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File: 161-2-1191

Citation: 2001 PSSRB 52



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

THOMAS C. CAHILL

Complainant

and

TREASURY BOARD
(Solicitor General Canada - Correctional Service)

Respondent

RE: Complaint under Section 23 of the
Public Service Staff Relations Act

Before: [Marguerite-Marie Galipeau, Deputy Chairperson](#)

For the Complainant: Himself

For the Respondent: [Carole Bidal, Counsel](#)

Heard at Ottawa, Ontario,
May 3, 2001.

DECISION

[1] This decision follows the reference of a complaint under paragraph 23.(1)(c) of the *Public Service Staff Relations Act (PSSRA)* by Thomas C. Cahill, formerly employed at Solicitor General Canada, Correctional Service.

[2] Paragraph 23.(1)(c) of the *PSSRA* reads as follows:

23.(1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed

[...]

(c) to give effect to a decision of an adjudicator with respect to a grievance; or

[...]

[3] Mr. Cahill alleges that the employer failed to implement the decision of Deputy Chairperson Evelyne Henry (2000 PSSRB 53; 166-2-29532), who rendered the following decision after a hearing held on May 31, 2000:

[1] Mr. Thomas Cahill, Coordinator of Personal Development at Bath Institution, Correctional Service Canada, filed a grievance on October 21, 1999. His grievance reads:

I grieve the financial penalty awarded to me by A/Warden G.F. Minard in his letter of October 5, 1999 received by me on Oct 17/99.

I request the matter proceed to 3rd level. As 2nd level imposed the penalty. No extension to timeframes will be granted.

[2] The corrective action requested was:

That the financial penalty be rescinded and no record of this financial penalty/incident remain on any employer files.

[3] A hearing was scheduled in Kingston for May 31 to June 2, 2000. After half a day of hearing where preliminary arguments on procedure were made and some of the employer's evidence was presented, counsel for the employer declared that the employer was conceding the grievance, that no further evidence was going to be presented and the

redress as stated by the grievor was granted by the employer.

[4] In view of the above the hearing was terminated and the grievance is allowed.

*Evelyne Henry,
Deputy Chairperson.*

OTTAWA, June 6, 2000.

[4] Mr. Cahill alleges that there remains a record of the financial penalty/incident on the employer's files despite the employer's concession of the grievance. The employer's position is that in conceding the grievance, its intention was to rescind the financial penalty from the grievor's personnel file, but not all employer files because this is impossible.

[5] The evidence can be summarized as follows.

[6] On May 18, 1999, three management representatives (a staffing officer, Human Resources, a deputy-warden and the acting chief: case management) filed a harassment complaint against Mr. Cahill.

[7] An investigation ensued.

[8] During the investigation, Mr. Cahill was suspended.

[9] On July 30, 1999, an investigation report was issued.

[10] As a result, on October 5, 1999, Mr. Cahill was given a financial penalty of approximately \$560.

[11] He grieved this financial penalty and, as can be read from the decision reproduced at the beginning, the employer conceded the grievance.

[12] Since then, it has come to the grievor's attention that there still exists, in certain employer files, a mention of the financial penalty which he received as well as a mention of the harassment complaint and findings against Mr. Cahill.

[13] In particular, there are certain documents reflecting the pay transactions relating to the imposition of and eventual rescission of the financial penalty and, more disturbingly from Mr. Cahill's point of view, the data file which contains the complaint and the findings against Mr. Cahill does not contain any mention of the fact that the financial penalty meted out as a result of the complaint and the investigation was eventually rescinded by the employer. Mr. Cahill is preoccupied that this omission is detrimental to him in that it gives the impression that he was penalized as a result of having committed harassment against three managers. Any access to the data bank renews for an additional two years the presence of the information relating to the complaint which led up to the financial penalty.

[14] Thus, Mr. Cahill believes that he may be forever haunted by events for which, in the end, he was not disciplined, the financial penalty having been rescinded.

[15] He would be happier if the employer made a mention in the harassment files of the fact that the financial penalty was rescinded and, to this end, he would also wish to have the employer place a copy of Mrs. Henry's decision reflecting the employer's concession of his grievance.

[16] Mr. Cahill is also frustrated that, after having been suspended for approximately six months pending the results of the investigation, after having received a financial penalty and after having had to file a grievance, the employer decided to concede the grievance thus depriving him of the opportunity to examine certain witnesses, including the Commissioner. If the employer had said that it was only making a partial concession, i.e. that it was agreeing to remove any mention of the financial penalty from the personnel file only and not from all employer files, as Mr. Cahill was led to believe, according to him, then he would have refused the employer's concession and he would have insisted that the hearing proceed because it was important to him that he examine some employer representatives and that he be allowed to show that some of the employer's representatives had used the harassment policy against him. He feels the employer's concession has prevented him from putting the facts to the light of day.

[17] The employer produced Mr. Louis Germain, a Staff Relations Advisor.

[18] Mr. Germain confirmed that, up until a few weeks ago, there were memoranda on Mr. Cahill's personnel file (Exhibits E-1 and E-2) relating to pay deductions. The deductions related to a previous financial penalty to that at issue here. According to Mr. Germain, Mr. Cahill's personnel file does not contain any reference to the financial penalty at issue in the instant case.

[19] Mr. Germain confirmed that there does exist a file containing the complaint made against Mr. Cahill as well as the investigation report. He explained that this file could not be destroyed because it was under the complainants' names.

[20] Mr. Germain explained that, according to Treasury Board policy, the Department must keep records of the harassment complaint for up to two years after the last entry or access to the file.

[21] He also testified that Mr. Cahill had asked that a document such as Mrs. Henry's decision be placed on this file in order to reflect the fact that, in the end, the employer conceded Mr. Cahill's grievance on the ensuing financial penalty.

[22] Mr. Germain acknowledged that by not having any mention on the harassment files of the fact that the employer had rescinded the financial penalty meted out as a result of the harassment complaint, the record left the impression that Mr. Cahill had indeed committed harassment.

[23] Mr. Germain conceded that there is no impediment to placing Mrs. Henry's decision (*supra*) on the harassment files, and offered to do so. Counsel for the employer confirmed that the employer was prepared to do so. (At this point, Mr. Cahill interjected that he would also like to have the allegations of harassment removed.) Mr. Germain pointed out that it is necessary that the employer keep pay documents in order to allow the proper audit of pay matters.

[24] Mr. Cahill conceded that his personnel file did not contain at the time of the hearing on May 3, 2001 any information relating to the financial penalty.

Arguments

[25] The employer's argument can be summarized as follows.

[26] The employer's intention at the time that it conceded the grievance was to rescind the financial penalty and to remove any reference to it from the grievor's personnel file and the employer has complied with this undertaking.

[27] However, the employer remains agreeable to putting Mrs. Henry's decision on the harassment files.

[28] Mr. Cahill's file has been expunged, and the employer has taken a pragmatic approach.

[29] The harassment files cannot be expunged, nor could this matter form part of a grievance. Even between them, the employer and the bargaining agent have not agreed in the collective agreement (clause 17.05) to remove disciplinary references from all government documents.

[30] In the instant case, to remove any trace of what has happened is impossible. Mrs. Henry's decision is public; the employer is accountable for its actions and needs to justify its pay actions to the Auditor. In addition, the employer is also accountable to the persons who initially filed the complaint against Mr. Cahill. Indeed, if the complainants decided to make accusations against the employer in its treatment of their complaint, the employer needs to be able, through the use of the relevant documentation, to defend itself. Should all documents be destroyed, the employer could not defend itself.

[31] Perhaps the adjudicator, Deputy Chairperson Henry's own words, could have made the situation clearer. In any case, she awarded the grievance according to the words used by the grievor.

[32] In summary, the intent should be that it is the grievor's file which is wiped clean of any disciplinary reference.

[33] The employer has complied with this intent. The penalty was rescinded, the money was given back, the disciplinary documents were destroyed and all references were removed from the grievor's personnel file.

[34] The following decisions were quoted: *Samborsky* (Board file 161-2-585) and *Emsley* (Board file 161-2-686).

[35] For his part, Mr. Cahill stated that, by the employer's concession, he felt deprived of a hearing by an independent third party and he feels that there remains a cloud over his reputation. He added that the words he had used in his grievance were "the employer's files" and that the employer's concession of the grievance was on that basis.

Reasons for Decision

[36] I have examined and inquired into Mr. Cahill's complaint that the employer has failed to give effect to a decision of Deputy Chairperson Evelyne Henry, sitting as an adjudicator on a grievance filed by Mr. Cahill.

[37] As can be seen from her decision reproduced at the outset of this decision, Deputy Chairperson Henry allowed the grievance on the basis of the employer's concession of the grievance. Since counsel for the employer indicated that the grievance was conceded and "the redress as stated by the grievor was granted by the employer", Mrs. Henry did not formally order the employer to do so as she was relying on the representations made by the employer. The employer committed itself to grant the redress sought by the grievor. The grievor had asked that "no record of this financial penalty/incident remain on any employer files". (emphasis added)

[38] The employer now argues that its intention was to remove any reference to the financial penalty from the grievor's file not "any employer files".

[39] Mrs. Henry narration (paragraph 3) of the employer's concession does not reflect that the employer made this intention known at the time it conceded the grievance, nor did the employer claim before the undersigned to have made this intention known at the time of the concession of the grievance.

[40] I conclude that, at best, this "intention" is an afterthought once the employer became cognizant of Mr. Cahill's subsequent insistence that "any employer files" be expunged of any reference. One can understand that now, with hindsight, the employer entertains misgivings about removing any reference to the events ("incident") which led to the financial penalty, which the employer eventually rescinded.

[41] I agree with counsel for the employer that the employer needs to have some record of what took place, if only to be accountable to the complainants or to an auditor.

[42] By the sweeping concession the employer has made, it is the author of its own predicament. However, in my view, the employer is rescued from its position by Mr. Cahill himself who has declared that he would be satisfied if Mrs. Henry's decision, and hence the employer's concession, was placed on all employer files relating to the "financial penalty/incident". Since the employer has indicated that it is prepared to do so, and in order to alleviate Mr. Cahill's concerns regarding his reputation, I endorse this solution and consequently hereby order the employer to place a copy of Mrs. Henry's decision (*supra*) reflecting the employer's concession of Mr. Cahill's grievance, on all employer files relating to the events leading up to and following the financial penalty, including the harassment complaint files.

**Marguerite-Marie Galipeau,
Deputy Chairperson**

OTTAWA, May 30, 2001.