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File: 166-2-13136
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PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

THOMAS H. TYHURST,

grievor,

AND:

TREASURY BOARD
(Transport Canada),

employer.

Before: Roger Young, Board Member.

For the Grievor: Frank Gauthier.

For the Employer: Brian R. Evernden, Counsel.

Heard at Toronto, Ontario, October 23, 1984.

CODE 402/82
ART 7
DISCIPLINE

EXHIBIT

1. This is a reference to adjudication under section 91 of the Public Service Staff Relations Act of a grievance arising out of a three-day suspension imposed by Transport Canada on the grievor for an alleged refusal to perform his full range of duties on August 10, 1981. This situation arose in connection with the P.A.T.C.O. strike in the United States and Mr. Tyhurst, an Air Traffic Controller (AI-4), was alleged to have refused to clear aircraft from Canadian into U.S. airspace. Disciplinary action was initiated on October 30, 1981, while the grievance process took place between December, 1981 and April, 1982.

2. As this hearing was about to commence, counsel for the employer requested a brief delay in order to consult a witness for the employer with whom, he advised, he had been unable to discuss matters previously. Counsel returned a short time later and announced to this Board and to the grievor that the employer no longer felt it could substantiate the allegations which had led to Mr. Tyhurst's suspension. In the circumstances, the employer conceded that Mr. Tyhurst had, in fact, worked at a departure station and that he had cleared aircraft into the United States. The employer thereupon announced it was abandoning the three-day suspension and would award three days pay to Mr. Tyhurst, forthwith. The employer also agreed that all documents and records relating to this alleged occurrence and suspension would be removed from Mr. Tyhurst's personal file and be destroyed. Counsel regretted that certain of this information had only been made available to him at the last moment.

3. The representative of the grievor regretted that so much time had had to elapse for the employer to come to the realization that Mr. Tyhurst had complied with his duties at all times. This fact had been discussed with the employer and it should have been plain from the outset that the grievor had been wrongly accused.

4. For its part, this Board noted that it appeared this matter could and should have been resolved much earlier. Plenty of time had elapsed for the employer to be aware of the extent of the facts upon which it purported to base its disciplinary action. Those facts were obviously no different today than during the grievance procedure. In the meantime, however, a Board file had been opened, various letters and documentation exchanged, hearing rooms reserved and an adjudicator scheduled and brought in. Moreover, some eight or more witnesses had been subpoenaed or were otherwise present while on leave from work, all at some significant cost to the taxpayer.

5. While amicable settlements between parties are always welcome and, perhaps are even advantageous from the standpoint of good labour relations, the circumstances here suggest that more discretion should have been exercised much earlier.

6. In view of the position taken by counsel for the employer, this decision will simply serve to formally recognize that the grievance is upheld. Mr. Tyhurst is to receive the three days pay owing him, forthwith, and all

records surrounding this incident shall be removed from his file and be destroyed.

R. Young,
Board Member.

OCTOBER 30, 1984.