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Date: 20031128

File: 166-2-31752

Citation: 2003 PSSRB 106



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**GARY DOUCETTE**

Grievor

and

**TREASURY BOARD  
(Department of National Defence)**

Employer



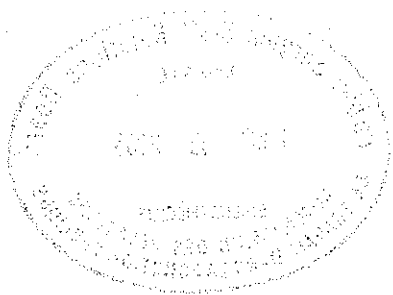
**Before:** Ian R. Mackenzie, Board Member

**For the Grievor:** David A. Mombourquette, Counsel for the Federal Government  
Dockyard Trades and Labour Council East

**For the Employer:** Richard E. Fader, Counsel

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(Decided without an oral hearing.)



## DECISION

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[1] On July 31, 2003, I rendered a decision against the termination of Gary Doucette's employment. I remained seized of the grievance in the event that the parties encountered any difficulties in its implementation.

[2] Mr. Doucette's bargaining agent raised a question about the implementation of the order for compensation in lieu of reinstatement. In a letter to the Board, received on September 26, 2003, the bargaining agent articulated the question as follows:

[...]

*At paragraph 101 of the decision, the adjudicator states that a suspension of eight months would have been appropriate discipline, given his conduct. Then in paragraph 109, the adjudicator states that Mr. Doucette should be awarded 12 months salary as of the date of the decision. Given that the initial suspension without pay commenced on June 28<sup>th</sup>, 2002 the eight months' suspension period should have ended on March 28<sup>th</sup> 2003.*

*Was it the adjudicator [sic] intention that the Department pay Mr. Doucette back-pay for the period from March 28<sup>th</sup> 2003 until the date of the award, i.e. July 31<sup>st</sup> 2003?*

[...]

[3] The parties submitted written representations on this issue.

[4] Counsel for the bargaining agent, David A. Mombourquette, submitted argument as follows:

*As is apparent from the question which we posed above, the issue to be decided is whether Mr. Doucette is entitled to compensation for the period of time between the expiry of his eight month suspension (i.e. March 28, 2003) and the date of the Adjudicator's decision (i.e. July 30, 2003). It is our position that he should be compensated.*

*The Adjudicator's decision makes it clear that the employer did not have cause to dismiss Mr. Doucette. In the ordinary course, this would have resulted in the reinstatement of Mr. Doucette together with any back-wages and benefits up to the date of the Adjudicator's award. In the case where a grievor has a suspension substituted for a dismissal, the suspension period will usually be deducted from any award or back pay and benefits. Accordingly, had the issue of reinstatement not been challenged by the employer, Mr. Doucette would have been entitled to both reinstatement as of July 31, 2003, and compensation for lost*

wages and benefits during the period of March 28, 2003 to July 31, 2003.

The Adjudicator's award went on to determine that this was not a proper case for the reinstatement of Mr. Doucette, due to the breakdown of the relationship between Mr. Doucette and the employer. While we do not dispute the authority of an adjudicator to award a monetary settlement in lieu of reinstatement in appropriate circumstances, it is clear from the jurisprudence that such a remedy is extraordinary. The payment of a monetary award is to compensate for eliminating the right of an improperly dismissed employee to reinstatement. Accordingly, the twelve month monetary award granted in the Adjudicator's decision is directly and exclusively connected to the loss of Mr. Doucette's right of reinstatement.

We submit that had the Adjudicator intended that the twelve month award would cover both the loss of the right of reinstatement, plus the period of time from the end of the suspension to the date of the Adjudicator's award, that the Adjudicator would have so specified. While there are arbitration decisions where an employee has been reinstated without back-pay, those decisions usually indicate that the dismissal has been overturned and a suspension submitted for the period from dismissal to the date of the Adjudicator's award. Again, had the Adjudicator intended for Mr. Doucette's suspension to continue up to July 31, 2003, the Adjudicator would have so indicated. By imposing only an eight month suspension, the Adjudicator must have intended that there be compensation to Mr. Doucette for the remaining period up to the date of the Adjudicator's award.

[5] Counsel for the employer replied as follows:

While it seems clear that the Adjudicator fully cast his mind to the issue of remedy in making the 12-month damages award, it is the position of the employer that the Adjudicator is in the best position to answer the question posed by Mr. Mombourquette. As a result, we leave it to the Adjudicator to resolve this matter.

#### Reasons for Decision

[6] The remedy set out in paragraph 109 of the decision reads as follows:

[109] Taking into account Mr. Doucette's age and length of service, 12 months' salary at the rate of pay for his classification and level on the date of this decision is appropriate.

[7] In assessing the appropriateness of the discipline imposed (termination), I concluded as follows:

*[101] Based on the above considerations, I conclude that the April 16, 2002 incident does not qualify as a culminating incident justifying discharge. The incident was, however, a serious matter and given the earlier disciplinary offences, one that deserves significant discipline. Taking into consideration the earlier disciplinary offences relating to his confrontations at the gate, as well as the spontaneous nature of the insubordination, a lengthy suspension of eight months would have been appropriate discipline. In coming to this conclusion, I have also considered the fact that problems with workplace relationships were not identified in Mr. Doucette's performance appraisals or in any counselling letters. In fact, his performance appraisal for the period ending April 2000 (Exhibit G-3) noted an improvement in his attitude toward supervision.*

[8] Compensation in lieu of reinstatement was determined to be an appropriate remedy in all the circumstances of this case. The amount of 12 months was determined to be an amount that adequately reflected the grievor's age and length of service. This amount was intended to be the full extent of the remedy for Mr. Doucette.

[9] The reference in paragraph 101 to what would have been appropriate discipline referred to the appropriate discipline in the event of reinstatement. My conclusion that reinstatement was not appropriate renders my earlier assessment of appropriate discipline academic. The remedy of 12 months of salary is, therefore, a comprehensive remedy that takes into account all the circumstances of the case.

[10] In conclusion, the remedy order for Mr. Doucette was 12 months' salary and this is his total entitlement under this order.

**Ian R. Mackenzie.  
Board Member**

OTTAWA, November 28, 2003.

