

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

DANNY A. LEONARDUZZI

Complainant

and

CANADIAN AIR TRAFFIC CONTROL ASSOCIATION

Respondent

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

Before: Joseph W. Potter, Deputy Chairperson

For the Complainant: Himself and Vonnie Rochester, Counsel

For the Respondent: Peter Barnacle, Counsel

Heard at Ottawa, Ontario,
September 10, 1998 and February 25, 1999

DECISION

Mr. Danny Leonarduzzi filed a complaint pursuant to section 23 of the *Public Service Staff Relations Act (PSSRA)*, alleging that his bargaining agent, the Canadian Air Traffic Control Association (CATCA), "...did not represent me fairly with regards to my termination grievance...." He claims this is contrary to subsection 10(2) of the *PSSRA*.

The complainant asks that an order be given instructing CATCA to observe subsection 10(2) of the *PSSRA* and take such action as may be required. Initially, Mr. Leonarduzzi wished CATCA to represent him at the adjudication of his grievance against the termination of his employment, but subsequently at the hearing into his complaint he requested reimbursement of his legal fees.

Two witnesses were called by CATCA; none was called by the complainant.

During the first day of hearing (September 10, 1998), Mr. Leonarduzzi chose to represent himself. As not all of the evidence was presented on that day, a second hearing day (February 25, 1999) was scheduled. On that day, Mr. Leonarduzzi was represented by Ms. Vonnie Rochester, counsel.

CATCA agreed to proceed first, although all parties agreed the complainant bore the onus to prove his allegation.

The Evidence

The background to this matter can be found in a letter from CATCA to the Public Service Staff Relations Board (PSSRB) dated January 12, 1998 (Exhibit E-1). The complainant did not have any material disagreement with the facts laid out in this letter.

Mr. Leonarduzzi was a probationary air traffic controller located at the Toronto Area Control Centre. On or about June 24, 1996, Mr. Leonarduzzi's training as an air traffic controller terminated in what was called "cease training". When an individual is "cease trained", a Student Progress Review Board (SPRB) is convened by management to "ascertain whether the student was provided with the full benefit of the training program and to review the appropriateness of the cease training recommendation" (Exhibit E-1, tab A, paragraph 7.1).

Mr. Leonarduzzi asked Mr. Cliff Durrwachter, the CATCA Toronto Area Control Centre Branch Chairman, for assistance at the SPRB, but CATCA's policy is to send only a witness to the hearing to ensure the student is given a chance to speak. In other words, CATCA does not provide a representative to speak on the trainee's behalf at the SPRB, but rather provides a witness to ensure the trainee has an opportunity to put his/her point across. Exhibit E-1, tab A, shows that Mr. Leonarduzzi was interviewed by the SPRB. The SPRB's findings, at paragraph 7.6 of tab A, Exhibit E-1, supported the recommendation for cease training

The decision of the SPRB went to Mr. F.J. Decarlo, the A/Regional Director of Air Traffic Services, and Mr. Decarlo sent a letter to Mr. Leonarduzzi on July 10, 1996 rejecting him on probation (Exhibit E-1, tab B).

Mr. Fazal Bhimji, the Vice-President of Labour Relations for CATCA, testified that a recommendation for cease training happens frequently. He stated approximately 60 percent of the applicants for controller positions are not successful and, as a result, CATCA has developed a document entitled "Guidelines for Investigation of Trainee Grievances" (Exhibit E-2). This document provides a CATCA regional representative with specific guidelines on how to conduct an investigation into those situations where a trainee has filed a grievance on his/her "cease training". (This is a CATCA initiated investigation separate and apart from management's SPRB investigation.) Mr. Leonarduzzi filed such a grievance on August 9, 1996 (Exhibit E-1, tab C), with Mr. Bhimji actually drafting the wording for the grievance document. It was unusual for a vice-president of CATCA to be involved at the early stages of the grievance process, as most trainees would be contacting their local branch representative. However, Mr. Leonarduzzi moved back to Montreal after he was rejected on probation and consequently he dealt with Mr. Bhimji in the national CATCA office.

Although CATCA prepared the grievance, Mr. Bhimji testified he told Mr. Leonarduzzi that CATCA would provide assistance, but not necessarily beyond the final level of the grievance process. A determination on whether or not to support the grievance at adjudication would be made at a later date.

The grievance was rejected at the first step in the grievance process on September 10, 1996, and at the second step on September 17 (Exhibit E-1, tab D). Mr. Leonarduzzi did not have a CATCA representative attend at either of these steps in the grievance process.

On November 1, 1996, the Air Navigation System was transferred to the private employer NAVCANADA. Mr. Bhimji testified it was his understanding that all grievance files were to be transferred to NAVCANADA at this time as well. Included in this was Mr. Leonarduzzi's grievance against his rejection on probation, and Mr. Bhimji requested a final level hearing on this with NAVCANADA officials in December 1996 and January 1997 (see paragraph 11 of Exhibit E-1). The hearing was not held.

On February 12, 1997, NAVCANADA sent a number of grievance files back to Transport Canada, in essence saying Transport Canada was responsible for the grievances (Exhibit E-1, tab E). Included on the list was Mr. Leonarduzzi's grievance.

Mr. Bhimji testified that, when these grievances were sent back to Transport Canada, CATCA was able to negotiate a settlement with NAVCANADA that effectively protected the grievor in that, if a grievor was to win his/her dismissal case, NAVCANADA would offer the grievor a job. Mr. Bhimji said this agreement covered some 12 individuals, and each had to provide his/her consent before an overall agreement could be reached. Mr. Bhimji testified that Mr. Leonarduzzi consented to this agreement.

Mr. Leonarduzzi claimed he did not consent to this agreement outright, but instead wanted to review the written document before providing consent.

On March 11, 1997, Transport Canada sent Mr. Leonarduzzi a letter apologizing for the delay in handling the termination grievance and saying attempts would be made to process it as soon as possible (Exhibit E-1, tab F). Given the delay in processing the grievance, Mr. Bhimji obtained agreement from Transport Canada that there would be no argument with respect to timeliness should the matter be referred to adjudication.

In the meantime, Mr. Bhimji sent a letter to Mr. Durrwachter asking him to conduct an investigation into the circumstances of Mr. Leonarduzzi's grievance (Exhibit E-1, tab G). The letter states, in part:

As in all cases of trainee termination in which our assistance is sought, we are obligated to make a decision that is not arbitrary, discriminatory or in bad faith....It is therefore important that we conduct a thorough investigation of the circumstances of the grievance before deciding what role, if any, we will play.

Included with the letter was the document "Guidelines for Investigation of Trainee Grievances" (see Exhibit E-2). This document states, in paragraph 2:

The purpose of the investigation is not to make a decision as to whether the termination (and/or cease training) was justified or not, but to determine if there are issues that should be clarified or explored in the grievance process. Deciding to support in the grievance process does not mean we will support a reference to adjudication. That is a decision that will be made by the National Executive, based not just on the investigation, but legal opinions with respect to jurisdiction of an adjudicator and overall assessment of the chances of success.

Mr. Durrwachter testified this document outlined the procedure he was to follow in conducting his investigation, and included some sample questions to be asked of various witnesses. In cross-examination, Mr. Durrwachter stated that Mr. Barnacle (CATCA's counsel) went over these guidelines with him and asked that a written report be done. The report was identified as Exhibit E-3. Mr. Durrwachter was supplied with a list of people Mr. Leonarduzzi wanted interviewed, and Mr. Bhimji testified all individuals that Mr. Leonarduzzi asked to be interviewed were included on the list.

Therefore, on the one hand, Mr. Bhimji was processing the termination grievance with Transport Canada while, on the other hand, Mr. Durrwachter was conducting his investigation, which would lead to a decision on whether or not to support the grievance at adjudication.

On April 3, 1997, Mr. Barnacle sent Mr. Leonarduzzi a letter explaining what was happening with the termination grievance and the reason for the delay (Exhibit E1, tab H). A grievance meeting was scheduled for early April and Mr. Bhimji spoke

regularly with Mr. Leonarduzzi on the details of the grievance, and the two met in order for Mr. Leonarduzzi to give Mr. Bhimji further documents.

Mr. Leonarduzzi asked to attend the final level grievance meeting and Mr. Bhimji consented.

The grievance meeting lasted approximately one and one-half hours, and each daily report for Mr. Leonarduzzi was discussed as well as each day of training report. Mr. Bhimji testified Mr. Leonarduzzi seemed happy with the presentation made.

On May 21, Mr. Leonarduzzi received the employer's grievance reply, which denied the grievance (Exhibit E-1, tab I). Mr. Bhimji wrote to Mr. Leonarduzzi saying, "The National Executive is considering referring this grievance to adjudication...", and asked that the necessary forms be completed (Exhibit E-1, tab J).

While the grievance was being processed, Mr. Durrwachter was conducting the investigation. He testified that, as he had not conducted such an investigation previously, he used the questions contained in Exhibit E-2 exactly as written and recorded the answers. He met individually with each person to be interviewed, spending between 20 to 30 minutes with each. His handwritten notes for each interview were tabled as Exhibit E-5.

As Mr. Durrwachter was also an air traffic controller, the interviews with potential witnesses had to be conducted during times when both parties were at work and on a break. Due to the fact that all employees worked various rotating shifts, Mr. Durrwachter said it took some time to complete the investigation. In fact, he said he received the guidelines on February 25 and his report is dated June 4, 1997.

In total, Mr. Durrwachter interviewed nine people, eight of whom Mr. Leonarduzzi suggested. These were individuals who either trained Mr. Leonarduzzi or worked with him in some capacity. All are air traffic controllers and members of the bargaining unit. Of those interviewed, Mr. Durrwachter stated one was favourable to Mr. Leonarduzzi, two were neutral, and the remaining six were adverse to Mr. Leonarduzzi's interests.

The one individual favourable to Mr. Leonarduzzi expressed the opinion that Mr. Leonarduzzi should continue training in ATC; the six adverse individuals expressed the opinion that Mr. Leonarduzzi should not continue training in ATC and the remaining two were neutral on that issue.

Mr. Durrwachter was asked in cross-examination by Ms. Rochester about the interview with each of the potential witnesses. While many had limited contact with Mr. Leonarduzzi, Mr. Durrwachter pointed out that he interviewed Mr. John Janssen, who was the primary on-the-job instructor (OJI). Mr. Janssen's role, said Mr. Durrwachter, was to watch Mr. Leonarduzzi on a continuing basis. Mr. Janssen's recommendation was that "Danny not continue training in ATC" (Exhibit E-3, page 5). The back up OJI was Mr. Rick Stewart and he too was interviewed and also had the same opinion as Mr. Janssen (Exhibit E-3, page 1).

Also in cross-examination, Ms. Rochester asked Mr. Durrwachter about another grievance Mr. Leonarduzzi had filed concerning his relocation entitlement. Mr. Durrwachter stated none of the people he interviewed had any involvement in the relocation grievance, but he did say those individuals above the level of Mr. Rod Kerr handled it. Mr. Durrwachter stated he never tried to investigate a link between the relocation grievance and the "cease training" recommendation.

In reply, Mr. Durrwachter was asked what Mr. Kerr would have based his conclusion on concerning the "cease training" recommendation. He replied the decision would be made on the daily and cyclical reports prepared by the primary and secondary OJI's, both of whom were interviewed.

Mr. Durrwachter's report was sent to CATCA's headquarters without further comment. Mr. Durrwachter admitted he did not interview Mr. Leonarduzzi, nor did he interview Mr. Rod Kerr who was the Manager, Area Control Centre Training. As the latter had recommended Mr. Leonarduzzi be "ceased trained", Mr. Durrwachter stated he did not need to speak to him to get his views on the issue.

The investigation report was sent to CATCA's head office on June 4, and the termination grievance was referred to the PSSRB for adjudication on June 13, 1997 (Exhibit E-1, tab K). Mr. Bhimji testified this was done in order not to jeopardize any time limits under the *PSSRA*.

The decision on whether or not to support Mr. Leonarduzzi's grievance was taken to CATCA's National Executive. This is comprised of the President, the Vice-President, Labour Relations, the Vice-President, Technical, and the Secretary (who is *ex-officio* and does not vote).

The National Executive was given a copy of Mr. Durrwachter's report as well as a legal opinion that, according to Mr. Bhimji, said that on the merits, CATCA did not have a chance to be successful with the grievance.

The National Executive decided not to support the grievance at adjudication, and Mr. Leonarduzzi was so informed in a letter dated July 10, 1997 (Exhibit E-1, tab L). The letter informed Mr. Leonarduzzi that this decision could be appealed to the Board of Directors, and he did so (Exhibit E-1, tab M). The Board of Directors is comprised of ten Regional Directors and the three National Executive members. Mr. Bhimji described this Board as the governing body of the bargaining agent.

Mr. Leonarduzzi was advised that his appeal to CATCA's Board of Directors would be heard on October 19, 1997 (Exhibit E-1, tab O), which was the first Board meeting following the July decision not to support the grievance.

At the Board meeting, Mr. Leonarduzzi represented himself and Mr. Bhimji presented an overview of the issue and the legal opinion cited earlier. Mr. Leonarduzzi presented his side of the story, and then left the room while the issue was debated. Mr. Bhimji stated the Board did not receive a copy of the investigation report, and debated the issue for some 30 to 40 minutes. The Board upheld the decision of the National Executive and Mr. Leonarduzzi was so advised on November 10, 1997 (Exhibit E-1, tab Q).

Mr. Leonarduzzi asked Mr. Bhimji, in cross-examination, if the comment "Danny is unbalanced", found in the interview record of Ms. Linda Baril (Exhibit E-3, last page), was given any consideration in deciding not to represent him. Mr. Bhimji replied that he considered the whole report, not just this one comment.

Mr. Leonarduzzi then filed, on December 12, 1997, the complaint that is the subject of this decision.

The complaint first came on for hearing on April 8, 1998, but was postponed at the request of Mr. Leonarduzzi, and was rescheduled for September 10, 1998 at which time the hearing commenced.

Ms. Rochester initially requested that Mr. Bhimji be recalled so she could cross-examine him but following Mr. Barnacle's objection and explanation of the process CATCA followed in making its decision not to represent Mr. Leonarduzzi, Ms. Rochester withdrew her motion.

No witnesses were called to testify for the complainant.

Argument of the Complainant

Ms. Rochester stated the complaint consisted of Mr. Leonarduzzi claiming that the bargaining agent has violated the duty of fair representation by operating in bad faith in dealing with the termination grievance.

At Exhibit E-1, tab L, the reasons for the denial of representation are highlighted in paragraph 1, and are threefold: the investigation report itself, the legal opinion and the familiarity Mr. Bhimji had with the file.

Ms. Rochester pointed out that Mr. Leonarduzzi had been told, following the grievance meeting, that further support by CATCA would depend on the Branch investigation (see Exhibit E-1, paragraph 14). Now, Ms. Rochester claims CATCA added two additional factors to the mix.

Insofar as the investigation itself was concerned, Ms. Rochester argued that it was not thorough. It was Mr. Durrwachter's first investigation and he needed instruction from Mr. Barnacle on how to conduct it.

The investigation itself took five to six months to complete. Given the fact he spent 20 to 30 minutes with each of the nine people he interviewed, Mr. Durrwachter spent a maximum of four and one-half hours of his time on the interviews. Given the fact he said he spent about seven hours on the investigation, this means he spent about two and one-half hours going over some 100 pages of documents. Also, he did not interview one of the managers, Mr. Kerr. He should have as he did not know the reason why Mr. Kerr took a "cease training" position with respect to Mr. Leonarduzzi.

If the bargaining agent really took the interview process seriously, it would have actually scheduled a time to conduct each interview instead of doing it on the run and done a more thorough question and answer.

Mr. Leonarduzzi was not interviewed, yet paragraph 14 of the guidelines for the investigation (Exhibit E-2, page 3) states that:

Once the first round is completed, go back to the trainee and get comments on any conflicting statements or information.

Paragraph 11 of the same exhibit states:

The first step in the actual investigation is to speak to the grievor or potential grievor....

No one, including Mr. Bhimji, interviewed Mr. Leonarduzzi at any time as part of the investigation. This meant Mr. Leonarduzzi did not have the opportunity to give his side of the story, and as CATCA relied on the results of the interviews for the decision, it could be considered arbitrary to rely on an investigation which did not include an interview with the grievor.

Also, no effort was made in the investigation to show that there was a relationship between Mr. Leonarduzzi's dismissal and the fact he had filed a relocation grievance. There was certainly the potential for bad faith on the part of the employer and CATCA did not explore this possibility.

In this case, once an air traffic controller is "cease trained" there is no further opportunity to get back in as an air traffic controller. Given this monopoly type of situation, there is a higher onus on the bargaining agent to represent its members than would be the case in another environment where a monopoly did not exist. Therefore, the bargaining agent should give Mr. Leonarduzzi any window of opportunity to grieve and represent him.

Counsel for Mr. Leonarduzzi referred me to the following cases: *Sean Torreadell and International Brotherhood of Painters and Allied Trades, Local No. 138 and Quantum Environmental Group*, B.C.L.R.B. No. B99/97; *Zuk et al. V. Canadian Brotherhood of Railway, Transport and General Workers* 85 CLLC 16,060; *Canadian Merchant Service Guild* [1984] 1 S.C.R. 509.

Argument of the Respondent

The complaint was made pursuant to subsection 10(2) of the *PSSRA* and the general principles for such a complaint have been well set out. These principles are:

1. The bargaining agent is not held to an impossible standard in assessing its support of a grievance. The individuals doing the bargaining agent's work are, for the most part, unpaid volunteers and do the work of the employer while also functioning as a CATCA representative.
2. The bargaining agent is entitled to make a decision unacceptable to a grievor as long as it does so in a manner that is not arbitrary, discriminatory or in bad faith. It is entitled to consider its financial resources.
3. Even if there are errors in the process, it does not translate into arbitrary, discriminatory or bad faith behaviour.

CATCA has established a fair and complete code to allow it to determine whether "cease training" grievances should go forward or not. This code is a guideline only, and in any given case it may or may not be applicable. In this case, the Branch's code was largely superseded by the National office, which was somewhat unusual. Mr. Leonarduzzi had the attention of the Vice-President, Mr. Bhimji. In fact, it was Mr. Bhimji who responded to countless telephone calls from the complainant; as well, he reviewed mountains of documents in preparation for the grievance meeting. Mr. Bhimji testified that everything pointed to the fact there was no merit in pursuing Mr. Leonarduzzi's case, and that is what CATCA considered.

Mr. Leonarduzzi complimented Mr. Bhimji on his thoroughness in presenting the grievance file to management. The bargaining agent submitted the grievance to adjudication to preserve any timeliness issue, even though it had not received the investigation report.

There was no action by the bargaining agent that was prejudicial to the employee. Mr. Leonarduzzi was told that CATCA would decide the question of support later on, but in the interim the grievance documents were processed.

The investigation guideline itself is clear in saying there is a difference between supporting a grievance and going to adjudication (see Exhibit E-2, paragraph 2).

The complainant has alleged that the bargaining agent acted in an arbitrary manner, and makes this claim based on the assertion that the investigation was done in a light manner. This claim is without merit. The bargaining agent did not rely on the SPRB investigation but instead conducted one on its own. Mr. Durrwachter interviewed the people suggested by Mr. Leonarduzzi and learned that the vast majority were adverse to Mr. Leonarduzzi's interests. There was not what one would call overwhelming support for Mr. Leonarduzzi as there was only one individual who supported the complainant, and this person was with Mr. Leonarduzzi for only one day.

The decision to cease training was made by management, but it was based on information supplied by members of CATCA. There was no need to interview management, because their decision was known; they were the ones who had fired Mr. Leonarduzzi. The only interest CATCA had was to speak to its members who provided input to management. In this way, the assessment could be made about the merits of the case.

The investigation was done in a very satisfactory manner. The fact that it was Mr. Durrwachter's first investigation is not relevant. He had the guidelines and the sample questions to ask, which he did. These guidelines ensure consistency for this type of situation.

The report was completed in a three-month period and we heard there was difficulty in coordinating the interviews. There was no prejudice to Mr. Leonarduzzi in this period because the final level grievance decision was not in.

The bargaining agent had to have the best information it could get before it decided whether or not to support the grievance, and Mr. Bhimji held off until he had the investigation report and the legal opinion. This is not arbitrary.

There was no evidence to show that the bargaining agent could reasonably say there was a link between the relocation grievance and the cease training. The employer would not reject a trainee, on whom it had spent hundreds of thousands of dollars, on

the basis of his filing one relocation grievance. There was simply no evidence whatsoever of a reprisal by management

The bargaining agent protected Mr. Leonarduzzi's rights throughout the process; it acted for him with NAVCANADA and in the preparation, filing, and processing of his grievance. The exhibits, particularly Exhibit E-1, show how careful CATCA was in respecting Mr. Leonarduzzi's rights.

Counsel for the respondent referred me to the following: *Trade Union Law in Canada* (Canada Law Book), by Messrs. Michael MacNeil, Michael Lynk and Peter Engelmann; *Canadian Merchant Service Guild v. Gagnon* [1984] 1 S.C.R. 509; *Rayonier Canada (B.C.) Ltd. And International Woodworkers of America, Local 1-217 and Ross Anderson and Forest Industrial Relations* (1975), B.C.L.R.B. No. 40/75; *Wolfe* (Board file 161-2-752); *Begley* (Board file 161-2-759); *Ford* (Board file 161-2-775); and *Charron* (Board file 448-H-4).

Reply of the Complainant

There is a higher standard that the bargaining agent has to meet here because Mr. Leonarduzzi has invested so much in his career, and the career is one of a monopoly.

The bargaining agent was obliged to turn its mind to any reprisal that may have existed. If Mr. Durrwachter had interviewed Mr. Leonarduzzi, this might have come out and a more thorough report could have been written. By missing this one crucial element, it can lead to a decision that the bargaining agent was arbitrary in its decision.

Reasons for Decision

This complaint is being made pursuant to paragraph 23(1)(a) of the *PSSRA*, which reads:

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;

...

Subsection 10(2) of the PSSRA reads:

(2) No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.

The complainant alleges that CATCA acted in an arbitrary manner in deciding not to represent Mr. Leonarduzzi at the adjudication of his termination grievance. The allegation is made on the basis that the investigation conducted by the bargaining agent was not as thorough as it should have been, and therefore the foundation for the decision was flawed.

The evidence, proffered entirely by CATCA in this case, indicates that a great deal of care goes into internal investigations of situations involving “cease training”. Guidelines have been developed for the investigation of these cases, and the evidence disclosed that Mr. Barnacle reviewed these guidelines with Mr. Durrwachter prior to the investigation commencing. The purpose of this discussion was to ensure completeness on the part of Mr. Durrwachter for this case as it was his first such investigation.

I find nothing of significance turns on the fact this was the first investigation Mr. Durrwachter conducted. His evidence indicated he followed the same procedure with all the employees he interviewed, and the interviews and report were completed as soon as could be expected given everyone’s individual shift cycle. In any event, I agree with Mr. Barnacle when he said Mr. Leonarduzzi was not prejudiced in any way by the length of time it took to complete the report. The grievance was not affected at all, nor was the reference to adjudication.

The guidelines indicate the investigation should include an interview with the grievor (see Exhibit E-2, paragraphs 11 and 14). This was not done here. However, again I do not find this to be a foundation for concluding that CATCA made an arbitrary decision not to represent Mr. Leonarduzzi at adjudication.

As Mr. Barnacle pointed out, Exhibit E-2 is a guideline and each case must be handled on its own merits. In this situation, as Mr. Leonarduzzi was no longer located in Toronto, he was not readily available to be interviewed. Also, Mr. Leonarduzzi was in constant contact with the Vice-President, Mr. Bhimji, and the full nature of the case was disclosed to Mr. Bhimji. Mr. Bhimji was fully cognizant of the facts as he was representing Mr. Leonarduzzi in his grievance. Therefore, I find any defect arising out of the failure to interview the complainant during the investigation was overcome by having Mr. Bhimji handle the grievance. The initial decision not to represent the complainant at adjudication was made in conjunction with Mr. Bhimji, and he was fully aware of Mr. Leonarduzzi's views.

The guidelines also clearly state, at paragraph 2, that an initial decision to support a grievance does not mean support at adjudication is automatic. The evidence indicated Mr. Leonarduzzi was told and understood this aspect.

Although counsel for the complainant raised the issue of a possible link between the recommendation for cease training and Mr. Leonarduzzi filing the relocation grievance, there was no evidence adduced to indicate this issue was raised with CATCA at the outset. If Mr. Leonarduzzi felt there was a link, he had ample opportunity to inform Mr. Bhimji of this element and allow CATCA to pursue it during the grievance process. I was not provided with any evidence whatsoever that indicated this was an issue which CATCA should pursue.

There is no obligation on a bargaining agent that would compel it to represent each and every employee who files a grievance. In this case, CATCA decided not to represent Mr. Leonarduzzi at adjudication following an internal investigation, which was done with those CATCA members suggested by Mr. Leonarduzzi himself. With only one exception, they agreed with the recommendation that cease training was appropriate in this situation. Armed with that and a legal opinion, which suggested there would be little, if any, chance of success at adjudication, the National Executive, which included Mr. Bhimji, decided not to represent Mr. Leonarduzzi, but did tell him this decision could be appealed to the Board of Directors.

I do not find this decision to be arbitrary, discriminatory or done in bad faith in any way whatsoever.

The Board of Directors reviewed the National Executive's decision, and in doing so heard from Mr. Leonarduzzi himself. It was not shown that the Board of Directors lacked any relevant fact in making its decision, which was not to provide representation. I do not find anything arbitrary, discriminatory or done in bad faith in this decision either.

In summary, the evidence, proffered entirely by the respondent in this case, did not disclose a violation of subsection 10(2) of the *PSSRA* and, as such, the complaint is dismissed.

**Joseph W. Potter,
Deputy Chairperson**

OTTAWA, April 1, 1999.