

**Date:** 20020322

**File:** 161-2-1214

**Citation:** 2002 PSSRB 35



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**MIKE BUCHANAN**

Complainant

and

**CORRECTIONAL SERVICE OF CANADA AND DIANNE BIRD**

Respondents

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

**Before:** [Yvon Tarte, Chairperson](#)

**For the Complainant:** [Mike Buchanan](#)

**For the Respondents:** [Colleen Edwards, counsel](#)

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(Decided on the basis of written representations)

## DECISION

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[1] This decision deals with a complaint filed by Mike Buchanan pursuant to paragraph 23(1)(d) of the *Public Service Staff Relations Act* (Act), which alleges that the Correctional Service of Canada (CSC) and Dianne Bird have failed to comply with section 100 of the Act and paragraph 72(1)(a) and subsection 72(3) of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (Regulations).

[2] Paragraph 23(1)(d) and section 100 of the Act read 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*

...

*(d) to comply with any regulation respecting grievances made by the Board pursuant to section 100.*

*100. (1) The Board may make regulations in relation to the procedure for the presentation of grievances, including regulations respecting*

*(a) the manner and form of presenting a grievance;*

*(b) the maximum number of levels of officers of the employer to whom grievances may be presented;*

*(c) the time within which a grievance may be presented up to any level in the grievance process including the final level;*

*(d) the circumstances in which any level below the final level in the grievance process may be eliminated; and*

*(e) in any case of doubt, the circumstances in which any occurrence or matter may be said to constitute a grievance.*

*(2) Any regulations made by the Board under subsection (1) in relation to the procedure for the presentation of grievances shall not apply in respect of employees included in a bargaining unit for which a bargaining agent has been certified by the Board, to the extent that the regulations are inconsistent with any provisions contained in a collective agreement entered into by the bargaining agent and the employer applicable to those employees.*

*(3) The Board may make regulations in relation to the adjudication of grievances, including regulations respecting*

*(a) the manner in which and the time within which a grievance may be referred to adjudication after it has been*

*presented up to and including the final level in the grievance process;*

*(b) the manner in which and the time within which boards of adjudication are to be established;*

*(c) the procedure to be followed by adjudicators; and*

*(d) the form of decisions rendered by adjudicators.*

*(4) For the purposes of any provision of this Act respecting grievances, the employer shall designate the person whose decision on a grievance constitutes the final or any level in the grievance process and the employer shall, in any case of doubt, by notice in writing, advise any person wishing to present a grievance, or the Board, of the person whose decision thereon constitutes the final or any level in the process.*

[3] Paragraph 72(1)(a) and subsection 72(3) of the Regulations state the following:

*72. (1) Immediately after receiving a grievance presented by an employee, the supervisor or local officer-in-charge shall*

*(a) forward a copy of the grievance to the authorized representative of the employer at the appropriate level; and*

*...*

*...*

*(3) The period during which an employer shall reply to a grievance at any level is calculated as beginning on the day on which the grievance is received by the employee's immediate supervisor or the local officer-in-charge.*

## **Facts**

[4] The following facts are not in dispute.

[5] Mr. Buchanan is a correctional officer employed at the Bowden Institution, in Innisfail, Alberta. Following consultation with the Regional Headquarters, Prairie Region, CSC (RHQ Prairies), the warden of Bowden Institution (warden) imposed on Mr. Buchanan a 20-day suspension. Mr. Buchanan grieved his suspension on March 30, 2001.

[6] Effective April 2, 2001, the CSC modified its grievance process to reflect changes in the newly signed Correctional Services Group collective agreement. As a

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result, the four-step grievance process became a three-step one, the second level (Warden/District Director) being eliminated. The new second level is the Regional Deputy Commissioner, while the new third and final level is the Assistant Commissioner, Human Resources Management.

[7] On May 1, 2001, Mr. Buchanan requested that his grievance be transmitted to "... Level III (NHQ)." On May 3, 2001, Jeannine Gallays, Personnel Assistant, Bowden Institution informed Mr. Buchanan that his grievance had been forwarded to the "... third (final) level ..." of the grievance process. The grievance was forwarded to the final level of the grievance process on April 3, 2001.

[8] On September 28, 2001, Ms. Bird, Human Resources Officer, RHQ Prairies advised that Mr. Buchanan's "... 2nd level grievance has been received at RHQ ..." and wanted to make arrangements for a consultation in that regard.

[9] On October 15, 2001, Mr. Buchanan's bargaining agent raised concerns of reasonable apprehension of bias, based on the fact that the RHQ Prairies, which had advised the warden regarding the 20-day suspension, was now handling the grievance at the second level of the grievance process.

[10] On October 18, 2001, Ms. Bird responded to Mr. Buchanan's bargaining agent that the grievance process has three levels, the second being delegated to the Deputy Commissioner, Prairie Region.

[11] On October 22, 2001, Mr. Buchanan's bargaining agent further requested to know from Ms. Bird why Mr. Buchanan's grievance, which had been transmitted to the final level of the grievance process, was being handled by the RHQ Prairies. Mr. Buchanan alleges that no answer was ever given to this query.

[12] On November 19, 2001, Jacques M. Pelletier, Assistant Commissioner, Human Resources Management, CSC denied Mr. Buchanan's grievance at the final level of the grievance process.

[13] On December 4, 2001, pursuant to paragraph 23(1)(d) of the Act, Mr. Buchanan filed a complaint with the Board, alleging that the CSC and Ms. Bird had failed to comply with section 100 of the Act and paragraph 72(1)(a) and subsection 72(3) of the Regulations. More particularly, Mr. Buchanan complained that his grievance, which had been transmitted to the third and final level of the grievance process, was

subsequently handled at the second level of the grievance process, by people who had advised the warden on the action grieved.

### **Submissions of the parties**

[14] On December 18, 2001, the respondents objected to the Board's jurisdiction to hear Mr. Buchanan's complaint. They alleged that:

...

*The facts alleged by the complainant, even if assumed to be true, do not make out a prima facie case for breach of section 23(d) [sic] of the Public Service Staff Relations Act . . . .*

...

[15] The respondents added that section 100 of the Act and subsection 72(3) of the Regulations are not capable of being breached. With respect to paragraph 72(1)(a) of the Regulations, the respondents argued the following:

...

*The facts as alleged do not make out a breach of section 72(1)(a). It is not a breach of this regulation to have Regional Headquarters deal with his grievance. The complainant may believe that Regional Headquarters should not both advise management and also respond to grievances on the same subject, but the fact this may have happened is not a breach of the Board's regulations.*

*The complainant also questions why a grievance which had been transmitted to level 3, was being dealt with at level 2. The complainant's grievance was filed at a time when there were four levels in the grievance procedure, with the third level being the Regional Deputy Commissioner. Effective July 3, 2001 [sic], the Regional Deputy Commissioner became level 2. This explains any confusion on the part of the complainant. I have attached an e-mail explaining the change in the grievance procedure. In any case, the complainant's grievance was forwarded, in accordance with the Board's regulations, to the appropriate level.*

...

[16] The respondents requested that the Board dismiss the complaint, without an oral hearing.

[17] On January 7, 2002, Mr. Buchanan responded that the Board had jurisdiction to hear his complaint. He argued the following:

...

*... The essence of the complaint is not that having CSC RHQ address the 20 day suspension would be a violation of the duty to act fairly and the principles of fundamental justice, as stated by Ms. Edwards. The essence of the complaint was the CSC's gross mismanagement of the handling of the grievance submitted relating to the 20 days loss of pay. The complaint is based on the fact that the grievance had been properly and timely submitted to Level III (NHQ) and was being heard some six months later at Level II (RHQ).*

...

[18] Mr. Buchanan also requested that the Board render a decision on the basis of written submissions.

[19] On January 23, 2002, the respondents replied to Mr. Buchanan's response. They apologized for Ms. Bird contacting Mr. Buchanan's bargaining agent in September 2001 to consult on the grievance at the second level of the grievance process, which they alleged "... was an administrative error due to the certification of the new bargaining agent." They added that "[i]t should not have happened, since the grievance had already been submitted to Level III." They denied any breach of the Act or the Regulations. The respondents argued that Mr. Buchanan could have referred his grievance to adjudication pursuant to paragraph 76(1)(b) of the Regulations; however, he did not do so. The respondents added that Mr. Buchanan did not refer his grievance to adjudication following its denial at the final level of the grievance process. They requested that the complaint be dismissed on the basis of written submissions.

[20] The Board then informed the parties that it intended to render a decision on the basis of the record before it.

### **Reasons for Decision**

[21] I agree with the respondents' submission that section 100 of the Act and subsection 72(3) of the Regulations do not create on the respondents obligations which could be the object of a complaint pursuant to paragraph 23(1)(d) of the Act. Indeed, section 100 Act provides the Board with regulation-making powers over the procedure for the presentation of grievances and the adjudication of grievances, while subsection

72(3) of the Regulations provides for a time-calculation method, not a time limit. These provisions cannot be breached by an employer or one of its representatives.

[22] With regard to the alleged failure to comply with paragraph 72(1)(a) of the Regulations, I agree that M. Buchanan's grievance should not have been sent to the RHQ Prairies after it had been forwarded to the third and final level of the grievance process. The respondents have recognized the inappropriateness of this action and have apologized for it.

[23] On the issue of remedy, I note that, at the expiry of the time limits contained in his collective agreement, Mr. Buchanan could have availed himself of his right to refer his grievance to adjudication pursuant to paragraph 76(1)(b) of the Regulations, without having to wait for a decision on his grievance. Paragraph 76(1)(b) reads:

*76. (1) An employee may refer a grievance to adjudication under section 92 of the Act by filing with the Secretary in duplicate a notice in Form 14 of the schedule, together with a copy of the grievance that the employee submitted to the employee's immediate supervisor or the local officer-in-charge pursuant to paragraph 71(1)(a) or (b) or paragraph 71(2)(a) or (b), no later than on the thirtieth day after the earlier of*

...

*(b) the last day on which the authorized representative of the employer was required [...] to reply to the grievance at the final level of the grievance process.*

[24] Considering that the respondents have recognized their mistake in sending to the RHQ Prairies Mr. Buchanan's grievance after it had been forwarded to the third and final level of the grievance process and that they have apologized to Mr. Buchanan for it, I find that, in the circumstances of this case, no further remedy is necessary.

[25] For the reasons above, I declare that the respondents should not have sent M. Buchanan's grievance to the RHQ Prairies after it had been forwarded to the third and final level of the grievance process. The complaint is dismissed in all other respects.

**Yvon Tarte,  
Chairperson**

Ottawa, March 22, 2002.