

Date: 20070214

Files: 166-02-35888 to 35894
and 166-02-36007

Citation: 2007 PSLRB 21



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

MICHEL EAST

Grievor

and

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

Employer

Indexed as

East 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: Léo-Paul Guindon, adjudicator

For the Grievor: John Mancini, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

For the Employer: Neil McGraw, lawyer

Heard at Montréal, Quebec,
from May 8 to 12, 2006.
(P.S.L.R.B. Translation)

I. Grievances referred to adjudication

[1] Michel East, the grievor, was employed as a Correctional Officer (CX-2) at the Leclerc Institution, Correctional Service of Canada (CSC), at the time of the incidents that led to these grievances. At that time, he was one of the representatives of the local of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN). The grievances sent to adjudication concerned the following issues:

- Public Service Labour Relations Board ("Board") file 166-02-35888

Grievance filed on November 10, 2004, objecting to the installation of a surveillance camera in an emergency light unit. The grievor requested that a private and independent agency do a sweep of the Leclerc Institution using a scanner, that correctional officers be compensated for having been filmed without their knowledge, that a private and independent investigation be conducted, and that management issue a public apology.

- Board file 166-02-35889

Grievance filed on November 2, 2004, objecting to the disciplinary investigation report on the incidents of September 21, 2004. The grievor requested that this discriminatory situation be discontinued and that the investigation report be destroyed.

- Board file 166-02-35890

Grievance filed on November 23, 2004, requesting payment of one additional hour of reporting pay for October 1, 2004. It claimed that the employer only paid part of the minimum four hours' reporting pay to which the grievor was entitled.

- Board file 166-02-35891

Grievance filed on October 29, 2004, contesting the employer's decision to prohibit the grievor access to the Leclerc Institution. The grievor asked that his rights be reinstated and that the employer apologize to him in public.

- Board file 166-02-35892

Grievance filed on November 23, 2004, objecting to the decision by the unit manager to suspend the grievor without pay for administrative reasons. The grievor asked that the harm done to him be corrected and that he receive a public written apology.

- Board file 166-02-35893

Grievance filed on October 29, 2004, objecting to the seven-day disciplinary suspension without pay imposed on the grievor. The grievor requested that the suspension be cancelled, that the related documents be removed from his file and that his rights be reinstated.

- Board file 166-02-35894

Grievance filed on November 2, 2004, contesting the procedure followed in the investigation related to the incidents of September 21, 2004. The grievor requested that the investigation report be destroyed and that his rights be reinstated.

- Board file 166-02-36007

Grievance filed on February 14, 2005, objecting to the seven-day disciplinary suspension without pay imposed on the grievor. The grievor requested that he be paid for the period in question and that he be paid \$100,000 in exemplary damages for inconveniences and damage to his reputation, as well as compensation for his legal costs.

[2] The collective agreement applicable in this case is the one signed by the Treasury Board and the UCCO-SACC-CSN on April 2, 2001 for the Correctional Services Group bargaining unit.

[3] On April 1, 2005, the new *Public Service Labour Relations Act*, 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”).

II. Preliminary objection and questions

[4] At the start of the hearing, the employer submitted that the adjudicator only had jurisdiction over the grievances contesting the seven-day disciplinary suspension (Board files 166-02-35893 and 36007) and the one requesting reporting pay (Board file 166-02-35890). It claimed that the adjudicator did not have jurisdiction over the other files, which had no foundation in the collective agreement.

[5] The grievor requested that the objection be taken under advisement and dealt with when the decision was made on the merits. According to him, the seven-day suspension was abusive and was imposed following the employer's actions in violation of laws of public order and the employer's policies. The adjudicator's jurisdiction covered all of the areas in which the grievor deemed to have been aggrieved. In this regard, the adjudicator could address laws of public order and general application that were deemed to be incorporated in the collective agreement, based on the principle established in *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42. According to that decision, the adjudicator's jurisdiction extended to determining whether the employer had complied with the legislation and whether there was any conflict with the general labour relations framework whereby the grievance procedure is the single window for redressing damage. Every grievance, except for the one dealing with the reporting pay allowance, related to the employer's decision to impose a disciplinary action, and the grievor must receive full compensation for any damage suffered.

[6] The grievor pointed out that the grievances contesting the suspension and claiming damages were the priorities, and that the others were secondary and could be withdrawn at the end of the hearing.

[7] In response, the employer submitted that the grievor had to specify at that stage which files would be kept for adjudication. If the adjudicator did not have jurisdiction for certain files, they should be closed immediately.

[8] The parties agreed to proceed on the files contesting the seven-day disciplinary suspension. The grievor was to file the evidence on the grievance related to the reporting pay allowance only if he could do so within the period of the hearing. Under these circumstances, the objection made by the employer concerning jurisdiction was taken under advisement and was to be addressed when deciding on the merits.

[9] The employer decided not to provide any evidence on the second incident listed in the disciplinary actions related to the damage caused to the facilities. The employer admitted that, under the circumstances, there should be a reduction in the disciplinary sanctions, and it would leave it to the adjudicator to determine the seriousness. The grievor was to submit evidence on this incident to demonstrate that the employer was unremitting towards him, thus causing him harm.

[10] The grievor sought authorization to record the hearing, submitting that this was a current practice with administrative tribunals, and he had not been given any reason that this should not be allowed at an adjudication hearing. Recordings are permitted at administrative hearings conducted by the employer, and the public nature of the grievance adjudication hearing supports this request. The employer responded that under the former *Act*, recordings were permitted only in exceptional circumstances where the cases were very complex, which did not apply in this case. This request to have the proceedings recorded was dismissed to avoid giving the hearing an overly formal appearance. In *Rhéaume v. Canada*, [1992] F.C.J. No. 1131 (QL), the Federal Court of Appeal recognized that an adjudicator has complete discretion to decide on whether to permit the hearing to be recorded. The Court stated the following:

...

In Puvanendran Kandiah v. Minister of Employment and Immigration, unreported judgment dated April 13, 1992, file No. A-113-90, this Court unequivocally stated that it did not believe that the obligation of a tribunal to provide a full tape recording of its proceedings and hearings could be derived from the mere fact that it is subject to the rules of natural justice or that it has a duty to give full effect to the fundamental rights of persons appearing before it as guaranteed by the Charter. The result is that in the absence of any statutory provision, a tribunal, whether it be a court of record or not, but which has been given control of its process, has complete discretion as to any mechanical or other recording of its proceedings, which means that the fact that it has adopted a general policy of refusing to permit such recording, provided that no discrimination is allowed to enter into the application of the policy, is legally unassailable. . . .

...

[11] The exclusion of witnesses was ordered in response to the employer's request and given the fact that the grievor did not contest it.

III. Summary of the evidence

[12] On June 21, 2004, a new director, Claude Lemieux, was appointed to the Leclerc Institution. The former director had resigned on June 21, 2004, exasperated by the different pressure tactics linked to the collective bargaining negotiations for the Correctional Service Group. The pressure tactics that began in 2003 took many forms, including the distribution of union pamphlets in the workplace as well as anonymous pamphlets containing negative comments about different managers. Graffiti with the Front de Libération de l'Établissement Leclerc (FLEL) logo were drawn on signs. Stickers were placed in different spots within the Leclerc Institution, some of which symbolized the departure of the former director (a crown with a cross) and identifying the next targets as the Deputy Director (a lobster) and a unit manager (a "Wilson" ball) (Exhibit E-12).

[13] The pressure tactics used by the UCCO-SACC-CSN local ("the local") were aimed at people who were in acting assignments in management positions. Correctional officers were giving the "silent treatment" to people who were temporarily assigned to management positions, speaking to them only when absolutely necessary. During the period covered by the grievances, 6 out of 12 correctional supervisor positions were filled on an acting basis. Two of the supervisor positions were filled in this manner in August 2004 by Pierre Blouin (from a correctional officer position) and Yves Whittom (from a parole officer position).

[14] Shortly after assuming his duties, the Director noticed that the work environment was being seriously disrupted by the pressure tactics being used and that this situation had persisted despite the departure of the former director. With his management team, the Director set in motion different measures aimed at improving the work environment and ensuring a safe and harassment-free workplace (such as more frequent rounds by managers, investigations into incidents and meetings with representatives of the local). The response conveyed to the Director by André Chênevert, President of the local, was that he was not in charge of the situation nor of the union members' actions.

[15] The methods used by the Director proved to be ineffective, and he noticed that the pressure tactics were being stepped up (by the placing of stickers on office doors, the distribution of hateful and intimidating pamphlets, the placing of liquid in pigeonholes and the making of rude comments). Correctional officers were continuing

to give the acting correctional supervisors the silent treatment. In June 2004, a correctional supervisor (Robert Massey) was personally targeted by the pressure tactics, and again on his return from leave in September 2004. Signs were also posted at the home of one manager.

[16] In an attempt to identify the perpetrators of this intimidation and harassment, the Deputy Commissioner of Correctional Services authorized the installation of two surveillance cameras. One of these cameras was placed inside an emergency light unit in the mailroom on September 21, 2004 by the Spy-Tech Engineering company, with the help of Michel Laporte (Information Officer) (Exhibit F-9).

[17] Two incidents led to the seven-day suspension of the grievor that is being contested in these files. The January 14, 2005 disciplinary action report by Brigitte Rhéaume, a unit manager at the time, stated the following (Exhibit E-11):

[Translation]

...

SUMMARY OF THE FACTS

On September 21, 2004, you made intimidating comments to an acting CS [Correctional Supervisor], and you also caused more than \$200 in damage to the employer's property. These comments and this action are serious and unacceptable.

...

ACTION TAKEN

- Seven (7) days' suspension without pay already served during the administrative suspension (without pay)*
- In the event of a repeat offence, a stronger disciplinary action may be applied.*

...

A. Intimidating comments

[18] Mr. Whittom testified to the incidents of which he was a victim and which he attributes to his applying for and accepting an acting assignment as a correctional supervisor. Mr. Whittom had been a parole officer since July 2004, at the time that the employer published a call for expressions of interest in the assignment. Parole officers

are represented by the Public Service Alliance of Canada (PSAC). Mr. Whittom was interested in the assignment, which he saw as an opportunity to acquire management experience that could benefit him.

[19] Mr. Whittom was informed of an advisory related to a boycott of acting assignments in management positions and checked with a representative of the local as to whether this advisory prevented him from applying for the position he wanted. The representative informed him that the advisory was only directed at correctional officers and did not apply to PSAC employees. Mr. Whittom also checked on this with the President of the PSAC local, and he was assured that as an employee represented by the PSAC, the advisory regarding the boycott of acting management positions did not apply to him. Thus, Mr. Whittom applied and accepted the offer of an acting assignment in a correctional supervisor position effective August 30, 2004.

[20] Approximately one week before August 30, 2004, Mr. Chênevert advised Mr. Whittom not to assume the acting correctional supervisor duties. When Mr. Whittom informed him about his follow-up on the boycott advisory, Mr. Chênevert replied that he was the president of the local. At approximately 07:30 on August 30, 2004, Mr. Chênevert called out to Mr. Whittom: “[translation] . . . you haven’t changed your mind? . . . we don’t need guys like you, you’ve got it coming to you” (Exhibit E-1). At around 15:30 that day, the grievor (Correctional Officer and the local representative) signed the attendance sheet in the unit manager’s office, and, in the presence of Mr. Whittom, twice stated the following: “[translation] It smells a lot like shit around here.”

[21] Late in the day of August 30, 2004, at around 16:30, Mr. Whittom took part in a hockey game with a group of about 20 players, 10 or so of whom were employees at the Leclerc Institution, and a few of whom were correctional officers. Mr. Chênevert and Alain Ouellet (Correctional Officer) took the opportunity to tell Mr. Whittom that they were not pleased that he had accepted the acting assignment as a correctional supervisor. They told him that it was not too late to return to his former position and that “[translation] . . . if he remained, he could be sure . . . that it would follow him throughout the rest of his career, no matter where he went . . . that it was a good way to get posted to the Atlantic.” They told him that they would not play hockey with him and asked the correctional officers who were there to vote on whether they would agree to play with him. After losing the vote, Mr. Chênevert and Mr. Ouellet left without playing in the hockey game (Exhibit E-1). The next day, the correctional

officers who had taken part in the hockey game were given a hard time and the President of the hockey league notified Mr. Whittom of this. The latter then decided to withdraw from this activity. At work, Mr. Whittom continued to receive the silent treatment from the correctional officers.

[22] Mr. Blouin had accepted an acting management position appointment approximately two weeks before Mr. Whittom. The latter was informed at the beginning of his shift on September 21, 2004 that Mr. Blouin had resigned his temporary assignment after he and his family were pressured. The Director testified that Mr. Blouin had met with him in the presence of Yves Laneville, Deputy Director of the Leclerc Institution, on September 21, 2004, at approximately 15:00. At this meeting, according to the Director, Mr. Blouin was “[translation] . . . white as a ghost and trembling.” Mr. Blouin told the Director and Deputy Director Laneville that someone, unknown to him, had come to his home and told him that he was having problems at work and that there would be more. This person asked Mr. Blouin if he recognized the licence plate number and cell phone number of his daughter that were scribbled on a piece of paper. Before that, Mr. Blouin had been called a “scab” and pamphlets had been handed out containing harsh words about his decision to accept the acting management position assignment.

[23] A suspicious package was found on the grounds of the Leclerc Institution at around 17:00 on September 21, 2004, resulting in a call to the Laval police and the Sûreté du Québec. Although the package was determined to be harmless, the incident increased tension at the facility. Gérard Vigneault (Correctional Supervisor), in charge of the night shift, noted this incident in his log (Exhibit E-6).

[24] Mr. Vigneault organized an information meeting at the end of his shift on the evening of September 21, 2004. The purpose of the meeting was to inform the employees of the morning shift (correctional officers and correctional supervisors) of the events that had transpired that evening. Mr. Whittom, Acting Correctional Supervisor for the morning shift, attended the meeting, standing in the doorway to the meeting room. A dozen employees were present, including the grievor, who was occupying a post with multiple functions. The grievor was sitting in the meeting room, with his back to the door and at an angle to it, and he testified that he could not see Mr. Whittom from his seat.

[25] At this meeting, the grievor proudly declared, according to the accounts given by Mr. Whittom and Mr. Vigneault: “[translation] By the way guys, one of the two scabs has resigned.” The grievor specified that what he actually said was: “[translation] A scab resigned.” Mr. Vigneault called out the grievor’s name and pointed at him, which stopped him from speaking. Mr. Vigneault did this because that was not the time to talk about the work conflict. Mr. Vigneault did not enter this incident in his log for September 21, 2004 because he considered it closed (Exhibit E-6).

[26] Mr. Whittom felt personally targeted by the grievor’s comment that he took to mean that he would be the next one down. After the exchange, Mr. Whittom went to Mr. Laporte’s office and told him and Deputy Director Laneville about the comments made by the grievor. Mr. Whittom confirmed in writing the details of the incident to Deputy Director Laneville (Exhibit E-2) and entered the incident in his log for September 22, 2004 (Exhibit E-3).

[27] According to the grievor, his words were not directed at Mr. Whittom because he did not know that he was at the meeting. Also, the grievor did not consider Mr. Whittom a “scab.” He confirmed that he had checked with the President of the PSAC local regarding what instruction had been given to Mr. Whittom about the boycott on acting management positions. No advisory had been issued to PSAC members in this matter. The grievor stated that he would have felt differently had it been otherwise. Moreover, the grievor admitted that pressure had been applied by correctional officers against Mr. Blouin and Mr. Whittom personally, “[translation] . . . because correctional officers don’t like it when people take acting correctional supervisor positions when their president tells them not to.”

[28] Another Correctional Officer (Mario Lavoie) told Mr. Whittom, at the end of the September 21, 2004 night shift in the office of the Correctional Supervisor: “[translation] You’re done,” in order to intimidate him. The grievor warned Mr. Lavoie to be careful, saying “[translation] He just turned me in” (Exhibits E-2 and E-3).

[29] A letter from André Leclerc (Correctional Officer), dated October 4, 2004, reproached the grievor for having asked him at the beginning of the September 21, 2004 night shift whether he had applied for a “keeper” position (Exhibit F-12). This letter prompted a harassment investigation. The grievor was only informed of this letter on December 4, 2004. In June 2005, the grievor checked the source of the document through the Access to Information and Privacy Division. On April 7, 2005,

there was an investigation into the harassment complaint followed, on July 22, 2005, by a disciplinary investigation. Louise Maillette (Unit Manager) refused to re-evaluate the findings of the harassment investigation. The disciplinary hearing held before Mr. Poirier (Deputy Director of the Leclerc Institution) on September 8, 2005 resulted in a disciplinary action (10-day suspension) against the grievor.

[30] On two occasions, October 19 and November 22, 2004, Mr. Lapointe (Unit Manager) taunted the grievor, asking him whether he was looking for hidden cameras.

B. Damage to property

[31] The video recording from the surveillance camera placed in the emergency light unit in the mailroom was played during the hearing. The video recording prepared by the employer (Exhibit E-13) was similar to the one prepared by Sergeant Rock Kingsbury, a police investigator with the Sûreté du Québec (Exhibit F-1). These two video recordings were copies of the original recording prepared on September 21, 2004 that was in the possession of the Sûreté du Québec.

[32] The video recording started at 22:29, and showed correctional officers Yves Montigny and Serge Senneville looking at the emergency light unit in the mailroom. Mr. Senneville returned with the grievor, and they looked at the emergency light unit. The grievor testified that he checked the emergency light unit at the request of Mr. Senneville. He noticed that the case appeared to have been moved (traces of paint showed the previous setting) and that the wire had been extended (there was white electrical tape connecting the wire into the unit at the plug). He checked whether the unit was working by pushing the “test” button, with a negative result. During the viewing, the recording was seen to stop when the grievor disconnected the electrical plug. He noticed that the emergency light unit was not fed by the emergency battery when he pulled out the electrical plug. When the emergency light unit was unplugged from its wall support, the grievor noticed that the wires coming out of the wall were connected. The video recording resumed when the grievor reconnected the wire after putting the unit back in its case. The recorded image of the two correctional officers walking towards the mailroom was off centre. The video recording stopped at 23:28.

[33] The grievor indicated that he was occupying a post with multiple functions for the September 21, 2004 shift. The check of security devices was one of the responsibilities. Thus, he was required to follow up on the suspected defect in the

emergency light unit in the mailroom pointed out by Mr. Montigny. He denied having damaged the employer's property in any way by handling it.

[34] Deputy Director Laneville and Mr. Laporte observed, on the screen located in the latter's office, images transmitted live from the surveillance camera located in the mailroom, showing the grievor's actions. The Deputy Director and Mr. Laporte went to meet up with the grievor. On the way, they met Mr. Vigneault, who informed them of the comments made by the grievor at the information session. The Deputy Director invited the grievor to follow him, along with Mr. Laporte, to his office next to the Correctional Supervisor's office. The grievor felt threatened by the attitudes of the Deputy Director and Mr. Laporte, who questioned him behind closed doors. The Deputy Director asked him to explain his comments during the information meeting. The grievor refused to do so. The Deputy Director believed that the grievor had parts of the equipment from the emergency light unit, and asked him to hand them over. The grievor denied having any. The Deputy Director and Mr. Laporte returned to the mailroom at the grievor's request, who showed them what he had done with the emergency light unit to demonstrate that none of its parts were missing.

[35] The grievor indicated that he wanted to be accompanied by a union representative. Deputy Director Laneville ended the meeting and asked the grievor to appear in the Director's office on September 27, 2004, the first working day following the grievor's leave. This event is described in Mr. Laporte's memo dated September 23, 2004 (Exhibit F-9). The grievor informed Mr. Vigneault of this incident, and asked him to make a note in his log that he had been threatened by the Deputy Director and Mr. Laporte. Mr. Vigneault did not mark down the incident in his September 21, 2004 log (Exhibit E-6), indicating that it was probably because he had not witnessed it. He considered the incident closed, just like the one on the comments made by the grievor at the information meeting.

[36] The Director met with the deputy directors, unit managers and officials in charge of security on the morning of September 22, 2004. Deputy Director Laneville informed the participants of the incidents that had occurred on September 21, 2004. The Director decided that a disciplinary investigation would be conducted by a committee of people who did not work at the Leclerc Institution to put an end to the intimidation and harassment actions towards incumbents of acting management

positions. The disciplinary investigation was to determine the facts and recommend whether any disciplinary actions were warranted.

[37] Mr. Lapointe decided that an administrative suspension without pay should be imposed on the grievor for the remainder of the disciplinary investigation. The people who attended the September 22, 2004 meeting agreed with this decision. A letter advising the grievor of his suspension was drafted that same day. The grievor was informed of the letter's content by phone on September 22, 2004. He was informed of his suspension without pay effective September 25, 2004 for the period of an investigation into the allegations of him having made intimidating comments and having damaged equipment on September 21, 2004 (Exhibit E-8). The grievor was also barred from access to the Leclerc Institution as of September 22, 2004, which is the normal procedure when a correctional officer is suspended. The suspension letter was handed to the grievor by Mr. Lapointe at a meeting on September 24, 2004, in the presence of a representative of the UCCO-SACC-CSN.

[38] On September 23, 2004, a meeting was held with two senior officers of the Sûreté du Québec and the Director, accompanied by Deputy Director Laneville, the Assistant Deputy Commissioner of Operations, a labour relations advisor and a legal advisor. Police protection was requested for the approximately 15 managers at the Leclerc Institution, including six acting managers, when they were outside the penitentiary. The Sûreté du Québec was asked to get involved in Mr. Blouin's case. A file was to be prepared for the acts of vandalism. Deputy Director Laneville described the incident of the surveillance camera to the representatives of the Sûreté du Québec. They indicated that information could be submitted to them, and that they would forward the matter to investigators who would file their report with the Crown Prosecutor, who would decide whether a misdemeanour charge would be laid.

[39] Deputy Director Laneville filed a statement with the Sûreté du Québec on September 30, 2004, stating that a surveillance camera had been damaged (Exhibit F-2). He filed a complaint on October 5, 2004 indicating that the casing for the emergency light unit had been damaged (Exhibit F-10). An invoice from the Spy-Tech Engineering company was attached to the complaint, assessing the damage at \$265.84 (Exhibit F-10). The Director specified that Deputy Director Laneville had left the Leclerc Institution for another job at the start of October 2004, and at no time had the latter

notified him that he had changed his statement. The Director did not become involved in the Sûreté du Québec file.

[40] When he started his shift on the morning of September 23, 2004, Mr. Whittom was advised of the grievor's suspension. The correctional officers from the night shift went to the Correctional Supervisor's office as a group and applauded him for a good minute without saying a word. Mr. Whittom felt intimidated by this demonstration, which he reported in his log (Exhibit E-5). He informed the Director and Deputy Director Laneville in writing of the details of this incident (Exhibit E-4). Mr. Whittom resigned his acting correctional supervisor position after these incidents, explaining in his testimony that he found it too difficult to function in such a work environment, and that the tension was affecting his private life.

[41] On September 27, 2004, the Director formed the disciplinary investigation committee, comprising Claude Duguay (Regional Manager, Human Resources) and Gilles Côté (Deputy Director, Montée St-François Institution). A meeting was called by the Director for September 29, 2004 with the representatives of the UCCO-SACC-CSN (Pierre Dumont, Regional President for Quebec; Michel Gauthier, union staff; André Chênevert and Luc Charron, a representative of the local) and the CSC Deputy Commissioner, its Assistant Deputy Commissioner for Operations and its legal advisor. The purpose of this meeting was to find a common ground between the UCCO-SACC-CSN and the CSC to find a way to discontinue the pressure tactics. The UCCO-SACC-CSN representatives agreed to stop distributing pamphlets. The CSC agreed to free up all of the representatives of the local for a meeting with the Leclerc Institution's management and to reinstate the grievor in his functions effective October 1, 2004.

[42] The disciplinary investigation committee filed its report on October 27, 2004. It found, in regard to the incidents involving the grievor (Exhibit E-9), the following:

[Translation]

...

E) Conclusion (incident involving Michel East)

In light of the facts compiled during the investigation, it appears that Mr. East made offensive comments about Mr. Whittom, who was an acting correctional supervisor at the time, in the presence of other employees. This situation contravenes the code of discipline and the rules of

professional conduct, and constitutes a gesture that can have a significant impact on the targeted employee and the organization.

The committee also believes that Mr. East committed a serious offence by damaging Correctional Service Canada equipment, and did so in an attempt to uncover the presence of a camera that had been previously installed by the employer.

For the two reasons given above, the Committee is of the view that significant disciplinary action is called for under the circumstances. Moreover, in view of the fact that this Committee was not mandated to conduct an exhaustive review of the overall context within which these events occurred, and that it would appear that they might have a significant impact, the Committee is leaving it up to the Director to determine the appropriate disciplinary action by taking into consideration the fact that this employee does not have a disciplinary record.

...

[43] The Director gave the grievor the investigation report. Ms. Rhéaume replaced Mr. Lapointe as the unit manager in January 2005 for approximately three weeks. She organized a disciplinary meeting with the grievor on January 2, 2005 to hear his version of the September 21, 2004 incidents. The grievor indicated that it had never been proven that the surveillance camera was damaged. The video recording showed that the surveillance camera worked after the grievor handled it. He specified that the comments he had made were not aimed at Mr. Whittom because he did not know that Mr. Whittom was at the meeting. Moreover, he added, Mr. Whittom was not a “scab” (Exhibit E-10). Ms. Rhéaume preferred the version of the events given by the disciplinary investigation committee to the grievor’s. She did not check the latter’s file to review his evaluation reports or whether it contained any disciplinary actions. The evaluation reports filed by the grievor indicate that he had met or surpassed the performance objectives that were set for him (Exhibit F-4). Ms. Rhéaume imposed a seven-day disciplinary suspension without pay on the grievor that had already been served during the administrative suspension (Exhibit E-11).

[44] Sergeant Kingsbury drafted an occurrence report following the meeting with Deputy Director Laneville on September 30, 2004 (Exhibit F-2). The grievor submitted his version to the police investigators, according to which he checked whether the emergency light unit was working as part of his duties.

[45] This case was forwarded to the Crown Prosecutor around January 20, 2005. On February 18, 2005, the Crown Prosecutor decided that there was enough evidence to lay a misdemeanour charge and wanted to have the grievor agree to submit to a program to deal non-judicially with certain criminal offences. The grievor rejected this proposal. On March 6, 2005, after further investigation and a viewing of the video recording, the Crown Prosecutor reversed the decision, concluding that there was not enough evidence.

[46] The grievor met with the Director about the misdemeanour charge. The Director specified that he was not involved in the charge and could not intervene in the Sûreté du Québec investigation. The Director specified that he had not seen the occurrence report (Exhibit F-2) before testifying at the hearing before me. It was only after the fact that he saw the complaint filed on October 5, 2004 by Deputy Director Laneville with the Sûreté du Québec (Exhibit F-10). The Director had seen the video recording in the offices of the Sûreté du Québec around February 15, 2005 and had noticed that the image recorded by the surveillance camera was off-centre after being handled by the grievor.

[47] After the Sûreté du Québec handed the video recording over to the authorities at the Leclerc Institution, the Director watched it with the grievor on March 15, 2005. At that time, the grievor submitted that the surveillance camera was not broken because the video recording resumed after he handled the surveillance camera. The Director upheld the disciplinary suspension.

[48] The grievor alleges that the incidents of September 21, 2004 are the reason for the employer harassing him. Based on his understanding of the events, certain members of management at the Leclerc Institution were harassing him by deciding, together with the Director, to conduct a disciplinary investigation into the incidents of September 21, 2004. His suspension without pay for the period of this investigation, although applied by Mr. Lapointe, was a decision made by management at the meeting of September 22, 2004. The grievor considers that the employer acted in bad faith when, on September 27, 2004, it advised him that his benefit plans (prescriptions and

life and disability insurance) were cancelled and that he would have to apply for employment insurance. The statement filed by Deputy Director Laneville with the Sûreté du Québec became part of the disciplinary investigation, and was initiated in consultation with management at the Leclerc Institution. According to the grievor, the disciplinary investigation committee's attitude towards him shows bias. He considers that a harassment complaint filed against him by Mr. Leclerc on October 4, 2004 is part of a campaign orchestrated by the employer. He considers that the employer's refusal to demonstrate how property was damaged and to take into consideration the images recorded by the surveillance camera are indications that the disciplinary procedure was biased.

[49] The grievor specified that, in April 2005, his physicians had determined that he was suffering from an adaptation and mood disorder related to the psychological harassment at work. The rejection of his application for coverage by the Commission de la santé et de la sécurité du travail du Québec would have been due to the lies told by a manager at the Leclerc Institution (Exhibit F-3). The grievor sees the complaint filed against him by a correctional officer on December 6, 2005 as harassment, as well as the denial of access to the Leclerc Institution effective December 14, 2005. Although this complaint was rejected on March 30, 2006, his access to the Leclerc Institution remains prohibited, and management is refusing to lift this prohibition. He took a position at the CSC Federal Training Centre for the Quebec Region in order to put an end to his problems with management at the Leclerc Institution.

IV. Summary of the arguments

A. For the employer

[50] Mr. Whittom and Mr. Vigneault provided details on the grievor's comments made at the September 21, 2004 meeting. These comments were part of a continuum of pressures exerted by the local at a time when tension was running high in the workplace, according to the Director's uncontested testimony. The message conveyed by the grievor was clear and intimidating or harassing towards Mr. Whittom. Mr. Vigneault reacted to the comments, which he considered out of order.

[51] No evidence supports the allegation that the employer had a bias against the grievor. The disciplinary investigation committee did not accept the grievor's version, but its conclusions were not reached in bad faith. The Crown Prosecutor reversed the

decision on the fact that there was sufficient evidence to lay misdemeanour charges after reassessing the file. Thus, the conclusion that the breakdown was operational seems as plausible as the opposite conclusion.

[52] The Director decided that a disciplinary investigation was called for into the incident of September 21, 2004. He mandated the creation of a disciplinary investigation committee comprising people from outside the Leclerc Institution and left it to do its work without getting involved in the investigation. Similarly, he refused to get involved in the Sûreté du Québec police investigation. The Director is responsible for ensuring a harassment-free workplace, and he took on this obligation in good faith. The decision to impose an administrative suspension on the grievor for the period of the disciplinary investigation was made by Mr. Lapointe, who is responsible for this decision. When she met with the grievor as part of the disciplinary meeting, Ms. Rhéaume preferred the version given by the disciplinary investigation committee to the one given by the grievor, and she acted in good faith.

[53] The adjudicator is authorized to rule on the validity of the disciplinary suspension imposed on the grievor, but not on the administrative suspension. The duration of the disciplinary suspension coincides with the administrative suspension, and the adjudicator will decide whether it was justified. Both *Cyr v. Parks Canada Agency*, 2005 PSSRB 16, and *Tanciu v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-27712 (19970805), acknowledged that the adjudicator's jurisdiction extended to disciplinary matters when threats, insults or provocative comments were uttered. In *Bélanger and Viau et al.*, PSSRB File No. 161-02-609 (19920406), the former Public Service Staff Relations Board indicated that malicious comments made by a representative of the bargaining agent were not protected under the former *Act* and could give rise to both an administrative and a disciplinary investigation.

[54] With respect to the damages claimed by the grievor, *Chénier v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 27, specified, founding itself on the conclusion reached by the Federal Court of Canada, Trial Division, in *Canada (Solicitor General) v. Hester*, [1997] 2 F.C. 706, that an adjudicator does not have the authority to award punitive damages. However, *Hester* decided that an adjudicator may order damages for losses suffered by an employee. In this case, there is no evidence that the grievor incurred damages through the employer's fault.

B. For the grievor

[55] In this case, the employer acted in bad faith because it knew that the grievor had not caused any damage to property. The Director wanted to restrict his testimony in the case by refusing to answer questions during his cross-examination. According to his version, it was necessary to intervene because the managers were being harassed, and he launched a crusade against the grievor. Yet nothing showed that the grievor or the union were involved in the pressure tactics. The Director knew that his decision to appoint acting correctional supervisors would lead to an escalation, and he planned to discover the culprits by using hidden surveillance cameras.

[56] The grievor did nothing reprehensible by discovering the surveillance camera. He was sequestered and intimidated by Deputy Director Laneville and Mr. Laporte during the disciplinary meeting. At the special meeting on September 22, 2004, the Director ordered an investigation even though he knew that the camera was working and that nothing was broken. The decision to suspend the grievor without pay for the period of the disciplinary investigation was made collectively at this meeting. This decision was of a disciplinary nature, not administrative, because its purpose was to penalize with the intent of changing behaviours. The bad faith shown by the CSC lay in its intent to punish and humiliate the grievor for lawful behaviour, and to refuse to reassess this decision for the two years of the grievance procedure. The Director showed bad faith by allowing Deputy Director Laneville to file a statement with the Sûreté du Québec that he knew to be false in relation to the damage to property.

[57] Regardless of the grievor's exact words, the final result remains the same: Mr. Whittom knew before accepting the acting management position assignment that the situation would be difficult, and his denunciation is aimed only at the grievor, while other instances of intimidation were not denounced. Mr. Vigneault did not report the incidents involving the grievor in his log, and the fact that they became reasons for disciplinary action are proof of the employer's bad faith.

[58] Mr. Whittom admitted that he had contravened the local's advisory by accepting an acting management position assignment. Under the circumstances, what was so reprehensible about the grievor's actions? The grievor specified that, according to him, Mr. Whittom was not a "scab" because he was not covered by the advisory issued by a bargaining agent that was not his. Mr. Whittom felt targeted for no reason, linking the

comments made by the grievor to the pressures to which people other than the grievor had subjected him.

[59] Just as the Director had found at the September 22, 2004 meeting, Ms. Rhéaume also found that the grievor had, through his comments, insinuated that Mr. Whittom would be the next one “[translation] to fall.” The message he was sending to employees was: “[translation] We just got rid of one. The rest of you had better behave.” The decision to impose discipline was made by Ms. Rhéaume even though the investigation report did not conclude that the equipment was damaged. She did not check the grievor’s file to see whether any disciplinary actions had been applied, or even his performance reports before deciding on the severity of the disciplinary actions. In so doing, she did nothing more than apply a disciplinary sanction predetermined at the September 22, 2004 meeting.

[60] The employer was unremitting towards the grievor in reporting him to the Sûreté du Québec and humiliating him before his colleagues by prohibiting his access to the Leclerc Institution. Mr. Laporte did the same by twice making comments about the grievor looking for surveillance cameras.

C. Employer’s response

[61] The disciplinary investigation report concluded that equipment had been broken, and there was no evidence to show that the Director was deliberately removing himself from this point. The grievor’s arguments concerning the Director’s lack of credibility, as well as that of Mr. Vigneault, Mr. Laporte and Ms. Rhéaume must not be considered by the adjudicator since these witnesses were not questioned during their cross-examination on the elements that the grievor used to support this claim. With respect to the definition of the term “scab,” the evidence shows that Mr. Whittom was personally targeted by the pressure tactics applied by the correctional officers because he had not complied with the advisory issued by the local by accepting an acting management position assignment. The grievor’s comments directly concerned the people on acting management position assignments, and Mr. Whittom was clearly the target.

V. Reasons

[62] No evidence was provided by the grievor on the reporting pay allowance he had claimed for October 1, 2004 (Board file 166-02-35890). The burden of proof was on the grievor to demonstrate, for this grievance concerning the interpretation and application of the collective agreement, that the employer did not properly apply the provisions pertaining to his October 1, 2004 return to work. Considering the lack of evidence on this grievance, I must dismiss it.

[63] The grievance referred to adjudication as Board file 166-02-35888 contests the employer's decision to install a surveillance camera, which would violate the rights of correctional officers by filming them without their knowledge. A broad interpretation of paragraphs 91(1)(a) and (b) of the former *Act* permits the grievor to file a grievance against a decision that could affect the terms and conditions of his employment. On this basis, the former *Act* provides employees a single window for contesting actions by the employer through the internal grievance process where no other federal legislation provides administrative recourse for redress. But this grievance cannot be sent to adjudication under paragraphs 92(1)(a) and (b) of the former *Act* because it does not relate to the interpretation or application of a provision of the collective agreement with respect to the grievor, nor any termination, demotion or disciplinary action resulting in a suspension or a pecuniary sanction. The employer's objection is allowed given that the fact installing the surveillance camera without informing the employees is not a matter that can be referred to adjudication under subsection 92(1) of the former *Act*.

[64] The grievances contesting the report by the disciplinary investigation committee (Board file 166-02-35889), the prohibition against access to the Leclerc Institution (Board file 166-02-35891), the administrative suspension during the disciplinary investigation (Board file 166-02-35892) and the disciplinary investigation procedure (Board file 166-02-35894) will be assessed based on the evidence and arguments submitted in regard to the disciplinary suspension (Board files 166-02-35893 and 36007) in order to determine whether these decisions by the employer are disciplinary or administrative in nature. If they are administrative in nature, the grievances contesting them may not be referred to adjudication under paragraph 92(1)(b) of the former *Act*.

[65] The seven-day disciplinary suspension without pay that the grievor was given on January 14, 2005 relates to two incidents. The employer accuses the grievor of having made intimidating comments to an acting correctional supervisor and of having damaged the employer's property for an amount in excess of \$200 (Exhibit E-11). Although the employer did not provide any evidence related to the broken equipment, this incident related to the handling of an emergency light unit by the grievor remains pertinent to the grievances contesting the disciplinary action, since the grievor alleges that the employer used this excuse to harass him.

[66] The two incidents of which the grievor is being accused occurred at the end of the September 21, 2004 night shift, and are tied to the collective agreement negotiations under way between the employer and the UCCO-SACC-CSN. Different pressure tactics were used by correctional officers, some of which were initiated by the UCCO-SACC-CSN or the local, and others by individuals acting anonymously. Other than the events underlying the administrative and disciplinary measures contested by the grievances in this case, the evidence does not identify the people or groups of people who applied the pressure tactics.

[67] Managers at the Leclerc Institution were specifically targeted by different pressure tactics. The deteriorating work environment resulting from the use of pressure tactics led to the resignation of the former Director of the Institution in June 2004, according to the uncontested evidence provided by the employer. Despite different means used by the new Director, the pressure tactics persisted and intensified, aggravating the deteriorating work environment. An advisory was being circulated in the Leclerc Institution, calling on members of the local not to apply for or accept acting management position assignments. The grievor admitted that concerted pressure tactics were being applied by correctional officers against Mr. Blouin and Mr. Whittom, who held acting correctional supervisor positions.

[68] Several incidents that occurred on September 21, 2004 increased the tension at the Leclerc Institution: the installation of a surveillance camera, a suspicious package alert and the resignation of Mr. Blouin from his acting management position assignment.

[69] Mr. Blouin's resignation from his acting management position assignment on September 21, 2004 was prompted by intimidation tactics against him. These tactics were perpetrated at his home and threatened a member of his family. This was the

resignation the grievor was speaking of at the meeting at the end of the September 21, 2004 night shift, when he mentioned that a “scab” had resigned. It is not important whether or not he mentioned a second “scab” in his comments, since everyone there was well aware that they related to the resignation of a correctional supervisor from his acting position. The grievor admitted that the correctional officers were displeased that people were accepting such acting management position assignments after the local President had told them not to. For the correctional officers, this amounted to contravening the union advisory. Whether or not the acting correctional supervisors were identified as “scabs” did not change the gist of the comments made by the grievor. In fact, Mr. Vigneault clearly understood the gist of the comments, which he linked to the labour relations problems, when he intervened during the meeting at the end of the night shift on September 21, 2004.

[70] The correctional officers believed that Mr. Whittom had contravened the advisory to boycott the acting management position assignments. The fact that Mr. Whittom’s original position as a parole officer came under a bargaining unit represented by the PSAC was irrelevant. This was clear from Mr. Chênevert’s intervention with Mr. Whittom and that of the correctional officers participating in the hockey game. Following the warnings issued to him by Mr. Chênevert on three occasions (before accepting the acting management position assignment, when he took the job and at the hockey game), Mr. Whittom knew that he was being personally targeted by the pressure tactics aimed at upholding the boycott on acting management position assignments. Mr. Whittom had good reason to feel personally targeted by the grievor’s comments.

[71] The grievor, as a representative of the local, was well aware of the pressure tactics and the goal of discouraging people from taking acting management positions. In this regard, the grievor’s comments were also aimed at Mr. Whittom, who had accepted such a position. The grievor’s explanation at the hearing to the effect that his comments were not aimed at Mr. Whittom because he did not consider him a “scab” is not credible.

[72] I find it difficult to assign any credibility to the grievor’s comment that he did not know that Mr. Whittom was at the meeting at the end of the night shift, because the latter was supposed to relieve Mr. Vigneault and take over the correctional supervisor functions for the September 22, 2004 morning shift. Even if I accepted that

the grievor was not aware of Mr. Whittom's presence at this meeting, this would not in any way change my finding that the comments made by the grievor were meant to intimidate all acting correctional supervisors, including Mr. Whittom.

[73] The comment by Mr. Lavoie to Mr. Whittom a little later at the end of the September 21, 2004 night shift confirms to me that the latter was being personally targeted by the pressure tactics. The applause to which Mr. Whittom was subjected the following day also confirms that it was a collective effort aimed at Mr. Whittom personally. The grievor's comments are one of the incidents that as a group pushed Mr. Whittom to resign his acting management position assignment.

[74] The grievor's comments at the end of the September 21, 2004 night shift were not isolated. On two other occasions, the grievor made out-of-order comments in the presence of Mr. Whittom, these being on August 30, 2004 (during the roll call) and on September 21, 2004 (in response to the comments made by Mr. Lavoie). These events show that the grievor's comments at the end of the September 21, 2004 night shift were part of a campaign of intimidation aimed at Mr. Whittom personally. The employer had good reason to find that the grievor had made intimidating comments aimed at a correctional supervisor at the end of the September 21, 2004 night shift. Under the circumstances, I find that the comments indicated in the disciplinary measures report by Ms. Rhéaume (Exhibit E-11) constitute a serious and unacceptable action.

[75] With respect to the damage to property, the statement filed by Deputy Director Laneville on September 30, 2004 with the Sûreté du Québec against the grievor include the fact that a surveillance camera was damaged (Exhibit F-2). The complaint filed on October 5, 2004 by Deputy Director Laneville (Exhibit F-10) specifies that he noticed that the emergency light unit casing had been moved and damaged, and that he requested an assessment of the damage. A bill from Spy-Tech Engineering dated October 1, 2004 indicating damages assessed at more than \$200 is appended to his complaint.

[76] Deputy Director Laneville informed the Director of the surveillance camera incident at the management meeting on September 22, 2004. At that time, the Deputy Director could not yet specify the exact nature of the damage to property because he was not yet in possession of the Spy-Tech Engineering assessment. Thus, when the Director determined that a disciplinary investigation into the incidents of September

21, 2004 was warranted, he was not aware of the nature or extent of damage to the property.

[77] The allegation that the Director acted in bad faith by allowing Deputy Director Laneville to file a false statement is unacceptable. The possibility of filing a statement was raised by senior officials of the Sûreté du Québec during the meeting of September 23, 2004. Nothing in the Director's testimony or in the evidence tabled at the hearing indicates to me that he encouraged Deputy Director Laneville to file a statement against the grievor or encouraged him to modify it in any way. The Director's comment to the effect that he did not get involved in the Sûreté du Québec file is credible and has not been contradicted. Moreover, his refusal to get involved in the disciplinary process after repeated requests by the grievor cannot be equated with taking sides against the grievor, but rather with showing respect for the different mandates and delegated authorities in disciplinary matters.

[78] Nothing allows me to conclude that management at the Leclerc Institution was unremitting against the grievor in order to make a strong example of him that would bring an end to the pressure tactics being used by the correctional officers. On the contrary, management at the Leclerc Institution agreed to put an end to the pressure tactics with the union at the meeting of September 29, 2004. Among other things, management at the Leclerc Institution agreed to reinstate the grievor into his duties on October 1, 2004, which contradicts the theory of a personal vendetta against him. It appears that the disciplinary process launched against the grievor in connection with the incidents of September 21, 2004 continued after the meeting of September 29, 2004, and nothing allows me to find a conflict with the September 29, 2004 consensus.

[79] Since the employer did not provide any evidence with respect to the damage to property, and it admitted that this warranted a reduction in the disciplinary action, I find that the employer decided not to pursue this as grounds for discipline. In conclusion, only one of the two reasons given for the disciplinary action remains.

[80] With respect to the seriousness of the disciplinary action, I consider that the comments made by the grievor are serious and part of a concerted harassment effort aimed at acting correctional supervisors in general, and against Mr. Whitton in particular. The fact that the intimidating comments were aimed at people in positions of authority is an aggravating factor. Although there is no evidence demonstrating that the grievor was involved in the other incidents (the hockey game, the applause and the

intimidation of Mr. Leclerc) his testimony has convinced me that he was a party to the organized harassment by correctional officers of people in acting management positions. The comments made by the grievor on three different occasions show that he intended to intimidate Mr. Whittom and reflect at the very least a serious error in judgment, and demonstrate foolish recklessness. Although members of a bargaining unit may be justified in applying pressure tactics to accelerate negotiations and get them resolved, they cannot, under these circumstances, intimidate or harass certain individuals. At all times, the employer is required to ensure a harassment-free work environment. Any act of intimidation or harassment can lead to disciplinary proceedings.

[81] Ms. Rhéaume should have taken into consideration the fact that the grievor's record did not contain any disciplinary measures and that his performance evaluations showed him to be an employee who met the goals that were set for him and, in some cases, exceeded them. Since these attenuating factors were not taken into consideration by Ms. Rhéaume, I find the penalty she imposed to be excessive.

[82] However, I consider that because of the seriousness of the offence committed by the grievor, he deserved a sanction beyond a mere reprimand. A four-day suspension without pay would have been reasonable in light of the circumstances in this case. The grievances in Board files 166-02-35893 and 36007 are allowed in part.

[83] With respect to the grievances pertaining to the investigation and the disciplinary investigation committee's report, I consider the employer's decision to hand the investigation over to people from outside the Leclerc Institution to have been wise under the circumstances. The grievor did not prove to me that this investigation was carried out in bad faith. Even if I accepted his allegations that the disciplinary investigation committee was not impartial, the hearing before me corrected any errors that may have resulted from this. The grievances on Board files 166-02-35889 and 35894 are dismissed.

[84] With respect to the suspension without pay given to the grievor by Mr. Lapointe on September 22, 2004, I find that it is administrative, not disciplinary, in nature. The Director's decision to proceed with a disciplinary investigation concerning the September 21, 2004 incidents concerned the grievor and another correctional officer. This decision was made based on a verbal report by Deputy Director Laneville. The purpose of the disciplinary investigation was to shed light on the incidents and to

recommend disciplinary actions where warranted. Nothing indicates to me that a decision to impose a disciplinary action was made at the September 22, 2004 meeting. Mr. Lapointe decided to suspend the grievor to avoid aggravating the situation, and the individuals attending the September 22, 2004 meeting agreed with this decision. During his testimony, Mr. Lapointe specified that this administrative suspension was only for the period of the disciplinary investigation, which was to determine the facts and specify whether disciplinary action was warranted.

[85] I cannot accept the argument presented by the grievor that he was prohibited access to the Leclerc Institution in order to humiliate him. In a penitentiary environment, for obvious security reasons, the individuals controlling access to the penitentiary are notified when an employee is under an administrative or disciplinary suspension and that employee's access is prohibited. This decision is of an administrative nature because it is motivated by reasons of security and based on procedures that are currently in use. Nothing in these files indicates to me that the prohibition against access was made for disciplinary reasons.

[86] The grievances on Board files 166-02-35891 (prohibited access) and 35892 (suspension for the period of the investigation) concern decisions of an administrative nature and cannot be referred to adjudication under paragraph 92(1)(b) of the former Act. Thus, they are not within my jurisdiction.

[87] Given that the grievor was involved in investigations and administrative or disciplinary actions after September 21, 2004 that were not related to the grievances, I consider those factors as not relevant to these cases.

[88] For all of the above reasons, I make the following order:

(The Order appears on the next page)

VI. Order

[89] The grievances in Board files 166-02-35893 and 36007 against the disciplinary suspension are allowed in part. The suspension without pay is reduced from seven to four days. I order the employer to adjust the grievor's file accordingly and to repay him the equivalent of three days' wages at the rate applicable at the time, with applicable deductions, and to restore the associated employee benefits.

[90] The grievance in Board file 166-02-35888 contesting the installation of a surveillance camera is dismissed.

[91] The grievances in Board files 166-02-35889 and 35894 against the disciplinary investigation report and the disciplinary investigation process are dismissed.

[92] The grievance in Board file 166-02-35890 requesting reporting pay is dismissed.

[93] The grievance in Board file 166-02-35891 contesting the prohibiting of access to the penitentiary is dismissed.

[94] The grievance in Board file 166-02-35892 against the suspension without pay for the period of the disciplinary investigation is dismissed.

February 14, 2007.

P.S.L.R.B. Translation

**Léo-Paul Guindon,
adjudicator**