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*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**PAUL W.J. BRAUN**

Grievor

and

**DEPUTY HEAD  
(Royal Canadian Mounted Police)**

Respondent

Indexed as  
*Braun v. Deputy Head (Royal Canadian Mounted Police)*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** [Marie-Josée Bédard, adjudicator](#)

***For the Grievor:*** [Lyle M. Smordin, counsel](#)

***For the Respondent:*** [Isabel Blanchard, counsel](#)

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Heard at Winnipeg, Manitoba,  
August 10, 2009.

### **I. Individual grievances referred to adjudication**

[1] The grievor, Paul W.J. Braun, held the position of Director of Employee Services at the Winnipeg office of the Royal Canadian Mounted Police (“the employer” or RCMP). The employer made the following decisions, which Mr. Braun grieved in separate grievances:

- It suspended his RCMP reliability status (RRS) on July 13, 2006 (grievance filed July 27, 2006).
- It suspended him without pay on July 26, 2006 (grievances filed July 4 and August 28, 2006).
- It revoked his RRS on November 6, 2007 (grievance filed November 20, 2007).
- It terminated his employment on April 8, 2008 (grievance filed April 18, 2008).

[2] As indicated, the grievor filed two grievances against his suspension without pay: a first one when he was informed of the employer’s intent to suspend him and a second one after he was officially suspended. However, at the hearing, the parties did not distinguish between those two grievances and always referred to “the” grievance against the suspension without pay without specifying which of the two grievances was at play. Moreover, the employer never replied to the grievance filed on August 28, 2006 and both parties argued about a total of four grievances. Therefore, in order to avoid any confusion and unless necessary, I will do as the parties did and refer to “the” grievance against the suspension without pay and to a total of four grievances.

[3] The hearing was initially scheduled to deal with an objection to my jurisdiction raised by the employer on the basis that the decisions being challenged did not fall within the matters that can be referred to adjudication under section 209 of the *Public Service Labour Relations Act* (“the Act”). However, at the beginning of the hearing, I became aware of a dispute as to which of the above-mentioned grievances had been properly referred to adjudication. The grievor argued that all four grievances had been properly referred. The employer, for its part, alleged that only two of the grievances had been referred to adjudication, namely, the grievances against the suspension of the grievor’s RRS and against his suspension without pay. Therefore, the employer

contended that I was not seized with the grievances against the revocation of the grievor's RRS and against the termination of his employment.

[4] I informed the parties that I would render a preliminary decision to determine which of the grievances had been properly referred to adjudication, and therefore, the hearing was limited to that issue.

[5] Both parties filed documentary evidence and presented oral arguments. During the hearing, confusion arose about the documents that the grievor had filed in support of the referrals to adjudication of his grievances. To clear up any confusion, I informed the parties that the Public Service Labour Relations Board ("the Board") would send each counsel copies of all documents contained in the Board's record relating to identifying the grievances that had been referred to adjudication. The documents were sent to the parties on August 12, 2009, and the parties were given until August 26, 2009, to submit additional written comments in light of those documents.

[6] Counsel for the grievor informed the Board that he had no additional comment to make apart from the oral submissions that he had provided at the hearing. Counsel for the employer, on the other hand, made additional written submissions.

## **II. Summary of the evidence**

[7] As indicated above, four decisions of the employer were grieved. The first decision at issue is the suspension of the grievor's RRS on July 13, 2006. The letter of suspension reads as follows:

...

*I am writing to inform you that I have reviewed your RCMP Reliability Status as a result of the following information brought to my attention:*

*- on 2006-02-08, you were observed by security personnel leaving a Safeway store in Winnipeg with unpaid concealed items valued at approximately \$40.00. You allegedly told the security personnel that you were an undercover RCMP officer under treatment for stress. You will be charged criminally for Theft Under \$5,000.00 and Personating a Police Officer as a result of your involvement in this incident.*

*An RCMP Reliability Status is based upon the honesty, trustworthiness, reliability and integrity of an individual. In view of the foregoing, I **suspend** your RCMP Reliability*

*Status effective this date and you are now prohibited from any unescorted access in RCMP facilities.*

*I will be conducting a further review of the circumstances after the completion of the criminal process to determine whether your RCMP Reliability Status may remain valid or whether it should be revoked for cause. You will be afforded the opportunity at a later date to provide me with your written representations prior to my making a final decision.*

...

[Emphasis in the original]

[8] The grievance filed on July 27, 2006, states the following:

...

*On July 26/06, I was served with a letter informing me that my Reliability Status had been suspended.*

*This decision appears to be based on events that occurred during a medical crisis that I experienced on Feb 8/06.*

*Since that time, I have been intensively involved in treatment to address and control my condition and have demonstrated, over the last six months, that I am fully able to manage my disease and avoid any reoccurrence [sic] of a crisis episode.*

*As a result, this decision is not based on current/relevant information that reflects my current/future ability to meet the RCMP's expectations, in this area, and is therefore flawed and without merit.*

...

[9] The second decision at issue is the grievor's suspension without pay, which was imposed on July 26, 2006. The letter of suspension reads as follows:

...

*It is alleged that on 2006-02-08 you misrepresented yourself to be a Regular Member of the Royal Canadian Mounted Police during your apprehension on suspicion of shoplifting by a Loss Prevention team at a Canada Safeway store in Winnipeg.*

*These allegations, if founded, would demonstrate a serious breach of security as well as misconduct. I have now been advised of the temporary suspension of your security clearance by Department Security. I must inform you that*

*you are being relieved from duty indefinitely effective immediately, without pay, pending an investigation into this matter.*

...

*Upon finalization of this investigation you will be promptly informed of Management's decision in this regard.*

...

[10] The grievor filed two grievances against that decision. The first grievance was filed on July 4, 2006, after the grievor was informed of the employer's intention to suspend him. That grievance states the following:

...

*On June 8/06, my supervisor C/Supt. Garry Jay informed me of his intent to suspend me without pay. I have not been the subject of any disciplinary action, nor convicted of any offense that would warrant such extreme action. It appears that this action is intended to punish me without justifiable cause, and an effort to pressure me to relinquish my position as the Director Employee Services.*

...

[11] On August 28, 2006, the grievor filed a second grievance against the suspension that reads, in part, as follows:

...

*On July 27/06, I was notified of my suspension without pay, resulting from the RCMP charging me with criminal charges and suspending my security clearance, in a continuing attempt to terminate my employment, inappropriately.*

...

[12] The third decision at issue is the employer's decision to revoke the grievor's RRS on November 6, 2007. That decision was grieved on November 20, 2007.

[13] The fourth and final decision at issue is the termination of the grievor's employment, which occurred on April 8, 2008. The letter of termination, signed by Commissioner William J.S. Elliott, reads as follows:

...

*I am writing further to the November 6, 2007, letter of Superintendent Pierre Giguere, in which you were informed of the revocation of your Royal Canadian Mounted Police (RCMP) reliability status.*

*As you no longer meet one of the conditions required for retention of employment in the RCMP, I must inform you of my decision to terminate your employment for cause, pursuant to subsection 12(1)(e) of the Financial Administration Act. This action is effective as of July 26, 2006, the date on which you were suspended without pay pending investigation.*

...

[14] The grievor grieved the termination of his employment on April 18, 2008, through a letter addressed to the Commissioner by his counsel. That letter was worded in the form of a request to the Commissioner to reconsider his decision to terminate the grievor's employment but was later considered by the parties to be the grievance presented against the termination. The internal grievance process was followed for each of the four grievances, and the employer's replies at the final level of the grievance process for each respective grievance were issued (in the case where the employer did reply) on the following dates:

Date of grievance	Grievance description	Date on which the employer replied at the final level of grievance process
July 27, 2006	Grievance against the suspension of the grievor's RRS on July 13, 2006	March 28, 2008
July 4, 2006	Grievance against the employer's intention to suspend the grievor without pay	March 6 or 8, 2008
August 28, 2006	Grievance against the suspension without pay on July 26, 2006	No reply on file
November 20, 2007	Grievance against the revocation of the grievor's RRS on November 6,	March 28, 2008 - unique decision with respect to both the suspension and the

	2007	revocation of the grievor's RRS
April 18, 2008	Grievance against the termination of employment on April 8, 2008	August 11, 2008

[15] On April 10, 2008, the Board received a letter by fax from the grievor's counsel with an attached notice of reference to adjudication that referred to two grievances presented at the first level of the grievance process on July 27, 2006 and on November 20, 2007, respectively. The July 27, 2006 date corresponds to the date on which the grievor filed his grievance against the suspension of his RRS, and the November 20, 2007 date corresponds to the date on which he filed the grievance against the revocation of his RRS.

[16] In a follow-up letter, also received on April 10, 2008, counsel for the grievor informed the Board that he was enclosing the two grievances being referred to adjudication along with the employer's replies to them. The enclosed grievances were the July 27, 2006 grievance against the suspension of the grievor's RRS and the August 28, 2006 grievance against the grievor's suspension without pay. The originals of both the notice of reference to adjudication and the two grievances were received by the Board on April 11, 2008.

[17] As prescribed by the *Public Service Labour Relations Board Regulations* (SOR 2005/79), the Board requested the employer to provide copies of its replies from each level of the grievance process. The employer provided two bound folders that contained the documents that I marked as Exhibit B-5.

[18] The first folder was labelled "Suspension without pay" and contained the following documents:

- the July 4, 2006 grievance against the employer's intention to suspend the grievor without pay;
- the employer's reply at the first level of the grievance process, dated December 20, 2007;

- the employer's reply at the final level of the grievance process, dated March 8 or 6 2008 (it's not clear if it's March 6 or March 8);
- a grievance transmittal form; and
- the grievor's suspension without pay dated July 26, 2006.

[19] The second folder was labelled "Suspension and Revocation of RRS" and contained the following documents:

- the July 27, 2006 grievance filed against the suspension of the grievor's RRS;
- the November 20, 2007 grievance filed against the revocation of the grievor's RRS;
- the employer's reply at the first level of the grievance process with respect to the July 27, 2006 grievance;
- the employer's reply at the final level of the grievance process with respect to the July 27, 2006 and the November 20, 2007 grievances;
- a grievance transmittal form; and
- the letter of suspension of the grievor's RRS and the letter of revocation of his RRS.

[20] On April 28, 2008, Ken Graham, a representative of the employer, sent an email to the Board in which he indicated that the employer considered that two separate files should have been opened by the Board, since the notice of reference to adjudication filed by the grievor related to two distinct grievances. Following discussions with the parties' representatives, the Board decided to open two separate files for administrative purposes and requested that counsel for the grievor submit two separate notices of reference to adjudication to replace his initial notice. Thus, on June 5, 2008, counsel for the grievor filed two separate notices of reference to adjudication. One referred to a grievance filed on July 27, 2006 and the other referred to a grievance filed on November 20, 2007. Those two dates correspond to the dates identified in the original notice of reference to adjudication, but this time, counsel for the grievor did not attach copies of the grievances.



### **III. Summary of the arguments**

#### **A. For the grievor**

[21] Counsel for the grievor submitted that, despite only one notice of reference to adjudication originally being filed with the Board, which was later split into two separate notices, all four grievances were properly referred to adjudication.

[22] Counsel for the grievor submitted that the four employer decisions that are being challenged originated from a single event that occurred in February 2006, which led to the following linked decisions by the employer. First, the employer suspended the grievor's RRS and then suspended him without pay on the basis that he could not remain in his position while his RRS was suspended. Then, the employer decided to revoke the grievor's RRS, and as a result, it terminated his employment.

[23] Counsel for the grievor argued that the grievance challenging the suspension without pay had been filed under paragraph 209(1)(c) of the *Act* (termination) and that it should be viewed as challenging both the suspension without pay imposed on the grievor and the termination of his employment. Counsel for the grievor based his position on the assertion that an indefinite suspension without pay is tantamount to the termination of a person's employment because the person who is suspended without pay, whose other employment benefits are suspended and who does not have access to his or her office cannot be considered as remaining an "employee" of an organization. From the grievor's point of view, the suspension without pay amounted to the termination of his employment, and therefore, the grievance against the suspension without pay should be deemed to challenge, at the same time, the termination of his employment.

[24] With respect to the grievances challenging the suspension and the revocation of the grievor's RRS, counsel for the grievor submitted that they were referred to adjudication together under paragraph 209(1)(b) of the *Act* (disciplinary action) and argued that those measures were evidently disciplinary in nature.

#### **B. For the employer**

[25] The employer submitted that the grievor did not refer the grievances to adjudication that he filed against the revocation of his RRS and against the termination of his employment and that, therefore, I could not be seized of them. The employer

contended that the only grievances that were properly referred to adjudication were the grievances against the suspension of the grievor's RRS and against his suspension without pay.

[26] First, the employer argued that counsel for the grievor clearly stated in his April 10, 2008 fax that he was enclosing the "two" grievances that were being referred to adjudication and not four grievances. Second, the employer argued that section 89 of the *Regulations* clearly provides that a notice of reference to adjudication must be filed together with a copy of the relevant grievance and that the only grievances provided to the Board were the grievances against the suspension of the grievor's RRS and against his suspension without pay.

[27] With respect to the grievance challenging the revocation of the grievor's RRS, the employer also contended that the oblique reference to the revocation of the grievor's RRS in section 12 of the notice of reference to adjudication is not sufficient to conclude that the grievance against that decision was being referred to adjudication. The employer added that, although it issued a unique decision on March 28, 2008 at the final level of the grievance process about the grievances challenging the suspension and the revocation of the grievor's RRS, the letter specifically referred to those two distinct grievances. Therefore, it could not be implied from the March 28, 2008 letter that both grievances were referred to adjudication.

[28] The employer also contended that the grievance challenging the suspension without pay could not be viewed as including the grievance challenging the termination of the grievor's employment. On that point, the employer submitted that the grievor's employment was terminated two days before the date on which he referred his two grievances (against the suspension of the RRS and the suspension without pay) to adjudication and that the reference to adjudication could not have included the grievance against the termination of the grievor's employment since it had not yet been filed. In fact, the grievor did grieve his termination, on April 18, 2008, 10 days after referring the above-mentioned grievances to adjudication, and the employer provided its response at the final level of the grievance process on August 11, 2008, but the grievor never referred that grievance to adjudication.

[29] Counsel for the employer also disagreed with the grievor's proposition that a suspension without pay is tantamount to a termination and that challenging the suspension without pay was sufficient to capture the termination of employment. The

employer submitted that a suspension without pay, during which the person remains an employee, is different from termination of employment, which ends the employment relationship. The employer further submitted that the suspension without pay was an administrative and interim measure that was subsequently followed by a distinct decision to terminate the grievor's employment.

[30] The employer finally submitted that it would be unfair and in contradiction of the principles set out by the Federal Court of Appeal in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109, (C.A.) to allow the grievor to change the nature of his grievances after referring them.

### **C. Grievor's rebuttal**

[31] Counsel for the grievor submitted that the situation in *Burchill* differs from the situation in this case, and he reiterated with respect to the grievance against the suspension without pay that the suspension was tantamount to the termination of the grievor's employment.

## **IV. Reasons**

[32] I will start by noting that there are inconsistencies between the information provided in the notices of reference to adjudication to identify the grievances being referred and the grievances attached to the notice of reference to adjudication filed in April 2008, which makes determining the grievances that the grievor really intended to refer to adjudication more complex. While the two grievances received by the Board in support of the notice of reference to adjudication were the ones filed against the grievor's suspension without pay and the suspension of his RRS, the information provided in the notice of reference to adjudication related to the grievances against the suspension of the grievor's RRS and against the revocation of his RRS and not his suspension without pay.

[33] Specifically, in the notice of reference to adjudication filed in April 2008, the grievor indicated in section 9 of the form that the grievances being referred to adjudication had been filed on July 27, 2006 and on November 20, 2007. Those dates correspond to the dates on which the grievor grieved the suspension of his RRS and the revocation of his RRS respectively. In section 12 of the form, the grievor indicated that his grievances were being referred to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *Act* and he added, at the end of the transcript of that

subparagraph the text “revocation of security clearance.” In section 11 of the form, where the grievor is asked to identify the dates on which the employer provided its decisions at the final level of the grievance process, the grievor indicated March 3, 6 and 28, 2008. The Board does not have any decisions in its records dated March 3. It is unclear if the employer’s reply with respect to the grievance challenging the grievor’s suspension without pay was issued March 6 or 8, 2008 and the March 28, 2008, date corresponds to the date on which the employer replied at the final level of the grievance process to the grievances challenging the suspension and the revocation of the grievor’s RRS.

[34] The information provided in the original notice of reference to adjudication was then transferred to the separate notices of reference to adjudication filed in June 2008. One notice referred to the July 27, 2006 grievance and the other to the November 20, 2007 grievance.

[35] If I were to rely only on the information contained in the notices of reference to adjudication, I would conclude that the only grievances that were referred to adjudication were the ones challenging the suspension and the revocation of the grievor’s RRS. However, that would not be consistent with the fact that the grievor provided a copy of the grievance challenging his suspension without pay, but did not provide a copy of the grievance challenging the revocation of his RRS.

[36] However, despite those inconsistencies, some elements suggest that the grievor’s intent was to refer the following three grievances to adjudication: the grievance challenging his suspension without pay, the grievance challenging the suspension of his RRS and the grievance challenging the revocation of his RRS.

[37] First, there is no real need for me to discuss the referral to adjudication of the grievance challenging the suspension of the grievor’s RRS, given that it was clearly one of the grievances attached to the notice of reference to adjudication filed in April 2008 and that the employer does not dispute that it was referred to adjudication. Therefore, I conclude that that grievance was properly referred to adjudication.

[38] For the following reasons, I also consider that, when the grievor referred the grievance against the suspension of his RRS to adjudication, he also intended to refer his grievance against the revocation of his RRS to adjudication.

[39] First, although the grievor did not provide a copy of the grievance challenging the revocation of his RRS along with his notice of reference to adjudication, the notice referred to a November 20, 2007 grievance, which corresponds to the date on which the grievor filed the grievance challenging the revocation of his RRS. Moreover, in section 12 of the notice of reference to adjudication, the grievor ticked the box referring to subparagraph 209(1)(c)(i) of the *Act* and added the text “revocation of security clearance” at the end of the transcript of that subparagraph.

[40] Second, it appears from the documents that the employer provided to the Board that it also understood that the grievor was referring both grievances to adjudication. As indicated before, when asked to provide the Board with its decision at the final level of the grievance process for each of the grievances that were referred to adjudication, the employer filed two bound folders. The cover of one of the folders was labelled as follows: “PSLRB # 566-02-1948 / Paul W.J. Braun / G635-13-168 & G635-13-169/ (Suspension and revocation of RRS),” and it contained the decisions to suspend and to revoke the grievor’s RRS, the grievances against those decisions and the employer’s decisions at the final level of the grievance process for both grievances.

[41] Therefore, I conclude that, under the circumstances of this case, while the omission to send the grievance against the revocation of the grievor’s RRS as an attachment to the notice of reference to adjudication contravenes section 89 of the *Regulations*, it constitutes a technical irregularity that should not, according to subsection 241(1) of the *Act*, invalidate the referral of that grievance to adjudication.

[42] I will now turn to the August 28, 2006 grievance challenging the grievor’s suspension without pay. Again, the employer does not dispute that that grievance was referred to adjudication. Moreover, despite the inaccuracies in the notice of reference to adjudication, that grievance was one of the two grievances sent to the Board in attachment to the notice of reference to adjudication. It also appears from the documents provided to the Board by the employer that it clearly understood that the grievor was referring to adjudication the grievance against his suspension without pay. Therefore, I conclude that the inaccuracies in the notice of reference to adjudication constitute a technical irregularity that should not, according to subsection 241(1) of the *Act*, invalidate the referral of that grievance to adjudication.

[43] I will now discuss the situation relating to the termination of the grievor's employment. For the following reasons, I do not consider that I am seized of a grievance challenging the termination of the grievor's employment.

[44] First, I disagree with the grievor's proposition that an indefinite suspension without pay is tantamount to a termination and that, therefore, filing a grievance challenging the suspension without pay amounts to challenging the termination. In this case, the employer made the following two distinct decisions: an interim decision to suspend the grievor without pay in July 2006 and a definitive decision to dismiss the grievor in April 2008. Although both decisions were linked to and originated from a unique set of events, they were made at different times and generated different effects on the employment relationship. Therefore, both decisions require separate grievances and in fact, separate grievances were filed. The grievor filed a grievance against his suspension without pay on August 28, 2006, and he filed a grievance against the termination of his employment on April 18, 2008. If the grievor was of the opinion that the grievance he had filed against his suspension without pay captured the termination of his employment, why did he file another grievance on April 18, 2008 against the termination?

[45] Second, I do not consider that the referral to adjudication filed on April 10, 2008 can be viewed as a valid reference to adjudication of the grievance against the termination of the grievor's employment. The notice of reference to adjudication was filed on April 10, 2008, two days after the grievor was dismissed. That referral to adjudication could not have captured the grievance challenging the grievor's dismissal as it had not yet been filed. The grievance challenging the termination of the grievor's employment was filed on April 18, 2008 and in accordance with section 225 of the *Act*, it could not be referred to adjudication until it was presented at all levels of the grievance process. In fact, the internal grievance process was followed, and the employer issued its decision at the final level of the grievance process on August 11, 2008. Unfortunately, the grievor did not refer that grievance to adjudication, and I am not seized of a request for an extension of time.

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

*(The Order appears on the next page)*

**V. Order**

[47] The employer's objection is partially allowed.

[48] The following grievances were validly referred to adjudication.

- The grievance challenging the suspension without pay, PSLRB File No. 566-02-1948.
- The grievance challenging the suspension of the grievor's RRS and the grievance challenging the revocation of the grievor's RRS, PSLRB File No. 566-02-2166.

[49] The grievance challenging the termination of the grievor's employment has not been referred to adjudication, and therefore, I am not seized of that grievance.

[50] The December 9 and 10, 2009 hearing dates will deal with the employer's original objection to my jurisdiction.

October 14, 2009.

**Marie-Josée Bédard,  
adjudicator**