

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

---

BETWEEN

MEICHLAND BLACKBURN

Grievor

and

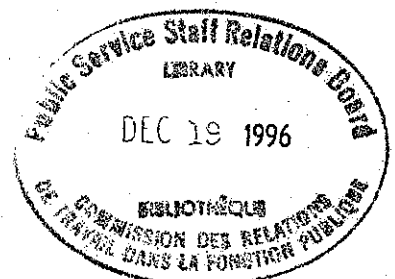
TREASURY BOARD  
(Solicitor General Canada - Correctional Service)

Employer

**Before:** Ian Deans, Chairperson

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

**For the Employer:** K. Willis



---

Heard at Kingston, Ontario  
June 27, 1996, September 3 and September 6, 1996.

## DECISION

---

In this grievance, the grievor a CX-1 Correctional Officer employed by the Department of the Solicitor General of Canada in the Correctional Services Branch at the Millhaven Institution grieved against a 7 day financial penalty as follows:

*Re: appearance in Court (Provincial) March 24th 1995, I've not violated standard 2 under both the Code of Discipline and Professional Conduct. The findings have violated my rights as a Canadian Citizen and that of a CSC Employee. Disciplinary action was Punitive not Corrective.*

He requested the following corrective action:

*The findings be withdrawn, the discipline be withdrawn.*

In summary the evidence before me was as follows:

### Evidence of the Employer

Donna J. Morin who is the Deputy Warden at Joyceville Correctional Institution and was Associate Warden at Millhaven at the time the incidents are alleged to have occurred, testified that she was contacted by Lou Kelly, Deputy Warden at Millhaven who reported that O.P.P. Constable Robert J. Abrams had telephoned him in late March or early April to complain about the conduct of Meichland Blackburn, the grievor. The telephone call was followed-up by a letter (Exhibit - G-4) dated April 28, 1995 and apparently received on May 19, 1995 which set out Constable Abrams' concerns.

This correspondence triggered an investigation and resulted in the production of a Fact Finding Report (Exhibit E-1). It also generated a memo from Constable G. Newlands (Exhibit G-3) and interviews with Justice of the Peace Cathy Hickling, Court employee Caroline Lindsay, Constable Newlands, Crown Attorney Jennifer Ferguson and Constable Abrams himself. Grievor Blackburn was interviewed by the witness on May 26, 1995 in the presence of A. Murphy (Executive Assistant), Garth Bowen (Observer for M. Blackburn) and R. Nellis (USGE).

Ms. Morin testified that the grievor denied the allegations. He followed this denial up with 2 letters (Exhibit E-5 and Exhibit E-6) further outlining his concerns.

Under cross-examination Deputy Warden Morin testified that the charges, "having tinted windows and failing to produce an insurance certificate did not form any part of the reasons for discipline."

She acknowledged that the presiding Justice of the Peace Cathy Hickling had indicated that she had not found the grievor to have been unusually aggressive and that Court employee Caroline Lindsay had indicated that the grievor presented no problem and that he had always acted pleasantly. Ms. Morin stated that the grievor should not have worn his uniform to the hearing although this in itself was not sufficient reason for discipline. She was then cross-examined on Constable Newlands' written statement (Exhibit G-3) and in particular the appropriateness of Constable Newlands removing the grievor's cap notwithstanding that the "Court" was not in session and the presiding Justice of the Peace was not in the courtroom. She decided to give more weight to constable Abrams' allegations based on her assessment of the situation on a balance of probabilities and awarded a 7 day financial penalty.

During the testimony of Deputy Warden Morin, counsel for the grievor reached above her head in a gesture which he later suggested was intended to replicate the action of Constable Newland's removal of the grievor's cap. This resulted in the witness expressing concern and Constable Abrams, who was in the body of the hearing room, leaping to his feet and reaching in a threatening gesture towards Mr. Dagger. The following morning Constable Abrams apologized and offered that his action was inappropriate but resulted from his unfamiliarity with the quasi-judicial, somewhat less formal hearing process before the undersigned adjudicator.

Constable Abrams, a 14 1/2 year veteran with the O.P.P. testified that on the night of January 14th, 1995, he observed and subsequently stopped a vehicle being driven by the grievor. He noted that a rear light was broken and that the windows were heavily tinted. He asked the grievor for his licence, ownership and proof of insurance. The grievor handed him a plastic folder containing his vehicle documents and one or more credit cards. He requested that the grievor remove his insurance

document. The grievor refused. He then advised him that he would be charged with having windows which were too heavily tinted. He returned to his cruiser and wrote out the ticket.

He further testified that the grievor shouted at him from approximately 30 feet away using profanity. He then warned the grievor that if he didn't cease he would be charged under the Criminal Code. He observed a number of youths walking through the parking lot where they stopped, and watched the events. The grievor came to the cruiser and proceeded to hand him the plastic folder with the vehicle documents inside. He asked him to remove the documents, the grievor again refused. He then wrote a second ticket for failing to produce his vehicle documents. The grievor again swore. He considered arresting him, but decided against this course of action, handed him the tickets and they parted.

The next time he saw the grievor was on March 24th, 1995 when he appeared at the hearing before the Justice of the Peace. He saw the grievor arrive, in uniform, carrying a briefcase and wearing a correctional services ball type cap.

He recalled that the grievor attempted during the hearing to be polite however he was argumentative and often repeated his questions over and over. Constable Abrams testified further that after the hearing the grievor said: "I'll see you again" - then said "I'll deal with you later". The witness took this to be a threat.

The grievor then left the courtroom and returned shortly after. He asked for directions to the Duty Counsel in order that he could retrieve some pictures. Constable Newlands told the grievor to remove his cap. He then told him at least one more time and then said he would not speak to him unless he removed his cap. When he did not, Constable Newlands reached-up, removed the grievor's cap and handed it to him. The grievor left.

During cross-examination, Constable Abrams agreed that the words of the grievor were not threats within the meaning of the Criminal Code and that at the time of the removal of the cap incident, the "Court" was not in session and the Justice of the Peace was not in the courtroom.

Evidence of the Grievor

The grievor gave testimony and recounted the events of January 14th and March 24th, 1995. He explained that in the late evening of January 14th, 1995 he was driving home from work, traveling east bound on Highway 33, when he saw an O.P.P. cruiser parked facing eastbound at the intersection of Centennial and Bath Roads. Shortly after he passed the intersection, he observed the cruiser following him with his roof light activated. Realizing that the cruiser was following him and not simply passing him he proceeded to a parking lot where he could safely stop and waited for the officer. When the officer (Constable Abrams) reached his car he informed the grievor that his car windows were too heavily tinted. The grievor attempted to explain that he had been driving the same car for four years with the same tinted windows and no one had expressed concern. He then recalled Constable Abrams, requesting his vehicle documents: licence, ownership and proof of insurance. He removed them from his pocket, they were in a clear plastic folder together with one or more credit cards, and handed the folder to the officer. Constable Abrams asked him to remove them from the folder. He refused. Constable Abrams then informed him he was getting a ticket for the tinted windows and also for refusing to produce his vehicle documents. He attempted on a second occasion to give Constable Abrams the folder containing the documents, the constable refused to accept them in the folder. The folder in question was provided by the Ministry of Transportation.

The grievor acknowledged that Constable Abrams initially acted professionally but his demeanor changed when the grievor refused to remove his documents from the folder. He denied using profanity. He explained that he felt that the fact that he is a black Jamaican born Canadian contributed to his receiving a ticket on the evening of January 14th 1995.

He next saw Constable Abrams on March 24th 1995 when he appeared in "Court" to fight the tickets. He represented himself and didn't feel he had any difficulty with the presiding Justice of the Peace. After the decision was handed down he decided to appeal and left the courtroom. He commented to Constable Abrams that the matter "was not over" "he would see him again". This was intended to convey that he would be appealing the decision. He further testified that once outside the

courtroom he realized that he would need his pictures, which had been entered in evidence. He returned to the courtroom, the "Court" was not in session and the presiding Justice of the Peace had left. He asked for direction to the Duty Counsel and Constable Newlands told him to take off his cap. He asked again for directions and was again told by Constable Newlands, to take off his cap. Constable Newlands, then reached up and removed his cap and thrust it into his chest. He left the courtroom.

He expressed concern about Constable Abrams having lodged a complaint so long after the January 14th incident and about his conduct in "Court" which he claimed had been refuted by the presiding Justice of the Peace Cathy Hickling. He explained that on January 14th he had his uniform on because he was returning from work and on March 24th because he was on approved temporary absence and had to return to work immediately after the "Court" appearance.

#### Reasons for Decision

The substantive facts are not in dispute. The grievor was stopped on January 14th 1995, he was in uniform, and he had a disagreement with the officer (Constable Abrams). He received a ticket for overly tinted windows and one for failure to produce his vehicle documents. He then appeared in Court on March 24th 1995 and defended himself wearing his uniform. Justice of the Peace Hickling expressed no concern relative to his conduct. He entered the courtroom in recess wearing a cap - was told to remove it and eventually had it removed by Constable Newlands. He left.

Constable Abrams was offended by what he perceived to be the grievor's conduct and lodged a complaint some time after the alleged incidents.

Did the grievor violate the Code of Ethics by his conduct in uniform? We all respond differently to stress and I am convinced that on the evening of January 14th the grievor, on his way home from work and therefore wearing his uniform, was perplexed and irritated by being stopped for a broken taillight and overly tinted windows. Hindsight would allow me to believe that if he had taken his vehicle documents out of the plastic folder he might not have gotten a ticket and the rest of

the story would not have occurred. In any event, the employer maintains that the events of January 14 played no part in the imposition of discipline.

Whatever occurred in the courtroom clearly upset Constable Abrams and his colleagues. Maybe it was the allegation of racism, perhaps it was the grievor's aggressive pursuit during examination. Whatever it was, the Justice of the Peace C. Hickling did not support the allegations of improper conduct on the part of the grievor, and she was the presiding official at the hearing.

The incident of the cap is disturbing, not necessarily because of the conduct of the grievor, but because of the intrusion of Constable Newlands. The "Court" was in recess, the presiding official was absent. I cannot help wondering if the actions of Constable Newlands were more a reaction to the events during the hearing than anything else. I certainly hope it had no relationship to the grievor's skin colour.

I am convinced that the grievor pursued his defence tenaciously. I can accept that this tenacity can and probably did irritate the others involved. Surely our police are trained to deal with this kind of "irritation" within the provisions of the relevant law.

I accept that Deputy Warden Morin was correct when she said, that the tickets were not a part of her consideration when she awarded the penalty. I believe her when she stated that the events of January 14th, 1995 would not have been sufficient to warrant discipline. Deputy Warden Morin accepted the allegation of misconduct on the part of the grievor during his "Court" appearance, notwithstanding the statement of Justice of the Peace Hickling that nothing unusual occurred. There is no evidence that the grievor's conduct after the hearing was improper. In fact it could be argued that he was provoked by Constable Newlands and demonstrated restraint by leaving the Court facility without incident.

I have very carefully reviewed all of the evidence placed before me. I can find nothing to justify the penalty imposed.

There can be no doubt that whatever blame attaches to the incidents in question it is shared. The views of Justice of the Peace Hickling go a long way to refute the allegations of the others. In the circumstances, I find that the grievance must be upheld and order that the grievor be reimbursed and made whole.

**Ian Deans**  
**Chairperson**

**OTTAWA, December //, 1996**