



COURT MARTIAL

Citation: *R v Rayment*, 2012 CM 1003

Date: 20120321

Docket: 201165

Standing Court Martial

Canadian Forces Base Esquimalt
Esquimalt, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Petty Officer 2nd Class K.D. Rayment, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Petty Officer 2nd Class Rayment admitted his guilt to two charges laid under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline. The particulars of these charges read as follows:

- (a) **FIRST CHARGE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE:** In that he, on or about 28 September 2011, at Kandahar Air Field, Province of Kandahar, Islamic Republic of Afghanistan, touched Corporal Goodwin J.A., contrary to Defence Administrative Orders and Directives 5012-0; and
- (b) **SECOND CHARGE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE:** In that he, on or about 5 October 2011, at Kandahar Air Field, Province of Kandahar, Islamic Republic of Afghanistan, stated "you suck things well" or words to that effect to Corporal

Goodwin J.A., contrary to Defence Administrative Orders and Directives 5012-0.

[2] The court must now determine and pronounce a sentence that it considers appropriate, fair, just, and that will maintain discipline.

[3] Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Petty Officer 2nd Class Rayment be sentenced to a reprimand and a fine in the amount \$1,000, payable in two equal instalments of \$500. They have provided a book of authorities that included recent cases dealing with harassment in the workplace to support their recommendation. They submit that it would fit in the range of sentences for similar cases. It is generally accepted that a court is not bound by such joint submission, but it should be rejected only if it is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[4] In the context of sentencing an offender under the Code of Service Discipline, the Court Martial Appeal Court has expressly stated that a court martial should guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*.

[5] The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes the interest of the Canadian Forces; the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender, but also upon others who might be tempted to commit such offences; and the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence; the previous character of the offender and his or her degree of responsibility; and the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. In other words, punishments in the form of incarceration should be used as a last resort. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[7] The facts surrounding the commission of the offences indicate that on 15 November 2010, Petty Officer 2nd Class Rayment was deployed with and was posted to Supply Company, Mission Closure Unit, Mission Transformation Task Force at Kandahar Airfield in Afghanistan on 9 May 2011. As part of his secondary duties for the Mission Closure Unit, Petty Officer 2nd Class Rayment was assigned as a workplace relations advisor and as such he was much aware of the Defence Administrative Orders and

Directives 5012-0 on the Canadian Forces Harassment Prevention and Resolution policy. Petty Officer 2nd Class Rayment was assigned to be a member of the Seacan Management Team on 22 September 2011. On 28 September 2011, the Seacan Management Team moved into a new building. Petty Officer 2nd Class Rayment moved his desk next to a female non-commissioned member who was his direct subordinate. He walked over to her and placed his hand on her neck, rubbed the area, and stated, "I get to do this everyday now that we are in the same office." She pulled away and told Petty Officer 2nd Class Rayment not to touch her again. On the morning of 5 October 2011, the victim walked through her office area drinking a juice box and pushing a two-wheel cart. Petty Officer 2nd Class Rayment told her she did that well. She inquired if he meant drinking apple juice. Petty Officer 2nd Class Rayment stated, "No, suck." She then stated, "Now I suck?" to which Petty Officer 2nd Class Rayment responded, "No, you suck things well." The victim understood the comment to be said in a sexual manner.

[8] The aggravating factors in this case can be summarized as follows:

- (a) You were in a position of trust and authority with the victim of your harassment. You were not only her supervisor, but also the workplace relations advisor responsible to prevent harassment in the workplace and contribute to ensure a harassment free workplace;
- (b) You are a very experienced non-commissioned member with more than 27 years of service during which you were deployed in a multitude of hostile or otherwise difficult environments throughout your career. There is no doubt that you knew the importance of promoting a workplace environment free of harassment, particularly in a deployed operation where effectiveness, team cohesion, morale, and mutual respect is so important;
- (c) A person found guilty of an offence under section 129 of the *National Defence Act* is liable to dismissal with disgrace from Her Majesty's service. This offence is objectively serious. However, it must be noted that the facts surrounding the commission of the offence or of the offences are at the lower end of gravity for similar matters, not that this constitutes any excuse to the improper behaviour; and
- (d) Finally, the fact that the harassment took place in a deployed environment.

[9] There are, however, significant mitigating factors in this case:

- (a) First, you have pleaded guilty to charges at the very earliest opportunity. The court considers this complete admission of guilt as a sincere expression of remorse and the full acceptance of responsibility;

- (b) Second, your record of service indicates that you have served more than 27 years in the Canadian Forces and that you have demonstrated over the years that you are an outstanding performer, reliable, and highly professional. The court has reviewed all your Personnel Evaluation Reports since 2006 and I conclude that your misconduct constitutes a serious error in judgment that is inconsistent with your reputation and behaviour throughout your career;
- (c) Third, you have no previous disciplinary or criminal record; and
- (d) Fourth, you have two children and two stepchildren born between 1990 and 1994. The document entitled "View Pay Entitlement" indicates that you pay a monthly support payment in the amount of \$837.

[10] The court agrees with counsel that this case fits within the range of sentences imposed in similar matters. The proposed punishment of a reprimand and a fine in the amount of \$1,000 is not so off the mark that its adoption by this court would be contrary to the public interest or bring the administration of justice into disrepute. This punishment is adequate to promote the objectives sought by counsel, namely the denunciation, as well as general and specific deterrence. I find that the sentence proposed will also contribute to the rehabilitation of Petty Officer 2nd Class Rayment, who will be stigmatized for his misconduct despite his otherwise outstanding record. The proposed sentence also meets the principle of parity.

FOR THESE REASONS, THE COURT:

[11] **FINDS** Petty Officer 2nd Class Rayment guilty of the first and second charge of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*, contrary to Defence Administrative Orders and Directives 5012-0, Harassment Prevention and Resolution.

[12] **SENTENCES** you to a reprimand and a fine in the amount of \$1,000, payable in two equal and consecutive monthly instalments of \$500, starting on 15 April 2012.

Counsel:

Lieutenant-Commander S. Torani, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Commander B.G. Walden, Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class K.D. Rayment