

Public Service Staff
Relations Act Staff Relations Board



Before the Public Service

BETWEEN

AMANDA KATHLEEN DAY

Complainant

and

CAPTAIN B. BLATTMANN and NEIL BRIGHT

Respondents

RE: Complaint under section 23 of the
Public Service Staff Relations Act

Before: [Stephen Kelleher, Q.C., Board Member](#)

For the Complainant: [Dan Quigley, Federal Government Dockyard Trades and
Labour Council \(Esquimalt\)](#)

For the Respondent: [Richard Fader, Counsel](#)

Heard at Victoria, British Columbia,
October 20 and 21, 1999

These proceedings arise from a complaint made by Amanda Day pursuant to Section 23 of the Public Service Staff Relations Act. That provision reads as follows:

23. (1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed:
- (a) to observe any prohibition contained in section 8, 9 or 10;
 - (b) to give effect to any provision of an arbitral award;
 - (c) to give effect to a decision of an adjudicator with respect to a grievance; or
 - (d) to comply with any regulation respecting grievances made by the Board pursuant to section 100.
- (2) Where, under subsection (1), the Board determines that the employer, an employee organization or a person has failed in any manner described in that subsection, the Board may make an order directing the employer, employee organization or person to observe the prohibition, give effect to the provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate.
- (3) An order under subsection (2) directed to a person shall:
- (a) where that person has acted or purported to act on behalf of the employer, be directed as well
 - (i) in the case of a separate employer, to the chief executive officer thereof, and
 - (ii) in any other case, to the Secretary of the Treasury Board; and
 - (b) where that person has acted or purported to act on behalf of an employee organization, be directed as well to the chief officer of that employee organization.

The allegation before me is that the Respondents acted in a manner contrary to Sections 8, 9 and 10 of the Act. Section 8(2) is the specific provision upon which Counsel for Ms. Day relies:

8(2) Subject to subsection (3), no person shall:

- (a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;
- (b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or
- (c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee
 - (i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or
 - (ii) to refrain from exercising any other right under this Act.

The original complaint was in respect of not only the Respondents before me but also Mr. Michael C. Hortie. Counsel for the three Respondents objected to the jurisdiction of the Board to hear the matter. It was the position of Counsel that the allegations of the Complainant did not come within the ambit of section 23.

The Board heard these objections in a hearing conducted on March 17, 1998. The Board published its decision on August 24, 1998. See Day -and- Blattmann, Bright and Hortie, PSSRB File Nos. 161-2-809, 161-2-810 and 161-2-812 [1998] C.P.S.S.R.B. No. 77.

Board Member R. Vondette Simpson, who heard the matter, concluded that:

...the majority of the allegations in the material submitted by the complainant do not come within the ambit of section 23.

The Board went on:

Some of these concern the details of a sexual harassment complaint which is now before the Canadian Human Rights Commission. I would have to agree with Mr. Houston, counsel for Mr. Hortie, that none of the allegations made by Ms. Day against Mr. Hortie comes within the ambit of the prohibitions in section 23 of the PSSRA. The Board hereby dismisses the complaint against Mr. Hortie (Board file 161-2-812)

Despite their vagueness and non-specificity, the Board will entertain evidence and argument on the following allegations raised in the material attached to the complaints (Exhibits R-2, R-3 and R-4) as they may fall within the ambit of section 23 of the PSSRA:

- (1) the allegation that as a result of her grievance the complainant was dismissed from the workplace and told not to return by Captain Blattmann and was instructed to remove her things from the workplace by Mr. Bright's office. I note that two of the people named, Laura Leigh and Steve Anderson, are not named as respondents;
- (2) the allegation in her letter dated November 4, 1996 to the PSSRB that Captain Blattmann and Mr. Bright provided her with documentation that stated she had no grievance rights. The letter continues:

...On my specific requests to obtain information on my grievance rights and rights to be informed I was told that I was to stop written communications. Agents acting on behalf of Captain Blattmann and Mr. Bright also refused to acknowledge my grievance rights and rights to be duly informed. I was also advised on occasions not to have union representation with me when confronted with intimidation and coercion by management staff on behalf of Captain Blattmann.

The allegations in respect of which the Board has jurisdiction do not include any allegation against Mr. Hortie. He is therefore no longer a respondent in these proceedings.

The Department of National Defence hired Ms. Day in April, 1994, to work as a Machinist Apprentice for a four-year period. That is the length of the apprenticeship. On March 14, 1995, Ms. May filed a complaint alleging harassment and sexual harassment in respect of eight other employees. These allegations were investigated pursuant to CPAO (Civilian Personnel Administrative Order) 7.18.

On June 29, 1995, Captain Blattmann, the then-Commanding Officer of Fleet Maintenance, wrote to Ms. Day, reporting on the outcome of the investigation:

1. (PB) On 14 March 1995 you registered a complaint of harassment and sexual harassment against eight Ship Repair Unit Pacific employees. Accordingly a team led by Ms. M. Broughm the Administration Officer at Queen's Harbour Master was tasked to investigate the circumstances surrounding the allegation, to make findings, and recommendations where necessary. The initial report required clarification and therefore Cdr. E. Paquette, the Production Officer at Ship Repair was tasked to review the findings and submit his report. Hence the delay in responding to your complaint.

2. (PB) The investigation was unable to determine that harassment did occur in seven (7) of the eight (8) cases. In the case of Mr. M. Hortie, there is apparent substantiation of harassment. He will now be subject to the disciplinary process and will be given the opportunity to respond to the allegation. You will be duly informed of the results of the disciplinary proceedings. In addition you are offered the opportunity to meet with my representative in this matter, Cdr. E. Paquette, who can be reached at local 363-7229, to listen to the rationale for the conclusions. You may wish to be accompanied by a person of your choice.

3. (PB) I recognize that it has been a difficult time for you and for those called upon for information. It is my intention to seek professional assistance for all employees in the affected areas to aid

us in the healing process. Information as to timing and manner of this assistance will be relayed to you as soon as possible.

4. (U) Having carefully reviewed the findings of the investigation, I am in complete accord with the action you have taken by officially raising a complaint of harassment. It is acknowledged that the environment in Ship Repair Shops needs to be corrected. Let me assure you that management is most determined to promote a healthy work environment to all of its employees. Following receipt of your complaint, instructions were immediately issued to all employees in the form of a Ship Repair Temporary Memorandum to re-enforce the Harassment Policy in effect in the unit. A copy of the SRTM 19/95 is enclosed for your information. There is much more work still to be done, for instance in addressing the use of offensive language and the posting of offensive material in the workplace, and ensuring behaviour conducive to a harassment-free environment. Let me assure you that further steps will be taken to police the various Ship Repair work sites to ensure no opportunity exists to intimidate anyone.

5. (U) In conclusion, it is my sincere desire to reestablish as soon as possible, a healthy work environment in the area directly affected by the recent incident. I will seek professional assistance to aid in the healing process and will ask for the understanding and cooperation of all employees in the affected area. You are requested to treat all information related to this matter in accordance with the security classification of this correspondence.

Ms. Day was not satisfied with this letter. She wanted to know the rationale for the decisions. She also wanted to know the process for appealing the decisions. She wrote to Captain Blattmann in this regard on July 24, 1995:

Upon receiving your response to my complaint dated the 8th of March, 1995, I find fault with your assessment with respect to several issues intended to be addressed.

I have not been informed what my rights to appeal are yet, so I am requesting this from you now.

Pertaining to discussing your rationale on handling these matters, I expect that the very least you could do is provide this rationale to me in written form with a signature attached to it.

The request for the rationale for the decisions, in writing, was not an unreasonable one. The harassment policy contemplates that a departmental representative will assist an employee with a complaint. One of the duties of the departmental representative is described in Section 22 (g) of CPAO 7.18.

22. The departmental representative chosen by an employee who has a complaint shall:...
- (g) ensure, in consultation with the senior manager, that both the complainant and the person complained against are advised in writing of the results of the investigation (decision and rationale) and any corrective measures that will be taken. Copies of the actual investigation reports shall not normally be made available to any of the parties involved except through official departmental procedures relating to the provision of material under the Access to Information Act and Privacy Act.

Captain Blattmann replied by letter dated July 26, 1995:

I acknowledge receipt of your letter dated July 24, 1995 and provide you with the following information in response to your queries.

I wish to make it very clear that the findings of the investigation were not my findings but those of an independent investigating officer. I am satisfied that the investigation was conducted in an independent and unbiased fashion; and in accordance with the rules and regulations governing any complaint of harassment as outlined in CPAO 7.18.

With regard to your right of appeal in the current situation, namely on completion of an independent investigation, the complainant does not have an automatic avenue of redress and has no grievance rights or any say in the decision process of the disciplinary hearings. As indicated in paragraph 2 of my correspondence to you dated June 29, 1995, you will be duly informed of the results of the disciplinary proceedings. You will then be given the opportunity to meet with the investigating officer, Cdr. Paquette, to obtain the rationale of the findings.

In conclusion Mrs. Day, let me reiterate that my rationale in handling these matters are in full conformity with the regulations dealing with harassment complaints. In the near future I shall inform you of the findings of the disciplinary proceedings. I trust to obtain your continued cooperation in resolving this difficult and complex issue to everyone's satisfaction. For Ship Repair Unit Pacific to meet its important task of supporting a modern fleet of warships it is essential not only to have a highly trained and skillful workforce but more importantly a healthy work environment to all its employees. My aim is to foster a healthy workplace.

The third paragraph of Captain Blattmann's letter appears to say that there is no right to grieve in respect of the results of the investigation. In fact, the Employer takes the position that there is a right to grieve. What Captain Blattmann meant in this letter, he testified, is that when discipline is imposed, that is a matter between the Employer and the person disciplined. The Complainant has no say in that decision and cannot grieve in respect of it. He did not intend to imply that Ms. Day could not launch a grievance in respect of the outcome of the investigation.

Ms. Day was not deterred. She wrote again on July 31 and August 1, 1995, asking for a written explanation of the decisions.

On August 3, 1995, Captain Blattmann wrote to Ms. Day again:

Further to my correspondence dated 29 June 1995 I wish to inform you of the conclusion reached in the harassment complaints you initially raised in March 1995. As you know, an extensive investigation was conducted by an independent team who submitted to me a comprehensive report of their findings. You had raised harassment complaints against eight employees and co-workers. I wish to disclose to you the findings and the administrative action taken in each individual cases:

Mr. Bialkowski: The allegation of sexual harassment not substantiated; complaint against Mr. Bialkowski cannot be upheld.

Mr. Mitchell: The allegation of sexual harassment not substantiated; complaint against Mr. Mitchell cannot be upheld.

Mr. Leech: The allegation of sexual harassment not substantiated; complaint against Mr. Mitchell [sic] cannot be upheld.

Mr. Lucoe: The allegation of sexual harassment not substantiated; complaint against Mr. Mitchell [sic] cannot be upheld.

Mr. Parkinson: The allegation of sexual harassment not substantiated; complaint against Mr. Mitchell [sic] cannot be upheld.

Mr. McKenzie: The allegation of sexual harassment not substantiated. However, Mr. McKenzie was personally counselled by the Commanding Officer of the fact that he did not take necessary and timely action to address the complaints brought forward, specifically with regard to the display of unacceptable photographs, calendars, etc. He was advised to be more proactive whenever an employee believes the display of such material contravenes SRUP policy.

Mr. Smith: The allegation of sexual harassment not substantiated. However, Mr. Smith was personally advised by the Commanding Officer to be more sensitive to issues related to the display of unacceptable material. As a senior manager, Mr. Smith was told to be fully cognisant of SRUP policy in matters dealing with display of unacceptable material. In addition he was directed to attend a Harassment Awareness course at the earliest opportunity.

Mr. Hortie: The allegation of sexual harassment was found unsubstantiated. However, the Commanding officer found Mr. Hortie culpable of abuse of his authority by obtaining your home telephone number. More specifically, he obtained your telephone number under the false pretext of keeping you informed of the hiring status at SRUP. It was not within Mr. Hortie's mandate to inform potential apprenticeship candidates whether or not they will be hired or when the hiring will actually take place. Such responsibility rests solely with the Base Civilian Personnel Officer (BCPO). The evidence clearly shows that Mr. Hortie sought to obtain your phone number for the purpose of establishing a relationship with you.

As a result of the abuse of power I have awarded Mr. Hortie a suspension of five days. In assigning the disciplinary action, I took into consideration the fact that it was Mr. Hortie's first offense after many years of satisfactory performance at SRUP.

In summary Ms. Day, I am satisfied with the conclusion of the investigation. A great deal of effort was dedicated to thoroughly

address the complaints you had raised; no energy or resources were spared to seek the facts. Furthermore, I am satisfied that the investigating officers performed their tasks in a very professional manner and did abide to the rules and regulations governing harassment complaints.

In consultation with BCPO and my Production Superintendent, I am proceeding to hire an independent agency to provide professional assistance for all employees in the affected areas to aid in the healing process.

It is my wish to meet with you and address any query you may have with regards to the findings of the investigation and the administrative disposition of the offenses. I have taken liberty of contacting Ms. Susan Hughes, the chairperson of the HEART Committee who gladly consented to discuss with you the appointment of an advisor as you have requested in your correspondence of 1 August 1995. Could you please contact Ms. Hughes at Shop 41, 363-2130 or at her residence [telephone number]; she will be happy to provide you assistance in this matter.

I am looking forward to meeting you and your selected advisor at your earliest convenience. Please contact my secretary, Mrs. S. Duresene at Local 2314, to set an appointment.

This letter reaches a different conclusion from the decision communicated on June 29, 1995 and set out above. In that letter Ms. Day was advised that in respect of Mr. Hortie, there was "apparent substantiation of harassment". According to the letter of August 3, "the allegation of sexual harassment was found unsubstantiated".

Captain Blattmann gave evidence about this apparent discrepancy. A team headed by a Ms. Broughm did the original investigation. She reported on May 5, 1995, that the complaint was not substantiated. That report was flawed in some manner. The team was instructed to carry out the investigation again. It made a second report on May 31, 1995. This time it upheld the complaint.

Captain Blattmann testified that he “had trouble” with the second report. He assigned Commander E. Paquette to look at the matter a third time. Cdr. Paquette concluded in a report dated June 26, 1995, that Mr. Hortie “...did not sexually abuse Ms. Day as defined in CPAOs.”

On August 11, 1995, Captain Blattmann wrote to Ms. Day inviting her to meet to discuss the issues further:

I take this opportunity to request a meeting with you on 17 August 1995 at 9 a.m. in my office. As previously mentioned in my correspondence to you, I view it as important the need to bring to a satisfactory conclusion the matters related to the recent investigation.

I am prepared to review in detail all of the issues relating to the findings of the investigation including the rationale of the administrative measures I have taken against those found to have transgressed the Department's regulations. More importantly it is my genuine desire to find out first hand how you feel and whether I can provide you with added information or assistance.

I trust you will agree with me that time has arrived to look forward and seek how best to reestablish a harmonious work relationship in the affected areas. We must, in cooperation with all concerned, proceed with a healing process so necessary to all employees who were directly and indirectly affected by the investigation.

I am looking forward to meeting you on 17 August 1995. Your supervisor and foreman were informed of this request and will ensure your availability to meet with me.

Ms. Day replied on August 18, refusing to meet:

Thank you for your correspondence dated 11 August 95.

It would not be appropriate for myself to discuss the particulars of my complaints with you following your decision dated June 29, 1995, as

your response to my July 24, 1995 letter was negative on observing my rights of appeal.

Your response was such that I have no rights of appeal or any other method of recourse.

I have already requested information in my earlier correspondence to you and you have failed to comply.

In your letters you are persistent in mentioning a healing process, however, I have looked through CPAO 7.18 and I do not see this inclusion.

Concerning any involvement of a healing process with yourself and the unit, sir, it could be conceived as a contravention of my human rights, especially at this point, given the inadequacy of your "full conformity" in process to adhere to the strong policy of our workplace.

I strongly suggest that you focus your concerns on fostering steady proactive approach in general terms of prevention and greater understanding.

But keep your healing process ideas to yourself.

Captain Blattmann answered this letter on August 30:

I wish to express my consternation and disappointment in your lack of desire to bring to a conclusion the harassment case. I have on repeated occasions made every effort to meet you so that all of your concerns could be discussed face to face. As a last resort I even sought the assistance of Dr. Malcolm to help in arranging for a meeting with you, but to no avail. I could consider your refusal to meet with me as an act of insubordination.

I am also very disappointed with your rejection to take part in the healing process since it is one of the essential steps leading to normal work conditions. Let me assure you that I have no intention to force your participation.

With regard to your rights of appeal or any other method of recourse; let me reiterate that you have no appeal rights against the findings of the report or against the disciplinary action I have taken in this regard. Should you not be satisfied with the findings or award of disciplinary measures, there are other avenues open to you. I am sure you are aware of these other avenues, namely the Public Service Commission and the Canadian Human Rights Commission.

Since you do not wish to meet with me, as of today I will cease to correspond with you in writing on this very topic. I consider this case closed. I will nonetheless keep my office door open to you should you change your mind and decide to meet with me in person.

On February 16, 1996, Ms. Day wrote to the Base Civilian Personnel Officer (BCPO), the respondent Neil Bright:

I spoke with you on the telephone several weeks ago about some of the problems I have been having with the Ship Repair Unit Pacific.

Following the conclusion of the investigation I should have been informed of my rights to appeal and my rights to access information concerning the disposition of harassment complaints filed through your office by myself on March 8, 1996.

I have not been receiving satisfactory assistance from your office.

I would like to receive immediately, from the individual who was designated to handle the processing of my complaints, a written explanation of the decision rendered and the reasons justifying it.

I have been waiting for eight months, and I consider this to be an 'undue delay'.

I fully understand that Mr. Hortie was found culpable of sexual harassment and I believe that I have the right to be informed by Captain Blattmann why exactly he would condone the sexual harassment. I would like this rationale delivered to me in written form, as previously requested in my written letters dated Monday, July 24, 1995, Monday, July 31, 1995, and Tuesday, August 1, 1995.

I am forwarding to you for your information two copies of the following: an excerpt from Routine Orders circulated on the base dated March 2, 1995 outlining an amendment from the Treasury Board for prompt disclosure to complainants 'in the interest of fairness', and a copy of Page C-1 Chap. 302 App. C (01-09-91) from the Treasury Board Manual - Personnel management - Human resources which concerns the following statement:

During the investigation of a complaint, these steps must be followed by the person designated to accomplish this function:

--inform the parties in writing of the decision rendered and the reasons justifying it without undue delay.

Your prompt attention to this matter would be appropriate at this time.

Mr. Bright replied on February 29, 1996:

I am writing in reply to your letter of February 16, 1996.

In your second paragraph, you indicate that you should have been advised of your right to appeal and your rights to access information concerning the disposition of your harassment complaints.

With respect to a "right of appeal", your letter to Captain (N) Blattmann dated July 24, 1995 was answered by his letter of 26 July, 1995. There is no formal "right of appeal" in the departmental harassment complaint policy. If you refer to CPAO 7.18 you will, however, note that complaints may be pursued as grievances or via other redress processes such as a complaint to the CHRC. I believe Captain (N) Blattmann was referring to disciplinary action which might be taken against the other parties named in your complaint when he said "the complainant does not have an automatic avenue of redress and has no grievance rights or any say in the decision process of the disciplinary hearings".

Captain (N) Blattmann's letter of 3 August 1995 informed you of the conclusion reached in the harassment complaints you initially raised in March 1995. Although detailed written rationales were not provided in all cases, Captain (N) Blattmann offered to meet with you to review in detail all the issues relating to the findings of the investigation. I believe a meeting would provide you with much of the information you are seeking as well as provide the opportunity for dialogue between yourself and the CO on any other issues you wish to have addressed. I am aware you have filed a request under provisions in the Privacy Act and should have subsequently received a copy of the investigation report which will hopefully provide insight into the disposition of the complaints.

You state that you have not been receiving satisfactory assistance from my office and that you want to receive a written explanation of

the decision and the reasons justifying it from the individual who was designated to handle your complaint. The role of the Civilian Personnel Officer is explained in CPAO 7.18. It is clearly not within my jurisdiction to comment on the rationale for the decisions reached by the Commanding Office. As I mentioned to you in our last telephone conversation, if you choose not to meet with Captain (N) Blattmann, your inquiries must be directed to him in writing. Since I am not in a position to answer your concerns, I am referring your letter to the Captain (N) and will discuss the issues you have raised with him.

This letter makes it clear for the first time that a grievance may indeed be pursued respecting the outcome of the harassment investigation.

On February 28, 1996, Ms. Day in fact initiated a grievance. In the grievance she sought an explanation of the decisions, including the rationale.

On March 20, 1996, after the second stage grievance meeting was held, Captain Blattmann wrote to Ms. Day:

I wish to inform you that a second level grievance hearing was held in my office on March 13, 1996 in the presence of your representative Mr. Quigley. You were absent having elected not to attend the hearing.

Mr. Quigley conveyed to me that you grieve the fact that management failed to provide you with adequate information pertaining to your complaints of March 8, November 21 and 27, 1995. As corrective action you requested a written explanation of the decisions rendered on the harassment complaints including rationale supporting the decisions made.

Having reviewed the pertinent regulations I do uphold your grievance on the grounds that management failed to provide you feedback on the November 21 and 27, 1995 incidents. As corrective action let me convey to you the findings surrounding these two complaints.

The Management of Ship Repair Unit carried out a disciplinary investigation. Mr. C. Rose was found to have misconducted himself

and was awarded a three (3) day suspension from work which he served on 18 through 20 December 1995.

You also grieve about the March 8, 1995 complaints. Let me remind you of my correspondence dated 3 August 1995, sent to you by registered mail, wherein the findings of the investigation and the disposition of the cases were indeed disclosed to you in accordance with CPAO 7.18 article 25g. You will also recall that within the letter an offer was made to meet with you for the sole purposes of explaining all of the rationale utilized in rendering the decisions. Regrettably you chose at the time not to meet with me.

In the course of addressing your grievance, I received by coincidence on March 1, 1996 relating correspondence from Mr. Bright, the Base Civilian Personnel Officer. He sent me a copy of your letter to him dated February 16, 1996 wherein you continue to express concerns of the lack of satisfactory information pertaining to your March 8, 1995 complaints.

Notwithstanding my correspondence of 3 August 1995, I will once again attempt to provide you with additional information dealing with the March 8, 1995 complaints.

Find enclosed at Annex A a full and comprehensive disclosure of information extracted from the formal investigation report into the alleged sexual harassment complaints you raised against seven (7) employees of Ship Repair Unit. I have sought to provide you therein with all of the rationale in support of my decisions. I sincerely hope the information contained in Annex A does indeed allay any lingering concerns you may still harbor on this matter.

In conclusion, I must remind you that the information provided here above and in Annex A are considered to be "PROTECTED B" information and should only be provided to individuals that have a legitimate need to know. It should be noted that this information is being provided to you in accordance with Departmental Harassment policy and regulations.

On March 13, 1996, Ms. Day wrote to Mr. Bright setting out her concerns:

It has come to my attention that the BCPO is not providing me with satisfactory assistance to resolve the harassment issues affecting my training and employment opportunities. These harassment issues hindering my ability to perform normal workplace duties arose from the fact that I was sexually and personally harassed by coworkers at

Ship Repair Unit Pacific. I was also subjected to retaliative harassing behaviour and suffered multiple recriminations as well for having raised the issues of my complaints.

Following an internal investigation tasked by Mr. Blattmann of Ship Repair I waited diligently to be informed of my rights to appeal the decisions. However, I waited so long that I began to realize that someone had forgotten to not only inform me of the results of the investigation but also what my rights to appeal the decisions are.

At this time it also came to my attention that possibly I was completely missing something by virtue of the fact that I am not educated on the departments policies and procedures for dealing with situations like this. So I requested that I be referred to someone who was capable of providing me with guidance and support on what to do next.

On the 20th of September of 1995 the letters of these requests and considerations which I had forwarded to Mr. Blattmann of Ship Repair were forwarded by him following a telephone conversation with Carol Comberbach accompanied with a note stating that these letters should be held on my personal file. Why were my requests not actioned?

I made it clear at that time that I wished to be kept informed on the outcome of the investigation.

I feel that Mr. Blattmann provided em with very false and deceiving information in his letters of response to me.

I feel that Ms. Comberbach had the responsibility to deal with the requests made in my letters.

In addition to these written requests I endured several antagonizing conversations with Ms. Comberbach in which I was told explicitly that I do not have the right to be informed of the outcome of the investigation unless I meet with Mr. Blattmann in person. And that I could not expect to receive this information in writing.

So following several months of waiting to be informed of this information so that I could proceed with pursuing resolutions that would allow me to pursue my workplace objectives, I sent a fax to Ms. Comberbach again with both a request for a written explanation and some supporting documentation.

On February 16, 1996, I wrote an additional letter to you explaining my request further.

Thank you for your letter dated 29th of February, 1996.

I feel that once I am correctly informed with the information which is long overdue, that I will be able at last to pursue a remedy seeking process.

To support this request further I would like to draw your attention to the CPAO 7.18 where it states on page 7:

22.g. ensure, in consultation with the senior manager, that both the complainant and the person complained against are advised in writing of the results of the investigation (decision and rationale) and any corrective measures that will be taken. [Copies of the actual investigation reports shall not normally be made available to any of the parties involved except through official departmental procedures relating to the provision of material under the Access to Information Act and Privacy Act.]

It is starting to appear that the blatant refusal to acknowledge my written requests as stated in writing by me in July and August of 1995 are somewhat constructively being used to hinder my resolution seeking process.

I am not satisfied with the assistance that I am receiving from the BCPO, as I have previously stated many times since the summer of 1995 directly to the staff relations officer, Carol Comberbach.

If for some reason you feel that my request for a written explanation in accordance with the CPAO 7.18 *under section 22.g.* is not honorable please consider this letter as a grievance and please forward it and the necessary documentation to DGPR on my behalf. If you cannot for some reason forward a grievance on my behalf then I would like to be informed in a timely fashion where to address a letter of grievance to.

Thank you very much for your attention to this matter.

Mr. Bright replied on March 28, 1996:

This letter is in response to your letter dated 13 March, 1996.

I'm not sure what assistance this office can provide other than to verify what actions have been taken to answer your concerns.

For example, I regret I cannot address your reference to "retaliative harassing behaviour" because I don't know what specific incidents you may be including. Any complaints that I am aware you have raised have been investigated by the Ship Repair unit. Your right to grieve and/or complain to third party has been explained and is also

part of the department's harassment policy, a copy of which was given to you when you first filed your original complaint. Guidance and information on related policies and procedures have always been available to you through Carol Comberbach, as explained when she assisted you to compile the complaint. You have subsequently filed a complaint with the Canadian Human Rights Commission. You have applied through the Privacy Act for additional information relating to the formal departmental investigation. These are both appropriate steps for you to have followed.

I have discussed with Captain (N) Blattmann your previous letter to me, dated February 16, 1996, concerning your requests for the results (decisions and rationale) of the investigations of your complaints. As I said in my reply to you, Captain (N) Blattmann had responded to your original complaint (March 1995); he will be addressing your request for additional rationale in his second level reply to your grievance, number 96-F-ESQ-010, received 29 February 1996. This same response will also address later complaints which you made to the SRUP directly, not through this office.

If you are not satisfied with the response to your grievance, you may of course transmit the above-noted grievance to the next level of the grievance procedure. Please find enclosed a grievance transmittal form. You may wish to file the transmittal through your representative, Mr. Dan Quigley, or it may be forwarded directly to your supervisor or Mr. J. Ferguson, AdminO, Ship Repair Unit Pacific.

You mention in your letter that you feel Ms. Comberbach had the responsibility to deal with your requests. Captain (N) Blattmann responded to your letters of request and copies were then forwarded to Ms. Comberbach for retention purposes only. Again, as I mentioned in my January 1996 telephone conversation with you, if you have additional questions or concerns which you feel haven't been addressed, please advise Captain (N) Blattmann of the specifics, with a copy of your correspondence to this office.

On April 10, 1996, Captain Blattmann wrote to Ms. Day. In this letter he explained for the first time the actual process that had led to his conclusion that the complaint against Mr. Hortie should not be upheld:

I had the opportunity of meeting with Mrs. Carol Comberbach from Base Civilian Personnel Office on 4 April 1996. Mrs. Comberbach informs me of your recent visit to her office and your continued dissatisfaction with regard to the information I provided you in my correspondence of 20 March 1996.

From my conversation with Mrs. Comberbach it would appear there is a further need for me to specifically re-address the issues surrounding Mr. Hortie's case. I am led to believe that you feel I am purposely hiding from you certain facts of the findings contained in the investigation reports. Let me assure you if that is the case it was purely unintentional. It was always my aim to be as open as possible in divulging the findings of the investigation; keeping in mind the highly sensitive nature of this information.

Ever since the conclusion of the investigation into your many complaints against employees of this unit, I have submitted a wealth of information not only to you but also to the Canadian Human Rights Commission, the Canadian Public Service Commission, the Workers Compensation Board of the Province of British Columbia.

Allow me again to review with you all of findings surrounding Mr. Hortie's case. I wish to inform you that three separate investigation reports pertain to his case; hence I shall quote directly from these reports.

REPORT NO. 1 - MS. BROUGHM DATED 5 MAY 95

Findings

The allegations of Amanda Day of sexual harassment by Mike Hortie cannot be corroborated and therefore cannot be upheld. The complaint of Amanda Day toward Mike Hortie regarding an abuse of authority is upheld by this investigation, with the understanding that there were mitigating circumstances in Mr. Hortie's personal life which affected his decision to pursue a friendship with Amanda Day outside the workplace.

REPORT NO. 2 - MS. BROUGHM DATED 31 MAY 95

Findings

The complaint of Amanda Day toward Mike Hortie regarding an abuse of authority is upheld by this investigation, due to the fact that the team finds it reasonable for Ms. Day to have believed that Mr. Hortie exercised influence over her ability to achieve the apprenticeship opportunity and her ability to succeed with her apprenticeship program once she began. The fact that Mr. Hortie did not officially have any influence or power over the apprenticeship program is considered irrelevant when weighed against his behaviour towards Ms. Day by requesting her phone number to keep her advised of the

situation in SRU(P) with regards to apprenticeship status, and when weighed against the fact that Mr. Hortie pursued Ms. Day outside the workplace with the knowledge that as an apprentice Ms. Day would eventually come to work with him during an orientation phase, and weighed against the presence of inherent authority in the journey person/apprentice relationship. The complaint of Amanda Day toward Mike Hortie regarding sexual harassment is upheld because the team determines that the above information makes it reasonable for Amanda to have perceived that conditions of sexual nature were being placed on her opportunity to advance in her apprenticeship.

REPORT NO. 3 - CDR PAQUETTE 26 JUN 96

Cdr. Paquette's report does not have a "findings" part per se but the following two paragraphs summarize his views and findings:

Para 8

Throughout my interview with Ms. Day I attempted to have her tell me how Mr. Hortie had applied job-related pressure on her in order to have a sexual relationship. Her responses were consistent in that the relationship was based on Mr. Hortie's emotional needs and Ms. Day's fear of being responsible for his causing himself an injury or death. Each time the relationship is ended it is reestablished when Hortie brings forth his emotional needs and Day succumbs to his manipulation. With some direction she does also mention (as a secondary reason) that she had fears for her job and apprenticeship but she does not say that Hortie was the cause of those fears.

Para 9

Based on the interviews carried out by the investigating team and the subsequent interviews I had with the principals, it is my opinion that while Mr. Hortie did abuse his authority, he did not sexually abuse Ms. Day as defined in CPAOs. It is also my opinion that Hortie did, either intentionally or unintentionally, emotionally manipulate Ms. Day. This manipulation did carry-over to the workplace and did affect the ability of Ms. Day to carry out her duties in a normal manner. While there are presently no regulations which prohibit relationships between DND employees working in the same environment it is incumbent upon the individuals to keep their personal lives away from the work site. When individuals do not adhere to this unwritten rule it is management's responsibility to take action. In this case the principals have been separated however much stronger action is warranted in Mr. Hortie's case.

As you can observe all three reports are consistent with regard to Mr. Hortie's abuse of authority. The undersigned fully supported these findings along with the rationale provided and did conclude

that Mr. Hortie misconducted himself. Subsequently I awarded him five days leave without pay.

The issue became rather more complex when the undersigned had to address the alleged sexual harassment complaint you raised against Mr. Hortie. In the initial investigation report Ms. Broughm concluded there was no corroboration in support of sexual harassment. When the report was reviewed by management and Base Civilian Personnel Officers it became apparent that the investigation team had omitted some rationale behind their deliberations. As a result the investigation team was tasked to review once more all of the information contained in supporting documentation. As well the team was explicitly told to re-read the regulations with respect to harassment. These requirements were passed to the team during a meeting with Ms. Broughm, Lt.(N) Barnes, Mr. N. Bright BCPO, Mr. S. Black MARPACHQ Civilian Personnel Staff Relations officer and Cdr. Paquette who represented the undersigned at the meeting.

The team submitted it's second report on 31 May 95 wherein this time the sexual harassment complaint was upheld because *the team determines that the information makes it reasonable for Amanda Day to have perceived that conditions of a sexual nature were being placed on the opportunity to advance in her apprenticeship.*

The conclusions arrived at in the second report still left many unanswered questions in my mind with regard to the culpability of Mr. Hortie. For instance did he or anyone else actually impose conditions of a sexual nature upon your training? Accordingly, I have verbal instructions to Cdr. Paquette to address the issues. I tasked him to conduct additional interviews with the principal figures and their representatives as well as with any witnesses deemed necessary to provide amplifying information.

In his report, Cdr. Paquette concludes that Mr. Hortie did not sexually abuse you as defined in CPAO's. Instead Cdr. Paquette determines that Mr. Hortie did, intentionally or unintentionally, emotionally manipulate you.

A number of observations contained in the three reports did mitigate against upholding the sexual harassment complaint. I do not agree with the findings of Ms. Broughm's second report on you to advance your apprenticeship. Let me explain why. During the period leading to your acceptance to the apprenticeship program Mr. Hortie interfaced with you for a total of five days only before you wrote the apprenticeship exam. It would therefore appear that he had minimal impact on your preparation and ultimate success in getting the apprenticeship. Hence in my view there was little reason for

you to foster any sense of obligation (of sexual nature in particular) towards Mr. Hortie.

Furthermore, it is most probable you did not know at the time that Mr. Hortie would be designated as your journey-person, and defacto your boss, when and if you became successful in your application for an apprenticeship at SRUP. Mr. Hortie was therefore just another worker.

Your work experience ended at SRUP on 8 October 93, this allowed for a total of 17 to 18 working days in which you developed a friendship with Mr. Hortie. During this period you state that he frequently patted your bottom and you told him to stop but there are no indications you took any further action because as you state quote: *I wanted people to like me because I wanted to get a job*".

During the oral portion of the apprenticeship exam (23 Sep 93) you were asked what would you do if you had a boss who was a jerk. According to the board examiners you gave a text book answer (approach to individual then his/her superior) but later on you chose not to avail of the process.

On the day you were informed of your success in the competition for a position as a machinist apprentice you went to shop 01 to thank the gentlemen for their help. Mr. Brian Smith, a witness, commented that Mr. Hortie received a kiss and a hug for his assistance, while none of the other men were thanked in that manner.

Due to a staffing freeze throughout the Public Service in the Fall of 1993, you could not be hired and Mr. Hortie offered to keep you informed of the status of the apprenticeship. He asked for your home phone number and you eventually obliged him. Over the next two months a relationship developed between you and Mr. Hortie, at the time you were not an employee at SRUP since you were hired only in April 94.

In April 94 Mr. Hortie broke up with his wife, as you began your apprenticeship at SRUP. Transcripts reveal you felt very sorry for him and didn't want to be responsible for any action he might take to end his life. During the period of April to June 94 you cohabited together (Mr. Hortie moved in your house) and carried on a sexual relationship but you repeatedly stated that you did not feel you were living common-law? In the following months your relationship with Mr. Hortie was "on and off" which leads me to believe that Mr. Hortie was indeed successful in emotionally manipulating you.

During the fall of 94 you are still maintaining relations with Mr. Hortie and while you were away on a course in Vancouver you did exchange correspondence with him. When asked why you answered Mr. Hortie's letter if you felt so uncomfortable in the

relationship, you stated "*it was good etiquette*". Also of interest, in his letters to you, Mr. Hortie mentions he is having dinners with your mother and was actually looking after your daughter. This is a rather a perplexing situation, if the relationship was at the time so distressful to you, would you not have confided in your mother and asked her not to invite Mr. Hortie to dinner? Would you not be alarmed to the fact that Mr. Hortie was looking after your very own child? Yet your relationship continued even after your return from Vancouver until January 1995 when it finally broke off and you proceeded to seek a peacebond against Mr. Hortie from the Base Military Police.

It is also germane to observe that throughout 1994 on the work site, many co-workers, supervisors and managers did witness you and Mr. Hortie arriving and leaving work together. They witnessed friendly relationship involving hand-holding, kissing, spending coffee breaks together, including lunch hours. What the co-workers witnessed can be described as mutual relationship.

In summary, I have to the best of my ability addressed all of the pertinent facts above, carefully read all the transcripts of the many interviews before arriving at a decision. More importantly I sought the professional advice of Base Civilian Personnel Officers, of Regional Staff Relations Officers, of my senior managers, in particular Cdr. Paquette before making my decisions.

I was fully cognisant of the gravity of the allegations and of the need to remain totally impartial. As already mentioned I found Mr. Hortie culpable of misconduct for abuse of power and did award him a penalty; again after consulting with expert authority. Secondly it is my belief that Mr. Hortie did indeed emotionally manipulate you. I am aware however that no regulations exist which prohibit relationship between DND employees working in the same environment. In which case it is incumbent upon the individuals to keep their personal lives away from the work site.

I could not however uphold the sexual harassment complaints you raised against Mr. Hortie. There are no concrete facts which can conclusively demonstrate that sexual harassment did occur on the work site. On the Balance of probabilities when reviewing all the facts at hand, it was my conclusion that sexual harassment did not occur as you have described it; hence I could not uphold your complaint.

I have proved you here above with all of the findings surrounding Mr. Hortie and ventured to outline to you the rationale of my decisions. I trust this information will answer your latest concerns as expressed to Mrs. Comberbach on 2 April 1996.

On May 24, 1996, Ms. Day filed another a grievance. It states:

I grieve the decision of your letter dated April 10, 1996 that states "Sexual harassment by Mike Hortie cannot be corroborated and therefore cannot be upheld".

On August 1, 1996 Captain Blattmann wrote to Ms. Day, denying the grievance. His letter reads as follows:

The second level grievance hearing was held on 23 July 1996 in the presence of your representative Mr. D. Quigley, President of the Federal Government Dockyard Trades and Labour Council and Mrs. Laura Legh from the offices of Director Civilian Personnel (DCP) formally known as BCPO.

You grieve the fact that in my correspondence of 10 April 1996 I concluded that *"sexual harassment by Mike Hortie cannot be corroborated and therefore cannot be upheld."* As remedial action you request the complaint of sexual harassment be upheld.

Firstly, let me express my thanks for having personally attended the hearing and presented your views. It shows courage and determination on your part to resolve the difficult issues at hand. I am conscious from the presentation you made that you truly believe to have been subjected to sexual harassment by Mr. Hortie.

I have conducted a considerable review of pertinent transcripts, investigation reports and consulted extensively with DCP personnel on the matter seeking their professional advice and counsel. I also took the opportunity to question Mr. Hortie once again. Unfortunately no new facts came to light which could alter my earlier decision made over one year ago.

I could not find new evidence which could indicate that conditions of a sexual nature on employment or on opportunity for training were placed upon you as defined in CPAO 7.18 para 7B. You may have perceived such conditions, in particular when viewed in retrospect, but I am unable to find any evidence that such a perception is a reasonable one.

Therefore I do not uphold your grievance and must as a result deny the corrective action you have requested. You may avail yourself of your right to seek redress at the next higher level of authority in accordance with the collective agreement.

Captain Blattmann met with Ms. Day on August 1, 1996. He testified that she was under severe stress. He and she discussed the entire situation. He suggested that she receive a medical evaluation and that she return to work when she is fit for work and less affected by stress. One of Captain Blattmann's concerns was the fact that she works with dangerous equipment. He felt she should not be working on a lathe, for example, if her mental attitude was affected by stress.

On August 7, 1996, Captain Blattmann wrote to Ms. Day confirming what had been discussed in the meeting of August 1:

Further to our meeting in my office Thursday 1 August 1996, we discussed the fact that you had been under a great deal of stress during the past few months, and that I am concerned for your personal well being. You indicated that you would seek medical attention from your personal physician and I sincerely hope that you do so. In addition to this step I would like you to undergo a medical review by Health Canada. The Federal Government, through Health Canada, have medical staff available to carry out evaluations, and provide medical assessments of public servants. The purpose of this review by Health Canada would be to obtain a medical opinion on whether or not you are able to return to work. In this regard I have directed the Administration Officer, Mr. Ferguson, to initiate a Fitness to Work medical for you with Health Canada.

A review of your leave records indicates that you have a negative balance, (-8.00 hours) of sick leave and a total of 59.49 hours, (7.43 days) of annual leave remaining for fiscal year 1996/97. Further, under Article 12.05(b) of the Ship Repair Collective agreement you may apply for the advancement of up to 15 days of sick leave. Should you apply for such leave I would give favourable consideration to your request.

Enclosed is an Application for Leave, Physician's Certificate of Disability for Duty (NHW 500), and a Consent to Release Information Form which should be completed and forwarded to your supervisor as soon as possible. Should you require more information please contact your supervisor Mr. Russ Watson at local [telephone number].

On August 8, 1996, Captain Blattmann wrote to Health Canada outlining his concerns:

Ms Day was hired by Fleet Maintenance Facility CAPE BRETON (ex SRUP) in April 1994 to progress a four year apprenticeship training program at the Naval Dockyard. Unfortunately within six months of joining this unit, she faced a number of problems at the worksite. These problems started with incidents with co-workers that resulted in harassment charges and grievances. These have since escalated to Human Rights complaints. Her behaviour over the past six months has been unstable and erratic to say the least, hence this correspondence. The following is a brief summary of some of the instances:

On one occasion she spent most of one morning in the washroom after an incident with a co-workers. She was so distressed that she was in hiding. She later went over to the Nurses station at the Dockyard NH&W offices and found her to be very distressed and unable to function. At that time he was concerned for her safety.

Another instance she was behaving in a peculiar manner at Base Civilian Personnel Office (BCPO) while talking to a staffing officer. It was reported that she became so distressed at this meeting that once again she was referred to the Health Unit. Apparently she had been yelling and later brought a complaint against the BCPO staff.

She recently had a physical altercation with a fellow female employee and does not believe that employee should be allowed in the vicinity in which she works. She assumes that if that individual is in the area she is talking about her.

These are only a few of the occurrences which have taken place. I find Ms. Day unsuitable to continue to work in the dockyard due to her high level of stress, excessive anxiety and in particular her erratic behaviour. I had a discussion with her on Thursday 1 August at which time I recommended that she seek medical attention and that I would initiate an H&W medical. She was in agreement with me, hence I would like to see her get some medical assistance as quickly as possible.

Your assistance in this matter would be greatly appreciated. A letter requesting the medical is being forwarded through normal channels and I would appreciate it if you could conduct this assessment yourself. Please feel free to contact me at 363-2315 for additional information, I am also prepared to meet with you personally to review in detail Ms. Day's situation if you so desire.

On August 21, 1996, Captain Blattmann had still not received any of the leave forms. He therefore wrote to Ms. Day again:

I am writing as a follow-up to my letter of 7 August 1996, which apprised you of the various leave credits and allowances you may be entitled to during your current absence.

Your supervisor, Mr. Watson has informed me that you are still absent from the workplace. As of this date, you have been absent from the workplace 21 days. In accordance with departmental administrative procedures all absences from the workplace must be authorized. As the Unit has not received a leave form from you indicating your intentions, I must reiterate the requirement for you to apply for authorized leave. Failure to do so will result in you being Temporarily Struck Off Strength (T/SOS). You are required to contact your supervisor, Mr. Russ Watson at 363-2195 and inform him of your intentions.

Should you be T/SOS there are ramifications on the various benefits (medical, dental and your public health care plans) to which you are currently entitled. Should you have questions on these matters, please contact Tina Mercier your Pay and Benefits Clerk at 363-7033. Also, a long-term absence may ultimately affect the yearly requirement of hours required to put towards your apprenticeship and the resulting schooling you are scheduled to receive.

I must advise you, this letter refers only to administrative action regarding your future pay and benefits. It is not to be construed as a disciplinary procedure at this time. Should the Unit not hear from you on your intentions in this matter verbally or in writing by 28 August 1996, however, there will be a requirement to start internal action to remedy this situation.

I am interested in your well being, I am also interested in your intentions in relations to your employment with the Department, up to this point you have made no indication whether or not you intend

to return to the workplace. Should you wish to discuss this matter, please contact me at 363-2315.

Ms. Day did not reply to that letter or provide any of the necessary information. Captain Blattmann therefore wrote to her on August 30, 1996:

I am writing as a follow up to my letters of 7 August and 21 August. I have been advised by your supervisor that you are still absent from the workplace and that you have not submitted a leave application for your absence which commenced on 25 July 1996. Your failure to apply for leave puts the unit in an awkward position. It is my opinion that you are not fit for work at this time, therefore sick leave without pay has been approved for you from 25 July 1996 to 25 October 1996. The employee's copy of the leave form is enclosed for your information. This means that you have been temporarily struck off strength (TSOS) effective 25 July 1996. Your record of employment will reflect your last day worked as 24 July 1996. The fact that you have been placed on TSOS has impact on the benefits available to you and you will receive an explanatory letter from the Personnel Office relating to this.

I have also been advised by Health Canada that you have refused to cooperate with them in a Fitness to Work Evaluation. The department is not prepared to allow you to return to work until such a time as you undergo a Fitness to Work Evaluation. You should also consider applying for Disability Insurance Benefits whether or not it is your intention to undergo an evaluation through Health Canada. Your own doctor can file the necessary report. Information about Disability Insurance is being forwarded to you under separate cover from the Personnel Office.

In your last visit to Dockyard on 27 August, you went to the shop to clear out some things and spoke with Barry Doupe the Acting Production Shop Supervisor. Mr. Doupe has stated that you indicated you no longer worked in FMF and that you had quit. You have also indicated in the past, to Mr. Lundgren, that you felt you had been fired. I would like to point out to you that your employment has not been terminated by the department and at this stage I am not prepared to accept your verbal resignation. It is obvious that you have been under great deal of stress and I feel your frame of mind is such that you should not be making a decision about your employment at this time. It is my hope that you will take some time to think about your continued employment with the Department

and will choose to avail yourself of the benefits and support that are available to you.

As you have recently acquired an unlisted phone number it is difficult for the department to contact you directly, I would urge you to contact your supervisor Mr. Watson at [telephone number] regarding the above.

Captain Blattmann wrote to her again Nov. 14, 1996:

I am writing to you as a follow up to my letter of 30 August 1996. To date the unit has not received any applications for leave from you for any period of your absence, which began on 25 July 1996. The leave form which was approved on your behalf ended on 25 October 1996. Although, I made the decision at that time that Sick Leave Without Pay was the most appropriate leave for your circumstances, your continued absence and the lack of information available to the department relating to your medical status makes it difficult to come to the same conclusion. The reason for your continued absence is not known, therefore at this time no more leave forms will be initiated and approved by the department on your behalf. Enclosed you will find some blank leave forms. I would ask that you complete one for the period of your absence from 28 October 1996 and return it with appropriate documentation, to the unit, as soon as possible. Should you feel that you are capable of returning to work, I wish to remind you that the department is not prepared to allow you to return until such time as you undergo a fitness to Work Evaluation with Health Canada and it is determined that you are fit to return to work.

There are a number of benefits available to you as a Public Servant, one is the Disability Insurance. You have previously been provided information on this benefit and I would strongly urge you to consider applying for these benefits. In addition, the department has an Employee Assistance program. This joint union-management program is a confidential referral service for civilian employees who want help to cope with a difficult period of their lives but do not know where or how to find it. The referral agents may be able to assist you, for that reason I would like to recommend that you make use of this program. I realize that you are not in the workplace so I am enclosing a list of current referral agents as well as an informational calendar about the program.

I am interested in you well being, I am also interested in your intentions in relation to your employment with the Department, up to this point you have made no indication whether or not you intend

to return to the workplace. Should you wish to discuss this matter, please contact me at [telephone number].

On February 20, 1998, the Employer wrote to Ms. Day, terminating her employment.

This letter is to inform you that your term of employment with the Fleet Maintenance Facility CAPE BRETON expires at 1630 hours 3 April 1998 and will not be extended.

Please contact your Compensation Specialist, Tina Mercier at [telephone number] to set up an appointment to complete your clearance documentation. Ms. Mercier has prepared estimates for your consideration.

As I indicated above the Board has already determined that it lacks jurisdiction to hear many of the complaints of Ms. Day. The only issue before me is whether the Respondents acted in a manner contrary to Section 8(2) of the Act:

- (2) Subject to subsection (3), no person shall:
 - (a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;
 - (b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or
 - (c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee
 - (i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective

agreement, to continue to be a member of an
employee organization, or
(iii) to refrain from exercising any other right
under this Act.

I do not think the harassment policy was administered effectively in this case. Ms. Day was entitled to the rationale for the decisions, in writing. The information was not forthcoming for a long period of time. Moreover Captain Blattmann's letter of July 26, 1995, could reasonably have been construed as stating she could not grieve in respect of the harassment decisions. That was not accurate.

But that is not the issue before me. The issue is whether the Respondents breached what Counsel for the Respondents referred to as the "unfair labour practice" provisions of the Act.

I am satisfied there has been no such breach. Ms. Day was not permitted to return to work after August 1, 1996, without providing evidence that she was fit to do so. There is simply no evidence from which it can be inferred that the Respondents were refusing to employ her because she was exercising a right under the Act.

Similarly I am not satisfied that the Respondents sought to compel her to refrain from exercising any right under the Act or to restrain her from exercising any such right. As I have said, I think Captain Blattmann unintentionally misled Ms. Day concerning her right to grieve the results of a harassment investigation. That is a far cry from compelling an employee not to exercise a right to grieve. Moreover, Mr. Bright in his letter of February 29, 1996, corrected any mistaken impression Ms. Day may have received from Captain Blattmann's letter.

The fact is, on two occasions Ms. Day did exercise her right under the Act to initiate a grievance. One of those grievances was a challenge of the decision respecting the harassment complaint.

I am satisfied there has been no breach of Section 8 of the Act. The complaint under Section of 23 of the Act must therefore be dismissed.

Dated at the City of Vancouver in the Province of British Columbia this 30th day of November, 1999

STEPHEN KELLEHER, Q.C
MEMBER