

IN THE MATTER OF AN ARBITRATION

BETWEEN:

GOVERNMENT OF THE NORTHWEST TERRITORIES
as represented by the Minister responsible
for the *Public Service Act*

Employer

- and -

THE UNION OF NORTHERN WORKERS

Union

Grievance re: Joseph Bailey Discharge

A W A R D

BEFORE:	Thomas Jolliffe, Q.C.
FOR THE EMPLOYER:	Bradley Patzer
FOR THE UNION:	Jacek Janczur
HEARING LOCATION:	Yellowknife, Northwest Territories
HEARING DATES:	January 29, 30, 31, and February 1, 2008 (Evidence) June 13, 2008 (Argument)

Date Award Issued:
December 18, 2008

Our File: 51,986 TJ

This matter concerns the grievance filed by the Union on behalf of Senior Recreation Development Officer (Senior RDO) at the Department of Municipal and Community Affairs (MACA), Joseph Bailey, following issuance of a dismissal letter on June 14, 2005. Therein the Deputy Minister alleged that the grievor recently had attended the Mackenzie Recreation Association (MRA) meetings in Inuvik where he “again acted in an inappropriate and unprofessional manner by speaking in an aggressive tone, using profanity and challenging the integrity of some MRA members”, which the Employer viewed as damaging to its interests. She stated the “this behaviour is completely inappropriate while acting as a representative of MACA as it undermines the integrity of the Department, and is quite concerning given the heightened awareness of your previous inappropriate behaviour.”

In dealing with the findings of its current investigation process leading to the discharge letter, the Deputy Minister was additionally expressly relying on the recent determinations by the Government of the Northwest Territories (GNWT) Audit Bureau, as follows:

- i. Nine (9) additional unauthorized transactions were processed through your GNWT corporate credit card;**
- ii. You changed fifteen (15) travel claim itineraries without seeking approval to do so;**
- iii. You made seventy-five (75) unauthorized personal telephone calls;**
- iv. Your Internet usage at work indicated that nearly one-third of your usage was accessing personal web-based electronic mail accounts.**

As also indicated therein, the grievor had recently served an eight day suspension in October 2004 which she reminded him had arisen following his having become verbally hostile and aggressive towards his immediate superior on being advised following a random review of his credit card

purchases that he should discontinue using his GNWT card and return it. It had been understood at the time that he had made some undisclosed purchases of a personal nature which constituted a breach of his signed cardholder agreement with the GNWT in that he was to use the card only for business related charges.

The Deputy Minister went on to state that:

Progressive discipline had been imposed to ensure that you understood the seriousness of your actions and the need for you to correct your behaviour. However, you refused to take responsibility for your actions, including your delay in pursuing anger management counselling as directed. Further, you failed to recognize that your continued inappropriate conduct negatively impacted the reputation of the Department and my confidence and trust in your abilities.

In summary, ... the latest incidents outlined in the Audit Bureau investigation regarding your inappropriate use of GNWT funds and equipment, and the aggressive, and unprofessional manner in which you conducted yourself towards individuals attending the MRA meetings, was inappropriate and has negatively affected the integrity of the Department. Furthermore, it has irreparably damaged my confidence in your abilities to continue as an effective and trusted employee of the Department.

In its grievance, the Union alleged that the grievor had been “wrongfully dismissed” and that the termination amounted to “excessive punishment considering the progressive discipline options available to the Employer”, and further said that the grievor “is potentially unaware as to the seriousness of the reasons for termination and as such is not being given a fair opportunity to correct them.”

The Employer’s first witness in this manner, Ian Legaree, has been the Director of Sport, Recreation and Youth at MACA for almost 20 years, working both with regional and headquarters’ staff which he oversees on a day-to-day basis from his office in Yellowknife. The grievor was a regional staff member since 2000, working for the North Slave Region, also from an office located

in Yellowknife. Mr. Legaree testified that each of the five MACA regions have an RDO positioned in their regional offices. They are meant to deliver organizational and recreational expertise to their community based clients of behalf of the GNWT, including regularly attending public events, meetings of local and regional governments, and in the grievor's case, working with six community governments within the North Slave Region, and dealing directly with the MRA membership. Mr. Legaree indicated in evidence being well acquainted with the grievor, talking with him on roughly a biweekly basis, and having daily e-mail contact, although the grievor reported directly to a regional superintendent, Terry Testart, working under Mr. Legaree. In normal course, it would have been the superintendent who approved the grievor's applications for travel, or leave, and set his work schedules.

It was Mr. Legaree who prepared the crucial report for the Deputy Minister following his investigation into certain complaints speaking to the grievor's actions subsequent to his arrival on Wednesday, April 20, 2005 at the MRA meetings held in Inuvik between then and Saturday, April 23, 2005. Mr. Legaree's report dated May 13, 2005 which he compiled on the basis of the interviews he conducted, was received by the Deputy Minister three days later. It was entered in evidence at the Employer's request, but subject to a consideration of the weight to be applied to the document given the hearsay nature of the information presented therein, and indeed covering much of Mr. Legaree's evidence. He testified that he had been requested by the Deputy Minister to conduct an investigation after four complaints were received by MACA between April 27 and May 10, 2005 with respect to the grievor's actions while in attendance at the MRA meetings in his official capacity as a MACA representative. The MRA's membership includes one representative from each of the community

governments in the North Slave Region. The complaints concerning the grievor's conduct were received from Ms. Cecile Desjardins, Acting Senior Administrative Officer, Hamlet of Rae-Edzo (received May 10, 2005) who had indicated that certain remarks from Mr. Bailey were seen to have publicly embarrassed the Hamlet's recreation programmer, Ms. Belinda Sanspariel; from Mr. Conan Donahue, Vice President of the MRA and acting chair for the meetings in Inuvik (received April 28, 2005) who reported the grievor's use of profane language and aggressive actions towards him, and also his making accusations concerning the integrity of members of the MRA and others; from Ms. Janie Hobart, Secretary of the MRA (received April 27, 2005) who reported the grievor having used inappropriate language and taken aggressive actions towards Mr. Donahue; and from Ms. Deborah Skipdonk, Executive Director of the MRA (received April 27, 2005) who indicated that certain remarks made by Mr. Bailey were felt by her to have questioned her competence and were publicly embarrassing. In compiling his report, Mr. Legaree indicated that he had interviewed the four complainants; also Ms. Sanspariel who was asked to confirm the version of events related by Ms. Desjardins; in addition Mr. Shane Thompson, Senior Recreation Development Coordinator, MACA, stationed at Fort Simpson, and Mr. Damon Crossman, Sport and Recreation Programs Advisor, MACA, Yellowknife, whose observations were sought because they were both in attendance at the MRA meetings and were thought to be present during the actions described by the complainants; and Mr. Terry Testart, Regional Superintendent, North Slave, MACA, concerning the instructions he had given to the grievor prior to his travelling to the MRA meetings. None of these persons testified.

Mr. Legaree's interviews of Desjardins, Sanspariel, Thompson, and Crossman resulted in him summarizing in his report the information received, which was that Ms. Sanspariel arrived at the MRA

meeting on Thursday, April 21, 2005, one day later than the delegates inasmuch as she had been unable to leave Rae-Edzo any earlier due to some urgent matters with which she had to deal. Upon arriving at the meeting she was pulled aside by the grievor and asked why she was arriving late which caused her to explain the difficulty in having had to remain in Rae-Edzo longer than she wanted on her supervisor's instructions to complete a project. Upon her taking her seat amongst the others, the grievor introduced her and then stated, according to the information received, "Belinda, explain to the whole room why you are late." Ms. Sanspariel, by Mr. Legaree's recollection, as written in his report told him that is the grievor's statement and the tone in which it was given embarrassed her in front of her MRA colleagues.

Mr. Legaree's interviews of Donahue, Hobart, Stipdonk, Thompson, and Crossman resulted in him summarizing in his report the information he received concerning the MRA meeting held the next day, Friday, April 22, in an area of the community hall which had been curtained off for that purpose which by Mr. Legaree's understanding was being chaired by Mr. Donahue, the MRA Vice-President. At the morning session, convened in order for the MRA members to discuss its financial statements and draft budget, by Mr. Legaree's information, Ms. Stipdonk was presenting the MRA financial statements to its members, and indicating that she still lacked information from several communities, not yet received. As a result the auditor had not yet completed the final report for the year ending March 31, 2005. She had gone on to explain that she was as yet unable to provide a report on the MRA's operating surplus for the fiscal year just ended. The issue of there being an operating surplus, and in what amount, no doubt, was a significant point of discussion for the grievor. It was then, according to the information received, that the grievor accused Ms. Stipdonk of not coming to

the meeting prepared, or as specifically related to him by Ms. Stipdonk, "and you come to a meeting like this unprepared".

By Mr. Legaree's information, later during the same morning session the grievor approached Mr. Donahue to ask whether the agenda could be altered in order that various applications for funding from the North Slave communities could be considered as some delegates, including himself, were scheduled to leave Inuvik later that same day. Mr. Donahue was reported to have responded by denying the request, citing the need to complete the budget discussions first, and further indicating that if the grievor wanted to discuss any of these other items he should be staying in Inuvik for all the MRA meetings. The information Mr. Legaree developed through his interviews was that the grievor then "raised his voice" in demanding that he and Mr. Donahue discussed the matter outside the curtained-off area, with Mr. Donahue responding only that he would talk to him later. The grievor, at that point, was seen to have become insistent, using hand gestures to point at Mr. Donahue as if to indicate that he should leave the area. At that juncture Mr. Donahue accompanied the grievor outside the curtained-off area, where the grievor, as reported by Mr. Donahue, verbally attacked him, moving inside his personal space and saying in a loud and aggressive tone, "don't ever fucking do that again". The witnesses interviewed by Mr. Legaree were taken as having confirmed for him that the grievor both used profanities and was speaking in a loud and aggressive manner in his dealing with Mr. Donahue outside the curtained-off area. Later, following their return to the meeting, by Mr. Legaree's information, the grievor questioned the MRA's funding practices, and implied that the Deh Cho communities were receiving favourable treatment as both Mr. Donahue and his executive director lived there. Mr. Donahue could only respond at that point that those types of statements were taken

as challenging the integrity of some MRA members and constituted inexcusable behaviour on the grievor's part.

Thereafter in his follow up interview with the grievor's superintendent, Terry Testart, Mr. Legaree learned that he had given permission to the grievor to depart from the MRA meetings on that Friday afternoon, April 22, but on the basis of the grievor's advice that they would be concluded that morning. Further, as reported to him by Mr. Testart, the grievor had been given specific instructions that he was not to question the activities of the MRA during any meetings in which he participated, and that he should be working with the delegates from the North Slave to encourage them to ask any questions they might have with respect to any MRA matters.

Included in his testimony, where Mr. Legaree related the information he received during the investigative interviews, his findings, and conclusions, reached in compiling and submitting his report to the Deputy Minister, was his description of meeting with the grievor in order to discuss what he had already heard from the complainants and witnesses relative to his alleged conduct. The grievor was represented at that initial meeting held on May 5, 2005 by a union service officer Ms. Georgina Rolt-Kaiser, with Mr. Legaree being accompanied by Ms. Sheila Bassi Kellett who was the Director of Corporate Affairs at MACA. At that time Mr. Legaree outlined the complaints received, although copies of the complaint letters could not be released until the complainants had confirmed their approval which was being sought. By the time of the second meeting held a week later on May 12, 2005 the grievor had received copies of the complaint letters. The grievor attended with the representation of another union service officer, Deb O'Connell, and also had Mr. Dan Schofield, Executive Director for the School of Community Government, MACA, accompany him to the

meeting. At that time, the grievor was advised that Mr. Legaree had completed his interviews with the complainants and other witnesses, which included the most recent written complaint from Ms. Desjardins received only two days previously, a copy of which was also provided to the grievor at that time.

By Mr. Legaree's recollection, given in testimony, and as indicated in his report submitted to the Deputy Minister, with respect to the initial incident involving Ms. Sanspariel, the grievor denied in their meeting having made the statements attributed to him, and had said that he had never asked her to explain why she was late.

By Mr. Legaree's recollection, as indicated in his report submitted to the Deputy Minister, with respect to the second incident involving Ms. Stipdonk, the grievor had said that he had not made the statements noted in her complaint, although he confirmed that he did ask her several budget related questions during her presentation. He had, however, acknowledged that he had been angered by the information she provided, being less than complete.

By Mr. Legaree's recollection, as indicated in his report submitted to the Deputy Minister, with respect to the third incident involving Mr. Donahue, the grievor confirmed that Mr. Donahue's complaint accurately reflected the events, although he had said there was no physical contact as one witness (Ms. Hobart) may have thought she saw, and he had not thought that Ms. Stipdonk from her location some distance away could have seen what she outlined in her complaint. As recorded by Mr. Legaree, the grievor had further stated with respect to his interaction with Mr. Donahue, that "Conan got upset first" and further that "maybe I was raising to these (issues) in the wrong way but my intent was not personal" and that any questions he posed were in support of North Slave. Further, he had

indicated that he had become upset during the MRA meetings because he was being repeatedly frustrated in his attempts to obtain information from the organization. By his recollection, the grievor did not take any issue with the description already received from others concerning his interaction with Mr. Donahue, nor did he apologize for what occurred. In response to counsel's questioning as to whether the grievor had said there were any "discrepancies", by his recollection, the grievor confirmed what Donahue had said. He testified that it was "not his testimony" that the grievor brought out any differences at that point. Again, according to Mr. Legaree, the grievor did say that Mr. Donahue had gotten angry first, also that he felt "out of the loop" with respect to the MRA affairs. Mr. Legaree did not accept that the grievor somehow could not have been aware of the Saturday sessions, inasmuch as there had been a brochure circulated and, by his information, the grievor indicated awareness in talking with his supervisor in a conference call where dates were discussed.

Mr. Legaree also recorded in his report to the Deputy Minister that the grievor had made a number of comments to him about events leading up to the Friday MRA morning meetings, April 22, which he took to have some relevance in his investigation, including that on Wednesday, April 20, the grievor had arrived at Inuvik under the assumption that the MRA meetings were concluding on the Friday, and that he would be travelling back to Yellowknife that day. He recorded that the grievor indicated he had prior permission from his supervisor (Mr. Testart) to leave Inuvik on Friday because he assumed the meetings were ending on that day and that he had family matters to attend to in Yellowknife. He also stated that he felt the budget and the MRA were driven by Mr. Thompson, the Senior Recreation Development Co-ordinator at MACA. However, when he arrived he had learned that a new MRA agenda had been issued which included meetings on the Saturday. In response the

