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Files: 566-02-2719 and 2720

Citation: 2010 PSLRB 9



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**DEBRA CHASE**

Grievor

and

**DEPUTY HEAD  
(CORRECTIONAL SERVICE OF CANADA)**

Respondent

Indexed as  
*Chase v. Deputy Head (Correctional Service of Canada)*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** [Renaud Paquet, adjudicator](#)

***For the Grievor:*** [David Capra, counsel](#)

***For the Respondent:*** [Maureen Harris, Treasury Board Secretariat](#)

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Decided on the basis of written submissions,  
filed November 16, and December 16 and 21, 2009.

## REASONS FOR DECISION

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

[1] In 2008, Debra Chase (“the grievor”) occupied a management position at the Peterborough Area Parole Office of the Correctional Service of Canada (CSC).

[2] The grievor filed a first grievance (PSLRB File No. 566-02-2720) on March 3, 2008 alleging that the CSC engaged in inappropriate behaviour and actions in ensuring that CSC staff submit harassment complaints against her, and in hiring a consultant to conduct an investigation and write a report on those complaints (“the first grievance”). The grievor alleges that the consultant’s findings were not based on proper evidence. The grievor requests that the investigation report be discarded and destroyed, that the employees who filed harassment complaints against her be advised of its destruction, that the CSC acknowledge its negligence in managing the situation, that the consultant and the employees who filed harassment complaints against her be investigated, and that the CSC compensate her for inappropriate treatment.

[3] The grievor filed a second grievance (PSLRB File No. 566-02-2719) on June 13, 2008 contesting a three-day suspension imposed on her by the CSC as a result of the harassment investigation report (“the second grievance”), that was the object of the first grievance. The grievor alleges that she was denied due process, and that her submissions were not considered in the decision to discipline her. The grievor requests that the CSC rescind the three-day suspension, reimburse the alleged resulting financial penalty imposed on her and remove from her personnel file all records of the discipline.

[4] On December 10, 2008, the CSC denied the first grievance at the final level of the grievance process. The grievor referred the first grievance to adjudication on January 16, 2009. On December 10, 2009, the CSC partly granted the second grievance and reduced the three-day suspension to a written reprimand. The grievor referred the second grievance to adjudication on January 16, 2009 under paragraph 209(1)(b) of the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22 (the “Act”).

[5] On November 16, 2009, the deputy head objected to an adjudicator’s jurisdiction to hear these grievances based on the grounds that the grievances do not include subject matters that may be referred to adjudication under subsection 209(1) of the *Act*. Subsection 209(1) of the *Act* reads as follow:

**209.** (1) *An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*

(a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*

(b) *a disciplinary action resulting in termination, demotion, suspension or financial penalty;*

(c) *in the case of an employee in the core public administration,*

(i) *demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or*

(ii) *deployment under the Public Service Employment Act without the employee's consent where consent is required; or*

(d) *in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.*

[6] After reviewing the objection raised by the deputy head, I asked the parties to present written submissions on the objection and advised the parties that I may issue a ruling based on those submissions.

## **II. Submissions from the grievor**

### **A. First grievance**

[7] The grievor submits that this case is distinguishable from *Canada (Attorney General) v. L m*, 2008 FC 874. Ms. L m was seeking an order directing her employer to launch a harassment investigation. The Federal Court held that the grievor did not have any substantive rights to require her employer to conduct the harassment investigation.

[8] In this case, the CSC had already launched the harassment investigation and found the grievor guilty of harassment. It is submitted that Parliament could not have intended that an employee not be able to refer to adjudication a grievance involving findings of harassment, where the finding of guilt resulted in discipline. The only question is whether the discipline falls within section 209 of the *Act*.

[9] The grievor admits that the first grievance is about the actual investigation report, and not about the subsequent disciplinary action. However, the wording of section 209 of the *Act* must be examined carefully. It specifically provides that a grievance may be referred to adjudication if the grievance is related to a disciplinary action resulting in termination, demotion, suspension or financial penalty. The investigation report is directly related to the disciplinary action referred to in the second grievance. Consequently, the adjudicator should hear all matters and evidence related to this investigation report as it impacted the CSC's decision to discipline the grievor.

## **B. Second grievance**

[10] The grievor admits that the CSC did reduce the three-day suspension without pay to a written reprimand at the final level of the grievance process. However, prior to the second grievance being referred to adjudication, the resulting financial penalty remained in place. The final-level decision was delivered on or about December 10, 2008. The second grievance was referred to adjudication on January 16, 2009. Reimbursement for the resulting financial penalty only took place on or about February 9, 2009. Thus, at the time of the referral to adjudication, the resulting financial penalty was still active and, as such, the matter is properly before an adjudicator.

[11] The grievor further argues that the disciplinary action of the CSC also resulted in a demotion. In October 2004, the grievor was appointed as an indeterminate Area Director in the Peterborough Parole Office. This was a management-excluded position. In May 2007, the CSC commenced the harassment investigation of concern herein. The grievor was found guilty of harassment with respect to one of her employees. The immediate response was a three-day suspension without pay. The longer-term result was a demotion, which does fall under section 209 of the *Act*. In October 2008, the grievor was ordered to deploy into a lower position as a Parole Supervisor. This forced deployment was conducted without the grievor's consent. The only way the CSC could

force the grievor to deploy without her consent was if it found her guilty of harassment.

### **III. Submissions from the deputy head**

[12] The deputy head argues that an adjudicator does not have jurisdiction to hear these grievances because their substance are not subject matters that can be referred to adjudication under subsection 209(1) of the *Act*.

#### **A. First grievance**

[13] The first grievance was filed with respect to an investigation report about allegations of harassment against the grievor. Given that the grievance clearly indicates that the subject of the grievance is the investigation report, this matter does not meet the criteria enunciated in section 209 of the *Act*. Even a liberal reading of the grievance would not open the door to the expansion advanced by the grievor in her submissions.

#### **B. Second grievance**

[14] An adjudicator does not have jurisdiction to hear the second grievance considering that the three-day suspension imposed on the grievor was reduced to a letter of reprimand at the final level of the grievance process. The fact that the corrective action was implemented only after the grievance was referred to adjudication is not relevant, as the decision to rescind the three-day suspension was issued prior to the referral to adjudication.

[15] With respect to the grievor's assertion that a disciplinary demotion is also an issue that would place this grievance before an adjudicator, the deputy head argues that no action has been taken to demote the grievor. The grievor was deployed to a new position as a result of a founded harassment complaint. At the time of the deployment, the grievor occupied a position at the WP-05 group and level, and she was deployed at the same group and level. Therefore, she was not demoted.

[16] The grievor's allegation of a disciplinary demotion has never been raised prior to adjudication. The deputy head submits that it should be considered to fall within the parameters of *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.). The wording of the grievance and the requested corrective action clearly indicate that the issue being grieved was the disciplinary penalty of a three-day suspension. *Burchill*

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supports the fact that a failure to raise an issue during the grievance process precludes referring it to adjudication.

[17] The deputy head referred me to the following decisions: *Lâm; Rogers v. Canada Revenue Agency*, 2008 PSLRB 94; *Parkolub and Hu v. Canada Revenue Agency*, 2007 PSLRB 64; *Lamarre v. Treasury Board (Fisheries and Oceans)*, PSSRB File No. 166-02-26902 (19960311); and *Lee v. Deputy Head (Canadian Food Inspection Agency)*, 2008 PSLRB 5.

#### **IV. Reasons**

[18] In her first grievance, the grievor requested that the CSC discard and destroy the consultant's report and acknowledge its negligence in managing the situation. Even if that investigation report eventually led to disciplining the grievor, the investigation report does not constitute in itself a disciplinary action.

[19] The grievor argued that the investigation report is directly related to the disciplinary action referred to in the second grievance, and that an adjudicator should hear all matters and evidence related to the investigation report as it impacted the decision to discipline her. This does not mean that the grievance related to the investigation report is adjudicable, but rather that, according to the grievor, the facts and evidence related to the harassment investigation could be heard and assessed by an adjudicator in the context of the second grievance, which deals with discipline. However, this first grievance is not adjudicable by itself, as it does not meet the criteria specified in subsection 209(1) of the *Act*.

[20] As for the second grievance, the grievor admits that the CSC reduced the three-day suspension to a letter of reprimand on December 10, 2008, but argued that when the grievance was referred to adjudication on January 16, 2009, the CSC had not yet reimbursed her the three days of salary. The grievor submits that the reimbursement only occurred on February 9, 2009.

[21] When the grievance was referred to adjudication, the CSC had already informed the grievor that the three-day suspension was reduced to a letter of reprimand. As there was no more suspension imposed on the grievor when the grievance was referred to adjudication, it did not meet the criteria specified in paragraph 209(1)(b) of the *Act*. The fact that the grievor was not yet reimbursed her three days of salary is irrelevant.

In the circumstances of this case, as soon as the CSC made the decision to rescind the suspension, the grievance became non-adjudicable.

[22] The grievor also alleged that she was demoted and forced to deploy in another position in October 2008. The grievor argued that she was demoted and deployed without her consent because the CSC concluded that she was guilty of harassment. A demotion and a forced deployment may fall under the criteria specified in subsection 209(1) of the *Act*.

[23] It is clear that an adjudicator has jurisdiction under paragraph 209(1)(b) of the *Act* to hear a grievance contesting a disciplinary action resulting in a demotion. It is also clear that an adjudicator has jurisdiction under subparagraphs 209(1)(c)(i) and (ii) of the *Act* to hear a grievance contesting a demotion for any other reasons or a grievance contesting a deployment when consent was required but not obtained. However, neither of the two grievances refers directly or indirectly to a demotion or a deployment. This is not surprising considering that the grievances were filed in March and June 2008 respectively, several months before the alleged demotion and the deployment occurred.

[24] Even if the grievor could establish that her alleged demotion or her deployment were disciplinary in nature, I would decide that I have no jurisdiction to hear either of the two grievances before me because they do not deal with the alleged demotion or the deployment. My jurisdiction is limited by what was grieved.

[25] In *Burchill*, the Federal Court of Appeal stated that a grievance presented at adjudication cannot differ from the one decided at the final level of the grievance process. The matter to be considered by an adjudicator must have been discussed by the parties. In this case, I am not satisfied that the alleged demotion or deployment has been raised within the grievance process.

[26] In *Schofield v. Canada (Attorney General)*, 2004 FC 622, the Federal Court confirmed that an adjudicator had correctly decided that she was without jurisdiction to hear an issue relating to a demotion where the grievance dealt with the employer's decision to recall an employee from an international assignment. The details of the grievance were changed at adjudication, and the adjudicator had no jurisdiction to deal with the new issue.

[27] In *Canada (Treasury Board) v. Rinaldi*, 127 F.T.R. 60 (T.D.), the Federal Court pointed out that the wording of a grievance is important because the allegations made in it have the effect of “attributing jurisdiction.” The Court also stated that it is primarily in light of the wording of the grievance that it must determine whether the allegation made at adjudication so altered the original grievance as to change its nature and make it a new grievance. In this case, the grievor challenged an investigation report and a three-day suspension, not a demotion or a forced deployment.

[28] The grievor could have filed a distinct grievance if she wanted to challenge her alleged demotion and forced deployment. She cannot alter at adjudication her grievances filed in March and June 2008 to do so.

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

*(The Order appears on the next page)*



**V. Order**

[30] The objection to jurisdiction is upheld.

[31] The grievances are dismissed.

January 20, 2010.

**Renaud Paquet,  
adjudicator**