

IN THE MATTER OF: *The Law Enforcement Review Act* Complaint
#3704

AND IN THE MATTER OF: A Disciplinary Default Hearing pursuant to s.28 of
The Law Enforcement Review Act R.S.M. 1987,
c.L75

B E T W E E N:

J.W.P.)	T. Valgardson, Counsel for
Complainant/Appellant)	the Complainant/Appellant
)	
- and -)	
)	
Cst. R. L.,)	Cst. R. L., in absentia
Respondent)	unrepresented
)	
)	P. McKenna, Counsel for the
)	Winnipeg Police Association
)	
)	Order dated: March 8 th , 2005

Chartier, P.J.

THE DISCIPLINARY DEFAULT HEARING PROCEDURE

[1] On November 15th, 2004, I found that the Respondent had abused his authority by using oppressive and abusive language thereby committing a disciplinary default. The matter was put over to February 8th, 2005 for the disciplinary default hearing.

[2] Section 28 of Law Enforcement Review Act (hereinafter called the “Act”) provides that where a Respondent is found to have committed a disciplinary default a Provincial Judge shall hear details of the service record of the Respondent and the submissions of the parties. The Provincial Judge is then to order one or more of the penalties set out in section 30 for each disciplinary default which the Respondent has committed.

NOTE: For the purposes of distribution, personal information has been removed by the Commissioner.

[3] Pursuant to ss.32(2) of the Act, the contents of the service record shall include:

- (a) all disciplinary defaults under this Act and the penalties imposed therefor;
- (b) all internal disciplinary offences and the penalties imposed therefor; and
- (c) all official commendations given to that member of the police force.

[4] Staff Sergeant James Poole, from the Professional Standards Unit of the Winnipeg Police Service, was summoned to attend the hearing to provide the service record of the Respondent and to answer any questions regarding its content. The service record was filed as Exhibit 1.

[5] Both counsel for the Complainant and for the Winnipeg Police Association were allowed to review the service record and to ask any questions of the Staff Sergeant with respect to the service record.

THE OBJECTIVE AT THE DISCIPLINARY DEFAULT HEARING

[6] Following the Staff Sergeant's testimony, I heard the submissions of the parties.

[7] I was asked by Counsel for the Respondent to allow the Respondent to address the hearing and to provide a victim impact statement. Counsel for the Winnipeg Police Association objected to this course of action arguing that these proceedings are administrative in nature and should not be allowed to become quasi-criminal.

[8] Clearly the Act is disciplinary in nature, rather than penal. Indeed, the nature of discipline itself is corrective, rather than punitive. The main objective at the disciplinary default hearing stage should be to determine what corrective measures would be necessary to rectify the objectionable acts or omissions. While the impact of the objectionable act or omission on the Complainant was very much relevant during the section 17 hearing on the merits of the complaint (information I heard from the Complainant and about which I was very attentive), it is greatly diminished at the disciplinary default hearing.

[9] At the disciplinary default stage, the hearing of evidence from the concerned parties is over. It is the time for the parties to submit what corrective measures would be appropriate under the circumstances. Indeed, section 28 of the Act limits the judge at the disciplinary default hearing to two things:

- a) hear the submissions of the parties; and
- b) hear details of the service record of the Respondent.

[10] For the above reasons I agreed with counsel for the Winnipeg Police Association and did not allow the Respondent to directly address the hearing. I did however allow the Complainant's views on the appropriate measure to be taken to be expressed through counsel. In that regard, counsel for the Complainant did provide further information.

THE FACTORS TO BE CONSIDERED IN DETERMINING THE APPROPRIATE PENALTY

[11] The following factors are not meant to be exhaustive but should be considered when making a section 28 order:

- a) the seriousness of the disciplinary default;
- b) the Respondent's service record, including:
 - the length of Respondent's service;
 - all prior internal disciplinary offences and the penalties imposed therefor;
 - all prior disciplinary defaults under LERA and the penalties imposed therefor;
 - all official commendations given to the Respondent.
- c) the penalties imposed on other police officers in similar circumstances;
- d) the Respondent's conduct since the incident.

a) Seriousness of the disciplinary default:

On November 15, 2004, I found that, based on the evidence before me, the Respondent abused his authority in that his language and conduct was abusive and oppressive contrary to 29(a)(iii) of the Discipline Code under the Act. Clearly this abuse of authority is more serious than the abusing one's authority by 'being discourteous or uncivil' as provided for under 29(a)(iv). It also goes without saying that the more serious the abuse of authority, the more serious the penalty.

b) Respondent's service record:

The Respondent retired from the Winnipeg Police Service on August 10, 2002 after having served 27 years. His service record indicates the following:

- i) no prior disciplinary defaults under this Act;
- ii) 4 prior appearances before the Discipline Committee of the Winnipeg Police Service resulting in:
 - May 25, 1988: loss of one day weekly leave;
 - March 7, 1995: loss of one day weekly leave;
 - November 1, 1996: loss of four days weekly leave;
 - March 6, 2002: loss of two days pay.
- iii) one Certificate of Commendation presented on March 18, 1999.

The Respondent's service record is far from being exemplary. I say this because of his four appearances before the Winnipeg Police Service Discipline Committee resulting in either the loss of leave or the loss of pay.

c) Penalty imposed in other similar circumstances:

Counsel for the Winnipeg Police Association referred me to two cases where officers had been found to have committed disciplinary defaults under the Act for having been found to be 'discourteous or uncivil'. Both officers received an admonition. As I have already indicated the disciplinary default in the case at hand is more serious than the two cases submitted. In addition, contrary to the

Respondent, the officers who had received admonitions had clean service records.

d) Respondent's conduct since the incident:

There is a three year period between the date of the complaint and the Respondent's retirement from the Winnipeg Police Service. Shortly after the Complainant made his complaint, the Respondent did receive a commendation. However, he was also found to have committed an internal disciplinary offence only a few months prior to his retirement. This last disciplinary offence somewhat reduces the effect of his Certificate of Commendation.

THE ORDER

[12] I am mindful, because the Respondent has since retired from the Winnipeg Police Service, that in reality only three of the s. 30 penalties apply in the present case. These three penalties are a written reprimand, a verbal reprimand or an admonition.

[13] Taking into account the findings of fact that I have found from the evidence before me, the submissions of the parties and the factors mentioned above, I find that a written reprimand would be the appropriate penalty for the disciplinary default in this case.

[14] This finding is now a matter of record and pursuant to ss.28(4) of the Act, the Chief of Police is directed to impose this written reprimand on the Respondent's service record. This written reprimand is to be noted on the Respondent's service record as a formal written warning that the Respondent has been found to have committed a disciplinary default under the Act by having abused his authority by using oppressive and abusive conduct and language.

DATED at Winnipeg, Manitoba, this 8th day of March 2005.

Original signed by:

Judge Richard Chartier