



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**CARRIE LAZETTE**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General - Correctional Service Canada)**

Employer

***Before:*** Ian Deans, Chairperson

***For the Grievor:*** Derek Dagger, Counsel, Public Service Alliance of Canada

***For the Employer:*** K. Willis

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Heard at Kingston, Ontario,  
June 26, 1996

## DECISION

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This grievance was filed by Carrie Lazette, a CX-COF-1, employed with the Solicitor General of Canada (Correctional Service Canada) at the Joyceville Institution in Kingston, Ontario.

Ms. Carrie Lazette grieved as follows:

*I grieve that I was unreasonably denied my 3-11 shift by Correctional Supervisor R. King on April 13, 1995.*

The grievor requested the following corrective actions:

- 1) *To be reimbursed any monies, if deducted due to the denial of my shift;*
- 2) *To reserve the option to have any documentation referring to this matter removed from all my employee files;*
- 3) *To receive an apology from Correctional Supervisor King with unit Manager, A. Kelly present.*

The relevant evidence in this grievance is not in dispute. The grievor showed up for work on April 13, 1995 and made herself available to undertake her normal duties. She had previously indicated (16th of January 1995, exhibit G-2) that she had no interest in acting in a higher position. When she was informed on April 13, 1995, that she should report for a Correctional Officer II level acting position, she declined and pointed out to her supervisor that the policy of the institution was, as set out in exhibit G-1 as follows:

*" Clearly, the policy of the Institution is to ensure that any staff member acting in another position is qualified to perform the duties associated with the position regardless of the duration of the acting period. It is incumbent upon the Correctional Supervisor on duty to ensure that only qualified officers are requested to perform the function of an acting Correctional Officer II. In every case, all qualified and willing staff should be approached first before any other qualified staff are directed to act in a position. The Assistant Warden Management Services will ensure that a list is available to the Correctional Supervisors so that you can easily ascertain whether an*

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*individual is qualified and willing to act in a Correctional Officer II position"*

Her supervisor, Mr. King, responded by informing her that he was extremely busy preparing for the change of shift and offered that, if she could find someone suitable to take her place in the acting position, she could do so. She responded that this was not her job. The policy clearly set out that it was the supervisor's responsibility to ensure that only qualified persons who are willing to act should be approached. She asked him if there were any alternatives available to her, his response was that if she didn't wish to act, she should go home. After a brief period, she returned to her home. The Employer then deducted one day's pay for the day that she didn't work.

### **JURISDICTION**

The Employer challenged my jurisdiction in this matter and claimed that it had not disciplined the employee in question, but rather had applied the principle of "no work, no pay". The representative for the grievor argued that the loss of pay was clearly disciplinary in nature and that an employee who shows up for work and makes herself available to do the work for which she is normally employed is entitled to be paid. He argued that the grievor was ordered to perform duties of a higher classification in violation of the Institution's policy and that the loss of pay was as a result of the actions of the Employer and was clearly disciplinary.

### **REASONS FOR DECISIONS**

It is clear from evidence that had the Employer followed its own policy this dispute would never have arisen. The grievor, at the employer's request, had previously indicated that she did not wish to act in a higher classification. The Employers' policy is unequivocal: "It is incumbent upon the Correctional Supervisor on duty to ensure that only qualified officers are requested to perform the function of an acting Correctional Officer II. In every case, all qualified *and willing* staff should be approached first before any other qualified staff are directed to act in a position" [my emphasis]. The grievor was not willing to act in this instance and felt that the

responsibility to find someone qualified who was willing to act rested solely with the Correctional Supervisor.

In the circumstances of this case, I find that the act of subtracting one day's pay from the grievor constitutes disciplinary action resulting in a suspension or a financial penalty as provided for in s. 92 of the Act. Notwithstanding its decision not to respect its own policy, the employer viewed the grievor's actions as insubordination and disciplined her accordingly. The employer so much as acknowledges the disciplinary nature of its actions in paragraph 6 of its "fact-finding" report (Exhibit G-8). My finding on the issue of jurisdiction is supported by the findings made in Evans (Board files 166-2-17075, 17076), Castonguay (Board file 166-2-17531) and Beaudet (Board files 166-2-16491 to 16504 and 166-2-16505 to 16514).

On the merits, I find that the grievor's refusal to accept an acting position in the face of the deliberate flouting by the employer of its own policy in regard to an employee who clearly stated her will not to act as a CO-II, cannot justify the discipline imposed. The grievance is upheld and the grievor shall be reimbursed forthwith.

Ian Deans,  
Chairperson

OTTAWA, August 26, 1996