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*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

MIKE LAWRENCE

Grievor

and

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

Respondent

Indexed as

Lawrence v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Public Service Labour Relations and Employment Board

For the Applicant: No one

For the Respondent: Christine Langille, counsel

Heard at Kingston, Ontario,
May 24, 2016.

REASONS FOR DECISION

Introduction

[1] The grievor worked as a parole officer in the Frontenac Institution (“the institution”) in Kingston, Ontario, which is a minimum-security facility. During the investigation and grievance process, he claimed that a gambling addiction led him to begin taking money from and operating a business with an inmate there (“inmate X”) who has over 130 lifetime criminal convictions and who was most recently incarcerated for defrauding investors of \$4 000 000 in a business scheme.

[2] The evidence disclosed that the grievor provided a contraband cell phone to inmate X. He made unauthorized accesses to other inmate files and then shared information from them with inmate X, his business partner. The grievor also made false statements to his warden in an attempt to obtain an early release for his inmate business partner.

[3] The warden became aware of the grievor’s actions and suspended and then terminated his employment. The grievor grieves his termination of employment. I must determine on the evidence before me if his actions merited discipline and if so, whether termination was justified given the mitigating and aggravating circumstances.

[4] The grievor’s bargaining agent withdrew its representation before the hearing, and neither the grievor nor his representative appeared at the hearing.

[5] 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 new 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*.

Facts

[6] The grievance before me was filed on March 31, 2011, and was referred to adjudication after the Correctional Service of Canada (“the employer”) rejected it at a final-level hearing on October 20, 2011.

[7] The grievor’s bargaining agent withdrew its representation on April 25, 2016. It so notified the grievor and informed him that he could “proceed on his own”. The Board contacted the grievor in writing by registered mail, dated April 26, 2016, in which it advised him of his hearing date and asked how he wished to proceed.

[8] The grievor then received a notice of hearing dated April 28, 2016, with the date, time, and Kingston location, which was sent by registered letter. He confirmed his receipt by signature upon delivery by Canada Post. The letter advised him as follows: “If you fail to attend the hearing or any continuation thereof, the Board may dispose of the matter on the evidence and representations placed at the hearing without further notice to you.”

[9] A final registered letter was sent to the grievor advising him that the hearing would begin 30 minutes later, at 10:00 a.m. on the same date and at the same location. Again, he confirmed receipt by signature upon delivery by Canada Post.

[10] Since the grievor had been notified of the time, date, and location of the hearing, and since the respondent incurred significant expense to prepare its case and have staff, counsel, and witnesses present, I waited until 10:15 a.m. for the grievor or his representative to appear; when they did not, I chose to proceed. To have done otherwise would have risked a deleterious effect to the memories of witnesses with the further passage of time and would have caused prejudice to other grievors who are waiting for their opportunity to have their grievances heard by the Board.

[11] The grievor began his career with the employer in 1991 as a CX-01 correctional officer and advanced through promotions to the WP-04 parole officer position he held at the time of his dismissal. The evidence indicates he had enjoyed an otherwise unblemished work record, meeting or exceeding performance expectations in his annual appraisals by his employer.

[12] Due to what the grievor claimed at the time of his dismissal was his gambling addiction, he began to make a series of bad decisions that ultimately ended his career.

In 2009, he emailed his supervisor, indicating his desire to enter into a business relationship with inmate X and stating that although it might have been a conflict of interest, he was asking for direction on whether he would be allowed to after inmate X was released from prison. No evidence of a reply was tendered at the hearing.

[13] The grievor surreptitiously provided inmate X with a cell phone and charger and tobacco, all of which is forbidden for inmates to possess. The grievor also began making unauthorized accesses to files of inmates not assigned to his caseload. It was later established that he shared confidential inmate information from these files with inmate X.

[14] The grievor fabricated a story upon which false documents were sent to his warden requesting an early release for inmate X, who the grievor falsely claimed was needed on the street by a police agency to act as an informant as part of an investigation into a terrorist plot.

[15] The grievor asked inmate X for money several times. The grievor characterized these funds as loans and business investments. He admitted to his employer that he received \$17 500 from inmate X. The grievor also admitted to making wire transfers of money to inmate X while the inmate was on medical leave from the institution. And, as part of his guilty plea to a charge of criminal breach of trust entered in court, the grievor admitted to receiving that \$17 500, as he was convicted for criminal breach of trust for accepting these funds. This was confirmed by a registered copy of his certificate of conviction, which was tabled as an exhibit before me at the hearing.

[16] When concluding that it would dismiss the grievor from his job, the employer relied upon the physical evidence of the cell phone, as it was confiscated, as well as computer records of the grievor's database searches of inmate files not assigned to him. The employer was aided by inmate X's cooperation; he shared information with the investigator regarding his business dealings and loans of money to the grievor that was independently corroborated by other reliable means to confirm that he possessed other inmates' confidential information, which he could not have otherwise been aware of.

[17] Evidence was received at the hearing that the grievor had received training on the employer's code of conduct, professional standards, and his duty as a peace officer. Evidence was also tabled before me linking the grievor's many ill-advised

actions to numerous breaches of the relevant codes, sections and standards.

Termination of employment

[18] Given the facts of this case and the mitigating and aggravating circumstances, was the termination of the grievor's employment justified?

[19] The employer presented clear and convincing evidence before me that leaves no doubt as to the grievor's serious wrongdoing, not the least of which was his criminal conviction for breach of trust in his actions involving an inmate. As such, I find there were clear grounds for discipline.

[20] The employer submitted that the grievor's long and otherwise good employment record was considered, along with the fact that he cooperated with the investigation of his wrongdoing once inmate X reported their many activities to the prison's security and intelligence officers. At the time of his disciplinary hearing and termination of employment, the grievor claimed he was suffering from a medical disability or illness related to a gambling addiction. He claimed that it caused him to do things he might not otherwise do.

[21] When questioned by the employer during its investigation about his disability, the grievor admitted he had never brought such a claim to its attention; nor did he have a medical note from a professional caregiver confirming such a condition. No medical note or evidence of any kind has been submitted since his termination by either the grievor or his bargaining agent.

[22] The employer also considered as an aggravating factor the high level of trust required of the grievor as a peace officer, whose reports on inmates were relied upon when decisions were made to release potentially dangerous individuals back into society. Also noted was the fact that he was a long-standing employee who was well aware of the standard of conduct required of him. And finally, the employer noted that the grievor's actions unfolded over many months and were by no means a limited or single error in judgement. The employer also tendered as an exhibit the extensive news media coverage of the grievor's arrest and criminal conviction, which was tabled as evidence of the significant harm caused to the employer's important role in the community and in society as the means by which citizens' safety from criminal wrongdoing is safeguarded.

[23] The employer also noted that during the investigation and in the disciplinary hearing, the grievor did not accept responsibility for his wrongdoing but rather tried to rationalize it as being relatively minor compared to other unspecified acts of wrongdoing that he alleged take place in the correctional system.

[24] Given all that, the employer decided the bond of trust with the grievor was irreparably harmed and that terminating his employment was required.

Reasons

[25] Given the grievor's flagrant wrongdoing, I find his termination of employment justified. His decision to enter into a complex relationship of exchanges of money and confidential information with an inmate was a very serious matter that could have caused dangerous repercussions to inmate safety.

[26] The grievor's deceit of concocting a fraudulent memo to his warden to justify the early release of inmate X, speaks to the fact the employer had no basis on which to seek to rebuild trust with the grievor through use of progressive discipline.

[27] And finally, by his workplace actions, which led to his very public arrest and criminal conviction, the grievor discredited the employer and its many hard-working and diligent employees, many of whom reside in Kingston.

[28] Canadian citizens have every right to rely upon and trust those who hold positions as peace officers. Our criminal justice system and the role our prisons play in society by protecting citizens and seeking to rehabilitate offenders must be held in high esteem by society. The grievor's misadventures undoubtedly cast the correctional system in a dim light.

[29] The employer, in addition to requesting that I dismiss the grievance on the merits of the evidence before me, also requested the alternate remedy that I grant its motion of abandonment. Given that the grievor received the Board's notice of hearing and that he decided not to attend the hearing, send representation, or request a postponement, the motion of abandonment is granted.

[30] I also grant the employer's requested sealing order for several exhibits due to their highly confidential nature as they contain numerous references to names of police informants, prison inmates cooperating with the employer's security intelligence

officers, and details of police agencies collaborating in undercover operations. Disclosing any of that could be highly damaging to law enforcement efforts and would put the cooperating informants at serious risk of harm. These risks significantly outweigh the public's right to an open court and judicial system in the hearing of this grievance.

[31] Specifically the following documents tendered as exhibits in the hearing are ordered sealed:

E-2 at Tab 26-1: Security Intelligence Report of January 2011 containing identifying information about an inmate informant.

E-15 at Tab 26: Fact finding report 2011-001.

E-40 at Tab 26-11: Disciplinary hearing package with hearing notes, investigation report and evidence including investigator emails, human resources files.

E-9 at Tab 18: Officer's statement of December 16, 2010 regarding fraudulent proposal involving inmate informant.

E-13: Briefing Note to the A/Assistant Deputy Commissioner of Institutional Operations, December 24, 2010: involving details of aspects of criminal activities by the grievor within the prison involving an informant and allegations against other inmates and named staff.

E-12: Officer's statement of January 4, 2011 regarding the grievor and an inmate informant.

E-11: Officer's statement of December 23, 2010 regarding the grievor and an inmate informant.

E-35: Fact finding investigation notes of March 25, 2011 containing inmate informant information and references to other staff.

E-41 at Tab 26-22: Exchange of several emails involving a

police organization and details of a covert intelligence operation and mention of an informant's name.

E-42 at Tab 26-25: Warrant to search containing identifying information of an inmate informant.

E-3: Invoice evidence with identifying information of an inmate informant.

E-4: Email of April 22, 2010 identifying a member of a police service involved in undercover law enforcement operations.

E-10: Fraudulent memo with identifying information of inmate informant.

E-43 at Tab 26-19: Officer's statement of December 23, 2010 with identifying information of an inmate informant.

E-44 at Tab 26-20: Officer's statement of December 23, 2010 with identifying information of an inmate informant.

E-9 at Tab 26-18: Officer's statement of December 16, 2010 with identifying information of an inmate informant.

E-45 at Tab 26-16: Fraudulent memo with identifying information of inmate informant.

E-46 at Tab 26-15: December 21, 2009 email containing information about a police investigation and informant.

E-47: Correspondence of September 10, 2009 containing identifying information about a police investigation and informant.

E-48: Inmate files including those of an informant.

E-49 at tab 26-12: Inmate informant files and record.

E-39: Court documents identifying inmate informant.

E-49 at Tab 19: Court documents subject to publication ban.

I have considered all the above noted documents in light of the *Dagenais/Mentuck* test and determine they all pose a risk of serious harm to individuals' personal safety and or police agency and prison law enforcement activities. These interests outweigh the public interest in having open court proceedings. There is no prejudice whatsoever to the grievor by their order.

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

(The Order appears on the next page)

Order

[33] The grievance is dismissed.

[34] I order the sealing of evidence in this case, the details of which are set out in paragraph 31 of my decision in this grievance file.

July 25, 2016.

**Bryan R. Gray,
a panel of the Public Service Labour
Relations and Employment Board**