

IN THE MATTER OF AN ARBITRATION
BETWEEN GEORGIAN COLLEGE OF APPLIED ARTS & TECHNOLOGY
AND
ONTARIO PUBLIC SERVICES EMPLOYEES' UNION LOCAL 350
OF GRIEVANCE OF: BARRY WOODS OPSEU # 91C859-860

BOARD OF ARBITRATION:

Kevin M. Burkett - Chairperson
Joseph Tascona - Employer Nominee
Jon McManus - Union Nominee

APPEARANCES FOR THE
EMPLOYER:

Robert J. Atkinson - Counsel
Brian Tamblyn - Vice President
Human Resources

APPEARANCES FOR THE
UNION:

Nick Coleman - Counsel
Peter Pass - OPSEU
Barry Woods - Grievor

A Hearing in this matter was held in Barrie on September 16, 1993

A W A R D

1 We have before us the grievance of Mr. B. Woods, a professor of some ten years service at the time of the grievance, challenging, as without just cause, a one day suspension imposed March 18, 1991 for allegedly refusing to carry out a work assignment. The Union advised at the hearing that a second grievance claiming harassment arising out of the same incident would not be pursued. There is no dispute with respect to our authority to hear and determine this matter.

2. The facts in this matter were put in by way of stated case with the parties agreeing that where the facts as stated by each of them are materially at variance the Board would make a determination Having regard to the foregoing the facts in this matter are as follows:

The college decided to review and upgrade the Basic Employment Training Program (B.E.T.) in 1990. Mr. Woods taught 19 of the 25 hours of course work offered in this program. The program was being from underutilized at the time.

Ms. Tine Curran, the co-ordinator of the B.E.T. program was put in charge of the review. In late January 1991 Mr. Woods was asked to do two things; firstly, to provide a list of the texts and reference books used in the courses that he taught; and secondly, to review the draft program and course outlines prepared by Ms. Curran. The college wanted Mr. Wood's feedback as to whether further changes and modifications were necessary. Mr. Woods initially refused to do either assignment claiming that these assignments were not within his standard workload form (S.W.F.). Mr. Woods filed a complaint with the workload committee at the college. The Committee did not entertain the complaint because of a technical defect. After a series of memos, Mr. Woods, in a February 18, 1991 memo to Ms. Ann McCullough, the Director of Development programs and his immediate supervisor, indicated his willingness to complete both assignments. These assignments, which required less than three hours of work time, had not been completed by March 1, 1991. The grievors failure to carry out the assignment prompted Ms. McCullough to send the following memo to Mr. Woods.

DEVELOPMENT PROGRAMS

HE H O R A N D U

TO: Barry Woods
FROM: Ann McCullough
DATE: March 1, 1991
SUBJECT: COMPLEMENTARY WORKLOAD RESPONSIBILITIES

I have reviewed your concerns as outlined in your memo received February 21st regarding time attribution on your standard workload form for providing feedback on draft BET program and course outlines. It was not my intent that this request for feedback (or the request to provide curriculum resources you are using in the Employment Skills

Academic course) constitute an assignment under Article 4.01 (4) (c) (ix). Both requests were made as normal administrative tasks in accordance with Article 4.01(6).

Complying with these requests might identify a need for curriculum review or course development. If this is the case, this will be treated as an assignment under Articles 4.01(4) (c) (ix) and 4.02 1 (a) (ii).

In order to finish these outlines before the end of March, would you complete the review requested and indicate any need for further time for curriculum review or course development by Wednesday, March 6, 1991. Copies of the working documents are attached.

"Signed" Ann McCullough jes M212 Attachment

- The resource list for the Employment Skills-Academic Course was provided the following week and in a conversation with Ms. McCullough, Mr. Woods said that he had reviewed the program/course outlines and was prepared to provide feedback to the co-ordinator. In that discussion Mr. Woods said that , he would identify assignments in addition to docum development that may be required. Ms. McCullough, in a memo to Mr. Woods dated March 6, 1991 stated as follows:

".... Please do this as soon as possible and indicate to Peter Watson (in my absence) in writing by Wednesday March 13th details of the assignments that must be completed and the amount of time required. Barry, the March 31st deadline for completion of the revised program/course outlines will not be met due, in large part, to delays caused by your questioning of the process. I do not expect you to delay this further".

If Ms. McCullough had testified it would have been her evidence that her instruction of March 6, 1991 was to complete the assignments that had first been given to Mr. Woods in early January. If Mr. Woods had testified it would have been his evidence that he had completed these assignments (when he provided the list of resource materials and indicated that he had completed a review of the draft program and course outlines and would discuss same with the co-ordinator) and was given a new assignment on March 6,

1991 .

Mr. Woods did not make contact with Mr. Watson the following week. Nothwithstanding his assertion that he waited outside Mr. Watson's office, he left no messages with Mr. Watson's secretary nor did he leave any written memos for Mr. Watson. Mr. Watson made contact with Mr. Woods on Friday March 15 and asked him if he had completed the work requested of him in Ms. McCullough's memo of March 6. Mr. Woods replied that he had not. Mr. Watson met with Mr. Woods on Monday March 18, 1991 and again asked him if he had completed the assignment. When Mr. Woods replied in the negative, Mr. Watson presented him with written confirmation of a one day suspension as follows:

TO Barry Woods
DATE 18/03/91

FROM: Peter F. Watson
OFFICE LOCATION: D107

SUBJECT: Program Development Extension: 576
Evaluation

Ann McCullough's memo of March 6th, 1991 provided clear instruction that you were to prepare for me, in her absence, evaluation of the extent of revision required in the B.E.T. program. You indicated to me on Friday morning (March 15th) that you have not done this. Mrs. McCullough also refers in her memo to the delays caused by your continual questioning of the process and believe, Barry, that this latest delay and your refusal to carry out a direct instruction is unacceptable. I am, therefore, suspending you from work for one (1 day without pay on a date which will result in the least possible disruption to the educational process and which will be arrived at through discussion with Mrs. McCullough on her return.

I regret having to take this action but I believe that it is necessary in order to indicate to you the seriousness of your intransigence on this whole issue.

"Signed"
PFW.bjm

cc. Personnel
E. Dunlop
A. McCullough

- Mr. Woods had had no prior discipline in his ten years with the college at the time of his suspension.

3. The Union accepts that where work load challenges are made, as in this case, the work now grieve later rule applies and that, therefore, Mr. Woods should have carried out the assignments given to him, albeit under protest.

4. The Union asks us to find that the initial assignments had been completed by March 6th, that a fresh assignment was given on March 6 with a March 13th deadline and it was this assignment that was not completed, it is submitted that any discipline is restricted to the failure to complete the March 6th assignment. The Union, while acknowledging that some discipline might be warranted, argues that having regard to both the nature of the offence and to Mr. Woods ten years of unblemished service a written warning would have been more just and reasonable in all the circumstances.

5. The college characterizes Mr. Wood's misconduct as a protracted refusal to carry out the assignments first given to him in early January 1991. The college argues that in the face of this protracted refusal and in the face of his continuing refusal to comply following the March 6th, 1991 memo stipulating the March 13th, 1991 deadline, a one day suspension is reasonable. The college submits that the March 6th, 1991 memo was in the nature of a written warning and that it having been disregarded the Union cannot now assert that a written warning should be substituted. The college, relying on Fanshawe College and OPSEU (1976) 12 LAC (2d) 189 (O'Shea) argues that where an employer's disciplinary response is within the range of what is reasonable it ought not to be modified.

6. We start by holding that even if Mr. Woods considered the March 6th directive to constitute a fresh assignment the fact remains that initially he refused to carry out the assignments given to him in early January and that he then did so reluctantly and, in our view, half heartedly (ie a resource list not in bibliographic form and a critique of draft program and courses that consisted of handwritten notes over the draft.) Having delayed and then carried out the assignments given to him in early January in the manner described, Mr. Woods then made no effort to comply with the March 6th instruction. He had not performed that part of the assignment by March 13th, as directed, nor had he performed it by March 15th, nor had he performed it by March 18th. In these circumstances it must be found that Mr. Woods was insubordinate.

7. We subscribe to the belief that arbitrators ought not to draw fine distinctions when assessing short suspensions where culpable conduct is admitted. The effect of drawing such fine lines is to encourage resort to arbitration in cases where the objective is to marginally impact upon the discipline that has been imposed. Policy and practical reasons dictate that the parties not expend their resources on such cases and that the process not become cluttered by them. We accept that where the penalty is within the range of what is reasonable in all the circumstances the arbitration process ought not to be used to fine-tune management decision making with the benefit of hindsight.

8. Against this backdrop we hereby find that the one day suspension imposed against Mr. Woods was within the range of what can be described as reasonable in all the circumstances of this case. Mr. Woods engaged in a protracted refusal to carry out a

proper assignment and then disregarded a written instruction with respect to the deadline for the completion of the assignment. The March 6th memo is of some significance because it served to put Mr. Woods on notice that the employer was losing patience with his "questioning of the process" and to give him a firm deadline. Although the March 6th memo was not disciplinary in nature it served to put Mr. Woods on notice and Mr. Woods chose to disregard that notice. In these circumstances the suggestion that a written warning should have sufficed is much less persuasive than it otherwise would be. Accordingly, we have not been convinced that the one day suspension is outside the range of what is reasonable in all the circumstances and we hereby so find.

10. Having regard to all of the foregoing this grievance is hereby dismissed.

DATED at Toronto on this 18th day November, 1993

Kevin M. Burkett Chairperson

(I Concur)

" Joseph Tascona"
Joseph Tascona - Employee Nominee

(I Dissent)

" Jon McManus"
Jon McManus - Union Nominee