



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**KIRK PARSONS**

Grievor

and

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

Employer

***Before:*** P. Chodos, Deputy Chairperson

***For the Grievor:*** Chris Dann, Public Service Alliance of Canada

***For the Employer:*** Jock Climie, Student-at-Law

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Heard at Calgary, Alberta,  
May 15 to 17, 1996.

## DECISION

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Prior to his termination the grievor was employed as a Carpenter at Bowden Penitentiary for 15 years. Mr. Parsons was suspended without pay on October 23, 1995 pending completion of an investigation into allegations of misconduct. By letter dated October 31, 1995 the grievor was advised that he was terminated for cause; the reason given was that *"It has been established that you indeed entered into a relationship with an inmate and a member of his family and benefited from this inappropriate relationship. This relationship was not in the line of your duty and not approved by your supervisor. ... this relationship and transaction brought discredit to yourself and the Correctional Service of Canada."* (Exhibit E-2).

The facts leading up to Mr. Parsons' discharge are as follows. In the fall of 1995 management at the Institution became aware of rumours to the effect that Mr. Parsons had entered into a transaction with an inmate, Mr. Stanley Weatherall; specifically, it was rumoured that Mr. Parsons had purchased a 1991 GMC truck from Mr. Weatherall at a very favourable price. Two Institution Preventive Security Officers (IPSO), Mr. Larry Richmond and Mr. John Siemens, were directed to investigate this matter. The IPSOs were familiar with the vehicle in question and were able to run a vehicle plate check through the police information system. The information system report revealed that Mr. Parsons was the current registered owner of the vehicle, and it had been previously registered to a Bonnie Cutforth and Mr. Weatherall. Upon receiving this information Mr. Richmond and Mr. Siemens arranged to interview Mr. Weatherall at the Institution on October 2. At this interview Mr. Weatherall was questioned about the sale of the vehicle; according to Mr. Richmond and Mr. Siemens, Mr. Weatherall initially stated that he had sold the truck to a Mr. Brown of Bowden, Alberta for \$16,500. He also indicated that Mr. Parsons was now the owner of the vehicle; he advised that he had sold the vehicle as he is suffering from cancer, had lost the sight of one eye and was not expected to have much longer to live. According to Mr. Richmond and Mr. Siemens, Mr. Weatherall expressed great concern that Mr. Parsons not get into trouble as a result of this matter. At 1:30 p.m. the interview was concluded; Mr. Weatherall then returned to the farm Annex which is located a short distance from the main part of the Institution.

Mr. Richmond contacted Ms. Anne Keir, who is a Case Management Officer located at the farm Annex and was at the time the Acting Unit Manager. She was told by Mr. Richmond that Mr. Weatherall might wish to convey more information and that

she should advise him that if he wanted to provide additional information he should contact Mr. Richmond. She then had Mr. Weatherall brought to her office; it was her observation that he was clearly upset; she was also aware that he was in poor health at the time. According to Ms. Keir, Mr. Weatherall told her: "I wish I could undo all of this". He went on to say that Mr. Parsons and his wife were really good people, that he would not want him to lose his job, and that Mr. Parsons had been a very good boss to him. He also stated that he wanted Mr. Parsons to have his truck; he told her he could not give a vehicle to one of his daughters and not to the other because it would create the appearance of favoritism. She invited him to contact Mr. Richmond. He called Mr. Richmond from her office; when Mr. Weatherall started speaking to Mr. Richmond she left the room. According to Mr. Richmond, Mr. Weatherall told him over the telephone that he wanted Mr. Parsons to have the truck because he liked him; he had told Mr. Parsons that he could have the truck if he paid off the existing financing of \$4,230.57 to GMAC and in addition paid Mr. Weatherall \$3,000. Mr. Weatherall stated that Mr. Parsons was concerned because he was not allowed to buy the truck from him as he was an inmate. They decided that they should use a mutual acquaintance, Mr. Bob Brown, as a middle man. Mr. Weatherall also stated that the GMAC financing was paid off by Mr. Parsons on June 13, 1995 through a Bank of Nova Scotia branch in Innisfail. Mr. Parsons had not paid Mr. Weatherall the \$3,000. (ref. Exhibit E-4, notes of the interview with Mr. Weatherall on October 2, 1995).

In reply to a question as to whether this matter would have affected Mr. Weatherall's parole application, which was under consideration at the time, Ms. Keir stated that the Parole Board would look only at the question of risk to the community in granting parole, and inmates are aware of this criterion. Mr. Weatherall was in fact released in November, 1995 and died within a month thereafter.

On October 4, 1995 Mr. Richmond again met with Mr. Weatherall and took down a verbatim account of questions and answers (Exhibit E-5). In response to Mr. Richmond's question, Mr. Weatherall stated the following: he arranged in approximately June of 1994 to transfer the registration of the vehicle to his stepdaughter, Bonnie Cutforth, in consideration for \$1.00, in order to allow her to drive the truck, instead of leaving it in storage. On or about April, 1995, he discovered that he had cancer; he had spoken to Mr. Parsons about his failing health. In May, 1995 he had asked Mr. Parsons if he would like to buy his truck. He originally quoted

Mr. Parsons a price of \$10,000.; he later told him that he could have the truck if he paid off approximately \$4,000. owing on the vehicle and in addition, gave him \$3,000. Mr. Parsons told him that he would use Mr. Brown as a middle man to buy the truck, as he was concerned that he could lose his job if it was discovered he was involved in a transaction with an inmate. Mr. Weatherall never spoke to Mr. Brown personally about purchasing the vehicle. He had instructed his stepdaughter, Bonnie Cutforth, to prepare a Bill of Sale in the amount of \$16,500.; he stipulated this amount because he did not want his stepdaughter to know how cheaply he had sold the truck for. After the sale of the truck was completed to Mr. Parsons, Mr. Parsons thanked Mr. Weatherall for the truck, stating "the truck is immaculate, your son kept it in excellent condition." Mr. Weatherall noted that he had not yet received the \$3,000. additional compensation from Mr. Parsons for the vehicle. Mr. Weatherall signed this document and indicated that his answers were truthful and given voluntarily.

As a result of their investigation the prison authorities decided to contact the R.C.M.P. to have them determine whether there was any criminality involved in respect of the transaction with the vehicle. On November 14, 1995 Constable Edwin Noble interviewed Mr. Weatherall at the Institution. He informed Mr. Weatherall that he had read his statement which he provided to Mr. Richmond. Mr. Weatherall confirmed to him that he had entered into an agreement to turn over the vehicle to Mr. Brown so that Mr. Parsons could receive the vehicle from Mr. Brown, in order to avoid the appearance of any transaction between the inmate and a prison official. Mr. Weatherall told Constable Noble that Mr. Parsons was to pay off the lien on the truck as well as provide him with \$3,000. cash. Mr. Weatherall stated that he had not received the money as yet but was "very certain" that he would receive the money from Mr. Parsons and was prepared to wait as long as necessary. He told the constable that he liked Mr. Parsons and wanted to do him a favour. Constable Noble concluded that there was no basis for further police intervention in this matter and so advised Warden Kassen. Constable Noble testified that, while Mr. Weatherall appeared to be frail at the time of the interview, he seemed to be mentally alert and had no problems recollecting the statement that he made to Mr. Richmond a month earlier.

Constable Noble also met with Mr. Parsons following his interview with Mr. Weatherall. He explained the purpose of his meeting; Mr. Parsons informed him

that he was involved in an employment dispute and he preferred not to make any kind of comment.

Mr. Siemens, the IPSO, testified that he had spoken with a Mr. Grant Jamieson who had worked for GMAC in Calgary; Mr. Jamieson confirmed that the lien on the vehicle had been paid through the Bank of Nova Scotia in the amount of \$4,230.57 (Ref. Exhibit E-6). He also met with Wendy Delaney, a Loans Officer with the Bank of Nova Scotia in Innisfail. She confirmed that the Bank branch had written a draft on behalf of Mr. Parsons to GMAC for the amount in question (see Exhibit E-6).

Ms. Bonnie Cutforth also testified on behalf of the employer. She noted that her stepfather Stanley Weatherall had arranged for her and her husband to take possession of the GMC truck; the arrangement was that they would pay the insurance on the truck and drive it. In order to facilitate this arrangement Mr. Weatherall transferred registration of the truck to her; however, it was understood that he retained the real ownership, that she was only looking after it for him. She testified that about February, 1995 Mr. Weatherall called her; he stated that he was thinking of selling the truck and asked her to contact GMC to determine its value. She was advised by one dealer that the truck was worth approximately \$22,000. Some time later Mr. Weatherall called her back indicating that he might have sold the truck; he said that he would let her know when the money was in the account. She advised him of the quote she got from the dealer; Mr. Weatherall stated that he would sell it to her for \$15,000.; however, she indicated that they could not afford that. He called back again saying that he did not have the money in the account yet. Around May 20, 1995 he said that a Mr. Bob Brown would be phoning to arrange a time to pick up the truck; he told her to prepare a Bill of Sale for \$16,500.

On the afternoon of May 24th, a Mr. Brown telephoned her asking for directions to her property. Mr. Brown arrived with another person; she had never met either person before (Mr. Parsons testified that he had accompanied Mr. Brown on this occasion to Ms. Cutforth's residence). Ms. Cutforth stated that Mr. Brown did not test drive the truck; he told her that he already knew of the truck. She never received any money for the vehicle, nor were there any discussions about payment.

Mrs. Maureen Vollmin also testified for the employer. Mrs. Vollmin was a friend of Mr. Weatherall and became the executor and sole beneficiary of his estate upon his death. She first met him in March of 1990 when she and her husband went to work for Mr. Weatherall on his farm. Approximately a year later Mr. Weatherall went to prison; while he was in prison Mrs. Vollmin and her husband visited him on a number of occasions. In early 1995 during one of these visits Mr. Weatherall asked her if she was interested in buying his truck; he indicated he would sell it to them for \$14,000.; he asked them, if they did not want to buy it, to find a buyer who would pay \$16,000. for the truck. They said that they could not afford it and did not know of any potential buyers. On another occasion Mr. Weatherall told them that Mr. Parsons liked his truck and wanted to buy it but could not purchase it directly from him; however he could do so through another person. She recalls Mr. Weatherall telling her that Mr. Parsons was going to pay him for the truck; she could not recall the amount involved in this transaction. Mrs. Vollmin stated that as executor of his estate she is familiar with his assets and bank accounts; she was unable to discover any deposit to his accounts for the truck. It was her understanding that Mr. Parsons was going to pay an unspecified amount for the truck; however, no money has shown up in any of the accounts relating to such a transaction.

Following the initial investigation by the IPSOs the Warden of the Institution, Mr. Mitch Kassen directed Mr. Gary Campbell, Chief of Works, to conduct a disciplinary inquiry. A notice of the disciplinary inquiry and Mr. Campbell's role as the Inquiry Officer was provided to Mr. Parsons on October 4, 1995 (Exhibit E-8). The so-called "Convening Order" issued by Mr. Kassen to Mr. Campbell set out a number of queries to which Mr. Campbell was to provide answers (Exhibit E-9).

On October 11, 1995 Mr. Campbell interviewed Mr. Parsons in the presence of his union representative, Mr. Beauchamp and an Institution employee, Ms. Debbie Cleaver, who took verbatim notes of the answers. Mr. Parsons told Mr. Campbell that he had purchased the 1991 truck from Mr. Bob Brown for \$16,500. He stated that Mr. Weatherall had approached him to purchase the truck but he refused because he did not want to jeopardize his job by dealing with an inmate. He also stated that he mentioned to Bob Brown, who knew Mr. Weatherall quite well, and who was looking for a truck, that Mr. Weatherall was interested in selling his vehicle. Mr. Parsons referred to a Bill of Sale (Exhibit E-12) dated May 26, 1995 which indicates

that he purchased the GMC truck from Brown for \$16,500. by cheque and that the vehicle was free of all liens. He stated in his response to Mr. Campbell's questions that he purchased the vehicle from Mr. Brown two or three days after Mr. Brown had obtained it. Mr. Brown had not registered the vehicle and decided to sell it because his wife did not like it. He acknowledged that it is an offence under the Code of Conduct to deal with an inmate; however he denied engaging in such conduct. He observed that, had he breached the Code of Conduct, he would not be driving the truck to work. When Mr. Campbell asked Mr. Parsons to provide a bank record of the transaction, Mr. Parsons responded: *"I don't think this is anybody's business, I have a Bill of Sale from Bob Brown showing that I bought the truck from him. My personal banking business is my business."* (Question 32, Exhibit E-10).

On October 13 Mr. Campbell phoned Mr. Brown at the hotel and bar which Mr. Brown owned. He again prepared questions ahead of time and recorded verbatim Mr. Brown's responses (Exhibit E-11). When asked how he found out the vehicle was for sale, Mr. Brown replied: *"I had my own sources for finding the vehicle was for sale. Tim (Weatherall) was a good customer of this establishment for a lot of years prior to incarceration. Brought it home and the wife took one look at it and didn't like it. I own a relatively new diesel truck already which is pretty nice, so I decided I would keep it and sell the truck I purchased from Tim's relatives. I then let people know it was for sale through my establishment. Kirk and another individual spoke up right away and I ended up selling it to Kirk."* Mr. Brown refused to give any details as to how much he paid for the vehicle, other than noting that it was clear of liens when he sold it to Mr. Parsons. He would not say how much Mr. Parsons had paid him for the truck. He also indicated that he considered Mr. Parsons to be a friend, although not a *"boozing buddy kind of friend"*.

On October 23rd Mr. Parsons appeared at a disciplinary hearing in the presence of Warden Mitch Kassen and Mr. Campbell, among others. Mr. Parsons was advised of Mr. Weatherall's statements indicating that he had transacted the sale of the vehicle to Mr. Parsons. Mr. Parsons responded: *"I'm telling you it's wrong. I did not have any business dealings with an inmate. My Bill of Sale says that I bought it from Brown."* Mr. Kassen proceeded to ask Mr. Parsons to produce documentation verifying that compensation was exchanged between him and Mr. Brown in respect of the truck. He

was suspended as of that day, and directed to produce the documentation by Friday, October 27th; he was told that his suspension would continue until that time.

On October 25th Mr. Parsons had a private meeting with Mr. Kassen at Mr. Parsons' request. Mr. Parsons testified that a friend of his, who had been suspended, had collected documentation on senior employees at the Institution; he told Mr. Kassen that he was in this "song book"; he also stated to him that "I'm tempted to use this; I'd like you to drop this". In cross-examination Mr. Parsons agreed that he was attempting to put pressure on Mr. Kassen to drop the investigation. According to Mr. Kassen, he reiterated to Mr. Parsons that he wanted him to produce the documentation regarding the transaction with Mr. Brown by that Friday. On the Friday there was another disciplinary hearing meeting with Mr. Kassen and the Warden, which was recorded and transcribed (Exhibit E-18). Mr. Parsons produced Exhibit E-13, a handwritten document prepared and signed by Mr. Brown, dated May 26/95, which states the following: *"Received from Kirk Parsons the sum of \$8500.00 cash as down payment for the purchase of one 1991 GMC Truck. Balance of \$8000.00 to be paid over the next 36 months by cash or cheque or in labor trade."*

Immediately following the disciplinary meeting with Mr. Parsons on October 27th Mr. Campbell again telephoned Mr. Brown. Mr. Brown verified the contents of the receipt (Exhibit E-13); he stated that Mr. Parsons had given him \$8500.00 in cash; he acknowledged that there was discrepancy between the receipt and the Bill of Sale; he explained that the Bill of Sale was for purposes of obtaining a licence; he also indicated that both the receipt and the Bill of Sale were prepared on the same day, that is May 26th. Mr. Campbell noted in his testimony that prior to October 27th there was no indication from Mr. Parsons or Mr. Brown that Exhibit E-13 existed.

Mr. Robert Brown was called upon to testify by the employer. He acknowledged that he is a friend of Mr. Parsons, although he rarely sees him socially; he also knew Mr. Weatherall. According to Mr. Brown he had heard from Mr. Parsons that Mr. Weatherall was trying to sell his truck for whatever was left on the lien, that is between \$4,000. and \$5,000. He had never spoken with Mr. Weatherall about purchasing the truck; he understood that Mr. Parsons had made arrangements with Mr. Weatherall for Mr. Brown to pick up the truck from a relative of Mr. Weatherall, and



that there would be a Bill of Sale provided in the amount of \$16,500. In his view the truck was worth between \$10,000. and \$12,000.

Mr. Brown had Mr. Parsons drive him to Ms. Cutforth's residence; "since Mr. Parsons had helped arrange things I got him to drive me". It was his intention to sell his own truck, pay off the lien on Mr. Weatherall's vehicle and keep it for himself. He kept the truck for a few days; however his wife hated it and refused even to ride in it.

Mr. Brown testified that when Mr. Parsons came into his bar on the next occasion he asked him if he was interested in buying Mr. Weatherall's truck from him; he offered him the truck for the cost of paying off the lien. His explanation for this arrangement was that he was fairly well off, that it never occurred to him to take the truck to a dealer; he acknowledged that he could likely have made \$7000. profit from a dealer on the sale of the truck. He observed that "in a small town you don't stick it to your customers", that Mr. Parsons knew what he paid for the truck and he did not want to alienate a customer.

Mr. Brown acknowledged that Exhibit E-12, that is, the Bill of Sale, was a fraudulent document and wrongly states the amount of the transaction; it also falsely states that the amount was paid in full by cheque. He stated that the amount indicated on the Bill of Sale was intended to correspond with the Bill of Sale provided by Ms. Cutforth; he did not have any explanation as to why it needed to correspond. Mr. Brown stated that sometime afterwards, perhaps a week or two later, he was approached by Mr. Parsons who indicated that he was in trouble at his place of work over the purchase of the truck, and that he needed a Bill of Sale showing that he bought the truck from him. Accordingly he drew up the receipt (Exhibit E-13). Mr. Brown acknowledged that this receipt was also false and that he might have prepared that document in October rather than in May 26, the date indicated on the document. He acknowledged as well that he "might have lied" to Mr. Campbell when he told him that the vehicle was clear of liens; he felt that Mr. Campbell's questions were an invasion of his privacy, and that the details of his transaction with Mr. Parsons were none of his business. He stated that he was not testifying under oath when he spoke with Mr. Campbell. Mr. Brown testified that if such a matter ever came up again he would do the same thing; he stated that "All my customers are my friends" and that he

would lie for his customers but would not lie under oath. He reiterated that he had bought the truck for himself and not on behalf of Mr. Parsons. When Mr. Parsons advised him that the truck was for sale, he knew it was a really good deal and he had Mr. Parsons speak on his behalf with Mr. Weatherall as Mr. Parsons had access to the prison but he did not.

Both Mr. Campbell and Warden Kassen testified as to the impact that the transaction between an inmate and an employee of the Institution could have on the operation of the penitentiary. Mr. Campbell noted that it is well known among staff that they are not to have dealings with inmates or their families, that such conduct can have significant security implications. It was his view that the other staff would not overlook such an incident and could well make problems for Mr. Parsons if he returned to the Institution. Warden Kassen observed that inmates continually attempt to gain power over staff through manipulation by involving staff in improper acts. By entering into an advantageous transaction with an inmate, the staff member is then obliged to that inmate; other inmates would know of the transaction and would use this information to compromise the staff member. He noted as well that such actions would undermine the trust that other staff members have in their colleagues, as well as undermine the Institution's reputation with the public. He observed as well that had Mr. Parsons come clean at some stage it might have been possible to have taken some other course of action, rather than discharge.

Warden Kassen referred to several employer documents concerning the conduct of staff, including the departmental Code of Discipline and Standards of Professional Conduct. He noted that all staff are required to acknowledge that they have received and understood these documents and Mr. Parsons had done so. He submitted that in purchasing the truck from an offender he had breached several provisions of the Code of Discipline and the Standards of Professional Conduct which prohibit staff from entering into any kind of personal or business relationship not approved by their supervisor or engaging in a personal business transaction with an offender or an offender's relatives. It also prohibits employees from using their position for personal gain.

Warden Kassen also testified that he has determined that the GMC truck in question is currently for sale by a dealer in Innisfail and is listed for \$18,900. He

acknowledged that he does not know where the dealer got the truck or what he had paid for it.

The grievor testified on his own behalf. He noted that he is 54 years of age, has three children and has been unemployed since his termination.

He testified that Mr. Weatherall had worked for him in the carpentry shop for two years and that he had given advice to Mr. Weatherall a number of times, particularly when his health was deteriorating. He stated that Mr. Weatherall had told him that because of his deteriorating health he would never be able to drive his truck again; he started asking him to buy the truck, at first suggesting a price of \$10,000. According to Mr. Parsons he told Mr. Weatherall that he could not afford it and that he is not allowed to deal with inmates. When Mr. Weatherall raised this matter again Mr. Parsons suggested to him that he offer it for sale to the general public. Later Mr. Weatherall again asked him to consider taking the truck and said he could have it if he paid off the lien; Mr. Parsons again told him that he could not do it. As a result of that conversation he told Mr. Brown about this offer; Mr. Brown suggested to him that he tell Mr. Weatherall that he (i.e. Brown) would consider buying the truck. He raised this with Mr. Weatherall, who said that he would offer Mr. Brown the same deal as he had offered the grievor. Mr. Weatherall then called Bonnie Cutforth and told her that Mr. Brown would purchase the truck, and she should prepare a Bill of Sale for \$16,500., the approximate value of the truck. Mr. Parsons said he knew nothing about any additional purchase price of \$3,000.; he also stated he had no other involvement in the transaction between Mr. Brown and Mr. Weatherall, other than driving Mr. Brown to Ms. Cutforth's residence, at Mr. Brown's request. Mr. Parsons stated that he was probably wrong in conveying the information from Mr. Brown to Mr. Weatherall but this constituted his only involvement with that transaction. He was with Mr. Brown when his wife refused to have anything to do with the truck; he then told Mr. Brown that if he decided to sell the truck he would like to know about it. Shortly thereafter Mr. Brown told him that he had to get rid of the truck and that he would give it to him for the same deal that he had received from Mr. Weatherall. Mr. Parsons agreed and then proceeded to pay off the lien.

Mr. Parsons acknowledged that Exhibit E-12, that is the Bill of Sale between himself and Mr. Brown, was inaccurate in several respects. He also stated that

Exhibit E-13, that is the receipt from Mr. Brown, was incorrect, in that the document was not prepared in May but rather was prepared in October and backdated. He agreed that he had not come clean with his superiors; he stated that he was scared and did not trust many people at the Institution. Mr. Parsons noted that three months ago he received a demand letter from a lawyer representing the Vollmins claiming he owed \$16,000. for the truck. He did not respond to this and has not heard anything further. He also noted that he would be willing to return to Bowden Institution and he still has a good relationship with his fellow workers there.

In cross-examination Mr. Parsons stated that he traded in the GMC truck for another vehicle of the same type; the dealer was asking approximately \$16,000. for the other vehicle; he agreed that he received a net gain of \$12,000. in respect of the GMC truck. He agreed as well that Mr. Weatherall had no reason to hurt him; he suggested that perhaps Mr. Weatherall was mixed up when he said Mr. Brown was a middle man. He acknowledged that some of his answers to the questions put to him by Mr. Campbell were a lie. He said he was not forthcoming because he assumed that they would conclude, as they did, that he and Weatherall had used Mr. Brown as a middle man. He acknowledged that he is a close friend of Mr. Brown. He agreed as well that he had lied about Exhibit E-12 and about Exhibit E-13. He thought that if he produced Exhibit E-13 it would appease the warden. He acknowledged as well that his reference to a "song book" at his private meeting with the warden on October 27th might be considered as blackmail.

#### ARGUMENT

The employer's representative submitted that the evidence demonstrates that not only was the grievor involved in the misconduct alleged by the employer but that the employer was entirely justified in discharging him. Mr. Climie acknowledged that the case against Mr. Parsons is largely circumstantial; however, he maintained that in this instance the evidence clearly meets the test for circumstantial evidence as enunciated in the Hodges case, referred to in Brown and Beatty, Canadian Labour Arbitration, Chapter 3:5100. That is, the evidence cannot support any other rational conclusion but that the grievor had improperly entered into a transaction with an inmate, and deceived the employer by engaging the services of a middle man in completing this transaction.

Mr. Climie noted that, while the various statements provided by Mr. Weatherall are clearly hearsay, this evidence is nevertheless admissible as it is both necessary and reliable; that is, Mr. Weatherall had no apparent reason to concoct this story; there is no suggestion that his mind was confused, and there are no other means of determining what transpired between Mr. Weatherall and Mr. Parsons. Accordingly, this evidence is admissible in accordance with the criteria set out by the Supreme Court of Canada in the Khan case (i.e. R. v. Khan [1990] 2 S.C.R. 531).

The employer's representative noted that Mr. Weatherall had given six accounts of what had happened to four different people - Mr. Richmond and Mr. Siemens on two occasions (including a signed statement), to Anne Keir, to Mrs. Vollmin, and to Constable Noble - all of whom believed that Mr. Weatherall was being truthful and had given the statement voluntarily and without malice towards Mr. Parsons. Moreover there is a great deal of other evidence which points to a transaction between Mr. Weatherall and Mr. Parsons: Mr. Parsons had taken ownership of the truck within three days, Mr. Weatherall relinquishing that ownership; Mr. Parsons had directly paid off the lien; he refused to provide documentary evidence to exonerate himself despite repeated requests to do so, and both Mr. Brown and Mr. Parsons admitted they lied to the employer about many of the details of their so-called transaction between the two of them. Mr. Climie also questioned a number of other aspects of Mr. Brown's and Mr. Parsons' credibility including their failure to explain why Mr. Weatherall would confer such a significant windfall on a relative stranger like Mr. Brown. He also noted Mr. Brown's concoction of Exhibits E-12 and E-13.

With respect to the appropriateness of the penalty, Mr. Climie noted that there was a clear breach of the department's Code of Discipline and the Standards of Professional Conduct. The seriousness of the threat to the operation of the Institution of such a breach was clearly delineated by Warden Kassen, that is, it undermines the integrity and the reputation of the Institution and is a direct threat to the security of the prison operation. Furthermore, there is Mr. Parsons' admission that he lied to the investigators and management throughout the investigation and his failure to acknowledge any serious wrongdoing. In this respect Mr. Climie referred to the adjudication decisions in Matthews (Board file 166-2-20753) and Francis (Board file 166-2-24111); Mr. Climie also cited the adjudication decisions in Kikilidis (Board files 166-2-3180 to 3182), Belix (Board file 166-2-17582), and Lachapelle (Board file

166-2-23956) where the adjudicator recognized that there are special circumstances and concerns arising in a prison environment.

The grievor's representative submitted that it is incumbent on the employer to prove that they dismissed Mr. Parsons for cause on the basis of the reasons set out in the letter of termination; that is, it must be established that Mr. Parsons entered into a relationship with an inmate and benefited from that relationship.

In his review of the evidence Mr. Dann noted that Mr. Richmond had never spoken with Mr. Parsons, that his notes of his meeting with Mr. Weatherall were not chronological, and there is some doubt as to whether Exhibit E-4 is actually completely accurate. Ms. Keir merely chatted with Mr. Weatherall; he did not tell her at any time that he actually made the deal with Mr. Parsons. He also noted that Ms. Cutforth had simply stated that Mr. Weatherall had asked her to write out the Bill of Sale in the amount of \$16,500., which accords with Mr. Parsons' version of events. He submitted that Mrs. Vollmin's testimony is suspect as she had an interest in the proceeds of the truck, and in addition her evidence was inconclusive and was based on one conversation where Mr. Weatherall simply said that he had made a deal concerning the truck. With respect to Mr. Campbell's evidence, Mr. Dann suggested that his exclusive concern seems to be that Mr. Parsons could not establish a paper trail. Mr. Dann submitted that a lack of documentation does not prove there was a transaction between Mr. Parsons and Mr. Weatherall.

Mr. Dann also submitted that Mr. Brown's testimony in these proceedings was consistent; he stated throughout that he had bought the truck for himself and that it was only when his wife indicated her dislike of the truck that he decided to dispose of it in a transaction with Mr. Parsons. The grievor's representative submitted that the only evidence actually implicating Mr. Parsons is the evidence of the supposed statements from Mr. Weatherall to Mr. Richmond and Constable Noble, which are clearly hearsay. While it is true that Mr. Parsons did lie to the investigators, his explanation that he did so because he panicked and got in over his head is entirely credible. He noted Mr. Parsons' evidence that it was Mr. Weatherall who had approached him about buying the vehicle and not the other way around. Accordingly, on the balance of probabilities the employer has not made out a case against the grievor.

In the alternative, Mr. Dann argued that discharge was too severe a penalty, given Mr. Parsons' long term service, his clean disciplinary record, and the fact that this was a single isolated incident. In support of his submissions the grievor's representative cited Amos (Board file: 166-2 14678) and Re Phillips Cables Ltd. And Teamsters Union, Local 213 (1988), 1 L.A.C. (4th) 242 (Hope).

#### REASONS FOR DECISION

The narrow factual issue to be determined in this case is whether the employer has established, on the balance of probabilities, that Mr. Parsons had engaged in a transaction with an inmate, Mr. Tim Weatherall, for the purchase of Mr. Weatherall's 1991 GMC truck, which resulted in the grievor receiving a significant personal gain. A subsidiary factual issue is whether Mr. Parsons had attempted to deceive the employer about the true nature of the transaction, by having Mr. Brown act as a middle man. The determination of these issues in large measure turns on the credibility of several statements allegedly made by Mr. Weatherall on the one hand, and the conflicting version of events proffered by Mr. Parsons and Mr. Brown on the other.

The most damning evidence against Mr. Parsons are the alleged statements made by Mr. Weatherall to Larry Richmond and Constable Noble among others, to the effect that he entered into an arrangement with Mr. Parsons to purchase his truck on what are indisputably very favourable terms, and that they agreed to use Bob Brown as a middle man. It is clear that these statements are hearsay; Mr. Weatherall had died prior to these proceedings and accordingly the veracity of these statements could not be tested by cross-examination of the alleged declarant. Accordingly, this evidence must be viewed with some caution. However, recent pronouncements by the Supreme Court of Canada have clarified that there can be circumstances where such statements are admissible and of probative value. In R. v. Smith, [1992] 2 S.C.R. 915 the court considered whether accounts of telephone conversations made by a murder victim were admissible. In concluding that some of the conversations were admissible the Chief Justice made the following observations at page 937:

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*To conclude, as this Court has made clear in its decisions in Ares v. Venner, supra, and R. v. Khan, supra, the approach that excludes hearsay evidence, even when highly probative, out of the fear that the trier of fact will not understand how to deal with such evidence, is no longer appropriate. In my opinion, hearsay evidence of statements made by persons who are not available to give evidence at trial ought generally to be admissible, where the circumstances under which the statements were made satisfy the criteria of necessity and reliability set out in Khan, and subject to the residual discretion of the trial judge to exclude the evidence when its probative value is slight and undue prejudice might result to the accused. Properly cautioned by the trial judge, juries are perfectly capable of determining what weight ought to be attached to such evidence, and of drawing reasonable inferences therefrom.*

In light of the Supreme Court's observations, and given the circumstances of this case I believe the statements in question are admissible and deserving of consideration. Firstly, several different people heard Mr. Weatherall state that he entered into a transaction with Mr. Parsons and that they used Mr. Brown as a middle man. The various versions of these statements, including one signed by Mr. Weatherall, are essentially consistent, and there is no reason given by anyone, including Mr. Parsons, as to why Mr. Weatherall would fabricate this version of events. Indeed, it was clear from many of the witnesses, including the grievor, that Mr. Weatherall had a high regard for the grievor and considered him a good friend. At least as important however is other evidence which tends to support the statements provided by Mr. Weatherall. There is no dispute that Mr. Parsons assumed ownership of the truck at least by May 26, 1995 (Exhibit E-12, the Bill of Sale). This was a mere two days after Mr. Brown had allegedly taken possession of the vehicle from Mrs. Cutforth on May 24th. Furthermore, it is not in dispute that Mr. Parsons paid off the outstanding lien, which Mr. Weatherall indicated was part of the financial arrangements that he made with Mr. Parsons. On the other hand, it is also clear that Mr. Brown paid nothing in consideration for the truck. It is Mr. Brown's contention that he had intended to assume ownership of the truck at the time but was dissuaded from doing so by his wife. I would note however that Mrs. Brown was not called to testify on behalf of the grievor to substantiate Mr. Brown's and Mr. Parsons' testimony. Furthermore, Mr. Brown and Mr. Parsons admitted that they were a party to the preparation and dissemination of fraudulent documents, and both acknowledged that they lied to the employer's investigators. In addition, Mr. Brown's testimony in this



proceeding had certain inconsistencies. He testified at first that he had prepared the so-called receipt (Exhibit E-13) sometime in May or early June; however, he later admitted that he prepared that document at Mr. Parsons' request in October, when Mr. Parsons was under investigation by his employer.

The leading case respecting the assessment of credibility of witnesses, which has been cited many times by both judges and arbitrators, is Faryna v. Chorny, [1952] 2 D.L.R. 354 where, at page 357 Mr. Justice O'Halloran of the British Columbia Court of Appeal enunciated the following:

*The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Applying the principles set out in the Faryna judgement, I do not believe that Mr. Brown's testimony is worthy of any credibility. Likewise, Mr. Parsons' credibility is very much suspect; in addition to the above, his reprehensible conduct at the private meeting with Mr. Kassen on October 25th, which the employer's representative properly characterized as an attempt of blackmail, hardly buttresses his credibility. Moreover, there are a number of aspects of Mr. Parsons' version of the events which defy common sense. No explanation was given either by Mr. Parsons or Mr. Brown as to why Mr. Weatherall, who hardly knew Mr. Brown, and had had no contact with him while in prison, would confer a significant windfall on him by allowing him to purchase the truck for the cost of the outstanding lien. Even Mr. Brown admitted that the sale of the truck to him on these terms would have benefited him in the amount of several thousand dollars. That Mr. Weatherall would wish to confer such a benefit on Mr. Parsons, whom he regarded as a friend and a confidant while in prison, makes some sense; to do so for Mr. Brown makes no sense whatsoever. Accordingly, I find as a matter of fact that Mr. Parsons had entered into a transaction with Mr. Weatherall to purchase his GMC truck on very favourable terms, and that he deliberately deceived his employer as to the true nature of this transaction. Furthermore, Mr. Parsons continued

this deceit throughout the investigation by producing fraudulent documents and lying to the employer about the relevant events, and I find that he continued to do so during these proceedings.

There is no doubt that the department views such conduct as a serious breach of its rules (Ref. the testimony of Mr. Kassen and Mr. Campbell as well as Exhibits E-20 and E-21). Given the environment in which persons like Mr. Parsons work, such concerns are entirely justified. In this context I would note the adjudication decision in Amos (supra) , which was cited by the grievor's representative. In that decision the adjudicator clearly viewed transactions between prison staff and inmates as a major infraction; the adjudicator imposed a one year suspension in circumstances that in my view were significantly less serious than in this case. It is also clear from Mr. Parsons' actions that he was fully aware of the rules in this regard, and of the grave consequences which could befall an employee who is in violation of them. Moreover, Mr. Parsons' behaviour during the employer's investigation, and his continuing denial that he entered into a transaction with Mr. Weatherall, deprives him of any consideration in respect of mitigation of penalty notwithstanding his 15 years of service and his clean disciplinary record.

Accordingly, for all these reasons the grievances are denied.

**P. Chodos,  
Deputy Chairperson.**

OTTAWA, June 24, 1996.