

THE LAW ENFORCEMENT REVIEW BOARD HEARING

FILE # 1610

BETWEEN:

M.W.

Complainant,

- and -

N.B.

Respondent Officer.

BOARD MEMBERS

C. Meighen, Chairperson
G. Lambert
T. Elwick

DECISION - THURSDAY, SEPTEMBER 12, 1991.

APPEARANCES:

Mr. D. Grey
and Ms D. Gielis appeared on behalf of the Complainant.

A. McGregor, Q.C.
and Mr. P. McKenna appeared on behalf of Respondent
Officer.

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ORIGINAL

THURSDAY, SEPTEMBER 12, 1991.

DECISION DELIVERED AT 11:20 A.M.

CHAIRPERSON: We have reached a decision with respect to the motion, and our decision is that we are not prepared to hear the new evidence.

We feel that it would not have any basic effect on our decision, and we are in a position where we want to provide our decision to you.

10 If we look at Form 12, which is the Notice Of Alleged Disciplinary Defaults, we considered the three of them and would like to respond to them in inverse order.

The first allegation is that on the 19th of May 1990, while arresting M.W. Constable B. was discourteous and uncivil toward the complainant, M.W.

20 Our view is that the only evidence which could be construed as discourteous or uncivil, was the response made to the comment that, either you're in trouble, or this is going to be reported in the native media, and his comment back was, fine, well then call them the next time you're in trouble, or something to that effect.

We consider the remark to be somewhat sarcastic and smart-aleck. In the circumstances, however,

we don't consider that the comment is an abuse of authority under the Act. Perhaps it was injudicious, but in the circumstances, it's difficult to be very critical.

The second allegation is that Constable B. while arresting M.W. used oppressive or abusive conduct or language.

Again, we can't find any evidence insofar as oppressive or abusive language. There just wasn't anything brought before us. The question of oppressive conduct, 10 oppressive or abusive conduct, again we just can't find that there's evidence that satisfies the onus of establishing beyond a reasonable doubt, that Constable B. abused his authority by using oppressive or abusive conduct.

The third complaint is that Constable B. used unnecessary violence, or excessive force against the complainant while arresting him.

I think the central issue really is the question of the kicking. We have no doubt that there was 20 at least one blow to the head of M.W., and we are of the view that it was of sufficient force to result in a warning coming from K.W. about the plate in his head. Quite frankly, we were fairly impressed with the demeanour and the candor of K.W. On the other hand, the complainant's case suffers without the complainant here; it

suffers without G. being here; it suffers without V. being here; it suffers without the doctor being here, who apparently was attended to by M.W. after his release.

On the basis of all of the evidence that is before us, we just are not in a position where we can satisfy the standard of proof. That is, we are not satisfied beyond a reasonable doubt Constable B. used unnecessary violence or excessive force against M.W.

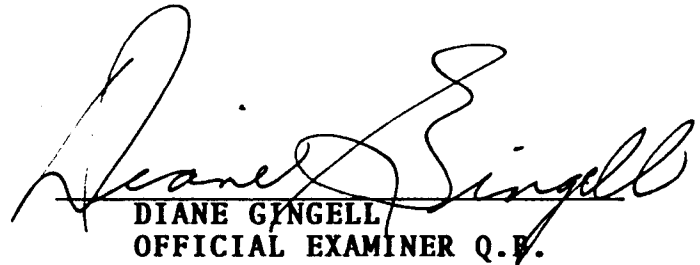
10 in arresting on May 19th, and we find that there was no abuse of authority.

We thank counsel and the witnesses for their appearance.

(HEARING ADJOURNED 11:30 A.M.)

OFFICIAL EXAMINER'S CERTIFICATE

I, DIANE GINGELL, A DULY APPOINTED
OFFICIAL EXAMINER in and for the Province of
Manitoba, do hereby CERTIFY the foregoing
pages of typewritten matter, numbered 1 to 3,
were taken by me at the time and place
hereinbefore stated on the Stenomask.


DIANE GINGELL
OFFICIAL EXAMINER Q.E.

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