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*Public Service
Staff Relations Act*
R.S.C. 1985, c. P-35

Before an adjudicator

BETWEEN

JEAN-PIERRE LABADIE

Grievor

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Labadie v. Treasury Board (Correctional Service of Canada)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Jean-Pierre Tessier, Adjudicator

For the Grievor: Céline Lalande, Counsel, Union of Canadian Correctional Officers
— Syndicat des agents correctionnels du Canada — CSN

For the Employer: Karl Chemsî, Counsel

Heard at Québec, Quebec,
September 13 to 15, 2005.
(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] Jean-Pierre Labadie ("the grievor") has been employed with the Correctional Service of Canada since 1998. His position is classified at the CO-I group and level. On December 16, 2001, an incident occurred among the inmates while the grievor was on duty in a control post. He left the control post in order to take action with the inmates. He was wearing his weapon on his belt.

[2] Following the incident report and after conducting an investigation, on February 27, 2002, the employer imposed a disciplinary measure—a financial penalty equivalent to four days' pay—on the grievor for violating the safety rules.

[3] On April 5, 2002, the grievor lodged a grievance contesting this disciplinary measure. In March 2004, the grievance was referred to adjudication; it was heard in September 2005.

[4] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 ("the former Act").

Summary of the evidence

[5] Officer Denis Raymond occupies a position at the CO-II group and level, and has been employed by the Correctional Service of Canada for 27 years. On the evening of December 16, 2001, he was in charge of "H" Block at the Donnacona Institution, a maximum-security penitentiary. This cell block is configured in the shape of an "X", with a central shared-access office area.

[6] There are two control posts for surveillance of the north side, the south side, and the connecting corridor. Usually one officer is on duty in each control post. However, at times when there are a great many inmate movements, particularly at meal times, a second officer is on duty in the control post. On December 16, 2001, the grievor was on duty in the control post as the second officer, at dinner time; dinner is served at 4:15 p.m.

[7] Mr. Raymond stated that the meals are delivered on carts. At meal times, in each wing, a cook and two inmates act as servers; thus, there are eight inmates serving in

the corridors. The servers give the trays to the inmates, who line up at gratings near the control posts and then return to their common rooms to eat their meals.

[8] At the time of the December 16, 2001 incident, near the end of the meal, four inmate servers remained in the corridors and a few inmates remained near the gratings where the meals were being distributed.

[9] Mr. Raymond related the December 16, 2001 incident as follows:

[Translation]

- *A fight broke out in the "E" Block common room. The officer in charge of the control post sounded the alarm twice. A few seconds later, Mr. Labadie shouted that he was coming out. At that point, another officer, Mr. Deschênes, restrained the two inmate servers and, in order to let Mr. Labadie go by, I ran ahead to restrain other inmates. The grating of the hall leading to the common room was opened. I then saw that Mr. Labadie was holding the (Federal 1.5) gun used to shoot gas. But I also noted that he was wearing his 0.38 revolver on his belt. I asked him to return to the control post.*

- *I noted one inmate who was pointing his finger at Mr. Labadie and saying, "Cowboy."*

- *Following the incident, I spoke with my co-workers, who also noted that Mr. Labadie was wearing his weapon, a 0.38 revolver, on his belt.*

- *I questioned Mr. Labadie on this point and he told me that he had forgotten that he was wearing his revolver.*

[10] Stéphane Deschênes is a supervisor who occupies a position at the CO-II group and level. He stated essentially the same facts as did Mr. Raymond. He stated that, during the events, he saw an inmate point his finger at the grievor, indicating that the grievor was wearing his weapon (a revolver) on his belt.

[11] Mr. Deschênes stated that he felt uncomfortable when he saw the weapon on the grievor's belt. Afterward, he avoided working the same shifts as the grievor because he feared for his safety.

[12] Suzanne Dessureault is a parole officer. With Serge Émard, she chaired the disciplinary investigation with regards to the grievor. She submitted her report (Exhibit E-1) indicating that it was established by the testimony heard by the investigation board that at the time of the December 16, 2001 incident, some inmate

servers and a few inmates remained near the grating where the inmates pick up their meals.

[13] Ms. Dessureault stated that she read Post Orders 823 and 828. Post Order 828 describes the responsibilities of Correctional Officers (CO-Is) in cell block control posts; in particular, it reads as follows:

[Translation]

...

23. Monitors inmate movements in accordance with the pre-established schedule and the instructions of the CO-II in charge of the central area (240).

24. All entries to and exits from the control post shall be made through the appropriate double-door compartment and under the supervision of the CO-II in charge of the unit. Before allowing the control post to be opened, the CO-II in charge of the unit shall ensure that no inmates are in the area near the entrance to the double-door compartment and that all doors to the compartment are locked.

...

[14] Subsequently at the hearing, it was established by all the testimony that officers who enter the control post are to store their weapons (revolvers) there. They are to take back their weapons only when they have finished work.

[15] In its report, the investigation board indicates that the grievor [Translation] "... does not appear to understand the repercussions of his error and minimizes the importance of what he did". As well, the grievor stated that he told another officer that his revolver was not loaded and added: "... police officers go into clubs full of motorcycle gang members, and that doesn't matter". The investigation board recommended that the employer impose a financial penalty equivalent to four days' pay, and considered that the incident was "... very serious and directly endangered the safety of the institution and the persons present".

[16] Lastly, Jean-Yves Bergeron, Assistant Warden, stated that after receiving the investigation report, he considered it necessary to impose a disciplinary measure, given that safety was at stake, that officers felt threatened, and that the grievor appeared to minimize the importance of what he did.

[17] Management imposed a financial penalty on the grievor equivalent to four days' pay as a disciplinary measure.

[18] According to the disciplinary report (Exhibit E-2), management criticized the grievor for:

[Translation]

- acting negligently and committing an infraction under the *Code of Discipline* (7.f. "disregards established safety practices");
- leaving the control post while inmates were in the corridor;
- failing to notify the CO-II on duty or to act in accordance with that person's instructions;
- failing to check both ways along the corridor before opening the door of the double-door compartment of the control post;
- leaving the control post while wearing his (0.38) revolver on his belt;
- endangering the safety of his co-workers and other persons in the institution; and
- minimizing the importance of what he did.

[19] Testifying on behalf of the grievor, Yves Therrien, CO-I, stated that he was in the "H" Block control post, across from the "E" Block control post, and was careful to restrain an inmate server by talking with him through the hatch of the control post. He emphasized that there were few inmates in the corridor because the meal period was over on his side and only a few inmates remained to be served in one wing of the block.

[20] The grievor stated that on December 16, 2001, he was working as a supervisor on the parapet walk and, at supper time, also had to go down and work in the control post as the second officer on duty there.

[21] The grievor stated that he usually removed his revolver and cartridge belt when he entered the control post, and put his weapon back on only when the meal period was over and he returned to the parapet walk to take his own meal.

[22] The grievor admitted that at times he did not remove the belt holding his revolver because he found it hard to buckle on again later; at those times he removed only the (0.38) revolver and the cartridge belt and stored them in the control post.

[23] According to the grievor's memory of the events of December 16, 2001, apparently he placed his (0.38) revolver back on his belt because the meal period was ending and he would be leaving in a few minutes. Apparently, he did not place the bullets back in his cartridge belt because at that point a fight broke out in a common room; his co-worker in the control post sounded the alarm three times and told the grievor that the fight was continuing and that action was called for.

[24] The grievor stated that he took the Federal gun and headed for the double-door compartment of the control post. He admitted not looking to the left but considered it urgent to leave the control post.

[25] The grievor shouted to warn his co-workers in the corridor and left the control post. He admitted that there were inmate servers in the corridor and a few inmates in the hall leading to the common room. All the inmates were restrained by his co-workers.

[26] The grievor argued that his (0.38) revolver was not loaded. He considered that action was called for and that in the end, nothing unfortunate happened.

[27] Richard Quesnel has worked at the Donnacona Institution since 1990. He has often worked on the parapet walks and acted as the second officer on duty in the control post at times of inmate movements.

[28] Mr. Quesnel stated that when he works in the control post, he takes off his revolver and places it on a shelf in the control room.

Summary of the arguments

[29] The employer emphasized that the facts were not contested. The grievor admitted his failure but minimized the importance of what he did.

[30] The institution involved is a maximum-security penitentiary, and it is important that safety standards be respected. In acting as he did, the grievor endangered the safety of his co-workers.

[31] Officers are to store their weapons when they are in the control post. They are to communicate with a CO-II in the corridor before leaving the control post. They are not to leave the control post wearing weapons on their belts.

[32] In the circumstances, the grievor minimized the importance of what he did, and a disciplinary measure was called for.

[33] For his part, the grievor stressed out that action was called for. His co-worker in the control post told him to leave and opened the door for him.

[34] According to the grievor, the CO-II who was in the corridor was unable to see into the common rooms or to assess how appropriate it was to take action.

[35] In the grievor's opinion, the employer is to take into account the fact that he admitted the facts and left the control post wearing his revolver on his belt by mistake, as well as the fact that the revolver was not loaded.

[36] Lastly, the grievor finds that the financial penalty equivalent to four days' pay is harsher than a four-day suspension without pay.

Reasons

[37] At issue in this case, in my view, is not the relevance of the action. What the employer has emphasized is the way in which the grievor left the control post and the fact that he was wearing his (0.38) revolver on his belt.

[38] The grievor has admitted not checking both ways along the corridor to see whether any inmates were present before leaving the control post. However, he did indicate that he was leaving the control post by shouting to his co-workers in the corridor.

[39] It is true that officers must leave the control post in a safe manner. According to the Post Orders, officers wishing to leave a control post are to communicate with the CO-II on duty in the corridor. The CO-II in charge is to ensure that any inmates present are restrained before allowing an officer to leave the control post.

[40] In this case, the evidence has not established how communication is to be made. I note that the officers in the control post are in something like a glass cage. There are hatches through which the muzzle of a gun can be pointed. The evidence has not established whether there are other openings allowing communication with the CO-II in the corridor.

[41] In this case, the grievor left the control post suddenly; although he shouted, it appears that his co-workers had to hurry to restrain the inmates who were still present in the corridors.

[42] Leaving the control post is dangerous to the extent that inmates are present in the corridors. At the time of the events, the meal period was nearly over and there were few inmates in the corridors. I therefore note that the grievor should have ensured that he had better communication with the CO-II in the corridor before leaving the control post. In light of the circumstances and the facts described, I cannot find that the grievor endangered his co-workers' safety simply by leaving the control post.

[43] That said, the main issue is the fact that the grievor was wearing his (0.38) revolver on his belt. It has not been established that the revolver was loaded, but even if it were not, the weapon itself constituted a threat to the officers and inmates present.

[44] One officer testified that he felt uncomfortable seeing the revolver, and stated that he subsequently changed his work shifts because he was afraid to work with the grievor.

[45] The grievor left the control post wearing his revolver on his belt by mistake and out of negligence.

[46] According to the procedure and all the testimony, officers who enter the control post are to remove and store their weapons. They are to take them back only when they have finished work.

[47] Service by officers acting as the second officer on duty in the control post during inmate movements, particularly at meal times, begins as required when the meal period starts and ends when the meal period is over, specifically when no more inmates are present in the corridors.

[48] The grievor ignored this rule. His presence in the control post was required as long as inmates were present in the corridor. That is the main reason why the number of officers in the control post is doubled.

[49] The grievor testified that the meal period was over and that hardly any inmates remained in the corridor. He placed his revolver back in the holster on his belt. It was at that point that a fight broke out between inmates and action was called for.

[50] In the evidence adduced, I have not seen any rule—if any such rule exists—establishing the point at which officers on duty as the second officer in the control post may place their revolvers back on their belts.

[51] That said, it is clear that officers on duty in the control post are to remove and store their weapons. It is only by scrupulously following this rule that incidents like the one in this case can be avoided.

[52] In my view, when a CO-II in the corridor authorizes an officer to leave the control post, the CO-II expects the officer to leave without wearing a weapon, as the rule states that officers in the control post are to store their weapons. An officer may be armed with a Federal gun for shooting gas, but that situation is quite different from wearing a revolver and bullets when inmates are present.

[53] I find that the grievor showed negligence by placing his weapon back on his belt before the meal period was over and before there were no longer any inmates in the corridor. Thus a disciplinary measure is appropriate. The grievor's co-workers felt threatened, and the grievor minimized the importance of what he had done. In the circumstances, I consider the disciplinary measure imposed by the employer appropriate.

[54] For all the above reasons, I make the following order.

(The Order appears on the next page)

Order

[55] The grievance is denied.

May 9, 2006.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,
Adjudicator**