

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

WILLIAM REASNER

Grievor

and

**TREASURY BOARD
(Transport Canada)**

Employer

Before: J. Barry Turner, Board Member.

For the Grievor: Himself

For the Employer: Lindsay Jeanes, Student-at-Law

Heard at Toronto, Ontario,
May 16, 1995.

DECISION

William Reasner, an Air Traffic Controller, AI-5 classification, Toronto Area Control Centre, Transport Canada, Toronto, Ontario, is grieving a two day financial penalty imposed on September 29, 1993 for alleged insubordination on September 24, 1993.

His grievance reads:

- 1. On Sept. 24, 1993 I was working the co-ordinator position in Toronto Terminal Control Unit.*
- 2. A misunderstanding took place between myself and the supervisor relative to the use of runway 24R for arrivals.*
- 3. The supervisor used abusive language to berate me while I was still in the operating position.*
- 4. On Sept. 29, 1993 I received a disciplinary notice giving me a 2 day financial penalty.*

Mr. Reasner is requesting the following corrective action:

- 1. Remove discipline and any reference to it from my file and reimburse me for any financial losses I have suffered.*
- 2. A written apology from supervisor for the harassing nature of his treatment toward me.*
- 3. Written apology from management for their failure to properly direct supervisors in matters of 'dealing with employees'.*

During the grievance process the two day financial penalty was reduced to a written reprimand on November 19, 1993.

I am being asked to decide if the employer's action was fair under the circumstances.

The hearing lasted only one-half hour with no witnesses testifying and no exhibits being submitted into evidence.

Summary of Evidence

At the outset of the hearing, Ms. Jeanes submitted that I did not have jurisdiction to hear the case. She argued that since the discipline had been reduced by the employer to a letter of reprimand, and since the grievor has already been reimbursed for the original two day financial penalty, section 92 of the Public Service Staff Relations Act (PSSRA) precludes my entertaining a grievance where the discipline meted out is only a letter of reprimand.

Section 92 of the PSSRA reads:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule 1 or designated pursuant to subsection (4),

(i) disciplinary action resulting in suspension or a financial penalty, or

(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or

(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty,

and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.

Counsel reminded me that the grievor's union, the Canadian Air Traffic Control Association (CATCA) had withdrawn its support of Mr. Reasner. Counsel also referred me to the Puxley decision (Board file 166-2-22284), the Rajakaruna decision (Board file 166-2-23135), and the Baril v. Attorney General of Canada [1980] 1 F.C. 55, decision to substantiate her argument. She concluded that for me to accept jurisdiction in this

matter would set a "very bad precedent", and asked for a verbal ruling from the bench.

On the other hand, Mr. Reasner argued that for me to accept jurisdiction would be a "very good precedent" since a financial penalty was inflicted on him initially, and that there was an incident on the day in question that he now wishes to have heard in full before me, particularly since his employer had over four hundred dollars of his money for over two months.

I intervened at this point to explain to Mr. Reasner the meaning of section 92(1)(b) of the PSSRA and the limitations Parliament has imposed on me as an adjudicator in this matter as in Baril (supra). I also reviewed with him the jurisprudence presented by Ms. Jeanes. When I asked him if he understood my explanation, and was satisfied with my explanation, he responded: "Yes". I also asked the grievor if his union had explained the meaning of the law and the impact the jurisprudence in this matter has on his grievance, to which he responded: "Yes".

I therefore issued a verbal decision that I was dismissing the grievance for want of jurisdiction.

I might add that this fact situation is distinguishable from the facts in Puxley (supra), where a financial penalty was rescinded by the employer only after the grievance had been referred to adjudication. In the present case, however, the grievance could not proceed beyond the last level of the internal grievance procedure as at that point it no longer dealt with the type of discipline contemplated by section 92.

**J. Barry Turner,
Board Member.**

OTTAWA, June 7, 1995.