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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MICHAEL BUCHANAN

Grievor

and

TREASURY BOARD
(Solicitor General Canada - Correctional Service)

Employer

Before: D.R. Quigley, Board Member

For the Grievor: John Mancini, Counsel, UCCO-SACC-CSN

For the Employer: Jennifer Champagne, Counsel

Heard at Calgary, Alberta,
July 16 and 17, 2002.



DECISION

[1] This decision follows a hearing into a grievance referred to adjudication by Michael Buchanan, a correctional officer supervisor (CX-02), following a 20-day suspension from Correctional Service Canada (CSC).

[2] Mr. Buchanan's 20-day suspension began on January 29, 2001 as a result of a Disciplinary Investigation Report (Exhibit E-2). The information in the report as well as the following factors were taken into consideration by the Warden, Mitch Kassen, in determining the severity of the penalty imposed:

- 1) as the officer in charge of the segregation unit, the grievor failed to provide the appropriate leadership and supervision expected;
- 2) the grievor's previous disciplinary record (incident of February 5 and 6, 2000);
- 3) the grievor's lack of cooperation during the investigation process, which ultimately delayed the final decision;
- 4) the grievor's work performance to date; and
- 5) no evidence of remorse for his actions.

[3] The grievor seeks, as corrective action, that the 20-day suspension be reduced to a written reprimand.

[4] Counsel for the employer filed 13 exhibits and called four witnesses; the grievor's counsel filed seven exhibits and the grievor testified on his own behalf.

[5] On July 17, 2002, as part of the evidence, I along with both legal counsel visited Bowden Institution to take a view of the site where the incident was alleged to have taken place. I wish to publicly thank the Warden and his staff for making the arrangements.

Background

[6] Mitch Kassen has been the Warden at Bowden Institution since 1988, and has been employed with the CSC in a variety of positions since 1977.

[7] Mr. Kassen described Bowden Institution as a medium-security correctional facility that houses approximately 500 offenders in the main medium-security complex and approximately 80 offenders in its medium-security annex. Bowden Institution also has a Disassociation/Segregation (D&S) unit that can accommodate up to 30 inmates.

[8] The D&S unit is separate and is operated as a maximum-security facility within the medium-security institution. The incident at hand leading to the disciplinary investigation and subsequent 20-day suspension occurred in the D&S unit on the evening shift (15:00-23:00) of January 28, 2001. Mr. Kassen's evidence regarding the incidents in question is set out later in these reasons.

[9] The D&S unit is a complex that has 30 cells divided into two ranges: "A" and "B". Range "A" consists of 15 cells that house "segregation" inmates who are locked in their cells for approximately 22 hours per day. These inmates are considered to be a threat to the Institution or to other inmates, have been caught with contraband (drugs, weapons), have stolen from other inmates, have been involved in fights, or fear for their personal safety if released amongst the general prison population. The inmates in Range "A" can wait from three to five months for a transfer to a maximum-security prison.

[10] Range "B" usually houses "reception" inmates who are new to the prison and do not understand the routine, are awaiting medical assessments, or have been caught with contraband. These offenders can move freely amongst their cells in Range "B".

[11] Range "A" can best be described as a hallway with a row of cells - eight on one side and seven on the other. The total length of Range "A" is approximately 90 to 100 feet. At the end of Range "A" there is a controlled door that accesses an exercise yard (a fenced area not accessible by the general prison population).

[12] Range "B" runs 90 degrees to Range "A" with the same cell configuration, minus the exercise area. Situated at the end of the range hallways is a punch clock (Deiser) that records that the correctional officers have in fact completed their rounds at a particular point of time.

[13] Both Range "A" and Range "B" can only be accessed from the "bubble" (Control Post Command) through a controlled door (Door #5) that leads into the servery area, a room where snacks and meals are prepared for the occupants of the ranges. Inside the

server area are two controlled barrier doors, one leading to Range "A" and the other leading to Range "B". These barrier doors, the cell doors and all other controlled doors are operated manually (to open or close) from within the bubble by a correctional officer.

[14] The bubble is the nerve centre of the D&S unit. This room is approximately 20 feet long by 10 feet wide with two large windows that face Range "A" and Range "B". Within the bubble, there is a bank of four to five security monitors, control panels and switches for all the doors, a computer, restraint equipment and also a control panel for the lighting within the ranges.

[15] Directly outside the bubble, in the server areas, is a pan tilt zoom (PTZ) camera, an eye in the sky; however, in this case, an eye in the ceiling. This camera was installed several years ago after an inmate who had breached security inside the D&S unit took a correctional officer hostage. In an effort to protect correctional officers, the camera may be monitored by correctional officers from other areas of the Institution, including the Administration Building and the R3 unit.

[16] Also, inside the bubble, opposite Door #5, is a door that leads directly into the hospital area. If the bubble were breached, inmates could access the medical supplies (such as syringes and medications) that are in high demand by the prison population. Therefore, maintaining its integrity is of utmost importance.

[17] Robert Pickard has been a CX-03 supervisor (keeper) for 10 years and has worked for the CSC for 23 years. Mr. Pickard works the afternoon shift (15:00-23:00). He assumes the responsibilities and authority of the Warden for Bowden Institution during this shift. His duties, in part, are to ensure that there is enough staff to man the Institution, the care, custody and security of the Institution, to arrange transportation to hospitals for inmates, and to make rounds to visit the various security posts within the Institution. On the afternoon shift, he works in tandem with another CX-03, Mr. Gitzel, who shares the workload.

[18] Mr. Pickard testified that at approximately 20:15 on January 28, 2001, while making his rounds, he visited the R3 unit in the Recreational Building. The R3 unit has a bank of monitors that access, by scrolling, 22 sites within the Institution as well as an eye in the sky that monitors the inside yard of the Institution where at certain times of the day inmates walk around freely. As well, there is a monitor for the PTZ camera

that monitors the bubble and it was then and there that he observed that the officers in the D&S unit were watching television.

[19] Mr. Pickard stated, "I was disappointed in that the three officers, Mr. Buchanan, CX-02 (the supervisor), and the two junior CX-01's, Mr. Lowe and Mr. Sveinson, were watching television. I phoned the D&S unit and hung up". He further stated, "This was an effort to give them a heads up, as I knew what was going on and for them to smarten up." Telephoning a unit and hanging up is a code. It signifies to the officers in the Institution that either someone is watching or the boss is doing his rounds and to be aware.

[20] Mr. Pickard further stated, "I watched the officers through the PTZ camera after my phone call and there was no change in their behaviour so I asked another officer to inform them that I was indeed on my way to the D&S again, as another heads up that their behaviour was "not on". I continued on my rounds, to the gym, and the rink, visited the main gate and back to the Administrative Post where, for interest sake, I looked at the monitor with the PTZ camera focussing in on the bubble and they were still doing the same thing - watching television."

[21] Mr. Pickard testified that he decided that enough was enough. Therefore, from the Administration Office, through the monitor and the VCR, he decided to put in a videocassette and record the events within the D&S unit.

[22] Mr. Pickard stated that the position of the officers watching television made it impossible for them to monitor the ranges. Therefore, they were not meeting their work obligations. Mr. Pickard asked Mr. Gitzel to revisit the D&S unit, as he had been there previously, at approximately 16:30, for a duty visit and find out what was going on.

[23] Mr. Pickard confirmed that Mr. Gitzel arrived in the D&S unit at approximately 21:45 to deal with the television situation and to discuss a fire alarm that had been received from cell A-3. At approximately 21:10, an inmate had started a fire by lighting toilet paper in his garbage can.

[24] Mr. Pickard reported that Mr. Gitzel did not witness the officers watching television and everything seemed to be on the "up and up". Mr. Kremp, a correctional officer who was watching the monitors, said to Mr. Pickard, "You better have a look at

this". Mr. Kremp was referring to Mr. Sveinson standing on the search table in the server area and masking the PTZ camera with tape.

[25] Mr. Pickard explained that on reviewing the videotape he observed that a number of infractions had occurred in the bubble.

[26] The first was that the officers were watching television, not their posts, for an extended period of time. The second was that Mr. Sveinson and another officer, Mr. Bownes, had left and entered Door #5 which was not locked, as required by security orders, and Mr. Bownes had not signed the log sheet, as per orders, when he had entered and left the bubble. Thirdly, Mr. Sveinson had stood on a search table and covered the PTZ camera with tape to render it ineffective while Mr. Buchanan watched him. Fourth, after they were relieved from their post, no effort was made to remove the tape covering the PTZ camera for the next correctional officer who was coming on shift. Fifth, no report was filed on the fire incident in cell A-3, as per routine orders.

[27] Mr. Pickard testified, "I was working a double shift and getting things ready for the midnight shift and asked Correctional Officer Jasper to check if the tape had been removed from the PTZ camera when Buchanan and crew finished their shift and if not, to remove it." Mr. Jasper did in fact remove the tape. Mr. Pickard's duties also included filing a 24-hour duty report with senior management on the events in the Institution under his charge. He filed a four-page report and provided the videotape (Exhibit E-3) of that evening, which would be reviewed at 08:00 by senior management.

[28] In cross-examination, Mr. Pickard conceded that although he knew of no person who had faced disciplinary measures for watching television, he has, however, given oral reprimands in the past to individuals who have been caught watching television at the workplace during their shifts.

[29] Senior management, after reviewing Mr. Pickard's report and the videotape, launched an Internal Disciplinary Inquiry (Exhibit E-2). The Board of Investigation consisted of Jack Kline and Larry MacDonald, both unit managers at Bowden Institution.

[30] The Board interviewed nine staff, including Mr. Buchanan. As well, they viewed the videotape (Exhibit E-3) and conducted file reviews of policies and procedures.

[31] The disciplinary investigation commenced on January 29, 2001 and was completed on February 16, 2001.

[32] Mr. MacDonald testified that by reviewing the videotape, confirming log entries, and interviewing staff at Bowden Institution, there were a number of infractions committed on January 28, 2001. It was during the testimony of Mr. MacDonald that the videotape was entered as Exhibit E-3. I was invited by counsel to view the tape as part of the evidence. This I did.

[33] The members of the Board of Investigation determined that the actions of Officers Buchanan, Lowe and Sveinson were severe and unacceptable. All static security range walks were completed at the required intervals and duration but other factors had seriously jeopardized the operation and security of the segregation unit during this shift. For example:

1. the members' review of the videotape confirmed that on several occasions Door #5, the entrance to the control centre from the servery area, was unlocked. This was in direct violation of both standard security practices and post orders for the segregation unit (Exhibit E-2; pp. 000076 - 000078);
2. the members confirmed that during the course of the videotape it is noted that there was little or no supervision or visual observance of Range "B". This range houses the reception inmates, who have open movement on the range;
3. the members confirmed that at 21:00 Officer Bownes was admitted into the bubble. He delivered an envelope to Officer Buchanan. He failed to sign the segregation unit's visitors' log. The segregation unit staff failed to ensure that all visitors to the segregation unit were recorded, as per policy (Exhibit E-2; pp. 000079 - 000082);
4. the members confirmed that at approximately 21:06 an inmate is seen in the servery area. Security Post Order No 07, subsection 4. k) (Exhibit E-2), concerning inmate supervision is clear that, "He/she shall ensure that inmates are under constant supervision when out of their cells";
5. the members confirmed that when Officers Lowe and Sveinson went down the range at 21:18 hours, it is clear that Officer Buchanan was not supervising their presence, as per common security practices for the safety of staff;

6. the members confirmed that at 21:28 Officer Sveinson left the bubble through an unlocked door and proceeded to cover the lens of the security camera with tape. It is also evident that Officer Buchanan observed Officer Sveinson covering the security camera and then turned his back on the situation. As the officer in charge of the segregation unit, Mr. Buchanan made no attempt to correct the situation thus ensuring that all security equipment was fully operational and that the safety of others would not be jeopardized;
7. the members also confirmed that no attempt was made to remove the covering on the security camera before the end of the shift, nor was the next shift informed that the security camera was disabled.

[34] The investigation also established that the officers' alleged actions were a deliberate attempt to breach the professional conduct of a correctional officer.

[35] The Investigation Board members confirmed that the actions of Officers Buchanan, Lowe and Sveinson were deliberate and even though they were warned that they were being watched and that Messrs. Pickard and Gitzel were doing their rounds, they failed to discontinue their inappropriate actions and behaviour.

[36] The members found that the actions of Officers Buchanan, Lowe and Sveinson, who were assigned to the segregation unit, were in contravention of established security practices and the *Standards of Professional Conduct* and *Code of Discipline* (Exhibit E-2):

1. *Standard One Responsible Discharge of Duties - Infractions:*

An employee has committed an infraction if he or she:

- *fails to take action or otherwise neglects his or her duty as peace officer;*
- *fails to conform to, or to apply, a relevant legislation, Commissioner's Directive, Standing Order, or other directive as it relates to his or her duty;*
- *as a supervisor, or as one in authority, condones or fails to take action when an employee has committed an infraction of the Standards of Professional Conduct, a breach of discipline or any other irregularity coming to his or her attention;*

- *performs his or her duty in a careless fashion so as to risk or cause bodily harm or death to any other employee of the Service, or any other person(s), either directly or indirectly;*

2. *Standard Two Conduct and Appearance - Infractions:*

An employee has committed an infraction if he or she:

- *acts, while on or off duty, in a manner likely to discredit the Service;*

3. *Standard Three Relationships with Other Staff Members - Infractions:*

An employee has committed an infraction if he or she:

- *disregards established safety practices;*

...

[37] Exhibit E-10 was introduced, which confirmed that on October 25, 1996 Mr. Buchanan had received the following documents:

- (a) the Personal Harassment Policy;
- (b) the name(s) and address(es) and telephone number(s) of the designated complaint assessor(s);
- (c) the Code of Discipline.

[38] Craig Lowe, a CX-01 for approximately three years, testified that on January 28, 2001 he began his shift (15:00-23:00) under the supervision of Mr. Buchanan in the D&S unit. At approximately 16:30, Mr. Gitzel made his first visit to the D&S unit and after he left, "we broke out the TV". Mr. Lowe explained that the television in the D&S unit belongs to the Inmate Welfare Committee. Inmates who are in the D&S unit and do not have a television can sign for it on their discharge card. The inmates then assume responsibility for the care and custody of the television while on the range. Mr. Lowe testified it was Super Bowl Sunday, and they started watching the game at approximately 17:00; after the football game, they watched "Survivor" and put the television away at approximately 22:00.

[39] Mr. Lowe's testimony confirmed that the inmates in Range "B" were not under constant supervision as required and although the barrier doors to Range "A" and Range "B" were locked, Door #5 to the server area was not locked at all times. The inmate who was working in the server area was not frisked nor patted down, but Mr. Lowe went on to say that, although it is the policy, it never actually happens.

[40] Mr. Lowe testified that at approximately 21:05 a correctional officer in unit #5 telephoned to warn them that Mr. Gitzel was on his way to the D&S unit. Mr. Lowe testified they then hid the television set in a garbage can until Mr. Gitzel left and they watched no more television for the remainder of the shift.

[41] Lastly, Mr. Lowe admitted that Mr. Sveinson had indeed taped the PTZ camera, but only the portion of the lens that viewed the bubble.

[42] Mr. Lowe stated that his responsibilities of confirming that the inmates were breathing, dealing with the fire in cell A-3 and doing the Deiser clock punches regularly were all completed.

[43] When asked by counsel for the employer whether he had experienced any other problems in the performance of his duties that evening, Mr. Lowe reluctantly admitted that on one of his walks down the range with Mr. Sveinson they were unable to get back into the safety of the server area or the bubble through the barrier doors. He stated that they were rattling the door and waving their arms to try to get Mr. Buchanan's attention for a few minutes, but to no avail. "It was a little uneasy being in there (the range) and not being able to get out."

[44] When asked by counsel for the employer where Mr. Buchanan was, he replied, "I'm not sure. He might have gone to the bathroom."

[45] When asked how long it normally takes for him to do his walk down the range, he replied, "Two to three minutes."

[46] In cross-examination, counsel for the grievor asked Mr. Lowe if he had ever heard of anyone being disciplined for watching the Stanley Cup finals, the World Series or the Super Bowl. Mr. Lowe replied in the negative. When questioned further by counsel, Mr. Lowe stated, "Mr. Gitzel never talked to us about the TV, only the fire incident in cell A-3."

[47] In reply, counsel for the employer ascertained from Mr. Lowe that Mr. Buchanan is supposed to "observe us when we do our walks down the range".

[48] Mr. Lowe concluded by stating that once it was known that they were being videotaped, "I knew I was in big trouble. We were caught and I truly felt bad about it. I was asked to write my version of the events that evening by my unit manager, which I did." (Exhibit E-2)

[49] Mitch Kassen, the Warden at Bowden Institution, testified that he found out about the incident that occurred in the bubble on January 28, 2001 during his routine morning review (at 08:00 on January 29, 2001). He stated that he had serious concerns with the role of the supervisor (Mr. Buchanan) with regard to his lack of professionalism, the safety and security of his junior officers as well as the inmates, that doors which should have been locked were unlocked, that inmates were without supervision, and that the officers were watching television and that even knowing that they were being videotaped, they still did not adhere to the policies and procedures of the Institution.

[50] Mr. Kassen reported on a series of letters. Exhibit E-5 is a letter dated January 29, 2001 sent to Mr. Buchanan informing him that a disciplinary investigation to be conducted by Messrs. Kline and MacDonald would commence in a few days and that he would be asked to attend an interview process. The letter also advised the grievor that he was suspended without pay pending the results of the investigation and that he would be entitled to bring a union representative to the interview.

[51] Exhibit E-6 is a letter dated February 1, 2001 advising Mr. Buchanan of the hearing interview with the disciplinary investigation board on February 6, 2001, at 09:00, and to bring a representative of his choice.

[52] Exhibit E-7 is a letter dated February 22, 2001 to Mr. Buchanan advising him that due to the fact that he had refused to meet with the Warden, the disciplinary report and video were being sent to his house. The letter also asked the grievor to provide any information or feedback pertinent to the report by March 2, 2001.

[53] Exhibit E-9 is a letter dated February 27, 2001 advising Mr. Buchanan that no correspondence had been received and the deadline for input was March 2, 2001. He was also informed that a hearing would be scheduled for March 5, 2001, at 14:00, to advise him of the discipline the Warden intended to administer.

[54] Exhibit E-8 is a letter dated March 1, 2001 to the Warden in which the grievor indicates that nowhere in the disciplinary process or judicial or arbitration labour law is he required to provide the author of an investigation report or his supervisor with any form of rebuttal, defence or clarification in respect of the investigation report. In such cases, the onus is on the employer to decide whether or not, and to what degree, the investigation report has merit, and if so, what the employer intends to do with said report. His letter also stated, "In accordance with the rule of law and fundamentals of natural justice, I will properly address my concerns during the course of the disciplinary hearing should CSC wish to pursue this matter and I will seek recourse through the grievance and arbitration system in place as well as through the courts if required to do so."

[55] Exhibit E-4 is a letter dated March 5, 2001 informing Mr. Buchanan of the Warden's decision to award him a 20-day suspension based on the results of the disciplinary hearing. The letter indicates that the five following factors were taken into consideration in determining the length of the suspension:

1. as the officer in charge of the segregation unit, Mr. Buchanan failed to provide the appropriate leadership and supervision expected;
2. Mr. Buchanan's previous disciplinary record (incident of February 5 and 6, 2000);
3. Mr. Buchanan's lack of cooperation during the investigative process, which ultimately delayed the final decision;
4. Mr. Buchanan's work performance to date; and
5. the fact Mr. Buchanan showed no remorse for his actions.

[56] Mr. Kassen expanded on the five factors he used to determine the 20-day suspension.

[57] As the officer in charge, Mr. Buchanan was a role model for the two junior CX-01's in his charge. In this case, he left them unattended when they went down the range. Major procedural routines, such as the securing of Door #5, signing Mr. Bownes in and out, and the supervision and patting down of the inmate in the server area did not occur. Allowing the taping of the PTZ camera and not removing the tape at the end of the shift, as well as watching television for a number of hours, demonstrates poor leadership and supervision.

[58] The grievor's previous disciplinary record contains a \$150 fine, which the Regional Board modified to a written reprimand in February 2000. This was as a result of Mr. Buchanan's failure to provide supervision to inmates in a courtyard and his failure to provide a report to his supervisors when requested.

[59] Mr. Buchanan demonstrated the same lack of cooperation and obstructive behaviour during that incident as he did during this investigation (Exhibit E-2).

[60] His work performance to date has been an issue raised in his work performance reports (PERs). Mr. Buchanan's casework of offenders (written reports) has been continuously late and incomplete (Exhibit E-11, covering the period 1999-09-08 to 2000-09-08; Exhibit E-12, 2001-01-01 to 2001-04-30; and Exhibit E-13, 2000-09-08 to 2001-12-31). The PERs (which were not grieved by Mr. Buchanan) conclude that a number of deficiencies in terms of professionalism, attitude, caseload timeliness, and supervision, were in fact deteriorating even though expectations were formalized in those PERs. Mr. Kassen stated: "In fact, we went from yearly reports to quarterly reports and finally monthly reports in an effort to motivate Mr. Buchanan in the completion and accuracy of his casework."

[61] Mr. Kassen stated that with respect to Mr. Buchanan showing any remorse or apologizing to his supervisors, to Mr. Kassen, as the Warden, or to the Institution, there has been no sign of it. Mr. Kassen concluded by stating that he was concerned with Mr. Buchanan's attitude and behaviour because "[I]n this Institution we need to work together, to share comments and the ability to communicate and dealing with staff is very important. Mr. Buchanan has not demonstrated any of these attributes."

[62] In cross-examination, Mr. Kassen pointedly stated that with respect to retroactive PERs for Mr. Buchanan, he did not ask for any and he did not know of any supervisor who would formulate retroactive PERs. He also stated in cross-examination

that 95 percent of the time things go smoothly within the Institution. However, there are 600 to 700 inmates who move about freely in an open environment at specific times throughout the day. Correctional officers need to be vigilant and ensure that they follow the rules and procedures for that five percent of the time when things can get out of control.

[63] Mr. Kassen stated that he awarded Mr. Lowe a five-day suspension and a 10-day suspension to Mr. Sveinson. As the supervisor of the two junior officers and further to the incidents that occurred that night, he believes that awarding Mr. Buchanan a 20-day suspension is warranted.

[64] Michael Buchanan has been an employee of the CSC since October 31, 1996. He began as a CX-01 after his core training and in the fall of 1998, he won a competition for a position at the CX-02 level.

[65] Mr. Buchanan testified with respect to an incident in February 2000. Mr. Pickard had asked him why he as well as other CX-01's under his supervision were not directly supervising inmates in the courtyard. "I stated that it was not a common practice and as I was the supervisor and had discretion, I was applying it. Mr. Pickard ordered me to go out into the courtyard and supervise the inmates, as well as to prepare a memorandum explaining why we were not in the courtyard supervising the inmates. I refused to prepare the memorandum because I did not want it to be used against me. As a result, there was a disciplinary investigation and I was fined \$150. I grieved the financial penalty, which Mr. Kassen denied at his level of the grievance process. However, regional headquarters, after review, reduced the fine to a written reprimand. It was as a result of this incident that the relationship between myself and Mr. Pickard deteriorated." Mr. Buchanan felt he could no longer work with Mr. Pickard professionally; therefore, he just avoided him.

[66] Mr. Buchanan described the D&S unit in detail, which reflected Mr. Kassen's testimony and what in fact I witnessed during my site visit.

[67] Mr. Buchanan testified that working in the D&S unit is very quiet; in fact, in the last five years there has been only one wrist-slashing incident. However, swearing at officers by inmates is a daily occurrence. As far as fights, there are none because the inmates are segregated in Range "A" and on January 28, 2001, there were only three to four inmates in Range "B".

[68] On the evening of January 28, 2001, Mr. Buchanan ordered the junior officers to deal with the fire incident in cell A-3, which they did. He stated: "I never discussed the TV issue with Mr. Gitzel as I do not watch sports as a rule. In the Institution there are cable hook-ups for staff to watch television, which I believe is paid by the employer, in the recreation building, the health care unit and the bubble."

[69] Mr. Buchanan testified that the inmate that worked in the servery area is paid by the Institution to clean and to prepare juice and coffee. Neither Mr. Buchanan nor any of the other officers on shift ever skin search or pat down this inmate unless he is going down Range "A" or to a hearing outside the D&S unit.

[70] Mr. Buchanan testified that the PERs were as a result of several issues related to his casework. In particular, he noted that his caseload was heavier than other officers' (Exhibits G-4 and G-5) and the computer system ("Radar") used to enter the data was unreliable and experienced a lot of downtime (Exhibits G-2 and G-3), which prevented him from entering his casework.

[71] Mr. Buchanan submitted that Door #5 cannot be kept in an unlocked position and even if Mr. Bownes did not sign into the bubble, not everyone does. As far as covering the PTZ camera, only part of it was covered and this was done as a prank because of the repeated phone calls and hang-ups. He indicated that he believed Mr. Pickard's job was to attend the D&S post and talk to them about the television incident as opposed to taping them with the video camera. Mr. Buchanan also submitted that it is worth noting that the tape was left on the camera lens for four hours before being removed and that the severity of the penalty is far greater than it deserves.

[72] In support, Mr. Buchanan directed me to Exhibit G-6, *Security Post Order No. 02, Correctional Supervisor, Staff Supervisor*, paragraphs e) and s):

e) Shall visit at irregular intervals all posts where officers are on duty and ensure that the duties assigned do these posts are being carried out in an efficient and alert manner.

...

s) Shall provide guidance and counseling to Correctional staff as required.

[73] Mr. Buchanan emphasized that Mr. Pickard did not attend the post as stated and should have addressed them in a direct manner as opposed to videotaping them. Also, Mr. Pickard knowingly left the tape on the PTZ camera for four hours before having it removed. Mr. Buchanan believes that the severity (20-day suspension) is far greater than the incidents deserve.

[74] As the adjudicator, I asked Mr. Buchanan how much time it would take for a correctional officer to properly conduct his rounds of the ranges. Mr. Buchanan responded 60 to 90 seconds to ensure that the inmates were alive and that they had not hanged or mutilated themselves. In cross-examination, Mr. Buchanan agreed that the inmate in the server area who was not patted down and who was wearing a big parka could have been carrying contraband. As well, he did not verify the food being prepared by the inmate that evening.

[75] When asked by counsel for the employer if the CX-01's walking the ranges should be watched by the remaining officer in the bubble, Mr. Buchanan replied, "in theory" yes. Mr. Buchanan further agreed under cross-examination that Mr. Bownes had not signed to enter the bubble because it has not been a standard practice. Mr. Buchanan explained that in fact Mr. Gitzel signed into the bubble although Mr. Bownes did not. As well, he agreed that on one occasion the officers (Sveinson and Lowe) were down the range and they could not see him in the bubble.

[76] Although Mr. Buchanan agreed that the PTZ camera was installed for security reasons and not for supervisory purposes, he stated that Mr. Sveinson taped only the part of the lens that looked into the bubble. He did not attempt to stop Mr. Sveinson, as "it was a prank done by other persons." When referred by counsel for the employer to Mr. Lowes' testimony of hiding the television, Mr. Buchanan said it should have remained where it was kept under the desk in the bubble and that he did not personally hide the television set.

Arguments

For the Employer

[77] The D&S unit situated in a medium-security institution operates as a maximum-security unit where security is the number one concern. The employer trains staff on policies and procedures with the high expectation that these

correctional officers support the safety and security of the Institution, their fellow officers and the inmates.

[78] Mr. Buchanan, an experienced supervisor of junior correctional officers, understands the employer's policies for professional conduct and the responsibilities and expectations with respect to his work duties. However, as per the evidence and Mr. Buchanan's testimony, he chose to either ignore or blatantly disregard these policies.

[79] The security policies that Mr. Buchanan chose to ignore are not flexible; in fact, there is a legal obligation to the general public to enforce these policies.

[80] The employer has introduced numerous infractions and violations. However, as Mr. Kassen testified, it was in fact a number of issues, including work performance, which he used to determine a 20-day suspension as opposed to termination of employment. The 20-day suspension given to Mr. Buchanan was reasonable considering Mr. Lowe, who confessed to the incidents of January 28, 2001, received a five-day suspension and Mr. Sveinson, who covered the PTZ camera lens, received a 10-day suspension. These two officers were being supervised by Mr. Buchanan and in fact learning or being given direction by him.

[81] Mr. Buchanan, it is fair to say, was remiss, even flagrant, with regard to his lack of professionalism and violations of security policies and procedures. Mr. Kassen not only considered the number of infractions but also Mr. Buchanan's disciplinary record, his poor work performance and Mr. Buchanan's lack of cooperation and remorse for his actions. It is the employer's view that a 20-day suspension was more than a reasonable award considering the evidence.

[82] Counsel for the employer submitted the following decisions for my consideration: *Courchesne* (Board file 166-2-12299); *Tousignant and Treasury Board (Solicitor General of Canada)* (1979), 26 L.A.C. (2d) 132; *Bélisle* (Board file 166-2-15175) and *Dealbuquerque* (Board file 166-2-4836).

For the Grievor

[83] Mr. Mancini stated that this is a classic case of reacting to an incident then applying a looking glass and eventually using a microscope to find more incidents in terms of labour relations to substantiate the imposed penalty.

[84] Mr. Buchanan and his officers dealt with the fire in cell A-3 and completed their rounds as per the policy. The inmates were all locked down in Range "A" and there were only three or four inmates in Range "B" that evening.

[85] Counsel stated that in reality a correctional officer's job is very dull, with long hours of inaction. He questioned how difficult could it be to watch three or four inmates in Range "B" with three correctional officers in the bubble. He also noted that the inmates in Range "A" were all locked up in their cells.

[86] Counsel argued that the suggestion by Mr. MacDonald that Ranges "A" and "B" must be watched at all times is an exaggeration. The truth of the matter is that the officers in the bubble know their job and what the needs of the inmates they monitor are. A case in point is the fire incident in cell A-3. The fact that it was dealt with quickly and without further incident speaks volumes about the type of supervision by Mr. Buchanan.

[87] Counsel further argued that this was not progressive discipline, but it was an alarmist attitude by management of Bowden Institution. Management believes that by imposing a heavy handed 20-day suspension on Mr. Buchanan other correctional officers will be sent a message. That message or tactics of intimidation is one that counsel stated he does not agree with. He indicated that it is not outlandish to watch the Super Bowl, the Stanley Cup finals or other major sporting events on television at this workplace; in fact, it is probably a common practice in this Institution. It was agreed by Messrs. Pickard and Lowe that no disciplinary action has ever been given to anyone for watching television.

[88] Mr. Buchanan's reaction to this heavy-handed discipline was that he was being treated unfairly. His reaction was to fight the unjust penalty he received through court proceedings as well as through the *Public Service Staff Relations Act*.

[89] Mr. Buchanan and the other officers did not frisk or pat down the inmate in the servery area because that's reality, not science fiction. Messrs. Lowe and Buchanan both testified the procedure is never followed.

[90] Mr. Kassen's concern with Mr. Buchanan's PERs was secondary until the events of January 28, 2001. However, when the opportunity presented itself, Mr. Kassen used the PERs to justify imposing the 20-day suspension.

[91] Counsel ended by stating that the 20-day suspension should be replaced by a written reprimand.

Reasons for Decision

[92] The two issues I must consider in the case at hand are whether the employer has demonstrated that a number of safety factors, policies and procedures, as well as proper supervisory conduct, were breached by Mr. Buchanan and whether the imposition of a 20-day suspension was warranted in the circumstances.

[93] The first issue relies on a number of exhibits; however, Exhibit E-2 (the Disciplinary Investigation Report Into Alleged Misconduct) and Exhibit E-3 (the videotape) are the crucial evidence. Also, Messrs. Lowe's and Buchanan's testimony was paramount in helping me reach my decision.

[94] Exhibit E-3 clearly demonstrates that a number of infractions, including violations of safety rules, security policies and lack of professional supervisory conduct, did occur within the D&S unit on January 28, 2001. The evidence clearly shows that Mr. Buchanan and the officers under his supervision were watching television for an extended period of time with little or no regard for monitoring the inmates, particularly those in Range "B". This allegation is supported by Mr. Lowe's testimony on the stand as well as his written statement to the Investigation Board (Exhibit E-2). Mr. Lowe testified that after Mr. Gitzel's first visit, at approximately 16:30, "we broke out the TV and watched Super Bowl Sunday and after its conclusion, the Survivor television show". Mr. Lowe also testified that on hearing that Mr. Gitzel was en route, they hid the television in the garbage can.

[95] Mr. Buchanan's testimony of not talking to Mr. Gitzel about the television issue was probably a true statement, as it is safe to assume that as the television was hidden in the garbage can Mr. Gitzel would not pursue the matter. However, when asked by counsel for the employer whether he or his men had hidden the television, Mr. Buchanan responded that he did not personally hide the television.

[96] After reviewing the videotape (Exhibit E-3), it is obvious to me that Mr. Buchanan and the other officers were not watching the ranges but were rather intently focused on the television.

[97] Messrs. Buchanan and Lowe both testified that although it was the policy of the Institution to pat down inmates, the reality at the Institution is that it was never done in the servery area. It was admitted by both that they chose to disregard this rule. My viewing of Exhibit E-3 shows that the inmate who was preparing the snacks and juices, and was wearing an extremely big parka, was totally ignored by Mr. Buchanan and his junior officers. In cross-examination, Mr. Buchanan agreed with counsel for the employer that the inmate could have been carrying contraband and that the food was not verified for its contents.

[98] Mr. Buchanan testified that Door #5, which leads to the servery area, and the barriers doors to the ranges ("A" and "B") could not be left open. My viewing of Exhibit E-3 and my on site visit to the Institution does not support this. It is clearly evident on the tape that at 21:28, when Mr. Sveinson looked at the PTZ camera from within the bubble and decided to tape the lens, he left through Door #5 without Mr. Buchanan having to operate the control panel. I observed on the tape that at 20:54 when Mr. Bownes entered the bubble and at 20:58 when he left, Mr. Buchanan opened and closed the door with a switch on the control panel. Also, during my on site visit I was shown by a correctional officer how the door to the servery could be left opened or unlocked. During cross-examination, Mr. Buchanan admitted the fact that Mr. Bownes entered and left the bubble without signing in or out. However, he also admitted that Mr. Gitzel, who had visited the bubble twice, had signed in and out.

[99] Mr. Lowe testified that after he and Mr. Sveinson had completed their round of the ranges, for a few minutes they were unable to return to the safety of the bubble and it caused them concern. "We were rattling the door and waving our arms in front of the security camera trying to attract the attention of our supervisor, Mr. Buchanan." In his testimony, Mr. Lowe suggested that perhaps Mr. Buchanan was in the washroom. Mr. Lowe testified it took approximately two to three minutes to effectively do the rounds of the ranges, while Mr. Buchanan's testimony was about 90 seconds. In cross-examination, Mr. Buchanan agreed that it was his duty as the officer in charge to observe, for safety reasons, his staff as they entered the ranges.

[100] Mr. Buchanan testified that he did nothing to stop Mr. Sveinson from taping the PTZ camera as he thought it was just a prank. He also testified that neither he nor his staff removed the tape before the next officer come on shift. Mr. Buchanan argued that the camera was installed for security purposes and not for supervisory purposes.

[101] In viewing Exhibit E-3, I note Mr. Sveinson began taping the PTZ camera at 21:28:35 and at 21:28:38, as he was about to add another strand of tape, Mr. Buchanan, who at that time was on the telephone, glanced over toward him and then turned around ignoring the matter.

[102] I agree that the employer has clearly demonstrated that Mr. Buchanan violated a number of policies and procedures (Exhibit E-2) with respect to the safety of the Institution, inmates and fellow officers, as well as demonstrating poor judgement in terms of his supervisory role of junior officers. The issue that remains is whether the 20-day suspension awarded by Mr. Kassen is warranted in the circumstances.

[103] I am not naïve enough to believe that correctional officers never watch television during their working shifts at Bowden Institution with their supervisor's knowledge. This is not a practice I either support or condone. However, it is not that behaviour alone that raises concerns about the ability of a supervisor to adhere to the safety rules and security procedures of the Institution. As evidenced by the employer, security doors were left opened, log-in and log-out rules as well as pat down procedures were ignored, and the security camera was rendered ineffective and left in that unsafe condition unbeknownst to the next correctional officer coming on shift.

[104] Mr. Lowe's evidence that it takes from two to three minutes to make the rounds of the ranges while Mr. Buchanan testified that it takes only 90 seconds causes me great concern. As the supervisor responsible for observing officers in a potentially dangerous environment, Mr. Buchanan was not present to control the only switch to open the door to enter the safety of the bubble. Mr. Buchanan admitted during his testimony that he was not observing those officers. I find that this in itself is a serious safety breach and shows total disregard for the safety of the officers under his supervision.

[105] Before he made a decision on the quantum of the suspension, Mr. Kassen attempted during a meeting to seek input from Mr. Buchanan (Exhibit E-7). The grievor, however, replied in writing as follows (Exhibit E-8):

...

Nowhere in the disciplinary process, Judicial, Arbitral or Labour Law, am I required to provide the author of an investigation report or their superiors with any form of rebuttal, defense or clarification to the investigation report.

In such cases, the onus is on the employer to decide whether or not, and to what degree, the investigation report has merit, and if so, what the employer intends to do with said report.

While I may have concerns with the report, lack of adherence to the Rule of Law and the general handling of this investigation, I do not feel sir that it would be appropriate for me to address those issues with you. In accordance with the Rule of Law and the Fundamentals of Natural Justice, I will properly address my concerns during the course of the disciplinary hearing, should the Correctional Service of Canada wish to pursue this matter and will seek recourse through the grievance and arbitration system in place, as well as through the courts, if required to do so.

[106] Mr. Kassen chose to use a number of building blocks to determine the quantum, such as Mr. Buchanan's previous disciplinary record, his lack of cooperation during the investigation process, his work performance, and his lack of remorse. After weighing these factors, he decided on the 20-day suspension.

[107] As an adjudicator, I too use building blocks, contributing or mitigating circumstances, during my decision-making process. These factors can be age, length of service, remorse, credibility, rehabilitative potential, provocation, health, family situation, PERs, any disciplinary infractions within the last two years, the grievor's cooperation, etc. As I determine which of these factors are relevant to the case at hand, I weigh them appropriately with the evidence and consider them in arriving at my decision.

[108] Mr. Kassen awarded a five-day suspension to Mr. Lowe and a 10-day suspension to Mr. Sveinson for their conduct in the incidents of January 28, 2001. As for Mr. Buchanan, with the evidence in front of me, I see no reason that I should mitigate the 20-day suspension awarded to him.

[109] For the above reasons, this grievance is denied.

D.R. Quigley,
Board Member

OTTAWA, October 16, 2002.

