

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**RON FERGUSON**

Grievor

and

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

Employer

***Before:*** J. Barry Turner, Board Member

***For the Grievor:*** Georges Nadeau, Public Service Alliance of Canada

***For the Employer:*** Ross Hornby, Counsel

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Heard at Vancouver, British Columbia,  
October 8, 1996.

## DECISION

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Ron Ferguson, a Correctional Officer, CX-2 classification level, Correctional Service Canada, Solicitor General, Mountain Institution, Agassiz, British Columbia, is grieving a financial penalty equivalent to two day's pay imposed by the employer in February, 1995.

His grievance reads:

*I grieve unfair, improper and undeserved disciplinary action taken against me 1995-02-02 by North Unit Manager Greg Robertson.*

The memorandum of disciplinary action dated February 2, 1995 and signed by Greg Robertson, North Unit Manager, reads:

1. *This memo is written to advise you of the results of my disciplinary investigation surrounding the events of December 23, 1994 that began during the lunch meal line and afterwards.*
2. *I have determined that you were abusive to a superior officer, by your words and actions, while on duty. Specifically you told the East Unit Manager that "I don't have time for this fucking bullshit", and abruptly hung up the phone. This was in response to her request/demand for a written explanation of why the inmates in the East Unit were called for prior to being given the goody bags.*
3. *I have also determined that you failed to promptly obey two lawful orders or commands of any other employee who is in charge or superior in line of authority. Specifically you were told to leave the institution which you did not do*
4. *Given the potential consequences of your actions regarding calling the inmates out of the order that was instructed, the date which was just prior to the four day Christmas weekend, your failure to promptly obey two lawful orders, which were in close sequence and the absence of disciplinary awards on your personnel file, I award you a financial penalty equivalent to two day's pay.*
5. *Please be advised that you may appeal this award through the staff grievance procedure.*

Mr. Ferguson is requesting the following corrective action:

1. *That I be reimbursed all monies owed to me.*
2. *That all reference to this be removed from my file.*

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3. *That I be awarded punitive damages equal to the amount of the financial penalty.*

I advised Mr. Nadeau that I did not believe that I had the authority to award “punitive damages”. In this regard I refer to the decision of the Federal Court of Appeal in Canada (Attorney General) v. Lussier (F.C.A. file A-1235-91). Mr. Nadeau then withdrew this element of the requested corrective action.

I am being asked to decide if the employer’s action was justified under the circumstances.

The hearing lasted one day with five witnesses testifying and fourteen exhibits submitted into evidence.

A request for the exclusion of witnesses was made and granted.

#### Summary of Evidence

The memorandum of discipline, the Code of Discipline, the Standards of Professional Conduct, an excerpt from the Master Agreement between Treasury Board and the Public Service Alliance of Canada and the Commissioner’s Directive on Harassment in the Workplace (Exhibits E-1 to E-5) were all admitted on consent.

1. Gordon Green, a Correctional Supervisor since 1989, Mountain Institution, medium security federal prison, testified that part of his role was to “ensure that Correctional Officers perform their duties according to procedures and policies”. He explained the administrative hierarchy as: Warden, Deputy Warden, Unit Manager, Supervisor, Correctional Officer. The prison has East, North and South Units.

He testified that at the beginning of the day shift on December 23, 1994 he briefed the staff as usual and told them that there would be the traditional “goody bag” handout of fruit, nuts, candy to all inmates after the noon count that starts at 1100 hours. He said that the inmates are called by radio after the count to eat lunch on a rotational basis from the various prison huts since the kitchen is not large enough to accommodate them all at once. The inmate committee ensures that all inmates get a goody bag.

Mr. Green identified a memorandum (Exhibit E-6) dated December 23, 1994 explaining the process for the handouts that day, that is, goody bags first followed by lunch. He briefed the Correctional Officers (CO) about this on December 23. They had no questions since most of them had done it before. He gave a copy to each one of the three CO's in charge of the prison's three units and kept one for the log book.

Mr. Green said the grievor attended the briefing and that this was the fifth year that Mr. Green had done the briefing regarding goody bags at Christmas. He said that he got a phone call in the kitchen around noon on December 23 from East Unit Manager (EUM) Nancy Wrenshall asking who had released huts E-13 and E-14 before they received their goody bags. He said he did not know but would find out. He asked the grievor who was also in the kitchen at the same time and who admitted that he called for the huts but that he did not actually release them. Mr. Green said he reminded the grievor about their morning briefing regarding what procedure was to be followed that day. He added that the grievor then answered the phone but Mr. Green did not hear the conversation. Mr. Green was then telephoned by Ms. Wrenshall and was told to meet with her and Mr. Ferguson in the Supervisor's office. While in this office, Mr. Green learned that the grievor had told the EUM on the telephone that he did not have to listen to her fucking bullshit and that the grievor had then hung up. Ms. Wrenshall told Mr. Ferguson to leave the Institution to which the grievor replied that he felt she was harassing him, that she was irrational and had no authority to tell him to leave, and that he was going to see the Warden. Mr. Green said the meeting was "not pleasant" and that he also told the grievor he should leave. The witness followed the grievor, saw him talk to Deputy Warden Boileau, then escorted him out to the parking lot. The grievor then left. Mr. Green added that Ms. Wrenshall has the authority to order Mr. Ferguson to leave. He identified his hand written notes that he wrote about one half hour after the incident (Exhibit E-7).

During cross-examination, Mr. Green said that technically any of the three Unit Managers for the Institution could be in charge of the Institution, and that he could potentially report to any of the Unit Managers even though his own unit was the South Unit. During meal times, Mr. Green said that he ensures there are enough staff to properly supervise, that there are no problems with inmates and that their arrivals are staggered; this latter requirement is due to overcrowding. He added that the inmate

huts are called in order according to a thirty-day rotational basis set out in advance and he identified an Amended Kitchen Feeding Routine memorandum as Exhibit G-1.

Mr. Green identified a copy of the daily roster for December 23, 1994 (Exhibit G-2) and said he was in charge of the kitchen that day. He agreed that it was not the grievor's duty to look in the log book on December 23 but added that it is everyone's responsibility to look at the log book or to make entries in it when required. Mr. Green testified that the grievor was not suspended on December 23, 1994 but was ordered to go home off shift.

The witness agreed that staff use profanity but he never heard Ms. Wrenshall use profanity. He reiterated that Mr. Ferguson must have known what process was expected on December 23 regarding the goody bags since he attended the morning briefing and he did not ask any questions for clarification. Mr. Green testified that at the briefing he said there would be a delay for the lunch meals since goody bags were being handed out after the count.

Mr. Green said that, when Ms. Wrenshall arrived at the Supervisor's office to meet with himself and the grievor, she was "not really out of breath and was probably disenchanted with the situation". He believed that she had already discussed the incident with Deputy Warden Boileau. He added that Ms. Wrenshall told the grievor he could contact his union representative from his home.

During re-examination Mr. Green said that even though Correctional Officers are assigned to specific units "everyone works as a team, including Unit Managers". He concluded by saying Ms. Wrenshall was concerned because Mr. Ferguson had not followed procedure and had been disrespectful to her on the telephone.

2. Nancy Wrenshall was the East Unit Manager, Mountain Institution, at the time of the December 23, 1994 incident. She reported to the Deputy Warden and had two Supervisors and case management officers reporting to her. When asked if she gave an order to a CO would she expect it to be obeyed, she responded: "Yes throughout the Institution. If the Warden gave me an order I'd obey it".

The witness said that the Institution has followed basically the same procedure referred to in Exhibit E-6 for years on goody bag day and that it is important to the

inmates. When she learned from CO Warren that some inmates had been released before they received their goody bags, she called Supervisor Green for an explanation since she felt this was a potential problem. She immediately asked him for a report. She saw CO Warren again who said he read the procedural memorandum for December 23 (Exhibit E-6) over the radio to CO Ferguson but the grievor released the inmates early. Ms. Wrenshall then called the grievor in the kitchen to ask him why he had done this and he told her he was not aware of the procedure for the day. She identified her Note to file (Exhibit E-8) dated December 23, 1994 regarding the incident that also shows she informed Deputy Warden Boileau of what had happened.

Ms. Wrenshall testified that she was angry with the grievor when she spoke to him in the Supervisor's office but that she was not out of control, nor was she intent on harassing him. She added that a subsequent harassment complaint about her by the grievor regarding the December 23 incident was determined to be unfounded.

During cross-examination, Ms. Wrenshall said this was the first time she suspended anyone and she was aware of her collective agreement obligations. She added that Mr. Ferguson was only relieved from his shift on December 23 but was paid for the day. She did not attend the pre-shift briefing by Mr. Green.

She said that huts E-13 and E-14 (see Exhibit G-1, page 2) were called to lunch, but LU1 was not released because CO Warren was still giving them their goody bags. She agreed that the staff at huts E-13 and E-14 released the inmates but they were told to release them by Mr. Ferguson. She called Mr. Ferguson personally to get an explanation even though she had already asked Mr. Green to find out what had happened because she wanted to know right away since there might have been an incident if an inmate asked the grievor why he did not get his goody bag. Ms. Wrenshall admitted that she uses profanity and added: "I work in a prison".

3. Greg Robertson has been with Correctional Service Canada for nineteen years and was a Unit Manager, Mountain Institution, in December, 1994. He was off duty on December 23, 1994 but on January 6, 1995 the Warden asked him to conduct an investigation into the incident (see Terms of Reference, Exhibit E-9). Mr. Robertson interviewed the grievor on January 12, 1995 (Exhibit E-10). He identified a transcript of radio communication from December 23, 1994 (Exhibit E-11) that shows Mr. Warren

read part of the memorandum regarding the procedure for the day to the grievor over the radio. Exhibit E-11 reads in part on page 2: "LU1 E-13 E-14 first delivery after inmates released for lunch". Mr. Robertson discussed Exhibit E-11 with the grievor after Mr. Robertson listened to the tape many times. He added that Mr. Ferguson felt Ms. Wrenshall was looking for someone to blame; he felt under attack and that he was being harassed. He could not recall Mr. Ferguson ever expressing any regret for the incident.

After completing his investigation Mr. Robertson concluded the grievor "was out of line and did not follow an order to leave the Institution promptly". He believed the grievor breached part of Standard One and part of Standard Three of the Code of Discipline (Exhibit E-2). The relevant parts read as follows:

*STANDARD ONE*

*RESPONSIBLE DISCHARGE OF DUTIES*

*Infractions*

*An employee has committed an infraction, if he or she:*

*...*

- fails to promptly obey the lawful orders or commands of any other employee who is in charge or superior in line of authority;*

*STANDARD THREE*

*RELATIONSHIPS WITH OTHER STAFF MEMBERS*

*Infractions*

*An employee has committed an infraction, if he or she:*

*...*

- is abusive, by word or action, to other employees, while on duty or under circumstances related to his or her duties;*

He said the grievor was given two orders to leave, by Ms. Wrenshall and by Mr. Green, but did not leave before going to speak to Deputy Warden Boileau. The witness applied a two-day financial penalty even though the grievor had no previous disciplinary record because he was abusive and did not promptly leave the Institution.

During cross-examination, Mr. Robertson made it clear that the grievor was not suspended for releasing the inmates early. He added that, even though Ms. Wrenshall had already asked Mr. Green to find out what had happened, Mr. Robertson could only guess why she then called the grievor to ask for his explanation for what he did. The witness identified his disciplinary investigation report as Exhibit E-12. Mr. Robertson said that the grievor claimed Ms. Wrenshall was already upset when she reached him by phone in the kitchen and that he had occasionally heard her use profanity. Mr. Robertson added: "Everyone does".

During re-examination, Mr. Robertson said that he would not expect a call from a superior to interfere in someone's work and that profanity is "used in bantering but not when someone is obtaining information".

4. Ron Ferguson has worked at the Mountain Institution since 1981 and had no disciplinary record up to the December 23, 1994 incident. He attended the briefing that morning and remembered Mr. Green reading part of a memorandum that said there would be a goody bag handout provided by kitchen staff and distributed by the inmate committee as in previous years. He said that on December 23, 1994 he was assigned to the south aggregate working area with Ms. Wood and Mr. Beaton as per the roster sheet Exhibit G-2, page 2, number 17.

He said an inmate count was done at 1100 hours on December 23 and a radio announcement around 1120 hours indicated the count was correct. Mr. Ferguson said he then followed the procedure on the Amended Kitchen Feeding Routine of December 9, 1993 (Exhibit G-1). He also acknowledged that the transcript of radio communications (Exhibit E-11) between himself and CO Warren was correct. Mr. Ferguson said that CO Guilderson released the inmates at huts E-13 and E-14 but CO Warren at hut LU1 held them back for some reason. The grievor was then called on the phone by Ms. Wrenshall who was angry and wanted to know who had countermanded her orders. He said he told her he had not received any orders and that he called for huts E-13 and E-14 as per Exhibit G-1. He said she implied that he had done something wrong so he became defensive when she demanded a written report especially since he was trying to keep watch over 100 inmates during lunch. Mr. Ferguson admitted that he said: "I don't have time for this fucking bullshit" and hung up the phone on Ms. Wrenshall. He recalled telling Supervisor Green that



Ms. Wrenshall had a bee in her bonnet. On the way to the Supervisor's office to meet with Ms. Wrenshall, the grievor said Mr. Green told him he (Mr. Green) had read the memorandum regarding the goody bags at the morning briefing which said the meal was to be delayed until the goody bags had been distributed. When Ms. Wrenshall arrived she was angry and addressed him regarding how he had just spoken to her on the phone. They yelled at each other and CO Ferguson wanted Supervisor Green to get EUM Wrenshall out of the office and to stop harassing him. When she said he was relieved from duty, he said she was abusing her authority. Mr. Ferguson said he was denied a union representative and was told he could speak to one outside the prison. The grievor also said Mr. Green ordered him to leave the prison but at the time he did not understand why. He added that, while on his way to see the Warden, he met Deputy Warden Boileau who already seemed to know about the incident and who also asked him to leave the prison. He left without knowing the terms of what he thought at the time was a suspension.

During cross-examination, even though Mr. Ferguson admitted Mr. Green read part of the memorandum for the goody bag distribution, he said: "It was never made clear to me by Mr. Green to delay the lunch in the morning briefing". Mr. Ferguson said that about two weeks after the incident CO Warren told him he was sorry for the mess since he (Warren) had been briefed.

Mr. Ferguson said EUM Wrenshall was accusatory towards him and that she called to berate him on the phone. He added: "I think there would have been more of a problem if the lunch had been delayed". Mr. Ferguson admitted using profanity when he spoke with Ms. Wrenshall but he did not swear at her. He admitted filing a harassment complaint against her but it was later dismissed. When asked if it ever occurred to Mr. Ferguson to apologize to her, he responded: "She forced a confrontation; I didn't".

In response to my question as to why there seemed to be such a rush to serve lunch on the goody bag handout day, Mr. Ferguson said: "Prisoners get very upset if they do not get their meals on time". He added that huts E-13 and E-14 probably got their goody bags after lunch.

5. Larry Beaton, a Correctional Officer, CX-1, attended the December 23 morning briefing and recalled Supervisor Green saying from the log book that the inmate committee would be issuing goody bags at the noon hour at the living unit hut doors. He had never seen this process before.

#### Argument for the Employer

Mr. Hornby argued that on December 23, 1994 the grievor took it upon himself regarding what he should do after the noon count was completed on “goody bag day” by calling for inmates to come to lunch; the grievor subsequently challenged a superior officer in a not so subtle way. He added that Mr. Ferguson then sought a higher authority to review an order he had received from EUM Wrenshall and Supervisor Green to leave the prison. He argued that the grievor could have “turned off” his behavior at any time but even today Mr. Ferguson does not feel that he did anything wrong.

He reminded me that Mr. Green briefed the staff including the grievor at a morning meeting about the goody bags; no questions were asked and Mr. Robertson’s investigation report (Exhibit E-12) concluded that everyone had a clear idea of what was supposed to happen on December 23.

Mr. Hornby said that, even if the orders for the day were not clear, the issue remains of Ms. Wrenshall’s authority being challenged by Mr. Ferguson when he initially refused to leave the prison, told her she did not have authority to order him to leave and then proceeded to seek a decision by a higher authority, namely the Warden, but instead he saw the Deputy Warden.

He argued Mr. Robertson considered two reasons for the two-day financial penalty: one, the swearing by the grievor, and two, his refusal to obey Ms. Wrenshall and Mr. Green. He agreed that Ms. Wrenshall was very angry, that her anger was deliberate, but he submitted that she did not lose control and that she consulted with the Deputy Warden.

He also agreed that profanity is used within a prison but not towards a superior officer. He concluded that the penalty is proportionate to the incident especially since Mr. Ferguson still denies any wrongdoing.

Argument for the Grievor

Mr. Nadeau argued that, if someone wants respect, he or she should start with respect. He concluded that, since Ms. Wrenshall did not do this, an incident occurred. He also argued that there was nothing specific or clear in Supervisor Green's instructions at the morning briefing to indicate that it would be necessary to delay the lunch period. He argued that the grievor therefore did his duty as usual and called the inmates for lunch after the count was done, and then he got "dumped on by a Unit Manager for not following the proper procedures". Mr. Nadeau said that management is now shifting the blame for their mess to Mr. Ferguson. He reminded me that CO Guilderson actually released huts E-13 and E-14, not the grievor. Mr. Ferguson merely called for them.

Mr. Nadeau argued that, even though Ms. Wrenshall asked Mr. Green to report on what had happened, she did not leave it at that. She called the grievor in an aggressive tone and he responded accordingly especially since he had important duties to perform in the kitchen at the time. He argued that she then berated him again in the Supervisor's office and denied the grievor the right to have his union representative present.

In conclusion, Mr. Nadeau reminded me that it was common to use profanity in the Correctional Service and that, when the Deputy Warden told Mr. Ferguson to leave, he left. He asked therefore that I allow the grievance.

In rebuttal, Mr. Hornby reminded me that only Mr. Ferguson failed to understand the procedures for December 23 and that the workplace is not the place for a debating society between a superior officer and a subordinate.

Decision

The two issues that I have to determine are whether or not the grievor was abusive to a superior officer and whether Mr. Ferguson failed to promptly obey two lawful orders, one from EUM Wrenshall and another from Supervisor Green.

Mr. Ferguson admitted that he said: "I don't have time for this fucking bullshit" to EUM Wrenshall over the telephone. This admission of using abusive language towards a superior officer while on duty is therefore a breach of Standard Three, Code

of Discipline (Exhibit E-2). He subsequently failed to promptly obey two superiors by not immediately leaving the Institution when ordered to do so by EUM Wrenshall and Supervisor Green. By diverting his direct departure from the prison in an attempt to see the Warden, but in fact he ran into the Deputy Warden, Mr. Ferguson was in effect seeking a review by a higher authority before obeying the two orders to leave the prison. This was also a breach of Standard One, Code of Discipline (Exhibit E-2).

Mr. Ferguson claims that it was never made clear to him that the lunch was to be delayed a little on December 23, 1994 while the goody bags were handed out after the noon count before lunch. As a result, he also claims that he was unfairly confronted and harassed by EUM Wrenshall. I find it difficult to understand that he appears to be the only CO who was not aware of what procedure was going to be followed on December 23. I believe Supervisor Green made it clear at the morning briefing which the grievor attended, after which there were no questions, and that it was reinforced by CO Warren when he read over the radio that the goody bags were to be delivered first, and after, the inmates were to be released for lunch (Exhibit E-11). If Mr. Ferguson was not certain what the memorandum really meant on December 23, he could have asked for clarification from someone, presumably Mr. Green, over the radio. It is worth noting that CO Warren did not release the LU1 section because he clearly understood that they were to get their goody bags before going to lunch. It is also worth noting that the grievor was not suspended for ordering the early release of the inmates but for abusive language and for failing to promptly obey an order. If Mr. Ferguson wanted clarification regarding whether or not EUM Wrenshall had authority over him, he should have followed the principle, "obey now and grieve later" instead of behaving the way he did.

I understand that the use of profanity in a setting such as a federal prison is not uncommon, but using it towards a superior officer while on duty is unacceptable. Mr. Ferguson's inability to recognize this, especially long after the incident occurred, is a failing on his part. This is unfortunate since he had no disciplinary record up to December 1994 after serving at the Mountain Institution since 1981. It was also evident to me during cross-examination that Mr. Ferguson displayed a marked attitudinal change whereby he became argumentative and questioning, reinforcing his failure to accept that his initial behavior was unacceptable, followed by his lack of prompt obedience.

For all these reasons, this grievance is denied.

**J. Barry Turner,  
Board Member.**

OTTAWA, October 28, 1996.