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Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

BETWEEN

**RONALD CARON, ROBERT JACQUES  
AND ALAIN RAINVILLE**

Grievors

and

**TREASURY BOARD  
(Solicitor General of Canada – Correctional Service)**

Employer

***Before:*** [Jean Charles Cloutier, Board Member](#)

***For the Grievors:*** Themselves

***For the Employer:*** [André Garneau, Q.C.](#)

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Heard at Quebec City, Quebec,  
March 15 and July 18 and 19, 2000.

## DECISION

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[1] Ronald Caron, Robert Jacques and Alain Rainville are correctional officers at Donnacona Institution of the Correctional Service of Canada. By letter dated March 26, 1999, each was given a financial penalty of \$1,000. The letter reads as follows:

[translation]

...

*On March 26, 1999, although your position was officially designated, you did not cross the picket line that was clearly open at about 9:48 a.m. for a period of approximately (15) minutes.*

*This situation is unlawful, contravenes section 102(1)(c) of the Public Service Staff Relations Act and is totally unacceptable. In view of the gravity of this situation, I am imposing a financial penalty of \$1,000. I formally advise you that, should there be a reoccurrence of that or a similar offence on your part, you will be terminated.*

...

[2] The grievors all filed grievances, dated April 8, 1999, which read as follows:

[translation]

...

*The employer unreasonably, arbitrarily and unjustifiably imposed a financial penalty on me.*

*CORRECTIVE ACTION REQUESTED*

*That the employer withdraw the financial penalty that it issued against me.*

...

[3] On November 22, 1999, the grievors received the following reply to the final level of the grievance procedure from Jacques M. Pelletier, Assistant Commissioner, Personnel and Training, Correctional Service of Canada:

[translation]

...

*I have carefully reviewed your grievance in which you grieve the \$1,000 financial penalty that was imposed on you because you did not report for your shift on March 26, 1999.*

*I also considered the comments made to the National Office by your union representative from the Union of Solicitor General Employees.*

*As the incumbent of a designated position, you are responsible to do what is necessary to report to work. I note that specific procedures for what was to be done when the entrance to the institution was blocked were issued to all employees. Furthermore, management reminded all designated employees of the consequences they might face if they refused to cross a picket line.*

*On March 26, about 9:40 a.m., the picket line was open for approximately 20 minutes. The police escorted all non-striking workers across the picket line. You had ample time to cross it, but you chose not to do so, being fully aware of the disciplinary measures to which you were exposing yourself as a result of this.*

*Designated employees must carry out their responsibilities. You are a peace officer: by refusing to cross the picket line, you jeopardized the safety of the staff, the inmates and even the public. I consider your action very serious, and I fully endorse the decision taken by local management in your case. In the circumstances, I have no choice but to dismiss your grievance.*

...

[4] At the outset of the hearing, Mr. Caron told me that he was representing himself and would also represent his colleague, Mr. Rainville. Mr. Jacques told me that he would represent himself. Mr. Caron objected to my jurisdiction to hear the grievances in view of paragraph 102(1)(c) of the *Public Service Staff Relations Act* (Act), which reads as follows:

**102. (1) No employee shall participate in a strike**

...

*(c) who occupies a designated position.*

Mr. Caron also indicated that my jurisdiction in grievance matters was limited to the contents of collective agreements. However, Mr. Caron did not withdraw his grievance or that of Mr. Rainville.

[5] I decided that I could assume jurisdiction under paragraph 92(1)(b) of the Act:

*92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to*

*(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,*

*(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),*

*(i) disciplinary action resulting in suspension or a financial penalty, or*

*(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or*

*(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty,*

*and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.*

[6] Furthermore, I relied on the decision (Exhibit E-1) of the Board in *Public Service Alliance of Canada and Treasury Board* (Board files 148-2-305 to 365) and, more specifically, on the following excerpt from page 4.

...

*Any employee subject to a disciplinary action can file a grievance. In addition, grievances that pertain to disciplinary actions resulting in either a suspension, financial penalty or termination of employment may, under section 92 of the PSSRA, be referred to adjudication before the Board. Therefore, the complainants who feel aggrieved by the disciplinary actions taken by the employer can contest them through the grievance process.*

...

[7] The grievors are grieving a financial penalty they received from the employer for not reporting to work on March 26, 1999. I consider this financial penalty to be disciplinary in nature and that paragraph 92(1)(b) of the Act gives me the jurisdiction to hear the grievances before me.

[8] On July 18, 2000, when the hearing resumed, I granted Mr. Caron's request to have the witnesses excluded. Counsel for the employer called two witnesses to appear, Claude Lemieux, Warden of Donnacona Institution, and Francis Brisson, Preventive Security Officer (PSO) at Donnacona Institution, and filed 13 supporting exhibits (E-1 to E-13). Each grievor testified and the grievors filed three supporting exhibits (S-1 to S-3).

[9] The parties agreed that the grievors are correctional officers who all occupied designated positions under the Act at the time the March 26, 1999 incidents occurred.

### The Evidence

[10] The evidence may be summarized as follows:

[11] It was established at the outset that Donnacona Institution is the only maximum security penitentiary in Quebec; thus, it has the most dangerous inmates and those serving the longest sentences.

[12] Approximately 190 correctional officers are employed at the institution and all but 15 occupy designated positions. The correctional officers occupying designated positions had been informed in advance that, under section 102 of the Act, they were forbidden to participate in a strike.

[13] In 1998, the employees used pressure tactics on a number of occasions prior to the March 26, 1999 demonstration (picket line).

[14] On each occasion, Mr. Lemieux, then Acting Warden of Donnacona Institution, sent memoranda to all employees, that is, to all correctional officers, regardless of whether they occupied a designated position. The purpose of these memoranda (see Exhibits E-4 to E-10) was to:

- a) inform staff of the employer's expectations in the event of collective action;
- b) give directives on how to proceed in the event of a picket line;
- c) advise all employees of the possibility that disciplinary action would be taken if the directives were not followed;
- d) advise the employees that it was their responsibility to report to work; and

- e) explain to employees, in detail, the procedure for reporting to work in the event of a picket line and, in addition, how the police would be deployed so that they could report to work (see Exhibit E-10).

[15] The grievors testified that the directives provided that a manager was supposed to be standing by the picket line in order to take attendance. However, on the morning of March 26, 1999, there was no manager there. The grievors stated that they looked for the manager so that their attendance could be noted and they could be given directives about what they were supposed to do. However, a union representative was taking attendance at the picket line, and the grievors gave him their names.

[16] The grievors admitted that they had not tried to cross the picket line and had not followed the directive to remain in their cars until the picket line was opened up by the police. The picket line, which was calm at the time, was opened up by the police at 9:48 a.m., allowing some fifty vehicles to go through. Subsequently, the line stayed open for five to ten minutes but the grievors did not cross it.

[17] The grievors stated that a picket line cannot be crossed, but did not establish the grounds for such a statement.

[18] The grievors alleged that they wanted to work, but also stated that no one had prevented them from doing so; they saw the open picket line while vehicles were passing through.

#### Employer's Argument

[19] The employer's argument may be summarized as follows:

- a) the grievors are correctional officers all occupying designated positions; they were also fully informed that there would consequences for refusing to cross a picket line (see paragraph 102(1)(c) of the Act);
- b) on the morning of March 26, 1999, the grievors knew what they were supposed to do, especially with regard to police intervention;
- c) the grievors had been given directives via a memorandum dated March 5, 1999 (Exhibit E-1), and they did not remain in their vehicles;

- d) on the morning of March 6, 1999, the picket line was calm and was opened up by the police at 9:48 a.m., allowing some fifty vehicles to pass through; subsequently, the picket line remained open for five to ten minutes but the grievors did not pass through;
- e) the grievors all occupied a designated position and did not want to cross the picket line, even though no one prevented them from doing so;
- f) the grievors were guilty of serious misconduct and fully deserve the \$1,000 financial penalty;
- g) the grievors did not follow the directives they had received and had no intention at all of reporting to work on the morning of March 26, 1999; and
- h) there is no attenuating circumstance that could mitigate the financial penalty imposed on the grievors.

[20] Counsel for the employer referred me to the following decisions: *Jones et al and Treasury Board* (Board files 166-2-9010 to 9012 and 9030 to 9037); *Gosselin et al and Treasury Board* (Board files 166-2-19279, 19295, 19281, 19190, 19178, 19288 and 19260); *Martini and Treasury Board* (Board files 166-2-22507); *MacDonald and Treasury Board* (Board files 166-2-22510 to 22512); *Frenette et al and Treasury Board* (Board files 166-2-22756 to 22759 and 22762 to 22765); *Guimond et al and Treasury Board* (Board files 166-2-22760 to 22764); *Berg et al and Treasury Board* (Board files 166-2-23678 to 23696); and *Morris and Treasury Board*, 2000 PSSRB 55 (166-2-29120).

### Grievors' Arguments

[21] The grievors' arguments may be summarized as follows:

- a) the cases cited by counsel for the employer are not relevant to their case;
- b) the employer never proved that the grievors refused to report to work;
- c) the employer had not assigned any manager to take attendance, contrary to what was stated in the directives received by the grievors (Exhibit E-10);

- d) there was no dangerous situation at any time, and the picket line was calm, as Mr. Brisson testified;
- e) the employer is responsible for seeing that employees occupying designated positions can enter the workplace;
- f) if a manager had been on site to take attendance, as provided for in the directives received by the grievors (Exhibit E-10), the latter could have obtained directives from him;
- g) the employer did not follow his own directives;
- h) the \$1,000 financial penalty is excessive, and the grievors request that it be withdrawn;
- i) a picket line cannot be breached; and
- j) the grievors were never advised that, if they did not report for work, they would be given a financial penalty of \$1,000; they should have stayed home that morning in order to avoid disciplinary action.

#### Reasons for Decision

[22] First, one must keep in mind that all the grievors did indeed occupy designated positions under the Act. They had been informed of the responsibilities incumbent on employees occupying a designated position in the event of a strike.

[23] I was asked to resolve the following two issues:

- a) are the grievors guilty of misconduct?
- b) is the financial penalty imposed on the grievors excessive?

[24] I note that the entire staff of Donnacona Institution, including the grievors, had received many memoranda that contained directives in the event of a strike (see Exhibits E-4 to E-10). The employer had certainly warned employees occupying designated positions to remain in their vehicles if there was a picket line when they arrived (see Exhibit E-10). On their own admission, the grievors did not follow that directive.



[25] Some fifty vehicles crossed the picket line when it was opened up by the police. In addition, the picket line remained open for five to ten minutes without being crossed by a single vehicle. I find, therefore, that the grievors could have crossed it if they had followed the directives they had been given and that they made the decision not to report to work.

[26] The idea of looking for a manager to record their attendance and obtaining directives from him in no way alters their obligation to report to work as employees occupying a designated position; they were aware of all the steps taken by the employer to facilitate their access to the workplace.

[27] The explanations given by the grievors to justify their absence from work on March 26, 1999 were so preposterous as to be laughable. They showed a cavalier attitude towards the employer and their duty to report to work; in addition, their attitude strengthened the impression that they were illegally participating in the legal strike of the other members of their bargaining unit.

[28] I find that, on March 26, 1999, the grievors were required to report to work and be ready to work and that they failed to meet these obligations. Moreover, I find that the failure was deliberate despite the many directives issued by the employer who, I have to say, went out of its way to ensure the smooth operation of the institution during the demonstrations and to safeguard the public and, above all, its employees.

[29] With regard to the \$1,000 financial penalty imposed on the grievors, I find that although it is borderline acceptable, it is justified in the circumstances in view of their conduct, since I am convinced that their misconduct was deliberate.

[30] For all these reasons, the grievances are dismissed.

**Jean Charles Cloutier,  
Board Member**

OTTAWA, September 15, 2000.

Certified True Translation

Maryse Bernier