

CANADA)
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) IN THE MATTER OF THE *ROYAL CANADIAN MOUNTED
POLICE ACT*, R.S.C., 1985, CHAPTER R-10, AS AMENDED
BY 33-34-35, ELIZABETH II, CHAPTER 11

BETWEEN:

THE APPROPRIATE OFFICER “E” DIVISION

and

CORPORAL R. HANNIBAL, REG. NO. 42970

BOARD MEMBERS:

**Superintendent R. Codère, Chairperson
Superintendent W. Martin, Member
Superintendent D. Simmonds, Member**

APPEARANCES:

**Mr. J.-F. Rannou
for the Appropriate Officer**

**Staff Sergeant M. Baier
for the Member**

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**DECISION OF THE ADJUDICATION BOARD
PURSUANT TO PART IV OF THE
*ROYAL CANADIAN MOUNTED POLICE ACT***

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Synopsis of the decision

Two allegations of disgraceful conduct were established against the member for having used vulgar, inflammatory and unprofessional language in the course of an arrest and for having made inappropriate comments towards a subordinate. The parties submitted an Agreed Statements of Facts as well as a joint proposal on sanction. The Board, considering the Appropriate Officer's support of the joint proposal, and giving deference to it although it was at the lower limit of acceptable penalties, imposed as sanction a reprimand for each allegation.

[1] This decision stems from a hearing held in Ottawa, Ontario, on September 11, 2008. The Appropriate Officer of "E" Division initiated the hearing on June 19, 2002, alleging in a Notice of Disciplinary Hearing that Corporal Hannibal contravened the Code of Conduct on six occasions. The Board was appointed in recognition of the fact that the parties wished to deal with the matter in an expeditious manner.

PRELIMINARY MATTERS

[2] The Appropriate Officer Representative presented three motions all with the consent of the Member Representative. The first was to withdraw Allegations 1 and 2, in addition to Allegations 4 and 5 which had already been withdrawn at an earlier stage of the process; the second was to replace the particulars of the remaining allegations by the particulars contained in an Agreed Statement of Facts (ASF); and, finally, the third motion was to amend Allegation 6 with regard to the date of the misconduct due to a clerical error. All motions were granted.

ALLEGATIONS AND AGREED STATEMENT OF FACTS

[3] The allegations, to which Corporal Hannibal admitted, read as follows (*verbatim*):

Allegation #3:

On or about August 25, 2001, at or near the city of Coquitlam, in the Province of British Columbia, you conducted yourself in a disgraceful manner that could bring discredit on the Force, contrary to section 39(1) of the *Royal Canadian Mounted Police Act Regulations, 1988*.

Allegation #6:

On or about July 13, 2001, at or near the city of Coquitlam, in the Province of British Columbia, you conducted yourself in a disgraceful manner that could bring discredit on the Force, contrary to section 39(1) of the *Royal Canadian Mounted Police Act Regulations, 1988*.

[4] In support of the allegations, the parties presented an Agreed Statement of Facts, as follows (*verbatim*):

1. At all material times, Cpl. Hannibal was a member of the Royal Canadian Mounted Police, posted in E" Division.
2. The Member was on duty in uniform at all material times. At approximately 12:30 a.m. on the 25th of August, 2001 an investigation of sexual assault

became necessary at a local pub.

ALLEGATION #3

3. During the course of the above-noted investigation, a patron of the pub, (Mr. M) was removed from the premises during which time there was a struggle between, among others, the attending members and Mr. M, who was intoxicated.
4. As a result of all the circumstances, it became necessary to consider deploying a taser (CEW) to obtain compliance of Mr. M.
5. The Member gave warning to Mr. M by displaying the taser device and activating it in the air together with an additional verbal warning prior to deploying the taser. The verbal warnings had no deterrent effect on Mr. M and the taser was deployed by the Member.
6. Compliance was briefly achieved, however, the altercation continued almost immediately thereafter.
7. The Member then again warned the suspect by stating, "Don't resist. If you do that again I will have to taser you".
8. The situation appeared dangerous for a number of reasons including but not limited to, the fact that the suspect's hands were cuffed in front. The suspect then continued to struggle and then subsequently was resistant to attempts to place him in the rear seat of the police car.
9. The Member then gave an additional verbal warning prior to deploying the taser using more words, some of which were vulgar, inflammatory, unprofessional and not in accordance with training he received on what would constitute appropriate words to be used as warnings prior to the necessary deployment of a taser by a member.

ALLEGATION #6

10. The Member was on duty and in full uniform on July 13, 2001.
11. In the course of his duties he came in contact with another member Cst. T.
12. During the course of contact with Cst. T. the Member made inappropriate comment to Cst. T using words to the effect "your ass is mine".
13. Very shortly thereafter the Member discussed his actions towards his co-worker with his line officer. No malice was intended by his inappropriate

comment.

SUBMISSIONS ON THE ALLEGATIONS

[5] Asked by the Board what the focus of the Allegations was, the Appropriate Officer Representative indicated that the misconduct related to the use of foul language by Corporal Hannibal in both instances. For the rest, the ASF spoke for itself. The Member Representative had no comments.

DECISION ON THE ALLEGATIONS

[6] Applying the facts presented in the ASF and Corporal Hannibal's admission to the allegations, the Board found that the identity of the member and the facts surrounding the alleged conduct had been proven. The Board also found that a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that the conduct of Corporal Hannibal in using vulgar, inflammatory and unprofessional words in the course of an arrest and in making inappropriate comments to a co-worker amounted to disgraceful conduct, bringing discredit on the Force. Furthermore, the Board found there was a clear relationship between the conduct and the interests of the Force so as to warrant discipline against the member. The Board, therefore, found that the allegation of disgraceful conduct had been established.

SANCTION

[7] The parties submitted a joint proposal on sanction consisting of a global reprimand for both allegations.

SUBMISSIONS ON SANCTION

[8] The Appropriate Officer Representative indicated that the member had been the subject of four prior disciplinary measures:

- an informal reprimand was administered on August 31, 1993, for uttering a verbal threat during a confrontation with a member of the public;
- counselling was administered on August 25, 1993, following an incident with a member of the public at the Detachment where his language was found to be tactless and oppressive;
- formal discipline consisting of a reprimand and a pay forfeiture of three days was imposed on January 18, 1994, in regard to a false, misleading or inaccurate statement given to a member who was superior in rank or had authority over him (found in (1994), 20 A.D. (2d)

172); and,

— an informal reprimand was imposed on September 16, 2000, in relation to an attempt to date a sixteen year old, whose address and telephone number he had obtained during the course of his duties.

[9] The Appropriate Officer Representative added that two of the four prior disciplinary measures were similar in nature. In regard to Allegation 6, the subject of the negative comments was a subordinate. Inappropriate comments would constitute the third time Corporal Hannibal would be disciplined for this type of conduct.

[10] The Member Representative submitted that Corporal Hannibal has an above-average to superior level of performance, works extremely hard, is highly intelligent and principled, is extremely dedicated to the Force, has strong communication skills, and is always available to help and motivate his co-workers. Very favourable comments were also provided by his superiors.

[11] For the imposition of an appropriate sanction, the parties relied on the decision of *The Appropriate Officer of "A" Division and Constable Bertrand*, (1998), 1 A.D. (3d) 120.

DECISION ON THE SANCTION

[12] The Board considered the facts of the case, the submissions of the parties, the aggravating and mitigating factors, and the decided case on which the parties relied. The Board also noted the judicial encouragement for adjudicative bodies to give a certain deference to agreements between parties on sanction, recognizing, of course, the ultimate authority rests with the Board pursuant to subsection 45.12(3) of our *Act*.

[13] The Board was of the view that the range of sanction for the misconduct would run from a reprimand to a pay forfeiture at the lower end of the penalty scale. Indeed, the misconduct itself was minor in nature. Nonetheless, we were not prepared to accept the proposed sanction, but first, we had to decide whether there would be one global sanction for two allegations. Subsection 45.12(3) of the *RCMP Act* provides:

Where an adjudication board decides that an allegation of contravention of the Code of Conduct by a member is established, the board shall impose any one or more of the following sanctions on the member, namely...

We were therefore of the view that the Board had to impose one sanction for each allegation. The Board felt that if only one allegation had been drafted to include both incidents, one sanction would have been appropriate for the whole misconduct. We were of the view that the situation was also different from a misconduct where several allegations contained in one Notice of Disciplinary Hearing would be so serious as to warrant one global sanction of dismissal.

[14] Secondly, we were of the view that the present matter involved conduct similar in nature to the facts that gave rise to the imposition of disciplinary measures in the form of a reprimand as well as counselling in 1993. Although the measures appeared dated, the misconduct was definitely of the same nature, namely the use of inappropriate language. In addition, in the instant matter, the member was experienced, holding the rank of corporal; finally, in Allegation 6, he was the supervisor of the member who was the subject of the comment.

[15] The Board indicated to the parties that it considered a sanction consisting of a reprimand for each allegation, as well as a pay forfeiture of two days for Allegation 3 and of 1 day for Allegation 6. The Board allowed the parties to present additional comments or evidence in support of their proposal. The parties suggested that the Appropriate Officer had considered the case in its entirety and that in the circumstances, the joint proposal was not unreasonable and therefore should be accepted as this is the rule when a joint proposal is suggested to a Board. The Board agreed that it should give deference to the joint proposal and it gave a lot of weight to the support of the Appropriate Officer in the proposal. If it would not have been for this support, we would have imposed a more serious sanction. We advised Corporal Hannibal that the sanction was at the lower limit of what was acceptable.

[16] The Board was satisfied that the joint proposal on sanction remained within the range of acceptable penalties in light of the circumstances of the case. A higher standard of ethical conduct is expected from the members of the Force given the nature of their responsibilities towards the public. Corporal Hannibal, as talented as he is, should be aware more than ever that he has to set an example for co-workers and exercise good judgment in his interactions with the public. The Board imposed the following sanction: a reprimand for each allegation.

ORAL DECISION RENDERED the 11th day of September 2008.

Dated at Ottawa
in the Province of Ontario
this 17th day of September 2008.

Superintendent R. Codère
Chairperson, Adjudication Board

I AGREE:

Dated at Ottawa
in the Province of Ontario
this _____ day of _____ 2008.

Superintendent W. Martin
Member, Adjudication Board

I AGREE:

Dated at Ottawa
in the Province of Ontario
this _____ day of _____ 2008.

Superintendent D. Simmonds
Member, Adjudication Board