

Date: 20131122

File: 566-02-6430

Citation: 2013 PSLRB 155



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

KEVIN BANSFIELD

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

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

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Michael F. McNamara, adjudicator

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

For the Respondent: Léa Bou Karam, counsel

Heard at Kitchener, Ontario,
October 23 and 24, 2013.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] This matter involves a grievance questioning the authority to impose a financial penalty as a result of an investigation.

[2] On May 16, 2011, Kevin Bansfield (“the grievor”) filed the following grievance:

On May 11th, 2011, I was informed that I was the Subject of a private discipline process being conducted solely by one CM, Donald H. Timmons. On May 10th 2011 (a day before informing me) CM Timmons told Compensation Advisor C. Cloutier, in the form of a CSC memo to financially penalize me \$570.00. Ms. Cloutier knows that a CM has no authority to financially penalize [sic] employee yet she did it anyway.

[3] As a remedy, the grievor requested the following: “I would like the CM and Compensation employee Sanctioned and disciplined for their actions. I would like the money that was taken from me in this illegal and unethical way back [sic throughout].”

Summary of the evidence

[4] At the outset of the hearing, the representative of the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent”) advised that the grievor was not present and that she did not expect him to attend. She advised that she had also just informed the respondent, the Treasury Board, about that fact.

[5] I asked the bargaining agent representative if Mr. Bansfield was aware of the hearing. The bargaining agent representative and a respondent witness stated that Mr. Bansfield was aware of it. I also heard that if the grievor were to attend, he would arrive exactly on time and would not be late. There was some sense among those present that the grievor would not appear, but there was no definitive evidence of that possibility.

[6] I decided to wait 15 minutes in case the grievor was simply late.

[7] At 09:45, the bargaining agent representative stated that she had attempted to contact the grievor but had not received a response. The bargaining agent representative also advised that if the grievor were not present, she would have no mandate to proceed and that she was requesting an adjournment.

[8] The respondent's counsel argued against the adjournment request and suggested instead that the grievor had abandoned his grievance, without explanation. Since the bargaining agent had no mandate to proceed, and since it was not a collective agreement grievance, which required the bargaining agent's representation, the grievor had clearly abandoned his grievance. Counsel asked me to so rule.

[9] The bargaining agent representative restated that she was without a mandate to proceed and that she was without instructions from the grievor and again asked that I adjourn and reschedule the proceedings.

[10] Following some consultation between the parties and a request from the bargaining agent representative to consult with her principals, the hearing was adjourned until 11:00.

[11] On resuming the hearing, the bargaining agent representative informed me that a meeting had been held with the grievor about two weeks before and that he had been unhappy about his representation at that time. He was given a copy of the hearing notice. The grievor was not returning telephone messages left for him at his home and had instructed the bargaining agent not to contact him by email. Again, she asked that I adjourn and then reschedule the proceedings.

[12] The respondent representative again spoke against an adjournment. The grievor did not appear, provided no reasons, was at work the day before the hearing began, was aware of the hearing and chose not to participate. He should have advised his bargaining agent of his intentions but did not. The representative referenced the *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39 case and asked that I declare the grievance abandoned and withdrawn.

[13] After some deliberation, I informed the parties that I was adjourning the process for the day and that it would resume the next morning. That was done to give the bargaining agent additional time to contact the grievor, through whatever means available. I stated that the process would be reassessed the next morning.

[14] I stated that if the grievor were not present the next morning and if no suitable reason were identified for his absence, I would ask the respondent to present its case, and I would proceed to hear evidence on the matter.

[15] In the morning, no further insight was gained into the grievor's lack of appearance. Efforts to contact him had received no response.

[16] I stated that the hearing would proceed. The bargaining agent representative had asked for an adjournment, but without specific knowledge of the grievor's reasons for his absence, I would not grant one.

[17] To the respondent's request for a declaration that the grievor had abandoned his grievance, I could not rely on *Fletcher* to grant it. In that case, the grievor had clearly advised the parties that she would not attend her hearing. That element is absent in this case.

[18] The bargaining agent representative then withdrew from the proceedings.

[19] I asked the respondent to proceed with its case.

[20] The respondent representative called one witness.

[21] Donald H. Timmons is a correctional manager (CM), CX-4, with the Correctional Service of Canada (CSC) at the Grand Valley Institute for Women, a multi-level institution. He has been a CM since 2009 and began working with the CSC in 2001.

[22] The respondent introduced a copy of a letter dated May 10, 2011, which addressed an investigation into the grievor's actions. The letter is signed by CM Timmons and states in part as follows:

...

Therefore by virtue of the authority delegated to me in the "Instrument of Delegation of Authorities in the area of Human Resources Management" (issued under the authority of the Commissioner of the Correctional Services of Canada 2009-09-21), I am issuing a financial penalty of \$570 (which represents three days of pay).

[23] The respondent next introduced a copy of the "Instrument of Delegation of Authorities in the area of Human Resources Management." CM Timmons testified that he had consulted it before issuing the financial penalty to the grievor. He referred me to the section on management delegation levels, where it identifies that, as a correctional manager, he has the authority to impose the following:

1. oral or written reprimands; and
2. suspensions with or without pay or financial penalties; pending an investigation, up to five working days or the equivalent of up to five working days, inclusive.

[24] CM Timmons testified that he had looked it up and that he had conferred with the CSC's Human Resources and Labour Relations areas because he was a relatively new CM at the relevant time.

[25] The authorizing document was referred to in the disciplinary letter and is available to employees on the CSC's Infonet Site.

Summary of the arguments

[26] The respondent's representative stated that the grievance is about the authority to impose discipline and that CM Timmons had that authority.

[27] In support of her arguments, the respondent's representative tabled her book of authorities, referencing the following five cases:

1. *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26;
2. *Singaravelu v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 178;
3. *International Union of Elevator Constructors, Local 96 v. Otis Canada Inc.*, 2005 Can LII 37979 (ON LRB);
4. *Stead and Weda v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 87; and
5. *Phillips v. Deputy Head (Canada Border Services Agency)*, 2013 PSLRB 67.

Reasons

[28] The grievance before me is not about the grievor's actions or the level of discipline imposed but instead is about the authority of the representative of the respondent who imposed the discipline.

[29] On the evidence, which was not contradicted by the absent grievor, the respondent's representative established that following an investigation, CM Timmons

imposed a financial penalty on the grievor. The evidence also showed that CM Timmons had the delegated authority to impose such discipline.

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

(The Order appears on the next page)

Order

[31] The grievance is dismissed.

November 22, 2013.

**Michael F. McNamara,
adjudicator**