

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

grievor had spoken to Mr. Thompson to ask if he could arrange to have the agenda changed in order that the North Slave delegates who were scheduled to leave on the Friday afternoon could be present when the budget was discussed and several related funding applications were being considered. By the grievor's version, as told to Mr. Legaree, Mr. Thompson had replied that he would seek the change requested. Mr. Legaree recorded the grievor having stated in their meeting that, "we know that Shane (Thompson) runs the MRA" and further that "Fort Simpson was getting more than its fair share of MRA resources" followed by his providing various financial documents related to the MRA, and also that he knew that something would result from the meetings, saying that Mr. Thompson "was trying to get me".

Mr. Legaree also indicated in his report to the Deputy Minister that following his meeting with the grievor on May 5, 2005, he had received an e-mail message from the grievor suggesting that they have a closed-door meeting involving Legaree, Thompson, Testart, and the grievor in order to solve the issues they had discussed. This was not to occur, but subsequently in compiling his initial findings respecting the grievor's interaction with his associates at the MRA meetings, Mr. Legaree considered it was necessary to look further into the grievor's assertion that he had only become aware that a Saturday session was planned when he arrived at the MRA meetings on the Wednesday, April 20. Further Mr. Legaree was concerned the grievor was alleging that preferential treatment was being extended by the MRA to the Deh Cho communities. Following his further investigation, he reported to the Deputy Minister that a review of the teleconference minutes from April 7, 2005 indicated that the MRA meetings in Inuvik were scheduled for April 20 – 23, with the grievor having participated in the call. Further the conference brochure showed scheduled meetings for Saturday, a copy of which

brochure the grievor was understood to have received. In looking at the alleged preferential treatment concern, Mr. Legaree examined the MRA contribution breakdown document provided by the grievor to him. By Mr. Legaree's observation, the allocation of programme funding was shown to be several thousand dollars less for the Deh Cho communities than for either the North Slave or the South Slave communities with which they were compared.

Ultimately, as indicated in his report to the Deputy Minister, Mr. Legaree concluded that despite the grievor having denied making the statements outlined in the report concerning his interaction with Ms. Sanspariel, he "did make comments that embarrassed Ms. Sanspariel in open meeting and in doing so is guilty of misconduct". With respect to the second episode involving the grievor's allegedly questioning Ms. Skipdonk's competence, given the supporting witnesses, he concluded that the grievor "did make comments that embarrassed Ms. Stipdonk in open meeting and in doing so is guilty of misconduct". With respect to the third episode relating to the grievor interaction with his colleague Mr. Donahue, and regard to the statements of several witnesses who supported Mr. Donahue's version, Mr. Legaree reported, "it is my opinion that (the grievor) did use profane language and aggressive actions with Mr. Donahue and as such is guilty of gross misconduct". He further reported that given the grievor's verbal confirmation that in his interaction with Mr. Donahue he had questioned the MRA allocation of funding, indeed had continued to do so during the investigation process, which was not supported by the financial documents received, the grievor was taken to have contravened his instructions from his supervisor Mr. Testart. He was guilty of disobeying instructions and making public statements which were harmful to MACA and the MRA members. Mr. Legaree's report concluded:

Taken individually, any one of the above noted actions are serious events that harm both the Department and one of its primary clients in the sport and recreation area. While (the grievor) reported to have concerns about the operation of the MRA his expression of these concerns in an open meeting was inappropriate and damaging to that organization.

In summary, (the grievor's) actions as described are very serious and constitute behaviour that is totally unacceptable by an employee of the Department of Municipal and Community Affairs.

In cross-examination Mr. Legaree agreed that by his recollection Mr. Donahue had said during his interview that he too "could have done things differently", with there having been some mention of an apology for the way he had acted. Indeed, as pointed out for him by Mr. Janczur, in the complaint letter which had been reviewed for purposes of Mr. Legaree presenting his report, Mr. Donahue had indicated that he felt at least "partly responsible" inasmuch as after the grievor had approached him about changing some agenda items in order to accommodate some of the North Slave members who were leaving, and wanted to make some applications, he responded that they needed to finish what they were working on, the draft budget, at which point the grievor had sat down. It was then, according to Mr. Donahue's written statement, that he had said to the grievor: "if he wanted to discuss issues that he should stick around for all the meetings", which previously was capable of being taken as a verbal rebuke. This remark was followed by the grievor indicating that they should discuss the issue outside the room. He repeated the request when Mr. Donahue declined to accept the invitation by saying that they could talk about later. Mr. Donahue reported in his written statement that it was on the third request that they left together, to walk outside the divider curtains, at which point the grievor "verbally attacked me" and "got in my face and using profanities told me never to do that to him again and that the reason he was leaving was family issues". By Mr. Donahue's

information set out therein, he immediately apologized to the grievor for his comment, and saying that he had been taken by surprise at the North Slave members' leaving. The statement went on to describe the grievor continuing at that point to be "very loud" and that his role then was in trying to calm him down so that they could talk, which was successful and they did talk about the difficulties the grievor was intending on raising, such as the funding applications he had wanted to discuss. By Mr. Donahue's written statement the grievor went on to question the MRA funding practices mentioning that other communities were thought to have received more funding for certain sports oriented activities than the North Slave region, possibly due to the persons involved in those other communities, and that the MRA was not supporting his region. Certainly, Mr. Donahue took issue over there being any suggestion of impropriety. He went on to indicate therein that from what he had heard from the grievor it was a matter of his questioning the integrity of certain individuals, including himself. He concluded his written statement by remarking: "This was the part of the incident that upset me the most, being sworn at I can live with, but having my, as well as two other individuals, integrity questioned in that unprofessional manner was in my opinion inexcusable behaviour for a professional".

Mr. Legaree testified that at the time of compiling his report, the grievor had not yet received a copy of two of the written statements which had been received (Crossman and Thompson), but he had seen the others (including Donahue).

The Employer's second witness in the matter, is the Deputy Minister at MACA, Deborah DeLancey. Her duties include approving and signing off on recommended disciplinary suspensions or dismissals on the basis of information developed and related through her subordinates. In her

testimony she explained that many MACA employees due to the nature of their responsibilities, travel widely in dealing with their regional clients located in communities across the Northwest Territories. They are provided with credit cards to cover their expenses, concerning which they are required to sign a usage agreement. The grievor's signed Card Receipt Form, dated January 19, 2001, leading to his having been provided a Diners Club/enRoute credit card (enRoute card), was entered in evidence with various acknowledged employee obligations written thereon such as: "the Corporate Cards are to be used only for business related charges approved by my Employer and are not available for personal use or used by anyone other than the Employee Cardholder". By Ms. DeLancey's testimony, the generally applicable employee rules for corporate credit card usage are well-known. The cards are mainly available for job scheduled travel, including chartered travel where necessary, and other modes where required in the given circumstances, also for travel accommodations and food, vehicle rental, oil and gas expenses associated with rental vehicles.

Card usage is not available for purchase of gasoline for one's personal vehicle, where expenses are paid out on a mileage basis only when driven for business reasons. There was placed in evidence through Ms. DeLancey a standard form Travel Authorization & Expense Claim document, needed to be filled out in advance where an employee is booking duty travel, including expected mode, accommodation, meals, with the final details to be filled in and resubmitted upon return to one's home base.

There was also entered in evidence through Ms. DeLancey, the Employers's Internet and Computer Usage policy in place since 2000, indicating that Internet usage is for work-related purposes not personal use, also its Code of Conduct developed in 2001 indicating that use of government

equipment and property should be for business related purposes, unless with prior approval.

In her dealing with the grievor's pre-existing discipline record in testimony, by the information related to Ms. DeLancey in September 2004 following an administrative officer in normal process reviewing credit card receipts, two of the grievor's purchases for gasoline while he was on annual leave in the High River, Alberta, area were flagged. The ensuing investigation led to the conclusion that the grievor had used his government credit card for an unauthorized reason, meaning for personal purchases, which was referred for further action. A disciplinary meeting was arranged with the grievor for September 21, 2004, whereat he was advised to discontinue using his issued credit card and return it to the Employer. A discipline letter resulted wherein Ms. DeLancey advised the grievor that his use of the government credit card in such a fashion as had been uncovered was contrary to the *Financial Administration Act*, in addition to a concern being raised by his not having disclosed the two purchases prior to the review being conducted. It was also alleged that at the investigative meeting with his superintendent, the grievor had used inappropriate language and had raised his voice. It was notified in the discipline letter that his response amounted to insubordination and would not be condoned, in addition to his having breached his cardholder agreement by not returning the card when demanded. The length of the resulting suspension was thereafter agreed by the parties within the grievance process at eight working days. At the same time, Ms. DeLancey being especially concerned about the grievor's conduct toward his supervisor, also directed him in the suspension letter to take an anger management course, with the admonition that failure to correct his insubordinate behaviour, or to comply with the requirement to attend counselling, could lead to further disciplinary action up to and including a recommendation for his dismissal. The grievor at that point did return his credit card as requested.

However, he did not make any arrangements for an anger management course in October 2004 concerning which, by her understanding, there were repeated follow-ups before something was eventually worked out between management and union representatives in April 2005.

During that same time frame as the grievor was being taken to task for his recent improper use of his credit card, September 2004, he also received a written reprimand for having provided a statement to a news reporter while attending the Tulita Hand Games, and being quoted on public issue current at the time in the September 13, 2004 issue of News North as a representative of MACA. Ms. DeLancey drew his attention in the notification letter to his having been reprimanded earlier that same year for making public statements and advised that failure to "correct this problem" would result in further discipline. She referenced the Code of Conduct, providing him a copy, which indicated that any interview requests from the media should be referred to the person's director or regional superintendent before any staff members could deal with the media.

Thereafter, following the complaints received from the grievor's colleagues concerning his actions at the April 20-23, 2005, MRA meetings in Inuvik, she initially consulted with her labour relations advisors before assigning Mr. Legaree to conduct an investigation. She received a copy of the report dated May 13, 2005 which he had completed setting out the understood facts by reference to the various complainants and witnesses, and the grievor's version, in reaching his conclusions. She also received a copy of the Audit Bureau Report compiled by its Director, T. Bob Shahi, completed on May 25, 2005 for the Financial Management Board Secretariat. It had been undertaken at her request made to the Audit Bureau the previous October following suspicions surfacing over the possible wider misuse by the grievor of his corporate credit card than the two gasoline purchases in August. Going

into the audit process, Mr. Shahi had been made aware that in August 2004 the grievor had recorded two unauthorized charges (gasoline) totalling \$154.65 on his enRoute card issued to him, which he understood had been eventually repaid, and concerning which the grievor had been formally reprimanded, as included in the eight day suspension.

Following Ms. DeLancey having received copies of both the Legaree report dated May 13, 2005, and the Shahi report dated May 25, 2005, by her description, she reviewed both, and also the recommendation for dismissal from the Assistant Deputy Minister of Regional Operations, Jack Poitras. She notified the grievor in correspondence directed to him dated June 6, 2005 that a recommendation for his dismissal had been made following the two separate investigations, asking him to respond. She related the facts as she understood them, both with respect to the grievor's interpersonal difficulties encountered while at the MRA meetings in Inuvik as set out in the Legaree report of May 13, 2005 described earlier in this award, and also with respect to the financial audit carried out by Mr. Shahi, the Audit Bureau Director, completed on May 25, 2005. More particularly, with respect to the audit report, she advised the grievor that it had been concluded that "irregularities have occurred with respect to corporate credit card charges, travel expense claims, Internet usage, and long-distance telephone charges", which she summarized in accordance with the findings contained therein:

- Nine unauthorized transactions were processed through your GNWT corporate credit, totalling \$422.**
- you had changed 15 travel claims itineraries without seeking necessary approval to do so, resulting in additional costs to the Department of \$2000.**
- you made a total of 75 unauthorized personal telephone calls, resulting in a \$173 cost to the Department.**

– a review of your Internet usage has revealed that nearly one-third of your Internet use at work was accessing personal web-based electronic mail accounts.

Ms. DeLancey advised the grievor in her letter that in addition to the developed information indicating that he had acted both “inappropriately and unprofessionally” at the MRA meetings, his credit card use as uncovered during the audit was both contrary to the *Financial Administration Act* and was fraudulent. She pointed out that her information indicated he neither had disclosed the inappropriate use of the credit card, nor had he sought approval to change his travel claims or make personal long-distance telephone calls. Further, he had used government equipment for personal use contrary to GNWT employee guidelines. Ms. DeLancey advised that his inappropriate use of GNWT funds and his inappropriate behaviour at the MRA meetings “have negatively affected the reputation and the integrity of the Department and severely damaged my trust in your abilities as an employee of the Department of MACA”. She went on to extend to the grievor the opportunity to provide a written response to the recommendation for dismissal. She also mentioned the grievor’s past disciplinary record in the following way:

You have been progressively disciplined in the past as a result of your repeated inappropriate behaviour. In October 2004, you recently served a lengthy day suspension as a result of the inappropriate use of the enRoute card and your inappropriate actions toward your former supervisor...

Within approximately the next week after receiving Ms. DeLancey’s letter, the grievor responded in writing, indicating therein his commitment to the North Slave communities with respect to the sport, recreation, and youth matters, within the MACA mandate, indicating also that he had been involved in numerous projects and initiatives over the years which had positively impacted the wellness of the communities. In addition, he stated that he not been afforded proper training in the sport and

recreation area which he had requested, and which had it been provided may have resulted in his not being in the situation he was in, and further that before any dismissal action was to be taken he was requesting to meet and discuss possible options. He also wrote as follows:

Although there seems to be a number of issues here, I feel that I have not been given a fair opportunity to properly address/resolve these issues. On many occasions I have requested the opportunity to resolve these matters behind closed doors so that any and all parties involved could all be "on the same page" and come up with options and solutions.

Unfortunately, my requests for taking this step towards resolutions were never acted upon. It is my belief that taking this "informal" approach to resolving matters not only addresses the matter in an immediate fashion, but also represents good human resource management. If for any reason a resolution could not be achieved under these circumstances then yes move to more formal course of action.

Ms. DeLancey testified that on reading the grievor's response letter, she did not see that he addressed any of the concerns that had been flagged for him, with no acknowledgment of any wrongdoing or remorse. She did not believe that the grievor had suffered any lack of training, having been a long time senior RDO and having been previously warned over his interpersonal difficulties. The termination letter was issued by her the following day on June 14, 2005.

Ms. DeLancey was aware that the grievance document filed by the Union in response alleged excessive and that the grievor had potentially been unaware as to the seriousness of the reasons for termination. She disagreed.

In cross-examination, Ms. DeLancey admitted to understanding that all the information contained in the Audit Bureau Report concerned the grievor's suspect financial activities prior to his receiving the eight day suspension in October 2004, indeed prior to the August 2004 gasoline purchases. The audit never revealed any additional suspect travel charges being recorded thereafter. However, she remarked, in her view had the grievor intended on correcting his behaviour and in taking

responsibility for his actions, at the time of his interview in September 2004 over the gasoline credit card charges he would have made a full disclosure covering all the other occurrences which were eventually uncovered through the Shahi audit. But she also did not take the grievor as having indicated any strong expression of remorse at any time, including during his investigative interview with Mr. Shahi, nor did she recall him ever raising the issue of stress or lack of training and knowledge, albeit she could accept that there could have been some personal issues which he did not identify somehow affecting his behaviour. Counsel also raised with Ms. DeLancey the fact of the audit uncovering numerous personal telephone calls which had been charged to his Employer, and she admitted not having any information to dispute that it "may have been" a longtime practice for the grievor to have made calls charged to his GNWT account and then to have reimbursed his Employer for the cost. Indeed, she now understands that reimbursement did occur at some point with respect to the long-distance calls at issue here. But, even if that were the case, she said, he still would have had no authorization and it would be against the Code of Conduct. She also acknowledged that during the interview process, the grievor explained that in the context of his dealing with community representatives, one or other of them may have used his computer from time to time, possibly even in his office, which would have shown up as his personal use on the audit, although from her perspective it still would have been a matter of the grievor "allowing it", which is to say it still occurred with his knowledge and consent. It was put to Ms. DeLancey that changes to travel claims and itinerary could be done by verbal approval, which she acknowledged could occur "in extreme circumstances", but that there would be a need for an employee to have subsequently obtained signed approval from his supervisor in order for the documentation to be completed. She does not understand that would have

occurred with respect to the grievor's changes. In that respect, she was referred to Directive 4.2.4 from the Financial Administration Manual indicating that changes may be authorized after a trip commences. She responded that signed approval would nevertheless be "inherent" at some point, inasmuch as signing is required by the Travel Authorization & Expense Claim form itself, including relative to section 'H', upon completion of one's trip as directed therein. To summarize, she said, there would have to be a final signing off of all expenditures claimed in line with the travel cost changes endorsed on the form, albeit previously he had never been disciplined for those kinds of difficulties, only with respect to the two gasoline purchases on his enRoute card.

During her cross-examination, Ms. DeLancey was also questioned on the GNWT Human Resources Manual – 704 – Investigations, and in particular paragraph 3 dealing with the supervisor's role of gathering relevant information. By her understanding a supervisor does not need to be a trained investigator at the same time. She felt comfortable having Mr. Legaree investigate the Inuvik situation, working as he did at a functional supervisory level, albeit as Director working two levels up from the grievor. She said she is not surprised that Mr. Legaree may have mentioned at some point that the grievor had breached his "personal standard". Being a long-standing public servant, she expects that Mr. Legaree would know how to respectfully deal with the colleagues, stakeholders and the public alike. Ms. DeLancey did not draw back from her view that the grievor had not sought any anger management counselling with any particular urgency, not having indicated any progress over several months. She made reference to a December 16, 2004 letter to the grievor from his superintendent, Mr. Testart, indicating that he had failed to follow up on Ms. DeLancey's instructions from two months earlier to arrange to take, or make arrangements to take, an anger management course or programme,

concerning what he had been told to report back within 30 days with proof that arrangements had been made, which he did not do. She also knew that the grievor preferred to arrange for elder counselling, which had led to discussions in the past and was considered culturally appropriate, but nothing was being confirmed. There were notes from a December 17, 2004 meeting with the grievor where he indicated to Mr. Testart and Ms. DeLancey that he had scheduled a meeting for January 15, 2005 with representatives for the anger management programme. By her recollection, some attempts were made towards confirming arrangements, but the issue was dragging on through to April 2005, while the grievor was admittedly continuing to make some attempts to finalize arrangements. There was no indication from her testimony that she understood the grievor to have failed to make any attempt whatsoever to comply with her previous directions with respect to anger management counselling.

Ms. DeLancey also testified that in her view it is not acceptable to allow outsiders to use the Employer's computers and telephones, albeit in some instances it would call for some professional judgment depending on the situation presented.

The Director of the GNWT Audit Bureau since 2003, T. Bob Shahi, is a certified general accountant, with a specialty in internal auditing. He has many years experience and was working as a bank auditor previous to joining the GNWT in 1987. He was assigned in late October 2004, subsequent to the grievor's two unauthorized gasoline purchases dating from August 2004 being discovered and forming one of the grounds for the suspension he had received a week or two earlier. He investigated his claimed expenses between March 1, 2002 and December 31, 2004 which he understood was the period of time which the grievor had been employed at MACA. Towards that end, as explained by Mr. Shahi in reviewing his signed and submitted report during his testimony as the Employer's final witness

in this matter, with his direct involvement, and under his supervision, the Audit Bureau examined the grievor's travel claims, his enRoute statements, Internet logs, long-distance telephone records, leave and attendance records, and personnel records. As stated in his report, the Audit Bureau's examination "included such tests, procedures, analyses, and inquiries we considered necessary to determine the nature and extent of any irregularities that might have occurred". He also met with the grievor in the company of his union representative on two occasions, March 29 and May 11, 2005.

Mr. Shahi recorded in his report that the grievor acknowledged there were "inconsistencies" in his travel claims and enRoute transactions, in addition to the two unauthorized gasoline charges in August 2004. By Mr. Shahi's count, the Audit Bureau identified an additional nine irregular transactions totalling \$422 processed through enRoute from March 2002 to July 2003, which he summarized in his report as follows:

- **five charges totalling \$152 at Yellowknife Motors when the grievor was not on duty**
- **three charges for fuel totalling \$213 where the grievor had claimed mileage expenses**
- **one charge from a restaurant for \$57 where the grievor had claimed per diem allowance**

In the Audit Bureau Report, Mr. Shahi explained that pursuant to the relevant Financial Administration Manual (FAM) section 820 - 1 covering duty travel, enRoute cards are issued to GNWT employees to facilitate payment of their travel expenses, such as fuel and maintenance costs for rental cars, not for food where a per diem payment is provided, or alcohol expenditures. By Mr. Shahi's recollection, at their meeting on May 11, 2005, the grievor acknowledged that five Yellowknife Motors' charges recorded on his enRoute card in 2002 were not related to any duty travel, and indicating also that during the six-week period covering the five charges, he "may have provided" fuel

for non-GNWT delegates to the MRA meetings held in Yellowknife at some point during that time frame. In their discussing another \$75 charge from August 2003 at the same Yellowknife Motors, he recalled the grievor explaining that he had been on duty travel to Rae-Edzo on the date of the purchase, which Mr. Shahi did not see as assisting his position inasmuch the records indicated he had not been authorized for a rental vehicle which meant he would have been booking mileage, which was allowed at the requested amount of \$110.58. By way of further explanation, according to Mr. Shahi, the grievor said he probably filled up his personal truck before leaving.

Mr. Shahi's investigation showed that again the following month, during duty travel to Fort Simpson from September 15 to 19, 2003, the grievor's enRoute card recorded two charges totalling \$137.81, both with the same charge date of September 18, from separate Shell service stations. Once again it was a situation where the grievor was not authorized for a rental vehicle, and where he charged mileage at the employee requested rate for driving his own vehicle. Mr. Shahi indicated in its report that the grievor acknowledged at their March 29, 2005 meeting that he had purchased fuel for his personal vehicle.

In acknowledging that there were no further identified enRoute irregularities subsequent to the August 2004 gasoline purchases, Mr. Shahi pointed that as a result of those occurrences, the credit card was shortly thereafter taken away from the grievor.

Mr. Shahi's investigation showed that during a period of duty travel to Tulita, on July 30, 2003, in addition to his room expense, the grievor charged another \$57.40 on enRoute for an evening restaurant bill (two orders of chicken wings, three beers), while at the same time also claiming the GNWT standard dinner per diem figure which was paid. In their subsequent discussion, Mr. Shahi

recorded that the grievor acknowledged that the GNWT should not be paying the bill, but inasmuch as he had left the hotel before the bill was settled, the hotel charged in the items on his enRoute. However neither that charge nor any of the other ones, which were seen by Mr. Shahi to be irregular, totalling \$422 were corrected prior to the audit.

By Mr. Shahi's description, the investigation also identified that 35% of the grievor's travel claims (15 of 42 claims) had itinerary changes which had not been approved by an appropriate officer. Five of them involved changes to already approved travel itineraries at an additional cost of \$2000. The additional costs, as described, were seen to have resulted from:

- **the grievor moving from lower to higher priced accommodations**
- **selecting more expensive modes of transportation**
- **charging additional per diems by lengthening the travel time**
- **incurring additional hotel costs by lengthening the travel time**
- **claiming higher mileage rates than the permissible rate**
- **submitting transportation expenses when none had been approved**

By Mr. Shahi's description, just as significant a concern was the grievor changing itineraries where the changes and additional enRoute charges were not explicitly noted on the requested travel claims, for example moving over at some point from private accommodations to hotel accommodations. In such a situation the reviewing officer, when considering whether travel would be necessary in the circumstances, would not have been anticipating any additional expenditures beyond what had been recorded by the grievor on his initial travel claims. It would only have been on his reconciling the enRoute charges that it would have been possible to determine the increased cost after the fact of the

changes being made. Further in dealing with the 42 travel claims, according to Mr. Shahi's report, they also show that the grievor had been approved in advance, for a number of travel advances. There were delays in repayment observed, although only on one occasion was his cheque (\$170.80) returned NSF. The amount was thereafter recovered through payroll deductions.

In remarking on the significance of the changed duty travel itineraries, which resulted in the grievor's department incurring another \$2000 in expenses, Mr. Shahi was able to observe that the FAM 820 -1 stated that all changes to duty travel must be documented and authorized by the appropriate approval officers. By Mr. Shahi's analysis, in dealing with the 15 trips where the claimed expenses did not match what had been approved in advance, the grievor was seen to have violated the procedure by failing to get approval for the travel changes, document the duty travel changes, and include receipts for the enRoute charges with his travel claim. His report detailed the changes to the trips where the unauthorized changes occurred, increasing the associated costs of his doing business on MACA's behalf. Mr. Shahi also recorded that during their May 11, 2005 meeting, the grievor indicated that he believed he had the authority to change his travel plans in going to communities within his region, and that whenever he notified his superiors it was only done out of courtesy and did not represent a request for approval. Further, Mr. Shahi reported that the grievor could not recall the details of the changes, and described them differently from one meeting to the next. He recorded the grievor's having acknowledged that while the travel changes occurred, he could not explain why his travel claims as presented in advance did not accurately reflect his travel, which is to say he did not explain why he had to frequently change his travel itinerary and increase the expenses associated therewith.

Mr. Shahi acknowledged there were no further travel irregularities occurring subsequent to the

grievor's eight day suspension. He also agreed that the grievor never attempted to change or "doctor" any aspects of the forms he filled out. However he did on numerous occasions change his itinerary as he saw fit, without authorization and without anything appearing on the forms. He said the grievor never indicated to him during their meeting that it was his practice to get verbal approval for the changes, and that "generally" the supervisors did not indicate that the grievor ever sought approval.

As Mr. Shahi explained in testimony, the report also showed that the grievor had charged \$173 in "unofficial telephone costs" to his Department by:

- **using his office telephone**
- **using the calling card assigned to his office telephone**
- **charging telephone costs to his hotel bill while on duty travel**

Mr. Shahi testified that the grievor during one of their meetings acknowledged allowing visitors to make long-distance telephone calls from his telephone, and at least \$37 of the \$173 uncovered in telephone costs was for private use.

The grievor in his written response to Mr. Shahi meant to accompany their conversations, as part of the investigative process to be appended to the Audit Bureau Report, the grievor acknowledged that in the past he had made mistakes and may have been "somewhat sloppy" in some areas of his finance reporting, preparing trip reports and completing expense claims. However he was insistent that he "never intentionally submitted a false claim or engaged in any practices that were fraudulent". He also indicated that since the previous autumn (2004) he had been seeking direct advice and guidance in completing expense reports and duty travel approval requests, but prior to which time he had never been advised by anyone from the Department's finance and administration area that he had been "doing

things wrong". He also pointed out therein that he had no signing authority for reimbursement and all he could do was submit a claim for processing. By his version, he was assuming that "all was well and performed in accordance with all appropriate processes and procedures" with any ignorance being displayed on his part said only to be evidence of his naivety.

Nevertheless, in his detailing the difficulties associated with the grievor's approach, when placed alongside the GNWT Code of Conduct, Mr. Shahi explained that FAM 820 -1 requires the Employer to cover long-distance telephone calls while on duty travel, if the call was for government business, and the person called was identified. It also allowed for five-minute personal telephone calls where duty travel extended beyond four days. He said that in examining the grievor telephone records and hotel receipts, he was able to observe that there were 80 unauthorized telephone calls. They were made from hotels with his GNWT calling card. For example, in August 2002 the grievor charged \$124 to his room at the Sheraton Hotel in Winnipeg for the 34 calls he had made, which included 21 local calls for \$24, eight long-distance calls to four numbers in Yellowknife for \$70, two long-distance calls to Colorado and Montana for \$13 which were his vacation destinations immediately after his duty travel was completed, and three long-distance calls to Kitchener for \$17. The grievor's Department was not aware it was paying for his telephone calls as the charges were included on his hotel bill which he did not submit as a backup to the enRoute receipt for hotel accommodations. He said the grievor never provided any indication of the purpose of the calls, or who he was calling, to justify their being considered a work related expense. By Mr. Shahi's recollection, when the hotel bill was presented to the grievor at their May 11, 2005 meeting, he said that he knew there were telephone calls on the hotel bill. According to the grievor's explanation in that meeting, he had called several Yellowknife numbers

to contact his son, and had allowed non-GNWT colleagues to use his hotel telephone to make long-distance calls.

Mr. Shahi's investigation also disclosed that the grievor had made 40 long-distance telephone calls from his office desk, one of them to Deline lasting 149 minutes at a cost of \$37. In their May 11, 2005 meeting, according to Mr. Shahi, the grievor indicated he had made calls to his home, to his workplace and to the mother of a close personal contact, with the majority of the calls admittedly being of a personal nature. In addition, three of the calls charged to the GNWT credit card were made to the Regional Office, while two others were made outside working hours to locations where he was not authorized to stay and four others either did not identify the person who was called or the business purpose of the calls. Mr. Shahi reported that in the May 11, 2005 meeting the grievor "confirmed" that at least \$37 of the \$173 claimed for telephone calls was for private use.

Mr. Shahi's report shows that there was real effort expended in his coming to understand the extent of the grievor's Internet use at work, which he concluded showed his regularly accessing personal web-based electronic mail (Web-mail) accounts. The GNWT had issued Internet usage guidelines in February 2000, which stated that it was a tool provided to assist employees in carrying out their duties and that personal use was not allowed. By his understanding, from August 2004, every GNWT employee had to have had good knowledge of the Internet usage guidelines, which were displayed every time someone logged on to the computer network. The Audit Report analysis of the grievor's Internet logs between August and December 2004 showed that 31% (7063 passes) were web e-mail pages, mostly *msn.com*. Mr. Shahi recorded the grievor to have indicated in their May 11, 2005 meeting that half of his web e-mail visits were work-related and the other half were personal, while also indicating

that he allowed his non-GNWT colleagues to use his computer to access their own web e-mail accounts if they were expecting work-related messages. Mr. Shahi had noted that during their May 11, 2005 meeting the grievor had said several times that it had been his understanding he was there to assist the communities "in whatever way he could". He had also indicated to Mr. Shahi, that despite his having previously worked as a project specialist, a policy adviser, and most recently as a senior RDO, he was not familiar with the GNWT policies until disciplined in August 2004. Further, according to Mr. Shahi, the grievor asserted that he had only accessed his own web e-mail account during coffee breaks and lunch hours. However, by Mr. Shahi's description, the researched information from the grievor's computer as set out in the time interval based table of web e-mail usage, detailed, within the Audit Report, showed that the five-month period under audit review contradicted this assertion. It revealed that the largest usage was during the normal morning work hours, and also that generally the usage extended across the entire work day in relatively consistent fashion. The least number of passes after 8:30 a.m. was during the noontime period and again during the supper hour.

As was his mandate from the Employer, Mr. Shahi stated his conclusion and recommendations. It was that from the extent of the audit findings, as described, he was of the opinion that "irregularities" had occurred with respect to the grievor's use of his enRoute card, duty travel, telephone charges, and use of web-based e-mail.

The grievor, Joseph Bailey, was called by the Union to testify on his own behalf as its only witness. He started with the GNWT in 1998 as a project specialist, and then as a policy adviser, before accepting a position with MACA in 2000 as an RDO, and later a senior RDO, working with six North Slave communities providing support and guidance with respect to their MACA funded youth

recreational, sport, and cultural programmes. He described his usual day-to-day duties as providing advice and assisting local community groups from his Yellowknife office in completing their funding applications, having organizational duties with respect to conferences and traditional aboriginal events, and generally dealing with the concerns of community members on a daily basis. Clients came to his office and he travelled out to their communities as needs arose.

The grievor confirmed in testimony that he attended in Inuvik for the MRA meetings in April 2005, which involved 19 communities being represented, with five of them located in the North Slave Region. He knew that there were issues which had been raised as to whether the North Slave communities were receiving their fair share of funding which was being made available for various projects, and which he thought might have to do with the fact of their being more isolated, and somewhat smaller, than some of the communities in other regions.

During the course of events, the grievor has familiarized himself with the Legaree report as a component of the Employer's decision to terminate his employment in mid June 2005. He has read through the complaints recorded therein and the statements both from the complainants themselves and witnesses who were in attendance at the MRA meetings. With respect to the Sanspariel complaint over his accusing her of being late, for all to hear, at the time of introducing her to those in attendance at the Thursday evening, April 21, meeting, the grievor testified that he could not recall that occurrence. With respect to Ms. Stipdonk's assertion that the grievor at the Friday, April 22, meeting had accused her of not coming to the meetings prepared, and thereby had publicly embarrassed her in front of the entire assemblage of community members, the grievor testified that he "may have said" that she had come to the meeting unprepared, emphasizing that he considered the information she was there to address to

be significant, a "very important issue", dealing as it was with her explaining the MRA's financial statements for the year, including its operating surplus. By the grievor's description it was the only real opportunity during the year for the member communities to be able to question her on financial matters in an open forum, and discuss the final report for the year ending March 31, 2005. At the same time, he said, it was not his intention to be taken as showing anger or wanting to embarrass her, only to present his concern over his members not being able to raise questions and ask for explanations at a meeting which they thought was set aside for that purpose.

With respect to the incident which developed involving his colleague, Conan Donahue, at the Friday morning, April 22, meeting, by the grievor's description the budget discussions were considered critical by his community members, and by the time of his arriving in Inuvik on the Wednesday he had thought that the agenda called for them to occur during the Thursday afternoon or Friday morning meetings. However when he attended the "meet and greet session" he was provided with a schedule which showed that the budget discussions' meeting was to be held on the Saturday. He and three North Slave representatives were already scheduled to leave Inuvik on Friday afternoon and accordingly, by his recollection, he approached Shane Thompson who he understood was to chair the budget discussions' meeting and requested that it be moved to Friday morning. He said that Mr. Thompson indicated at that time that he was agreeable to moving the discussion to the Friday. Notwithstanding the assurance received, according to the grievor, at some point during the Friday morning meeting, with Mr. Donahue chairing the session, and realizing that the budget discussions were apparently not yet on the agenda, he "asked if I could speak to him outside" and they left the immediate area. The grievor recalled that on then asking Mr. Donahue whether he was aware that three of his community

representatives from the North Slave group, and himself, were leaving on the afternoon plane, Mr. Donahue responded that he was not aware. The grievor testified that he pointed out to Mr. Donahue that the budget discussions were "very important" to his members and that he had already discussed with Mr. Thompson on Wednesday evening their being changed to Friday. He said at that point Mr. Donahue "expressed surprise" at their leaving, and "expressed reluctance" to change the agenda. By the grievor's recollection, he felt "pretty frustrated" at that point, having received a negative reaction to what he was saying, including Mr. Donahue remarking that "if you want to be part of it, stick around". He thinks by that time they may have been back in the meeting area, but on hearing Mr. Donahue's remark, he asked if he could speak with him outside again. On leaving with him, going outside the curtained off meeting area, he recalled feeling even "very frustrated". He said that he told Mr. Donahue he had not appreciated what he said, meaning of the "sticking around" remark, as had to get back to Yellowknife that afternoon, being a single father with child care responsibilities. He recalled Mr. Donahue apologizing for his remark. He said he also mentioned his discussion with Mr. Thompson and inquired whether or not he had been told anything. By the grievor's recollection he also said "this is bullshit, what's going on here, Shane is trying to keep us from asking questions", in response to which Mr. Donahue said "I'll see what I can do". At that point, by the grievor's testimony, they went back into the meeting. Further, by the grievor's version, he did not touch Mr. Donahue at any point in any aggressive fashion and did not say the word "fuck". He said that at the time he considered himself to be a good friend to Mr. Donahue, having both attended Arctic College during the same time 11 years earlier where they roomed beside each other, "hung out together", and played on the same hockey team. He said that in the past, as friends, they have had occasional "run-ins", and that

if they had not been good friends he would not have talked to him the way he did. He said that he also apologized to Mr. Donahue after the meeting was over for his outburst, saying that he had been very frustrated over the scheduling issue. However, they have not talked to each other since that time.

At the same time, when he was in Inuvik in late April 2005, the grievor knew that he was in the midst of the ongoing audit process, which he been initiated the previous fall and concerning which he had already been interviewed twice by Mr. Shahi. To put it bluntly, the situation he was in at that point with his Employer, and thinking that it was trying to build a case against him for termination, was causing "lots of stress... lots of anxiety", which he thinks may have had an effect on how he would react to the MRA difficulties experienced at the meetings in Inuvik. Although he was interviewed by Mr. Legaree, he said, he never saw his report which was issued in mid May for the Employer after the complaints were received and witnesses interviewed.

In turning to the audit process, and the difficulties uncovered thereby, the grievor testified that no one ever provided any "full instruction or orientation" on the Travel Authorization & Expense Claim form, including the finance person, who "ran me through the top part" in terms of providing some guidance. He said that he was told by one of the finance officers, Jimmy Stewart, just to fill it out and that if he encountered any difficulties, they would take care of it, meaning, the finance office would work out what was needed. He said that as far as he recalled, prior to his receiving the eight days suspension no one had ever said there was any problem in the way he had been charging expense items to his enRoute card while travelling, or in his making changes to travel itineraries, or in his charging long-distance telephone calls. By his recollection, Mr. Stewart had mentioned that employees make personal calls from time to time while travelling, which they highlight on their credit card invoices and

reimburse the GNWT.

In dealing in his evidence with some of the audit issues raised with him in his discussions with Mr. Shahi, he recalled mentioning to him that on one occasion he had been booked into University campus accommodations in Winnipeg, but after four days was told that a group of athletes was arriving and that he would need to find a room elsewhere, which required him claiming additional expenses. He said that he could recall having telephoned Mr. Legaree on that occasion, asking about the Sheraton Hotel, and was told it would be okay to stay there as that was where the meetings he was attending were being held. With respect to his use of the Internet, he said he did check his Hotmail account from work, some of which would have been with respect to government client calls inasmuch as his business card included his Hotmail account number. He also recorded memoranda on his Hotmail account while travelling outside Yellowknife, being unable to otherwise access his government computer from elsewhere. By his description, he was trying to remain as accessible as possible for his community based clients. At the same time, by his description, visiting clients at least occasionally checked their own e-mail accounts from his office computer. He said he also did sports and recreation activities' research from his office computer through website available information, and providing some examples to clients in his "trying to be proactive" as the senior RDO for the North Slave Region.

With respect to the anger management directions received, the grievor said that "right from the outset" he had sought aboriginal based healing on the basis of his respectful relationship with elders, but that due to the Department insisting on credentials being produced, arrangements were delayed resulting in a string of e-mails between the grievor and a MACA representative in Yellowknife, Gail Stryde. These included the grievor reporting on January 25, 2005 that between October and December

he had been researching anger management services which incorporated the aboriginal perspective, and that between December and January he had attended one preliminary and to follow up "sessions" with counsellors from Tree of Peace, and a preliminary session with Moskegun Consulting in January where it was recommended that he take an anger management assessment test which would then lead to a recommendation of the minimum number of follow-up sessions which would be required. At that point, by the grievor's description, he was looking for some confirmation that payment would be forthcoming by the GNWT for whatever number of sessions were thought to be appropriate following the assessment. The grievor followed up with another e-mail on February 14 asking for some confirmation that he could get started and pointing out that he could not meet further with Moskegun Consulting until a payment plan had been confirmed. Ms. Stryde responded the following day that she had been extremely busy but would get back to him as soon as she could. Nothing transpired thereafter prior to the discharge four months later.

The grievor denied ever intending on defrauding the Employer. He said that he has two children at home for whom he provides care, and that his discharge has caused a significant financial impact in that he is not currently employed at the same salary level, and has had to pay the full cost of his benefit plan over the intervening months. He is currently 43 years old and works at the Legislative Assembly as a part-time constituency assistant to an MLA.

In his cross-examination the grievor acknowledged having received and read Ms. DeLancey's letter referencing the recommendation for his dismissal, and asking for his response. He was certainly aware by then that the Employer was concerned over his actions at the Inuvik meetings six weeks earlier, having been already interviewed by Mr. Legaree. He agreed that his response at that point was

as written in his reply letter of June 13, 2005. Inasmuch as he had not directly responded in this letter to any of the particulars of the alleged wrongdoing which had been set out for him in some detail by Ms. DeLancey, he was asked for some further explanation by counsel. With respect to his interaction with Ms. Sanspariel he said that he thought it might have occurred earlier than the session Ms. DeLancey had described, but admittedly he had asked Ms. Sanspariel for an explanation why she was late for the meeting. With respect to Ms. Skipdonk, he did not see that he had asked for anything inappropriate. He said it was "just a question". With respect to his interaction with Mr. Donahue, on reflection, he feels his co-worker was "partly responsible" and that he has not wanted to talk to him since. He also said that they had walked about 30 feet away from the curtained-off area and he does not see that anyone could have heard much of anything going on between them.

The grievor also took issue with Ms. DeLancey having referred in her dismissal recommendation letter to his behaviour having been "quite concerning given the heightened awareness of your previous inappropriate behaviour". He said that he did not know what she was referring to there. The grievor went on to say that he had not received any orientation on the Code of Conduct, although he admittedly had a copy of it. He acknowledged not having looked at it in the past when issues had arisen concerning his approach to some previous matters. The grievor acknowledged his discipline for the two gasoline purchases, indicating that he had always intended on reimbursing the Employer when he returned from his trip to Fort Providence, where he obtained the gasoline on his enRoute card when caught short of funds. He also said that he had always thought he at least had the authority to buy some gasoline when needed by the North Slave community recreation staff, in a situation where, he thought, their expenses would be ordinarily covered by MACA, for example attending the MRA meetings. He said he had

