

NOVA SCOTIA POLICE REVIEW BOARD

IN THE MATTER OF: *The Police Act, R.S.N.S. 1989, Chapter 348 and the Regulations made pursuant thereto*

- and -

IN THE MATTER OF: A Form 13 Notice of Review filed by **STAFF SERGEANT BRIAN MACDOUGALL** in regard to his internal complaint against **CONSTABLE ROBERT HEARN** a Member of the Truro Police Service and a decision by Chief R.G. White of the Trenton Police Department made on March 15, 2002

BEFORE: Mr. Brian Creighton, Chair
Mr. Orville Symonds, Member
Ms. Marion Ferguson, Alternate Chair

COUNSEL: Mr. David Fisher - Solicitor on behalf of Constable Hearn
Mr. John Rafferty - on behalf of Truro Police Service
S/Sergeant Brian MacDougall - on behalf of himself

HEARING DATE: October 11, 2002

PLACE Glengarry Hotel
150 Willow Street, Truro, Nova Scotia.

DECISION DATE: Written Decision - October 28, 2002

DECISION: Dismissed

On the 19th day of February, 2002, Staff Sergeant Brian MacDougall of the Truro Police Service made a complaint in writing by filing a written statement with Chief Kenneth MacLean that alleged Constable Robert Steven Hearn had committed a disciplinary default. The date of the alleged incident was February 19, 2002. The form of the written complaint was a statement given to Deputy Chief Glen Rogers, which statement accords with the requirements of Nova Scotia Police Act 20(1) which provides as follows:

20 (1) A member of a police force may allege that another member of that police force has committed a disciplinary default by filing a written allegation with

(a) the chief officer of the police force

Chief MacLean appointed Deputy Chief Rogers as the investigator. The complaint was not sustained and the complaint was appealed to the Nova Scotia Police Review Board in accordance with Nova Scotia Police Act Regulations. The parties agree that this Board has full jurisdiction to decide as to whether or not Constable Hearn committed a disciplinary default and, if so, what the penalty should be.

Brian MacDougall is a Staff Sergeant in the Truro Police Service. He is the third in command, according to the oral evidence in these proceedings and in accordance with the organizational chart provided to the Board. The Chief is in command, followed by the Deputy Chief, followed by Staff Sergeant MacDougall.

Staff Sergeant MacDougall is past President of the uniformed officers' local for Truro of the Police Association of Nova Scotia (PANS), and Past President of PANS. Staff Sergeant MacDougall remains interested in the Union local's business.

In the Truro Police Service, only the Chief and Deputy Chief are not members of the Union local. The Union executive is composed of members of all ranks. The Board observes that having senior commanding officers in a PANS local can and will from time to time be problematic. Indeed, the evidence in these proceedings is that there is an inadequate level of separation in the Truro Police Service between the PANS local and the day to day functioning of the Department. Although the Board has had very limited evidence on the overall functioning of the Department, the Board recommends that the Truro Police Service look rigorously at the issue of separating Union activity from the day to day functions of the Police Service.

In or around February of 2002, the PANS local contract was being negotiated. The Board was not provided details as to whether the union contract had expired or was about to expire, or whether there might be some interim negotiations underway. Regardless, a negotiating team was appointed by the PANS local's executive which team did not include Staff Sergeant MacDougall or any of the non-uniformed senior officers whose interest in the negotiations would vary somewhat from the interests of the uniformed and junior officers.

Staff Sergeant MacDougall was clearly upset by this circumstance, although he tried to

downplay this fact before the Board. The Board concluded that on the morning in question, Staff Sergeant MacDougall was very focused on this issue when he arrived at the police station.

Constable Robert Hearn is a relatively junior member of the Truro Police Service. However, he has a university education, military training and was a military officer. Constable Hearn is also the current President of the PANS local. He became the focus of Staff Sergeant MacDougall's ire.

On the morning of February 19, 2002, in the hallway between Dispatch and the Squad Room, Staff Sergeant MacDougall encountered Constable Hearn.

The Board finds that Staff Sergeant MacDougall ordered Constable Hearn into the Staff Sergeant's office located close to the Squad Room. This was not Staff Sergeant MacDougall's office but used by senior officers who needed an office. The Board further finds that Constable Hearn was resistant and challenged Staff Sergeant MacDougall's authority to order him into the office. Regardless, Constable Hearn did ultimately go into the Staff Sergeant's office. Constable Hearn surmised that the purpose of Staff Sergeant MacDougall's order was because he was upset not to be on the Union local's negotiation team. Constable Hearn was aware that Staff Sergeant MacDougall was upset and believed that the conversation which would ensue would only be about union business and not related to policing business.

At the hearing, Staff Sergeant MacDougall stated that his intention had been to discuss Union

and other police business, including Constable Hearn's work as a K-9 officer. The Board is sceptical as to whether or not Staff Sergeant MacDougall did have such intentions.

In a very short meeting, Staff Sergeant MacDougall did speak exclusively about union business. The Board finds that Staff Sergeant MacDougall was fairly insistent that he be on the Union negotiating team. Constable Hearn quite correctly advised him that this was a Union Executive decision and was not something over which he as President had exclusive control. Staff Sergeant MacDougall appeared to Constable Hearn to be using his authority as a senior officer to assist in his lobbying efforts to get on the Union negotiating team. Because Staff Sergeant MacDougall had used his authority as Staff Sergeant to bring the meeting about, this created in Constable Hearn's mind the impression that Staff Sergeant MacDougall was improperly using his authority as a senior officer to discuss Union business. Constable Hearn therefore made attempts to, and did, excuse himself from the room without the specific consent of Staff Sergeant MacDougall. Staff Sergeant MacDougall pursued Constable Hearn into the Squad Room and gave a direct order that he return to the Staff Sergeant's room, and Constable Hearn refused. This incident occurred in front of a junior constable working in the squad room. Constable Hearn did agree to attend at the Chief's office and both officers went to visit the Chief.

Staff Sergeant MacDougall's complaint is that Constable Hearn was insubordinate in accordance with Nova Scotia Police Act Regulation 5(1)(b) which provides as follows:

5 (1) A member of a police force commits a disciplinary default where the member
(b) is insubordinate by

- (i) word or action, or
- (ii) disobeying or omitting or neglecting to carry out a lawful order without adequate reason

The Board finds that on the simplest of levels that Constable Hearn was insubordinate. Constable Hearn was improperly resistant to an order that he go into the Staff Sergeant's office in the first instance, and excusing himself and refusing to return to the Staff Sergeant's office were further acts of insubordination.

In stating that Constable Hearn was insubordinate, the Board is reluctant to be too restrictive in the definition of insubordination. Staff Sergeant MacDougall's point that the orders in themselves were lawful is correct, and therefore there was insubordination. Mr. Fisher on behalf of Constable Hearn argued that there was no insubordination because the orders were unlawful. The orders were not unlawful, and Constable Hearn should have attended the office and remained in the office despite what was apparently a gross abuse of authority by Staff Sergeant MacDougall. Constable Hearn had the opportunity to make a disciplinary complaint against Staff Sergeant MacDougall pursuant to Regulation 5(1)(a)(iv) which provides as follows:

5 (1) A member of a police force commits a disciplinary default where the member

(a) engages in discreditable conduct by

- (iv) using oppressive or abusive conduct or language towards any other member of a police force

The Board will not consider any disciplinary action against Constable Hearn. Staff Sergeant MacDougall abused his authority in the most egregious fashion by using his rightful authority to command a junior officer for an improper purpose. Staff Sergeant MacDougall put Constable Hearn

in an extremely uncomfortable and difficult position and Constable Hearn appears only to have been trying to extricate himself from that circumstance.

This disciplinary complaint is dismissed. The Board affirms that it found that technically there was an insubordination. However, this insubordination was inextricably linked to an abuse of authority by Staff Sergeant MacDougall. It would be grossly unfair for this insubordination to go on the disciplinary record of Constable Hearn as a disciplinary default. The Board directs that nothing will be placed on Constable Hearn's disciplinary record.

The Board affirms its recommendation that the Truro Police Service should address the issue of union business being carried on within the day to day workplace of the Department. The Board cautions against this restriction only applying to senior officers who are in the Union. This would be unfair to those senior officers. If senior officers are restricted from discussing union business on the premises, so should be the junior officers among each other. The Board was left with the impression by the witnesses in the proceeding that Union business is often discussed among officers on duty. If junior officers are allowed to discuss Union business among themselves while on duty, senior officers who are in the Union should not be restricted from such interaction. In this case, Constable Hearn did not want to discuss the composition of the negotiating team with Staff Sergeant MacDougall. That is his right. Staff Sergeant MacDougall ought to have graciously accepted Constable Hearn's desire to not discuss the issue.

DATED at Halifax, Nova Scotia this day of October, 2002

BRIAN CREIGHTON

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Chair

ORVILLE SYMONDS

Member

MARION FERGUSON

Alternate Chair

Distribution:

S/Sergeant Brian MacDougall - Truro Police Service
Constable Robert Hearn - Truro Police Service
Mr. David Fisher - Solicitor on behalf of Constable Hearn
Mr. John Rafferty - Solicitor on behalf of the Truro Police Service
Chief Ken MacLean - Truro Police Service
Chief R.G. White - Chief - Trenton Police service
Mr. Brian Creighton - Chair NS Police Review Board
Ms. Marion Ferguson - Member, NS Police Review Board
Mr. Orville Symonds - Member, NS Police Review Board

File No.: 02-0030

IN THE MATTER OF:

The Police Act, R.S.N.S. 1989,
Chapter 348 and the Regulations made
pursuant thereto

AND IN THE MATTER OF:

An appeal in Form 13 by **STAFF
S E R G E A N T B R I A N
MACDOUGALL** in regards to his
internal complaint against
CONSTABLE ROBERT HEARN of
the Truro Police Service and a
decision by Chief R.G. White of the
Trenton Police Department.

D E C I S I O N

Before:

Mr. Brian Creighton
Mr. Orville Symonds
Ms. Marion Ferguson