

# **ARBITRATION**

# **BULLETIN**

No. 01-87

January 9, 1987

**WINNIPEG SCHOOL DIVISION NO. 1**

**AND**

**WINNIPEG TEACHERS' ASSOCIATION**

**RE: GRIEVANCE OF TERAL GRAY**

**BOARD COMPOSED OF:**

Chairman	Don Baizley
Board Nominee	Gerry Parkinson
Association Nominee	Lawrie Cherniack (Dissenting)

**APPEARANCES:**

For the Division	G. Parkinson
For the Association	M. Myers, Q.C.

**BACKGROUND**

The Grievor, in this case, Teral Gray, was employed since 1976 as an art and language arts teacher at Andrew Mynarski School. In September of 1985, the grievor learned of an opportunity to participate in a trip to India sponsored by a Unitarian Church Organization in Saskatoon. The trip was for three weeks commencing December 9, 1985 and was designed so that for one week the participants would stay in the home of someone who was in a comparable occupation. The remainder of the trip involved touring parts of India, meeting artists, student artists and observing various forms of folk and local art. The trip was to take place over the Christmas break though 10 days of school would have to be missed.

On learning of the opportunity, the grievor spoke to Mr. Springman, the Principal at Andrew Mynarski, and requested an early leave. Springman did not have the authority to grant permission for the trip and

advised Ms. Gray that she would have to obtain permission from the Assistant Chief Superintendent of the School Division. Ms. Gray then approached Mr. Mutchmor, the Assistant Chief Superintendent and requested permission for the leave but it was denied. The reason given by Mutchmor was that there was a policy in the Division, concerning absence for personal business. The policy in effect was that permission would not be granted for absence for personal business (such as extended holidays) during the period immediately preceding or following the Christmas break. Only leave for compassionate reasons would be given at this time of year.

On October 6, 1985 the grievor made a further appeal to Mr. Smyth, the Chief Superintendent of the Division. On the 22<sup>nd</sup> of October Mr. Smyth replied by way of letter (Ex. 28) denying the grievor's request.

Following the decision of the Chief Superintendent, Tom Springman wrote to the grievor on December 5, 1985 (Ex. 29) advising that if she were to follow through with her plan to extend the Christmas break without authorization she could be deemed to have left her position as a teacher and could possibly be terminated.

Despite this, the grievor made the decision to go, in her words "believing in all conscience, that this was a unique opportunity to take a privately arranged tour geared to my professional interests".

On her return from the trip, a letter from the Chief Superintendent's office (Ex. 2) was delivered to her. It stated, in part:

"We believe that you have made a conscious, informed decision to ignore the refusal of your request for leave and to null and void our contract of employment with the Winnipeg School Division No. 1. We, therefore, have no alternative but to consider that you have abandoned your position effective December 9, 1985.

The Board of Trustees of the Winnipeg School Division No. 1 shall meet on Tuesday, January 21, 1986 to consider the issue of your future employment with the School Division.

At this meeting the Board will consider the following recommendation:

1. "That Ms. Teral Gray be considered to have abandoned her position on December 9, 1985 and to have terminated her contract of employment with the Winnipeg School 1."

And that, without prejudice to the position taken by the Division in Motion No. 1.

2. "That Ms Teral Gray be suspended without pay effective December 9, 1985 and that the contract of employment between the Division and Ms Gray be terminated by the Division effective June 30, 1986.

The Board did so meet and after hearing from the grievor, adopted these recommendations. Ultimately the matter resulted in the filing of the grievance that is now before this Board.

## THE ISSUES

Two issues were ruled upon by the Arbitration Board. First, did the grievor quit or "abandon" her position. Second, if the grievor did not quit or abandon her position, was there just cause for the employer to terminate her.

## THE DECISION

In part, the award of the Arbitration Board read:

The right to resign or quit one's employment is that of every employee and is his equivalent to the employer's right to terminate i.e., the act of discharge. Where it is alleged that an employee has voluntarily terminated his employment, an arbitrator must first attempt to determine the employee's intention, as to establish that the employee quit it must be shown that he actually intended to voluntarily sever the employment relationship. Often this intention must be inferred from the circumstances.

Secondly, the act of quitting includes some objective conduct which demonstrates an attempt to carry that intention into effect.

Dealing with the question of intention, this Board is satisfied that at no time did Ms Gray intend to terminate her employment. Aside from her own evidence on this point the careful planning and arrangements she made for her classes are consistent with her intention to return to her position following the Christmas Break.

The Division argues that the grievor's taking a trip in the face of a warning that she could be terminated for doing so is objective conduct consistent with an intention to quit. This might well be a reasonable inference to be drawn from such conduct normally. However, the planning and arrangements she made are actions which are consistent with an intention to return to her position on completion of the trip. When coupled with our view as to the sincerity of Ms Gray, however, naïve, in the circumstances we are unable to conclude that her conduct, taken as a whole, was consistent only with an intention to quit.

As a result, it is the Board's decision that Ms Gray did not "quite" or "abandon" her position.

## JUST CAUSE

The relationship between the grievor and the Division was governed by a variety of circumstances.

Firstly, there is a written contract in a form prescribed by statute. (Exhibit 1).

Secondly, there is a collective agreement in effect between the Division and the Winnipeg Teachers Association Number 1 of the Manitoba Teachers' Society. (Exhibit 8).

Thirdly, the Public Schools Act CCSM Cap. p. 250.

Lastly, to the extent not superseded by any of the above, the common law.

Paragraph 1 of the written contract provides that Ms Gray "will diligently and faithfully teach and conduct the school department or departments which may be placed upon her charge from time to time by the division in accordance with the statutes and regulations of the Department of Education."

Further, section 96 of the Public Schools Act provides that:

"every teacher shall teach diligently and faithfully according to the terms of

(her) agreement with the school board and according to this act and regulation."

Paragraph 10 of the collective agreement provides:

"This agreement is made subject to the provisions of the Public Schools Act, the Education and Administration Act and the regulations there under. Except as hereinafter provided the regulations, by-laws and code of rules shall remain enforced during the term of this agreement and it is understood and agreed that no changes shall be made in forms of such agreements wherein the said regulations or by-laws are in the code of rules of the division which affect the terms or conditions of employment of teachers by the division except by agreement of the parties hereto and subject to the approval of the minister under, The Public Schools Act, if such approval is required."

Section 5.4 of the Code of Rules and Regulations which is an appendix to the collective agreement provides as follows:

#### Section 5.4 Absence for Personal Business

(a) procedure for securing permission

Teachers shall not absent themselves from duty for reasons of personal business without first securing permission from the superintendent. All requests for such approval shall be made through the principal on the form prescribed. In the case of an emergency where approval cannot be secured in advance, the teacher shall report to the principal at the earliest opportunity."

It is clear that the grievor has breached all of the above.

A conscious refusal to carry out the direction of an employer amounts to insubordination, and in countless cases has proved to be justifiable grounds to warrant discharge as an appropriate penalty.

It is difficult to imagine what more the Division could do to attempt to impress on Ms Gray that she simply could not take this leave of absence. Although it is clear that she was well-intended and sincere in her beliefs, the fact of the matter is that she was given ample warning of the consequences of such conduct. Despite this, she chose to take the trip.

It is worthy of note that there was opportunity, after receipt of the Division's decision to reject her request for the leave of absence, for her to challenge the decision by filing a grievance, or taking some other action. She did not take any steps in this regard.

On the face of it, the policy is reasonable and there was no evidence that it was applied in an arbitrary or inconsistent manner. Further, the policy was made known to the employees of the division, and in particular the grievor. Moreover, the grievor was warned of possible consequences of her refusal to obey the decision of the Division. As a result we are unable to conclude the conduct of the Division, in terminating the grievor, was unreasonable.

There is one other factor which weighs in the Board's decision. That is the aspect of deterrence. Deterrence has long been recognized as a legitimate consideration when imposing disciplinary penalties. The Division employs some 2,300 teachers. In imposing discharge in these circumstances the Division

is legitimately endeavoring to make it clear to those 2,300 employees that this conduct will not be tolerated.

Accordingly, on the second issue, it is this Board's decision that the Division did have just cause to terminate Ms Gray.

The grievance is therefore dismissed.