the hospital; there remained the possibility that there would be an extension of the University of Toronto's contract, or alternatively another university might take over this responsibility.

[7] The MSB drafted job descriptions with a view to hiring personnel as of July 1, 1998; generic job descriptions covering a number of support staff were prepared. However, specific job descriptions were drafted for the OHIP Co-ordinator position and her assistant (a position held by a Ms. Yvette Dooley) which were reviewed for classification purposes.

[8] On June 9, 1998 the Zone Director received a memorandum establishing the classification of Ms. Roy's position as a CR-4. On June 12, 1998 Ms. Roy was provided with an offer of employment at the CR-4 level for a specified period beginning July 2,

1998 and ending March 31, 1999. The letter of offer noted that her salary on appointment would be "\$26,657. + 994.00 per annum plus an Isolated Post Allowance". This letter also states "Your appointment is subject to a 12 month probationary period commencing on the effective date of appointment.". Ms. Johnson observed that while Ms. Roy had undertaken the task of ensuring that patients at the hospital had valid health cards, the department had been putting pressure on the provincial Ministry of Health to assume this responsibility; accordingly, while the other aspects of her position remained the same, it was anticipated that this would no longer be one of her responsibilities.

[9] When she was given the letter of offer Ms. Roy expressed to Ms. Johnson her unhappiness with the salary level; while the precise differential in pay is a matter of some dispute, it would appear that the salary offered by the MSB was several thousand dollars lower than the salary which the grievor had been receiving from the University. Ms. Roy felt that the classification did not take into account that she was the longest serving University employee at the hospital. According to Ms. Johnson, several employees were unhappy with their classification; however, they considered that they had no choice but to accept them. It was her expectation that once employees were in their jobs they would be able to provide a more detailed job description, which would facilitate a review of the classifications. All employees were advised that they were required to make a decision to accept their positions within one week. Ms. Roy provided her acceptance of the position on June 17, 1998. However she advised the Zone Director in a letter dated June 19, 1998 that "The 1-week time frame to review the contract and make a decision is a very short period of time. For these reasons, I am very tentative in signing this contract and I am doing so 'under duress'." (Exhibit E-6).

[10] At the beginning of July, Ms. Johnson became concerned that Ms. Roy would be the only employee who had familiarity with the OHIP billing process. Ms. Roy did have an assistant, that is Ms. Dooley, however, Ms. Dooley had not been re-employed by the MSB. According to Ms. Johnson, Ms. Dooley would have been offered her position as Assistant Clerk in July; however, Ms. Dooley had made a prior arrangement with the University to take off the summer months to look after her children. Ms. Dooley tried to make similar arrangements with Ms. Johnson, however, Ms. Johnson advised her that she was unable to offer her a contract of employment and then immediately give her the leave of absence. Ms. Johnson told Ms. Dooley that if she was not prepared to

work right away then the position would remain vacant, and the administration would re-examine the situation in September to determine what their needs were. Ms. Johnson subsequently advised Ms. Dooley by letter dated July 17, 1998 that her services would no longer be required.

[11] Ms. Johnson approached Yvonne Murphy, Ms. Roy's immediate supervisor, about arranging for training of other clerical staff to assist in fulfilling the OHIP billing functions. According to Ms. Roy, on July 6 Ms. Murphy had asked her to train Ms. Michelle Farlinger, a medical clerk who also reported to Ms. Murphy. Ms. Roy trained Ms. Farlinger for three days in OHIP procedures, new born registrations and mail processing. Ms. Roy stated that Ms. Farlinger was frequently called back to do other duties and this resulted in the interruption of her training. On July 8 Ms. Murphy advised Ms. Roy that she was not doing proper training and that Ms. Murphy wanted her to draft a procedures manual with respect to the OHIP fee schedules, which Ms. Roy understood meant condensing the voluminous fee schedule manual. Ms. Roy objected to the task; a heated argument then ensued, in the course of which Ms. Roy stated that she would not do any training unless her salary was increased. She told Ms. Murphy that she had already trained Ms. Dooley who would be returning to the office in September.

[12] On July 9 Ms. Murphy approached Ms. Johnson and advised her that she and Ms. Roy had had a vehement argument about her direction to Ms. Roy to provide training and to prepare desk procedures setting out the regular routine in the office. Ms. Johnson contacted Ms. Roy and a meeting was arranged for the following afternoon. At this meeting, which was attended by Ms. Roy, Ms. Murphy and Ms. Johnson, Ms. Roy indicated she was reluctant to participate without representation; Ms. Johnson stated that representation was not necessary as this was not a disciplinary issue. Ms. Roy continued to insist that she should have representation. According to Ms. Roy, Ms. Johnson told her to sit down and not to be ridiculous, and that she was blowing this matter all out of proportion. Ms. Roy said that she would get in touch with Ms. Johnson in two or three days to set up a meeting again.

[13] Ms. Johnson sought advice from a Ms. Donna Gammon, a Human Resource Advisor in Winnipeg, who suggested that she attempt to set up another meeting with Ms. Roy, and to obtain the name of her representative. Ms. Johnson then contacted Ms. Roy that day and a meeting was arranged for July 15.

[14] Ms. Roy encountered some difficulty in finding a union representative. She was finally contacted by Elizabeth Gillelan, the Ontario Regional Vice-President of the National Health and Welfare component of the Public Service Alliance of Canada, who suggested that she obtain an agenda for the meeting from Ms. Johnson. Ms. Roy sent a memo to Ms. Johnson requesting such an agenda (Exhibit G-3). However, it was not provided.

[15] The meeting took place on July 15. At this meeting Ms. Murphy apologized to Ms. Roy. Ms. Roy raised concerns about her salary and classification; she also indicated she did not feel it was incumbent upon her to provide training of a back-up, in particular since she had already trained Ms. Dooley to perform the required functions. Ms. Johnson stated that Ms. Roy would have to choose to either do the training as requested or leave the job.

[16] A subsequent meeting occurred on July 23rd; on this occasion Ms. Gillelan was linked by teleconference. Ms. Johnson reiterated that the choice was either to perform all the duties of the position, including training, or leave. Ms. Roy again advised that she would not do the training or draft the desk procedures. On the advice of Ms. Gillelan, Ms. Roy read a statement that she had written (Exhibit G-5) in which Ms. Roy stated among other things that: "I was not consulted about a staffing or training strategy and I am not prepared to take on the responsibility of developing new staff at present." Ms. Johnson then indicated that she would have to consider her options in light of Ms. Roy's refusal to do her job. That same day Ms. Johnson prepared a letter to Ms. Roy (Exhibit E-7) indicating that Ms. Roy was being rejected on probation because of "... your refusal to perform the full level of your position as OHIP Billing Co-Ordinator at Sioux Lookout Zone, specifically training staff and preparing desk procedure manuals." The letter goes on to state that her employment was terminated effective the next day, that is July 24th, 1998.

[17] Ms. Roy testified that she was taken by surprise when she received from Ms. Johnson the letter of termination. Ms. Roy stated that she did not expect to be dismissed; rather, she thought someone from management or the union would explain the rules to her. Later that afternoon, the Head of Maintenance came to her office and changed the locks on the door and some of her belongings were removed from her office. Ms. Roy was extremely upset by these developments; however, she returned the next day to find that her office door was open and she was able to retrieve the rest of

her belongings. She noted that throughout that day a number of people came to see her including Ms. Johnson's secretary who asked about obtaining training for Ms. Roy's job. She had also received a bouquet of flowers from the staff doctors.

[18] Over the next week Ms. Roy began looking for alternative employment. She was informed that a local school required a secretary for two weeks. She began that job on August 20th. Prior to that, she filed the subject grievance, dated August 7, 1998, in which she grieved her termination of employment, and among other things requested the withdrawal of her letter of termination.

[19] When Ms. Johnson returned to the office on August 9th she was told that Ms. Roy had filed a grievance respecting her termination; she was also advised that Ms. Roy was entitled to a two-week notice period under the Public Service Employment Regulations. Ms. Johnson testified that she regarded the grievance as an indication that perhaps Ms. Roy wanted her job back. She was prepared to reinstate her, provided that she would agree to perform the training duties. Accordingly, she drafted a letter dated August 25th stating:

...

In light of the fact that you have grieved the termination of your employment, I would like to provide you with an opportunity for reinstatement to the position of OHIP Billing Co-ordinator at Sioux Lookout Zone. Please note that I am only willing to reinstate on the basis that you will perform the required duties of staff training and preparing desk procedures as instructed by your supervisor. If you have not contacted me by Friday, August 28th, 1998, I will take this as your refusal of this offer and the termination will stand.

...

(Exhibit E-8)

[20] Ms. Roy was advised by the Personnel Office that they had a letter for her. She picked up Exhibit E-8 at the Personnel Office. Ms. Roy testified that she was feeling extremely stressed at this time as a result of her termination. She consulted Dr. Dooley in his capacity as a Physician; Dr. Dooley was concerned about her level of stress; he testified that he felt she suffered from some degree of clinical depression because of the termination; he referred her to a Dr. Myers, who gave her sleeping medication.

[21] Ms. Roy asked Ms. Gillelan to contact the Branch to request that Ms. Roy be given two weeks to decide whether she wanted to return to work. She expressed reservations to Ms. Gillelan about going back to the job. Subsequently Ms. Gillelan called her at the school and advised her to take the job back. Ms. Roy testified that she remained in a state of shock and did not know if she wanted the job. However, she drafted a letter to Ms. Johnson which stated the following: "I accept the offer of reinstatement. My representative will be in contact with you. If you have any questions you can contact me at ..." (Exhibit E-9). Ms. Roy arranged to have her son deliver the letter to the hospital.

[22] When Ms. Johnson received the letter on Friday, August 28, she called Ms. Roy's home and spoke with her son Jason who advised that she was not available, and would not be available over the weekend. She advised Ms. Roy's son that she had received Ms. Roy's letter and that she expected Ms. Roy to be at work on Monday, August 31st.

[23] On August 31st Mr. Kevin Lundstrom, a Public Service Alliance of Canada representative, delivered a note from Dr. Myers indicating that Ms. Roy was on sick leave until September 14. Ms. Johnson had heard rumours that Ms. Roy was working at the local school. She contacted Ms. Gammon in Winnipeg to discuss the situation, and was advised that Ms. Roy had a right to take a less stressful job while on sick leave for stress. However, Ms. Johnson felt it was necessary for her to confirm that Ms. Roy intended to return to work. On September 9th Ms. Johnson called Ms. Roy at the school; she asked if it was convenient for Ms. Roy to talk with her; Ms. Roy replied no, that Ms. Johnson should talk to the union. Ms. Johnson stated that she just wanted to confirm that Ms. Roy would be at work on September 14. Ms. Roy replied that Ms. Johnson would have to wait until the 14th to find out. She asked if Ms. Roy would be available to meet for lunch, Ms. Roy said she had a luncheon engagement. Ms. Johnson also told Ms. Roy that she did not object to her having a union representative, and that if she wished to extend her sick leave this would not be a problem; however she wanted to know whether Ms. Roy would be returning to work. Finally Ms. Johnson agreed to wait until Monday.

[24] Over the weekend Ms. Roy decided to prepare a letter of resignation. On Monday, September 14th, she delivered the letter to Ms. Johnson, who asked her if she had anything she wanted to say; Ms. Roy said no, that the letter was self explanatory. This letter reads as follows:

This is to advise that I will not be returning to my position of OHIP Billing Co-ordinator in Medical Services. I have changed my mind about accepting your offer of reinstatement.

I realized that I would never be able to return to that environment when you telephoned me at my place of temporary employment. I told you that I was on authorized medical leave. You told me to take all the time I wanted. I expressed my preference that you communicate with my union representative. You indicated that you did not want to involve the union. You insisted that we meet that very day to discuss the details of my return to work, in spite of the fact that I had made it clear that I would not be available, and did not wish to meet. As a result of your call I felt shaken and embarrassed in the presence of co-workers and strangers, and upset for the rest of the day.

My work in the OHIP office was a source of great satisfaction to me for many years, and I had been prepared to continue in the job under Medical Services, notwithstanding your expectations and the poor compensation which you were offering. However, it no longer seems reasonable that I should continue to subject myself to the stress of working in close proximity to you at the zone, or to put my health at risk.

On Friday I was offered a secure position with the school board. In accepting this job I will be taking another substantial cut in pay, but I will be working with staff and supervisors who value each others work and treat each other with respect.

[25] Ms. Johnson waited about a week before responding, and then prepared a letter dated September 21, 1998 accepting Ms. Roy's resignation.

[26] Subsequently Ms. Johnson took steps to staff the Billing Co-ordinator position. The medical services function has since been taken over by McMaster University; however, the duties of the co-ordinator position continue to be performed by an employee of the Medical Services Branch.

Arguments

[27] Counsel for the employer noted that the grievor was on probation following her appointment to the Medical Services Branch in July 1998. Management had a legitimate interest in ensuring that other employees are trained in respect of OHIP billing procedures. Management had the right to direct Ms. Roy to perform those

duties, and she responded by categorically refusing to do them. Given that Ms. Roy was a new, term employee with only two weeks service, management had no choice but to reject her on probation for cause.

[28] Mr. Lindey noted that while the employer had offered to reinstate Ms. Roy in her position that offer was conditional upon her accepting to perform the full range of her duties, including training and the preparation of desk procedures.

[29] Mr. Lindey also submitted that it was entirely proper for Ms. Johnson to contact Ms. Roy to determine whether and when she would be returning to work upon her acceptance of her reinstatement. Counsel for the employer maintained that the letter of resignation which the grievor submitted the following Monday was unambiguous. It fulfilled all the requirements of a *bone fide* resignation: there was clearly a subjective intent to resign coupled with objective evidence of carrying out that intent, i.e. the letter of resignation and the alternate employment that the grievor had secured with the school. Counsel also noted that Ms. Johnson had waited a week before accepting the resignation in order to determine if Ms. Roy would change her mind.

[30] Mr. Lindey pointed out that a resignation in the Public Service is governed by section 26 of the *Public Service Employment Act* (PSEA); in accordance with subsection 92(3) of the *Public Service Staff Relations Act* (PSSRA), an adjudicator has no authority in respect of any form of termination under the PSEA. Furthermore, this is neither a disciplinary action, nor does it relate to a matter under paragraphs 11(2)(f) or (g) of the *Financial Administration Act* (FAA).

[31] Counsel maintained that while the grievor may have been suffering from stress at the time in question, there is no evidence to suggest that the resignation was in any way coerced or that there are any elements of bad faith. Furthermore, there is no evidence that she did not know what she was doing.

[32] Finally, counsel maintained that in accordance with the judgment in *Burchill v. Attorney General of Canada* (1980), 37 N.R. 530 (F.C.A.) it is not open to the grievor at this stage to change the grounds of her grievance and now allege that her resignation was coerced.

[33] In her submissions the grievor read from a prepared statement. The following are excerpts from that statement:

I am here today representing myself. Most people would have thrown the towel in by now, after all I have been dealing with all of this since July 1998. Some of the things I have been dealing with are harrasement (sic), embarrassment, demands, threats, being thrown out of my office, locks changed on my office door, loss of wages, loss of pension and benefits, along with my reputation with the Provincial and Federal Government of Canada.

I have had to deal with lawyers, mediators, unions, and politicians and travel to Ottawa and now Kenora which takes a great deal of time, and money for everyone involved.

...

I really feel that training should have been provided by my supervisor for myself and perhaps if I would have been shown the direction or approach the federal government was taking with this new medical unit I could have been on the same page from the beginning. I had no idea that my co-worker was not welcome or wanted back. I knew that it was a native position and for me to train a non native for the position was unfair not only to Ms. Dooley, but very stressful for myself considering I had taken a \$17,000.00 pay cut.

I was not drinking on the job, I was not stealing on the job, I was not taking long coffee breaks, or I was not late getting back from lunch. Instead I continued to get ready for the new medical unit, working with the program people in Toronto to close the U of T files down and start up the program for the medical unit. A group number had to be applied for and I assisted and provided information to the Finance Officer on how to get this number. I trained for 3 days on how to do the mail, register newborns, and organize the mail for Ministry of Health. I also trained nurses on July 6th at 11:15 - 11:30.

...

My goal with this hearing is to convince you that I am a sincere hard working individual that was treated unfair (sic), and was dismissed unjustly without any training or direction from my supervisor. I was not sure that Ms. Murphy was my supervisor until she came (sic) to my office and started telling me that I was not training properly. I realized that Ms. Johnson was in charge of the new medical unit because she was the one that hired me but that was the extent of my knowledge of who was what and where. I assumed that this was a transaction that would be short because McMaster was going to be taking over in place of the University of Toronto. I had no idea that McMaster would not be taking over the billings.

...

I would like to tell you that I am a human being that prides myself on the work that I have done for Health Canada and the University of Toronto for the past 10 years. I served the native people very well and went beyond my job requirements so that the Federal Government would also get paid for such things as blood work, dental, room services, etc. You will find out from the people here today what kinds of services I did provide for Health Canada and that's why I have the letter and 5 year pin in my file.

I would think that if alcohol, drugs, theft, would have been a factor with me I would then say you have a reason to fire me. However, in most work places you would get a letter and a warning telling you to shape up and you then would have an opportunity to go for treatment. You may even be given some time off work to get your life back in order.

I said no to making up a manual. I said no to staying at a meeting with two supervisors. I said yes to billing, and I even went so far as to say I would do a great job with the billings. I was put at the bottom of the latter (sic) on the pay schedule but I was the longest employee with the U of T. I think you will agree that it was really unfair that my wages be dropped by \$17,000.00 and I be put at the bottom and then expect to train. Please take a moment to be put in my shoes. What would you have done. When I was called over to personnel to pick up the letter offering me my job back she started telling me how I should have done as I was told and grieve later. I know that now but I didn't know anything about unions before that.

In all honesty if a different approach would have been taken and I would have had some training myself, I would have in all likely hood (sic) been part of the team but when you are kicked off the team right from the start its (sic) very difficult and when you are under duress right from the start its (sic) decisions that are forced upon you that may have been made differently under different circumstances.

...

I am not here today to dig up other cases. My case is here before you today. I am here before you today so that this will never happen to other employee's (sic) again and that I be made whole again. Some say I have guts to stand up to the Administrator, others say they wish they could do it but they need their job and money so therefore they are stuck there.

Ms. Johnson is ready to retire. She will have a full pension and full benefits from the Federal Government and hopefully will live a long happy life. I just want some of my happiness back. I have lost all of my security. I have no pension. I

have no future. I have no reputation. I am 46 years old - I had a bright future. Can you help me get my future back?

...

[34] In addition to the above, Ms. Roy referred to the Supreme Court of Canada decision in *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, in support of her contention that the employer is under an obligation to act in good faith and to deal with employees in a candid and reasonable fashion. She stated that the call from Ms. Johnson at the school was the last straw; when Ms. Johnson called her Ms. Roy was already under considerable stress, and had been under doctor's orders to take stress leave.

Reasons for Decision

[35] This case has almost a tragic dimension. The evidence is uncontradicted that Ms. Roy was a hard-working, dedicated and competent employee during the ten years that she worked as the OHIP Billings Co-ordinator for the University of Toronto. In the summer of 1998 she found herself doing essentially the same job, but for significantly less money, under the direction of a different employer who regarded her as a new employee. I believe that Ms. Roy never fully understood the precarious nature of her position as a probationary employee. Ms. Roy felt it was unfair to require her to perform what she viewed as additional responsibilities for less money; furthermore, she was being asked to train other employees who would be replacing a former colleague with whom she had worked closely and well, who was not being retained by the Medical Services Branch. All these circumstances were understandably galling to her, and may have ultimately led her to submitting exhibit E-11, which the employer has characterized as a letter of resignation.

[36] The test for determining whether an employee has resigned has been described as follows:

In determining whether or not an employee has quit his employment, arbitrators are generally agreed that the basic task confronting them is to ascertain the intention of the employee involved. That is, the arbitrator must determine whether or not the employee actually intended to voluntarily sever the employment relationship. There is also a consensus of arbitral opinion stemming from the earliest cases, that the act of quitting embraces both a subjective intention to leave one's employ, and some objective conduct

which manifests an attempt to carry that intention into effect.

(Brown and Beatty, *Canadian Labour Arbitration*, Canada Law Book, 3rd Ed., paragraph 7:7100)

[37] Applying these considerations to the facts of this case it is readily apparent that the grievor did in fact resign. From Ms. Roy's own evidence it was clear that in the days prior to submitting her resignation she harboured serious doubts as to whether she wished to continue to work at the Zone hospital, in view of the events that transpired since she became an employee of the MSB. Finally, on the Friday prior to submitting her resignation, when she spoke with Ms. Johnson over the phone at her place of work, Ms. Roy told her in effect, that she would only let her know on the following Monday if she intended to return to work. According to Ms. Roy's own testimony, over that weekend she resolved that she would not be returning to work and drafted exhibit E-12. She then submitted that letter first thing Monday morning, i.e. on September 14th, directly to Ms. Johnson. When Ms. Johnson asked her if she wished to discuss the matter, she indicated that the letter spoke for itself, which indeed it did, and there was nothing more to say. She then left the hospital and never returned.

[38] At no point in her testimony did Ms. Roy indicate that she did not have the intention to resign, or that she was suffering from a psychological or mental condition which prevented her from forming the intention to submit her resignation. This is not to say that Ms. Roy was not suffering from considerable stress as a result of the events in question; but this is far from sufficient to justify a determination that the resignation was not in fact voluntary.

[39] While I have considerable sympathy for Ms. Roy and the circumstances in which she found herself, I can find no basis for concluding other than that the letter of resignation noted above was voluntary and demonstrated Ms. Roy's intention to terminate her relationship with the employer through a resignation. At the time that she submitted her resignation she was given a clear choice of resuming her position or walking away from employment with the Zone hospital. She consciously and unequivocally chose the latter. Undoubtedly, she regrets that choice now, and that choice may well be unfortunate, not only for Ms. Roy, but for the hospital which she served so well for ten years. However, neither she nor I can undo that choice. As Mr. Lindey has correctly noted, a resignation is a matter which is under the purview of

the *Public Service Employment Act* and consequently is, generally speaking, beyond the jurisdiction of an adjudicator as a consequence of subsection 92(3) of the *Public Service Staff Relations Act*. That provision reads as follows:

92.(3) Nothing in subsection (1) shall be construed or applied as permitting the referral to adjudication of a grievance with respect to any termination of employment under the Public Service Employment Act.

[40] I have already expressed my regret that these events should have led to the resignation of a dedicated, hard-working and competent employee. Ms. Roy's act of insubordination in refusing to provide training and prepare desk procedures could have been dealt with by Ms. Johnson in less draconian ways; for example, Ms. Johnson could have imposed progressive discipline to impress upon Ms. Roy the need to conform with management's directions and orders. Ms. Johnson was well aware of Ms. Roy's excellent work record with the University and her long experience there. In view of those facts, a less rigid, less confrontational approach by Ms. Johnson would not have been inappropriate. Sometimes it behooves management to defuse a potentially confrontational situation, rather than merely asserting authority. Ms. Johnson chose to do the latter, with unfortunate results for all concerned. However, when Ms. Johnson offered Ms. Roy her job back the employer's action in terminating the grievor essentially became moot. The subsequent severing of the employment relationship was in fact a conscious, deliberate and unambiguous decision on the part of the grievor.

[41] In view of my conclusion that Ms. Roy had terminated her employment by her voluntary resignation, it is not necessary to address the employer's other submissions. For the reasons noted above this grievance is denied for want of jurisdiction.

**Philip Chodos,
Vice-Chairperson.**

OTTAWA, February 1, 2000.