

Date: 20161024

File: 566-02-9180

Citation: 2016 PSLREB 106

*Public Service Labour Relations
and Employment Board Act and
Public Service Labour Relations Act*



Before a panel of the
Public Service Labour Relations
and Employment Board

BETWEEN

CHARLES STEWART

Grievor

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

Indexed as

Stewart v. Deputy Head (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

Before: Margaret T.A. Shannon, a panel of the Public Service Labour Relations and
Employment Board

For the Grievor: James Craig, Public Service Alliance of Canada

For the Respondent: Pierre-Marc Champagne, counsel

Heard at Lethbridge, Alberta,
April 26 and 27, 2016.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Charles Stewart, challenged the 75-hour suspension without pay imposed on him by the employer, the Canada Border Services Agency (CBSA), on September 28, 2012, for an alleged violation of its code of conduct and code of values and ethics.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

II. Summary of the evidence

[3] The grievor is employed as a border services officer (BSO) at the Port of Coultts, Alberta, and is alleged to have solicited and accepted free concert tickets when clearing the noted celebrity Elton John’s plane for entry into Canada at the Lethbridge Airport in Lethbridge, Alberta.

[4] As a BSO, the grievor has peace officer status. He is alleged to have placed himself in a conflict of interest when he accepted complimentary tickets to an Elton John concert in Lethbridge. The grievor and another officer were assigned to clear Mr. John and his crew through immigration upon their arrival at Lethbridge Airport on the day of the concert in question. While the other officer refused the tickets, the grievor took steps to obtain them. He went to the venue, the ENMAX Centre, which is owned and operated by the City of Lethbridge, and identified himself as a CBSA officer who was there to pick up complimentary tickets. He then used them to attend the concert with his wife.

A. Evidence of Kevin Hewson

[5] Kevin Hewson is the employer's district director for its Southern Alberta and Southern Saskatchewan District. On April 25, 2012, he was contacted by Superintendent Linda Rocz, from the Port of Coumts, who advised him that the grievor had cleared Elton John's plane the previous day and had accepted complimentary tickets to the concert scheduled for that same night. Mr. Hewson took this information to his regional director general, who requested that a professional standards investigation be conducted. Superintendent Steve Singer was directed to speak to the grievor and determine his version of the events of April 24, 2012. Mr. Hewson spoke to Jill Henderson, the events manager at the venue, to determine what happened when the grievor went there on the day of the concert. All that information was then conveyed to the professional standards branch, which agreed to pursue a formal investigation into the grievor's conduct.

[6] The employer's code of conduct is clear as to what type of gift an officer may accept in the course of his or her duties; for example, an employee may accept something of nominal value, such as a pen (Exhibit 2, Section J). Tickets to a high-profile event, such as an Elton John concert, are very expensive and very difficult to obtain. Those that the grievor obtained were complimentary, but it does not matter whether they were free or had a face value; a CBSA employee is not allowed to obtain tickets as a result of performing his or her duties.

[7] Even had the grievor offered to pay for the tickets, he still would have been in breach of the code of conduct as he obtained a benefit through his employment that is not normally available to members of the general public. A BSO cannot be perceived as benefitting personally in the course of performing his or her duties. The only reason the grievor received the tickets in question was that he was assigned to clear the performer's plane that day at the Lethbridge Airport. The plane entered Canada from the United States the day of the concert. Its contents and passengers were required to go through CBSA scrutiny before being allowed entry into Canada.

[8] Mr. Singer spoke to the grievor, who provided a summary of the events of April 24, 2012. The grievor admitted that during the clearance of Elton John's plane, he was offered tickets to the concert that evening by Mr. John's assistant. The grievor took down the information while another BSO, Brandon Merrill, who was working with

the grievor that day, entered the assistant's phone number into his cellphone. When it was discovered that Mr. Merrill had inaccurately recorded the phone number, the grievor went to the hangar holding the plane to find Mr. John or his assistant. Neither one was there.

[9] The grievor then called Acting Superintendent Darren Lynch and asked whether he was allowed to accept the tickets. Mr. Lynch advised the grievor not to accept them, but they continued to discuss whether the tickets had an actual value and whether the grievor could accept them if he offered to pay for them. Mr. Lynch had been acting in the superintendent position for only a very brief period at that time. The grievor had previously asked a senior superintendent, Superintendent Doug Bakke, about what he should do if offered tickets while clearing the performer's plane before he went to Lethbridge Airport. Mr. Bakke had told him that he was not to accept tickets if they were offered.

[10] Regardless, the grievor then went to the venue to solicit tickets for the event, following which he and his wife attended the concert that night, knowing that Mr. Bakke, his assigned superintendent, had directed him not to accept tickets if they were offered. When the grievor arrived at the venue to secure the tickets, the employees in the box office called Ms. Henderson. She was told that the grievor was there looking for tickets he had allegedly been promised. When she went to the box office to speak to him, she noted that he was wearing his CBSA ball cap, which is part of his uniform.

[11] Mr. Hewson received the professional standards investigation report (Exhibit 4) of September 12, 2012. It confirmed that the grievor had clearly violated the code of conduct. Mr. Hewson then discussed the report with the regional labour relations advisor and Chief Karen Holzer, who was responsible for the port where the grievor was employed. He asked whether new information had come to her attention. Since it was determined that a 75 hour suspension without pay was appropriate, Chief Holzer was delegated to meet with the grievor and impose the discipline on him.

[12] Before determining the quantum of discipline, Mr. Hewson considered both aggravating and mitigating factors. A pre-disciplinary meeting and a disciplinary hearing were held. The grievor admitted taking the tickets and apologized. The fact that Mr. Bakke had told the grievor not to take the tickets, that he actively pursued

obtaining them by taking down the details and the assistant's phone number, and that he went to the hangar to correct the phone number and then to the venue to solicit the tickets while wearing his CBSA ball cap were all aggravating factors. The grievor took no ownership of his actions, even though he apologized for taking the tickets.

B. Evidence of Mr. Singer

[13] Mr. Singer is one of the superintendents at the Port of Coumts, where the grievor was assigned, and in April 2012 was the acting chief of operations there. At some point leading up to the Elton John concert, he became aware that the celebrity would arrive by air at the Lethbridge Airport and that the CBSA would be required to clear the aircraft and passengers for entry into Canada. The grievor and Mr. Merrill were scheduled to meet the aircraft and conduct the clearances. The grievor was given directions that the clearance was to be done professionally and strictly according to policy. This was a high-profile event, and Mr. Singer wanted to ensure that the CBSA was seen in the best possible light.

[14] The first Mr. Singer heard that a problem had arisen with the clearance was on April 26, 2012, when Mr. Hewson contacted him and advised him that the grievor had received complimentary tickets and had attended the concert. Mr. Singer was shocked by the news. He confirmed to Mr. Hewson that he had no information about it but that he had spoken to the grievor and had reinforced that the clearance was to have been conducted by the book. Mr. Hewson asked Mr. Singer to contact the grievor.

[15] The grievor admitted to Mr. Singer that he had accepted the tickets and had attended the concert. He explained that when he completed clearing the plane, he engaged in a casual conversation, during which he said that he was not attending the concert that night. Someone then offered him tickets and provided him with a phone number, which did not work when he tried it. He then described going to the venue and requesting tickets. He claimed that he was off duty when he went there.

C. Evidence of Mr. Bakke

[16] At the relevant time, Mr. Bakke was the grievor's supervisor at the Port of Coumts. He had a discussion with the grievor concerning the clearance of Elton John's plane at Lethbridge Airport, including what the grievor should do if he were offered tickets. Mr. Bakke testified that he told the grievor he was not to accept any such offer,

to which the grievor responded that he understood the direction and that he was of the same opinion.

[17] The concert tickets in question were of high value. While a BSO may accept an item of nominal or little value, the officer is not to accept items such as the tickets in this case, due to public perception. Concert tickets of this type are not usually offered to members of the public and could be perceived as a bribe.

D. Evidence of Mr. Merrill

[18] On April 24, 2012, Mr. Merrill was assigned to the Lethbridge Airport along with the grievor to clear Elton John's plane. The grievor went into the CBSA office at the airport with his wife. When the plane arrived, Mr. Merrill and the grievor entered it and were met by Mr. John and approximately six other passengers. The grievor did the primary examination, while Mr. Merrill did the passport check. There was no indication based on the primary examination that the plane needed to be searched, so Mr. Merrill left. The grievor remained on the plane and continued talking to Mr. John's assistant.

[19] Mr. Merrill waited for the grievor at the bottom of the stairs outside the airplane. Eventually, the grievor and Elton John's assistant joined him. When Mr. Merrill approached, the assistant asked him if he would like tickets to the concert as well. Mr. Merrill responded he would but only if he were allowed to accept them. The assistant then provided his phone number and told the grievor and Mr. Merrill to call him if they did want tickets. Mr. Merrill entered the number into his cellphone.

[20] Mr. Merrill went into the CBSA office with the grievor, where the two discussed whether they could accept the tickets. The grievor called Mr. Lynch and asked him whether it would be alright to accept them. He relayed Mr. Lynch's response to Mr. Merrill, who did not consider Mr. Lynch's response as authority to accept the tickets, so he did not. He gave the phone number to the grievor and left the airport.

E. Evidence of Ms. Henderson

[21] On April 24, 2012, she received a call from the box office manager via two-way radio, who told her that a CBSA officer was there and was asking for two tickets to the concert. She went to the box office and spoke to the manager in response to the radio call then went to the lobby to speak to the CBSA officer.

[22] She met the grievor in the lobby; he was dressed in civilian clothes but was wearing a CBSA ball cap. He explained that he had met Elton John at the Lethbridge Airport earlier that day and that he had been offered complimentary tickets. Since the phone number the personal assistant had given him had not been recorded accurately, he had decided to go to the venue to pick them up. Ms. Henderson spoke to the event's production manager, who knew nothing about free tickets for anyone. The production manager spoke to one of Mr. John's assistants, who told him the he had offered the grievor the tickets. The assistant then gave Ms. Henderson two tickets, which she delivered to the grievor.

[23] The radio conversation was overheard by an event volunteer, Kyle Reindl, who was also employed by the CBSA. He told Ms. Henderson that he would have to report the incident to his employer as it was against policy for a BSO to accept gratuities in the course of employment. Several weeks later, Ms. Henderson was contacted by Mr. Hewson and asked about the situation.

F. Evidence of Mr. Reindl

[24] Mr. Reindl is also a BSO at the Port of Cou tts. On April 24, 2012, he volunteered as a security officer for the event at issue. He was at a security meeting before the show when he overheard on his radio that the box office manager needed "... passes for the CBSA guy who cleared the plane that day." The people at the meeting reacted when they heard that someone from the CBSA was looking for free tickets.

[25] Since Mr. Reindl knew that it was a violation of the code of conduct for a CBSA employee to accept gifts of this nature, he told the head of the security company that he had to report it but that he would wait until after the show started. Once it started, he went to see who had been given the tickets; it was the grievor. Mr. Reindl reported the incident to his supervisor at the Port of Cou tts.

G. Evidence of Ms. Holzer

[26] Ms. Holzer was the chief of operations at the Port of Cou tts at the time the disciplinary action against the grievor was taken. When she arrived there in June 2012, she was told about the situation. Her first involvement with it was in September 2012, when the employer received the professional standards investigation report. She reviewed it with Mr. Hewson. A copy was provided to the grievor, who was allowed the

opportunity to provide any additional information the employer should have been made aware of.

[27] She reviewed the report, the interviews, the timelines, and the information provided by the grievor. A discipline meeting was held on September 28, 2012. Ms. Holzer noted that the grievor was remorseful and that he recognized that he had behaved inappropriately. She also noted that he had been advised before the start of the plane clearance that he was not to accept tickets to the event if they were offered. He acknowledged this and stated that he knew he was not able to accept the gratuity, yet he pursued the opportunity and secured the tickets. He called the assistant, and when he was unable to contact him, he went to the plane hangar. When he was unsuccessful at finding the personal assistant who had offered the tickets at the hangar, he went to the venue to solicit the tickets.

[28] Given the potential for an impact on the contractual relationship between the City of Lethbridge and the CBSA concerning the CBSA's services at the Lethbridge Airport and the public perception of the people at the ENMAX Centre when the grievor arrived to secure the tickets, Ms. Holzer concluded that his actions had the potential to injure the CBSA's reputation, which was an aggravating factor considered when determining the appropriate penalty. The mitigating factors paled in light of all the other considerations, including the fact that the grievor had been told twice before the day of the concert not to accept tickets if they were offered.

[29] Although the grievor claimed to be remorseful, in Ms. Holzer's estimation, he did not recognize the magnitude of his actions and the impact they had on the CBSA's reputation in the community. The only way the grievor was able to obtain the tickets was through performing his duties. Considering the potential impact on the employer and that the matter involved a high-profile celebrity and the perception of a CBSA officer seeking a gratuity, a serious penalty was warranted.

H. Evidence of the grievor

[30] The grievor described his primary role as a BSO as being responsible for ensuring that people and goods entering Canada are admissible and that all duties and taxes are collected. The officers from the Port of Coumts, where he was assigned, provide border clearance services at airports in Coumts and Lethbridge. He is on a list of BSOs who have volunteered to clear traffic at the airports. He holds peace

officer status.

[31] He has been an Employee Assistance Program referral agent and is a member of the local Occupational Health and Safety Committee. He is also an active volunteer in his community. He has been trained as a facilitator for the CBSA First Impressions Count training program and occasionally presents public outreach sessions on behalf of the CBSA. He stated that what he did on April 24, 2012, completely contradicted what is taught in First Impressions Count.

[32] Before the incident at issue, the grievor had never been suspended, although he admitted to receiving three written warnings as a result of public complaints and to receiving a written reprimand two weeks before the hearing, for tardiness. He has never previously been disciplined for a code of ethics or a code of conduct violation. His performance reviews have generally been satisfactory. Within a month of the Elton John concert, he received a Peace Officer Exemplary Service Medal, which he offered to return. Both Ms. Holzer and Mr. Hewson refused to take it back.

[33] The grievor was told a couple of days before Elton John's arrival that he was assigned to clear his plane at the Lethbridge Airport. Superintendent Doug Smith told him to be on his best behaviour, but he did not remember Chief Singer speaking to him about it. The grievor's selection was based strictly on the call-back list for airport duty. He was very excited to clear the flight and knew that he had to be professional when carrying out his duties.

[34] After he learned about the assignment, the grievor asked Mr. Bakke about accepting tickets if they were offered. The grievor admitted that he was told not to accept any gifts, including tickets. He testified that the CBSA's code of conduct is unequivocal that accepting gifts other than small nominal tokens is prohibited. According to him, the CBSA is very cognizant of its public image and of how his conduct reflects on the public's opinion of BSOs.

[35] The grievor knew when offered the tickets that he was not allowed to take them, but he did anyway. When the offer was made, he saw an opportunity to take his wife, who was a fan of Elton John, to a concert to which she otherwise could not have gone. Despite this, the grievor initially advised Mr. John's assistant that he could not accept gifts. The assistant insisted and provided his phone number, which Mr. Merrill incorrectly recorded. The assistant told the grievor and Mr. Merrill to contact him later

for the tickets.

[36] When the grievor tried the phone number, it did not work, so he went to the hangar area before he left the airport; nobody was there. Before leaving, he phoned the port to report that the duties had been completed and that the plane had been cleared. He spoke to Mr. Lynch, told him about the offer of tickets, and asked if he could accept them even though he had initially declined them. Mr. Lynch indicated that if the grievor paid the face value of the tickets, it would be different from accepting complimentary tickets. He never attempted to pay for the tickets and never asked how much they cost. In any event, the tickets were marked as complimentary and had no face value.

[37] The grievor admitted that at that point, he knew any further attempts to procure the tickets would be wrong, but he pursued them anyway because of the opportunity to take his wife to the event. He stated in his testimony that he should have followed Mr. Bakke's instructions rather than relying on an acting superintendent's interpretation of the rules. Regardless, he knew the right answer. He described pursuing the tickets as being motivated by greed.

[38] After calling the port, the grievor and his wife ran some personal errands, following which he went to the venue to secure the tickets. He approached the ticket office wearing his BSO ball cap. He did not initially identify himself as a CBSA employee but ultimately told the staff he was the BSO who had cleared Elton John's plane earlier that day. He explained to the venue staff that he had been promised tickets to the concert that evening and that he was there to pick them up. He then explained the same thing to Ms. Henderson. When asked for identification, he showed her his driver's license in an attempt to distance himself from the CBSA.

[39] The grievor and his wife attended the show and sat in the second row in front of the stage. On his way out of the venue after the concert, he spoke to people he knew who had also attended. They told him that they had seen him on the jumbotron (a scoreboard-sized video screen that aired recordings of people who had attended the concert). The grievor testified that he "felt some regret [he] was on the jumbotron" because if the recording had appeared in the media, it could have had repercussions and could have embarrassed the CBSA.

[40] A couple of days later, he received a call from Mr. Singer, who asked if he had

attended and if he had accepted complimentary tickets. The grievor testified that he admitted to both and realized that an investigation and discipline were coming. He admitted what he had done to Mr. Singer; he knew he had to and had to accept the consequences that would follow. He admitted breaching the code of conduct and the code of ethics. He recognized that the CBSA's image was critical to the effective performance of its mandate and that he had threatened that image by his conduct. When he met with the professional standards investigator, he admitted to his actions without hesitation, even though he knew he might be terminated as a result. In his opinion, he had been open, honest, forthright, and contrite. He told the investigator that he recalled Mr. Bakke telling him not to accept any tickets.

[41] The grievor testified that he accepted the tickets in a moment of weakness and on the spur of the moment. He saw an opportunity to give his wife the chance to see Elton John. It was an opportunity to do something for her, and he knew that he too would enjoy the concert. He thought his duties ended when he left the plane, so there was no conflict of interest with his duties, as he was not on duty when he secured the tickets.

III. Summary of the arguments

A. For the employer

[42] The grievor would have the adjudicator believe that he took full responsibility for his actions. An adjudicator should pay attention to the details of the events to determine if the expression of remorse was sincere and in line with the facts. Recognition of misconduct, expressions of remorse, and apologies are mitigating factors but are diminished when an employee tries to explain his or her actions as the grievor did.

[43] The grievor anticipated that he would be assigned to clear Elton John's plane that day; he asked Mr. Bakke what he should do if he were offered tickets. The grievor's testimony established that he had been told that he was not to accept any such offer. He also tried to establish that nothing was premeditated in his behaviour that day. But pursuing the tickets, knowing that doing so was a violation of the code of conduct, contradicted the idea that his actions were not premeditated. He had time to stop but continued to pursue the tickets. He admitted that he knew what he was doing at the box office was wrong, yet he continued to pursue the tickets. Even though he

knew he should not have accepted the tickets, he went to the concert anyway.

[44] He could have mitigated his actions and not attended the concert, but he put his interests ahead of the employer's and went anyway. Even though he claimed to be remorseful, the grievor did not report the incident to his employer; Mr. Reindl did. Had management not called the grievor to question him about the tickets, he would have said nothing. Clearly, he was not remorseful. Any mitigating factors were neutralized by his conduct. Apologizing does not necessarily require that the employer reduce the disciplinary penalty.

[45] Despite the numerous red lights flashing at him that day, the grievor pursued the tickets, and not on the spur of the moment. He demonstrated an ongoing pattern of conduct and not a momentary lack of judgement. All his actions while securing the tickets indicated a determined intention to violate the employer's code of conduct.

[46] The grievor placed himself in a conflict of interest, which violated the employer's code of conduct. Public servants bear a greater requirement to act with integrity than does the public, but as a peace officer, the grievor must be held to an even higher standard (see *Stokaluk v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 24 at paras. 155 to 166). As a public servant, the grievor in his conduct must bear the scrutiny of the public he serves (see *Duske v. Canadian Food Inspection Agency*, 2007 PSLRB 94).

[47] The penalty imposed must reflect the severity of the breach (see *Cooper v. Deputy Head (Correctional Service of Canada)*, 2013 PSLRB 119; *Ranu v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 89; and *Mercer v. Deputy Head (Department of Human Resources and Skills Development)*, 2016 PSLREB 11). The fact that the grievor may be a good person does not mean that he should be treated less severely than others would be. He cannot be allowed to place himself above the interests of the employer and the Canadian public (see *Bracebridge (Town) v. Ontario Public Service Employees Union, Local 305*, [2012] O.L.A.A. No. 643 (QL)). He has the burden of proof of establishing that the penalty imposed was unreasonable (see *Mercer*), which he has not done.

B. For the grievor

[48] The Public Service Alliance of Canada's (the bargaining agent) position is that

the penalty imposed was disproportionate, given the mitigating factors. An appropriate penalty would be a three-day suspension without pay (see *Easton v. Canada Customs and Revenue Agency*, 2001 PSSRB 95; and *Bastie v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-22285 (19930909), [1993] C.P.S.S.R.B. No. 153 (QL)). The grievor does not dispute that a serious incident occurred that warranted discipline. The totality of the mitigating factors must be considered, which the employer did not do.

[49] The grievor admitted fault once the employer confronted him. It is a blip on his employment record. He does not dispute that he was warned several times that he was not to accept tickets if they were offered. He did not rest his defence on character evidence; it was provided to the Board to show what type of person he is. He reacted with a natural human response in the face of a big event, a celebrity, and an opportunity. He was star-struck.

[50] He has demonstrated a level of self-awareness. He had an angel on each shoulder and allowed the bad angel to win. During his testimony, he was able to identify multiple points at which he erred. His self-awareness is key and points to the employer's goal being accomplished with a lesser penalty. He has recognized that he offended the employer.

[51] Asking Mr. Bakke in advance about accepting tickets does not equal premeditation. To determine premeditation, one must look at the events in their totality (see *United Steelworkers of America, Local 3257 v. Steel Equipment Co.*, [1964] O.L.A.A. No. 5 (QL)). This is not a case of a series of individual violations but rather a simple one-day event for which the grievor was apologetic. He did not seek the tickets; they were offered to him.

[52] The grievor's excitement over the Elton John event caused him a momentary lapse in judgement. His ability to cite the code of conduct and to identify what he violated indicates that he will not repeat his behaviour. His offer to return his Exemplary Service Medal indicates that he is ashamed of his actions. The offer was an attempt to make amends with the employer. The mitigating factors should neutralize his failure to report his breach of the code of conduct. There is no evidence that the employer suffered any negative effects from his breach.

[53] A proper balance must be struck between the aggravating and mitigating

factors, which has not been done. While the grievor ignored red lights, which must be balanced by his awareness, cooperation, length of service, and excitement at meeting Elton John. The employer pursued discipline too aggressively.

IV. Reasons

[54] There is no question that the grievor accepted a gift that, but for the fact that he was assigned to clear Mr. John's plane as part of his employment as a BSO, he would not otherwise have been offered. That constituted a violation of the employer's code of conduct (Exhibit 2, Section J) and the *Values and Ethics Code for the Public Service* (Exhibit 3, Section 2). The grievor admitted as much. Second-row seats at an Elton John concert cannot be considered gifts of a nominal nature, regardless of whether or not they are complimentary. The grievor admitted that Mr. Bakke had told him before accepting the tickets that he was not to accept them. He also admitted that he is aware that the CBSA's code of conduct explicitly prohibits BSOs from accepting gifts from the public they serve as part of their duties.

[55] The grievor claimed to be repentant for his misconduct and described it as a spur-of-the-moment aberration motivated at one point in his testimony by greed and at another point by the chance to provide his wife with an opportunity she would otherwise not have had. He attempted to excuse his misconduct on the basis that it occurred when he was off duty. It was not; it was directly related to conducting his BSO duties. It is irrelevant that he obtained the tickets after he had completed clearing the plane and had left the workplace. Had he not been assigned to clear that plane on that day, he would not otherwise have been offered the tickets. There is a clear nexus between the tickets and how he conducted his duties on that day.

[56] The grievor's conduct of pursuing the tickets does not support his statement that it was a spur-of-the-moment incident. He actively and repeatedly pursued them, knowing full well that he was violating the CBSA's code of conduct and code of ethics. He made no less than three deliberate attempts to obtain the tickets: he called the assistant and sought the plane's passengers in the hangar at the Lethbridge Airport, and after failing at those two attempts, he proceeded to the ENMAX Centre after a cooling-off period to obtain the tickets. While there, he wore part of his BSO uniform and explained to the venue staff that he had been promised the tickets that afternoon while clearing Elton John's plane at the Lethbridge Airport. He admitted to the venue

staff that he worked for the CBSA.

[57] The grievor was a senior BSO experienced in conducting his duties both at the Port of Couatts and while clearing airplanes. He knew what his obligations were that day, and his behaviour cannot be excused because of his excitement at meeting a celebrity. His obligations under the code of conduct and the code of ethics were cast aside in favour of his greed and excitement at seeing a celebrity perform.

[58] The employer was justified disciplining the grievor up to the point of termination. He recognized that he might have been terminated as a result of his conduct. What then are the mitigating factors that would warrant a further reduction to his penalty, particularly given the employer's legitimate interest in upholding values and ethics in the public service? He was a long-serving officer with according to his own testimony "generally satisfactory" performance reviews who was fully aware that his actions violated the employer's policies. He admitted to recognizing that his behaviour had the potential to hurt the employer's reputation in the community.

[59] While long service and remorse may be mitigating factors in this case, I also view them as aggravating factors. The grievor knew full well that his behaviour was unacceptable based on his years of service and experience with the CBSA and a direction from his superintendent. He expressed remorse that rang hollow, such as when he described his reaction to his image being broadcast on the jumbotron as feeling "some regret." An employee motivated by greed who takes advantage of his position to benefit himself and his wife deserves discipline, including potentially termination. Given that the employer has seen fit to impose a penalty far less severe than what might otherwise have been considered reasonable, it clearly indicates that the CBSA has assessed the aggravating and mitigating factors and has determined the penalty appropriate for the violation.

[60] By his own admission, the grievor's behaviour had the potential to embarrass his employer. It would not have withstood the scrutiny of the public, an example of which were Ms. Henderson's concerns with the grievor demanding tickets at the venue. He relied on the fact that the public was not aware of his actions, but how can he reasonably believe that when he interacted with not only the public but also with the passengers of the plane he cleared that day? His actions clearly had the potential to affect the public's "... trust in the integrity, objectivity and impartiality ..." of those

protecting Canadian borders (see *Duske*, at para. 102).

[61] The grievor's argument that a lesser penalty would have accomplished the employer's goal ignores the fact that part of an employer's goal in imposing discipline is to send a message to the employee and to the workplace that objectionable behaviour is not acceptable. A violation of the *Values and Ethics Code for the Public Service* is a serious offence worthy of a serious penalty.

[62] Contrary to the argument of the grievor's representative, the grievor has shown no insight into the true nature of his offence. He spoke at length about his involvement in the community and how embarrassed he was by this incident and asked that his behaviour be excused because he admitted what he had done when he was confronted about it. I have no doubt that he would never have spoken of the matter again had Mr. Singer not asked him directly if he had accepted tickets when he was told not to. The fact that he answered honestly when confronted does not excuse his behaviour. As a BSO charged with the security of Canadian borders and as a peace officer, the grievor is expected to follow orders, to act in the best interests of Canadians, and to act at all times with integrity and honesty. He did none of those things, and a lesser penalty would trivialize the nature of his violation of the code of values and ethics and the code of conduct.

[63] I heard nothing that would cause me to conclude that the discipline imposed on the grievor was either unreasonable or wrong.

[64] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[65] The grievance is dismissed.

October 24, 2016.

**Margaret T.A. Shannon,
a panel of the Public Service Labour
Relations and Employment Board**