

OCCPS JR #09-02

McCormick v. Greater Sudbury Police Service

Reversed in part

Divisional Court (March 1, 2010)

Court File # 125/09

Hill J. (Lax J. concurring; Wilson J. concurring in the result)

JUDICIAL REVIEW - Hearing Officer found S/Sgt. guilty on charges of unnecessary force and neglect of duty and imposed penalty of demotion to cover both counts - Commission dismissing appeal from conviction and penalty decisions - Hearing Officer misapprehended evidence with respect to allegation that Appellant kicked a handcuffed prisoner - Misapprehension went to basis of Hearing Officer's decision - Hearing Officer's reasons deficient - Appeal allowed in respect of unnecessary force count and penalty.

JUDICIAL REVIEW - Appellant convicted on counts of unlawful or unnecessary exercise of authority and neglect of duty - Conviction on unnecessary force count not sustainable in light of legal errors in Hearing Officer's decision - Appellant acknowledged he failed to make notebook entries relating to his participation in an arrest - Hearing Officer's finding of guilt reasonable in relation to notebook particular - Appeal dismissed respecting neglect of duty count.

JUDICIAL REVIEW - Standards of review – Scope of Commission's jurisdiction to review decisions of hearing officers' factual findings - Distinction between sufficiency of evidence and reasonableness of a decision - Review

authority conferred by s. 64(10) of *Police Services Act* includes not only sufficiency of evidentiary support but also reasonableness of hearing officer's findings - In instant case, failure to consider reasonableness of Hearing Officer's findings requires that Court conduct reasonableness review of Hearing Officer's decision.

PROCEDURAL FAIRNESS - Duty of procedural fairness may require an administrative tribunal to provide reasons for its decision - Police discipline cases under *Police Services Act* give rise to legitimate expectation that adequate reasons will be provided - Requirement to give reasons part of the duty of procedural fairness - In instant case Hearing Officer failed to advert to contradictory evidence relevant to credibility of key prosecution witness - Path of reasoning deficient and not affording effective appellate review - Deficiencies in reasons compromise procedural fairness to a degree amounting to reversible error - Appeal allowed respecting unnecessary force conviction - New hearing ordered before a different Hearing Officer.

PROCEDURAL FAIRNESS - Appellant found to have used unnecessary force against handcuffed prisoner - Hearing Officer denied Appellant opportunity to re-examine victim using a photo of the constable who better matched victim's description of his assaulter - Hearing Officer's reasons for excluding evidence included purported futility of performing identification exercise in light of his assessment that victim's evidence was generally unreliable - Negative prejudgment employed to exclude relevant evidence from an independent witness who was providing evidence exculpating Appellant - Reasons for excluding evidence erroneous and amounted to denial of procedural fairness.

REMEDIES - Appellant found guilty on charges of using unnecessary force and neglecting his duties - Appeal from conviction and penalty decisions of Hearing Officer dismissed by Commission - With respect to unnecessary force charge,

reasons of Hearing Officer deficient and contain legal errors
- New hearing warranted before a different Hearing Officer -
Neglect of duty conviction upheld - Penalty remitted to
newly assigned Hearing Officer.