

HERA 819

LAW ENFORCEMENT REVIEW AGENCY

File No. 40

BETWEEN:

H W (J.J. H ,

Complainant,

v.

CONSTABLE R. C , # ,

Respondent.



PENALTY HEARING DECISION

Law Enforcement Review Agency Hearing held before Madam Chairperson Martha Chuchman and Messrs. Charles Meighen, Robert Rae, Bruce Chegus and Robert Fabbri at the Charter House Hotel, SE Hargrave and York, Winnipeg, Manitoba, on Tuesday, November 3, 1992.

APPEARANCES:

PANEL:

Presiding Officer:	Madam Chairperson M. Chuchman
Deputy Presiding Officer:	Mr. C. Meighen
Board Member:	Mr. R. Rae
Board Member:	Mr. B. Chegus
Board Member:	Mr. R. Fabbri

Counsel for Complainant:	Mr. M.J. Pollock
Counsels for Respondent:	Messrs. A. McGregor and P.R. McKenna

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Per: Violette Michaylow

THE CHAIRPERSON: The Board has deliberated. It took a little bit longer than we had hoped. In any event, we have reached a decision. The Board having made a finding that Constable C did commit disciplinary default of abusing his authority by using excessive force towards the late J. J. H. has had to consider the appropriate penalty for such disciplinary default.

In reaching a decision as to penalty, the Board considered the submissions of counsel, the service record of Constable R. C. and the recommendation of the Manitoba Police Commission as to the appropriate penalty made pursuant to Section 17(6) of the Law Enforcement Review Agency Act.


The penalty provisions are set out in Section 30 of the L.E.R.A. Act. The provisions of this section are strict and rigid and we have no ability to deviate from them. The Manitoba Police Commission has recommended that the maximum possible penalty for this disciplinary default be dismissal.

Pursuant to Section 28(3) of the L.E.R.A. Act, we have the discretion to order a lesser penalty. It is our opinion that because of the mitigating factors, namely that this was an isolated incident, the respondent's current state of health, previous clear record and the undue economic hardship that would result, a lesser penalty is justified.

It is trite to say, but no penalty which we impose will reverse the tragedy which occurred on March 9, 1988. The Board's decision is that Constable R. A. C. should be reduced in rank to a fourth class constable which would, in effect, place him back into training. That is the Board's decision. Thank you. The proceeding is now concluded.

(PROCEEDINGS CLOSED)

I, Violette Michaylow, Court Reporter, do hereby certify that the foregoing pages, numbered 1 to 2, is a true and accurate transcript of the proceedings herein as recorded by me to the best of my skill and ability.



Violette Michaylow
Court Reporter