

**Date:** 20010510

**File:** 166-2-29654

**Citation:** 2001 PSSRB 47



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**KEITH CLAYTON NOWEN**

Grievor

and

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

Employer

***Before:*** [Léo-Paul Guindon, Board Member](#)

***For the Grievor:*** Himself

***For the Employer:*** Richard Fader, Counsel

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Heard at Calgary, Alberta,  
January 9, 2001.

## DECISION

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[1] Keith Clayton Nowen, a Correctional Officer II, employed at Bowden Institution, filed a grievance on November 5, 1999 against a financial penalty equivalent to 15 days of salary (approximately \$2,698.) he received on October 4, 1999. The memorandum from Mitch Kassen, Warden, Bowden Institution, dated October 4, 1999 reads as follows (Exhibit E-1, tab P).

### HARASSMENT INVESTIGATION

*This memo is further to the memo dated September 2, 1999 and our meeting of October 1, 1999 regarding the harassment investigation conducted as a result of the complaint lodged by Mr. Beauchamp. You have had an opportunity to review the completed report, which clearly indicates that misconduct has occurred and the allegation of personal harassment has been upheld in its entirety. Your actions, both on and off duty, were unprofessional and very inappropriate.*

*In order to impress upon you the extreme seriousness of this misconduct and to encourage you to correct this type of inappropriate behaviour, I am imposing the following corrective disciplinary action.*

*You will serve a Financial Penalty equivalent to fifteen days of salary, which equates to approximately \$2,698.00. In order that this financial penalty does not result in undue financial hardship, I am willing to allow you to make arrangements to have the amount owed deducted equally each pay for a period not exceeding one year.*

*You will also be required to attend a formal harassment course as soon as one can be scheduled and you will be contacted when arrangements have been made.*

*In determining the severity of the discipline, I have taken the following factors into consideration:*

- your refusal to co-operate with the investigating team*
- your apparent lack of remorse for your actions*
- the disrepute you brought to the Service as a result of the requirement for RCMP intervention*
- the impact your improper behaviour had on other staff members*

*I also wish to advise that further unacceptable behaviour of this type may result in more severe disciplinary action being taken.*

[2] That penalty was reduced to the equivalent of three days' pay at the third level of the grievance procedure (Exhibit E-1, tab 17).

[3] The penalty was imposed on Mr. Nowen after a harassment complaint lodged by a co-worker, Jean-Jacques Beauchamp, and after a harassment investigation and Case Report dated August 20, 1999 (Exhibit E-1, tab O).

[4] Jean-Jacques Beauchamp testified at the request of the employer. On May 27, 1999, he filed a harassment complaint with Dale Gavel, Senior Project Manager, Drumheller Institution (Exhibit E-1, tab K), against his co-worker, Keith Clayton Nowen.

[5] The adversarial relationship between Messrs. Beauchamp and Nowen goes back to 1995 following a memorandum issued by the employer which denied Mr. Nowen access to the Institution. This memorandum was posted at the main gate where Mr. Beauchamp worked. At that time, Mr. Beauchamp was an officer of the union local. A copy of the memorandum was forwarded by Mr. Beauchamp to Mr. Nowen but he wanted a better copy of it. He requested it repeatedly by several phone calls to Mr. Beauchamp at work and at home and pursued his demands by coming to Mr. Beauchamp's residence on numerous occasions. The confrontations, visits and telephone calls continued until a grievance filed by Mr. Nowen was ended.

[6] In February 1999, Mr. Nowen travelled to make representations at the fourth level hearing of his own grievance. He requested the bargaining agent to reimburse him in the amount of \$325 for his travelling expenses.

[7] A motion was presented by Mr. Nowen at the local union meeting held on February 26, 1999 to get reimbursement and the motion was adopted (Exhibit E-1, tab A). Mr. Beauchamp was not present at the time of the proposal and adoption of the motion.

[8] Mr. Beauchamp refused to comply with the decision to reimburse the travelling expenses as requested by Mr. Nowen. At the March 10, 1999 local union meeting, in response to a question from Mr. Nowen, the past president (Nadine Kovacks) explained that the motion should not have been tabled and that the bargaining agent would not pay (Exhibit E-1, tab C). After that meeting, Mr. Beauchamp received a phone call at home from Mr. Nowen who expressed his anger in an intimidating tone of voice.

[9] The relationship between the two men worsened following the election of Mr. Beauchamp as president of the union local in March 1999. Mr. Nowen withdrew his candidacy just before the vote and indicated to Mr. Beauchamp, by a phone call to his house, that he had to resign for reasons of integrity. Mr. Beauchamp, who was the new President of the union local, refused to reimburse the expenses to Mr. Nowen and explained to Mr. Nowen that the bargaining agent's By-laws and Regulations provide that a grievor attending a level of the grievance process does so at his own expense. A copy of the By-laws and Regulations was provided to Mr. Nowen (Exhibit E-1, tab 20, section 13).

[10] In a letter dated March 6, 1999 (Exhibit E-1, tab B), Mr. Nowen explained his withdrawal because of his involvement in the C.S.N. (U.C.C.O.) recruiting campaign. He requested that an investigation should be conducted regarding the participation of Mr. Beauchamp in that campaign and that he should be removed from office following the findings. Mr. Beauchamp denied any participation in that campaign.

[11] In March 1999, on the picket line, Mr. Nowen again requested Mr. Beauchamp to pay his travel expenses and he reiterated his claim by letter dated March 24, 1999 (Exhibit E-1, tab D). Again, Mr. Beauchamp told him that the bargaining agent could not go against the By-laws.

[12] Mr. Nowen continued the adversarial relationship in the workplace. After the briefings at the beginning of shifts, he followed Mr. Beauchamp asking him to pay. The same request was repeated at break time and lunchtime, notwithstanding the repeated negative answer and warning by Mr. Beauchamp to Mr. Nowen to stop bothering him.

[13] The request was reiterated by repetitive phone calls to Mr. Beauchamp's workplace (at the Main Gate), sometimes on three or four occasions during one shift. Mr. Nowen placed at least 20 calls to Mr. Beauchamp's residence. From his notes, Mr. Beauchamp indicated that two phone calls were received on March 15 and four on March 16.

[14] Mr. Nowen showed up at Mr. Beauchamp's residence on March 17, 1999, at around 4:45 p.m., but got no answer when he knocked on the door. A phone call followed at 7:09 p.m. Two calls were received on March 31, 1999, and three on April 8, 1999. The call display feature on Mr. Beauchamp's telephone showed the

name "Genesis" when the call came from Mr. Nowen and Mr. Beauchamp did not answer.

[15] The situation took its toll on Mr. Beauchamp and added a lot of stress to his important responsibilities at the Main Gate where he is in charge. The supervisor was advised of the situation and changes were made to the schedules (avoiding having both individuals on the same shift) and to the routines. (Mr. Beauchamp was authorized to miss the briefing meetings.) Mr. Beauchamp stopped taking lunches or breaks outside his workstation at the Main Gate to avoid confrontations with Mr. Nowen.

[16] On April 2, 1999, Mr. Nowen went to the Main Gate Building and entered to request his payment. On being again refused by Mr. Beauchamp, Mr. Nowen stated while pointing his finger in Mr. Beauchamp's face, that he would bring Mr. Beauchamp to court.

[17] On April 8, 1999, Mr. Nowen showed up at the Main Gate but Mr. Beauchamp was scheduled for the next shift only. Mr. Nowen came to Mr. Beauchamp's home and knocked on the door, but no one answered it. He left but came back; he knocked on the back door, loudly enough to be heard by the people from the Institution on the phone with Mr. Beauchamp. Following advice he received from the Institution, Mr. Beauchamp called the Royal Canadian Mounted Police (R.C.M.P.). The R.C.M.P. officer met Mr. Nowen at the front of the house and told him to stop coming back to Mr. Beauchamp's residence.

[18] After consultation, Mr. Beauchamp filed a harassment complaint on April 14, 1999 (Exhibit E-1, tab G) and gave details on April 26 (tab I), April 28 (tab J) and May 27, 1999 (tab K).

[19] On June 29, 1999, the National President of the U.S.G.E. took the position that nothing in the U.S.G.E.'s By-laws prohibited a union local from paying expenses to the grievor attending at one of the steps of the grievance process. Consequently, the National President suggested that the local pay Mr. Nowen. A cheque was forwarded later on to Mr. Nowen by the U.S.G.E. National Office because Mr. Beauchamp maintained that the local union could not do it under the By-laws.

[20] R.C.M.P. Corporal Edward D. Plitz testified that he attended at the Beauchamp residence on April 8, 1999, at around 3:00 p.m., on a complaint of harassment filed by

Mr. Beauchamp. He talked to Mr. Beauchamp and advised Mr. Nowen that continuing to bother Mr. Beauchamp this way would cause the R.C.M.P. to stay involved. A letter from Corporal Plitz to D. Gavel (the harassment investigator at Drumheller Institution) reported his involvement (Exhibit E-1, tab O).

[21] Mr. Beauchamp informed the Warden, Mitch Kassen, that Mr. Nowen was harassing him at home and at work. After Mr. Beauchamp's complaint (Exhibit E-1, tab G) on April 14, 1999, two investigators conducted an investigation: Dale Gavel (Drumheller Institution) and Robby Nowicki (Edmonton Institution). Mr. Nowen received information of that investigation by memorandum dated April 16, 1999 (Exhibit E-1, tab H). On May 20, 1999, Mr. Nowen requested details of the complaint and he was answered on May 25, 1999 (Exhibit E-1, tabs L and M).

[22] Since April 21, 1999, Mr. Nowen has been on certified sick leave and a notification was sent on July 3, 1999 by the Warden to the insurance company after Mr. Nowen applied for long-term disability benefits (Exhibit E-4).

[23] The headquarters assigned the investigators after Mr. Kassen's approval and they issued a Case Report on August 20, 1999 (Exhibit E-1, tab O and Exhibit E-3). Mr. Kassen reviewed the Report and disciplined Mr. Nowen by imposing a financial penalty equivalent to 15 days of salary (Exhibit E-1, tab P). Mr. Nowen did not make any remarks about the Report at a meeting held on October 1, 1999. Mr. Kassen indicated that he considered the harassment a very serious situation and that the incidents that occurred at the Main Gate had a serious impact on security. Four factors were taken into consideration in determining the severity of the discipline (Exhibit E-1, tab P):

- (1) Mr. Nowen's refusal to co-operate with the investigating team;
- (2) the apparent lack of remorse for his actions;
- (3) the disrepute he brought to the Service as a result of the requirement for R.C.M.P. intervention; and
- (4) the impact his improper behaviour had on other staff members.

[24] In Mr. Kassen's view, the Commissioner's Directive (Exhibit E-1, tab 19) provides guidelines for harassment investigations but are not mandatory rules. The 30-day time

limit indicated at section 17(c) of the Directive can be extended. In the present case, the time limit was extended by decision of the investigators because Mr. Nowen was on sick leave.

[25] Todd Altman was present at the Main Gate Building on April 2, 1999 for part of the conversation between Messrs. Beauchamp and Nowen. They talked about money in loud voices and Mr. Nowen wanted to bring Mr. Beauchamp to court. Mr. Altman wrote a report on September 16, 2000, at Mr. Nowen's request (Exhibit E-5). In his testimony, he mentioned that maybe it was harassment between them but he was not aware of the details.

[26] The testimony of Nadine Kovacks, the former president of the local union, who was called by Mr. Nowen to testify about the grievance procedure (time limit for reply of the employer at each level of the grievance process), was objected to by counsel for the employer. I upheld the objection. This testimony is not relevant to the grievance in the present case. To grieve the wrongful application of the collective agreement (grievance procedure) by the employer, the employee needs to file a specific grievance with the approval of the bargaining agent pursuant to subsections 91.(1) and (2) of the *Public Service Staff Relations Act (PSSRA)*. In this case, the alleged violation of the grievance procedure by the employer is irrelevant to this grievance, which challenges a financial penalty, as it cannot be used to obtain redress.

[27] Mr. Nowen, testifying on his own behalf and arguing his own case, indicated that the Commissioner's Directive concerning harassment is mandatory and gives a clear responsibility to the employer to stop any harassment (Exhibit E-1, tab 19). According to him, mediation is the first step in resolving the problem, but Mr. Beauchamp did not want mediation.

[28] Mr. Nowen filed Exhibit E-7, relating to his allegation that the procedures for the investigation were not being followed in accordance with the policy on harassment in the workplace. The Deputy Commissioner, Rémi Gobeil, answered that procedures are being followed; the Warden of an institution has the authority to convene an investigation into a harassment complaint if the complaint was filed at the institutional level. The Deputy Commissioner explained to Mr. Nowen the consequences if he decided not to meet with the investigators on August 17, 1999.

[29] Mr. Nowen submitted that the harassment investigation was irregular and illegal on the basis that it was performed under the authority of the Warden of the Institution. Section 6 of the Redress Guidelines on Harassment (Exhibit E-1, tab 19) was not followed because the responsibility rests with the Deputy Commissioner to authorize complaint assessors.

[30] Section 17(c) of the Commissioner's Directive was not observed because the 30-day time limit between the receiving of the request for investigation and the notification of the result was exceeded. For Mr. Nowen, this is a second argument supporting the irregularity of the investigation. He submitted that the penalty imposed following the illegal investigation is void and the grievance should be granted.

[31] Counsel for the employer argued that he was taken aback by this argument, which was not submitted before the hearing and should not be accepted at this stage of the hearing. I took the objection under advisement, telling the parties that the alleged irregularity was a secondary issue.

[32] Mr. Nowen requested the union local to cover the cost of the airline ticket (\$300.) which he incurred to attend a fourth level grievance hearing in Ottawa. On February 26, 1999, a motion to reimburse his expenses was adopted at a local union meeting (Exhibit E-1, tab A). The union local decided not to pay Mr. Nowen's expenses and it was explained at the March 10, 1999 meeting that the motion went against the By-laws (Exhibit E-1, tab C). On March 24, 1999, the reimbursement was requested in writing to Mr. Beauchamp by Mr. Nowen (Exhibit E-1, tab D). On April 8, 1999, Mr. Nowen filed a Civil Claim against the bargaining agent and a Notice was delivered for a hearing to be held on July 8, 1999 (Exhibit E-1, tab E).

[33] The U.S.G.E. in Ottawa made the decision to reimburse Mr. Nowen for his claim and Mr. Beauchamp advised the Court to that effect on July 7, 1999 (Exhibit E-1, tab E).

[34] Mr. Nowen went to the Beauchamp residence on April 8, 1999 to serve a copy of the Civil Claim filed against the bargaining agent for the reimbursement of his travel expenses. Previously, through a phone call to the Institution, Mr. Nowen received information that Mr. Beauchamp was working at the Main Gate but Mr. Nowen found out that Mr. Beauchamp was scheduled for the evening shift when Mr. Nowen showed up at the Institution at 11:00 a.m. At 11:30 a.m., a woman answered the door at the Beauchamp residence and she informed Mr. Nowen that Mr. Beauchamp was not at



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home. Mr. Nowen stayed around and saw Mr. Beauchamp coming back home at 2:20 p.m. Mr. Nowen parked his car on the service road, went to the back door of the residence and rang the bell. Nobody answered. From his cellular phone, he called the Beauchamp residence but did not get a response. He went back again to the back door, rang the bell and asked at the window but did not receive any answer. He called the Institution to verify if Mr. Beauchamp had booked off for the shift. He said he was worried about Mr. Beauchamp in that something might have happened to him because he did not answer the door. At 2:47 p.m., he saw the R.C.M.P. patrol car coming and followed it to the front of the Beauchamp residence. He talked to the R.C.M.P. Officer (Cpl. E.D. Plitz) and was told to stop harassing Mr. Beauchamp. He requested the Officer to deliver the court claim copy but the Officer refused to do it. Mr. Nowen left the place after being there for 22 minutes and got to his house at 4:45 p.m. at the same time as his wife.

[35] On October 12, 2000, Mr. Nowen requested information from Cpl. Plitz and received an answer on October 18, 2000 (Exhibit E-2). Mr. Nowen denies that the response of the R.C.M.P. on April 8, 1999 was shortly after 3:00 p.m. because at that time he was reporting the incident to his wife by cellular phone. The response of the R.C.M.P. would have to be around 2:45 p.m.

[36] Mr. Nowen admitted that he called Mr. Beauchamp 15 times between February and April 8 to ask for reimbursement of his expenses.

[37] The incidents alleged by Mr. Beauchamp on March 17, 1999 (Exhibit E-1, tab G) never happened. Mr. Nowen was at a meeting with his lawyer, Brian A. Adair, on that date (Exhibit E-10).

[38] Mr. Nowen went to Mr. Beauchamp's residence on three occasions; the first was for a party in February 1993; the second time, in 1995, he or his wife showed up five to seven times at the Beauchamp residence trying to get a copy of a memorandum; and April 8, 1999 was the third time.

[39] Mr. Nowen submitted that Mr. Beauchamp filed a harassment complaint on April 14, 1999 (Exhibit E-1, tab G) and that Mr. Beauchamp's letter of April 26, 1999 (Exhibit E-1, tab I) has to be considered separately from the first one instead of being encompassed by the same harassment investigation.

[40] Mr. Nowen's performance review for the period September 1, 1988 to March 1, 1989 was "fully satisfactory" (Exhibit E-13).

[41] Mr. Nowen filed Exhibit E-14 relating to the adversarial relationship with his ex-wife (Suzanne Boulerice) in January 1990. The Unit Manager asked both of them to confine their conversations to dealing with professional concerns in the workplace, without blaming one or the other. In Mr. Nowen's view, this incident is not relevant to the harassment complaint filed by Mr. Beauchamp and the investigators should not have taken it into consideration in their report.

[42] Relating to the alleged surreptitious tape recording, Mr. Nowen indicated that he was in possession of a tape recorder but did not use it and never recorded anybody without his or her consent. On only two occasions (disciplinary measure; investigation meeting) did he request permission to record the interview. In cross-examination, Mr. Nowen admitted that his telephone was recording automatically all the conversations without the awareness or consent of the speaker (Exhibit E-1, tab N).

[43] The memorandum issued by the Deputy Warden to staff at the Front Gate on April 6, 1995 was filed as Exhibit E-15. Mr. Nowen requested a better copy from Mr. Beauchamp; Mr. Nowen could not get one from the Institution because he did not have access to the Institution. Mr. Nowen and his wife, both separately and together, showed up at the Beauchamp residence a few times in an attempt to get a better copy of the memorandum. Mr. Nowen indicated that he was suspended from work for 17 days after a report by Dr. T. Malcolm Campbell to the Deputy Warden and Mr. Nowen claimed \$3,248. in damages in a Civil Claim against the doctor in 1996 (Exhibit E-16). Mr. Nowen said that Mr. Beauchamp did not make remarks to him about backing off.

[44] Nobody in management talked to Mr. Nowen about Mr. Beauchamp's exclusion from briefings or schedule changes.

[45] The Performance Evaluation Report for the period October 1, 1999 to September 30, 2000 contains no reference to the incident with Mr. Beauchamp (Exhibit E-17).

[46] Mr. Nowen's spouse, Christina Hermina Genesis, corroborated his testimony regarding the 1995 incident (to get a copy of the memorandum). She explained that a recording device was put on their home telephone in 1992 following recommendations

of the R.C.M.P. after a few individuals made harassing phone calls to their residence. On March 17, 1999, her husband had an appointment with Brian Adair at 3:00 p.m.; he called her at 4:10 p.m. and she met him at home at 4:50 p.m.

### Arguments

#### For the Employer

[47] The employer has to prevent harassment in the workplace and to ensure that the workplace is free of harassment. The managers and supervisors are required to take action and respond to complaints and to put a stop to any harassment by imposing discipline.

[48] In this case, the motivation for the harassment (union matters) is irrelevant and the actions of an employee against a co-worker had an impact in the workplace. Mr. Beauchamp said he received phone calls at home and at his workplace at the Main Gate. The repetitive phone calls at the Main Gate can have a major impact on the security of the Institution and Mr. Nowen's multiple requests destroyed Mr. Beauchamp's work environment. The April 8, 1999, incident at Mr. Beauchamp's residence was a violation of his privacy and the situation was taking its toll on him and making him sick. The evidence showed a pattern of obsession on the part of the grievor, whose actions affected Mr. Beauchamp at work; the grievor's actions affected Mr. Beauchamp personally, as well as his family, and these actions constituted harassment.

[49] The credibility of the witness has to be tested. At the hearing, the grievor was insistent, requesting every detail of the facts. Since the March 10, 1999, local union meeting, it was clear that Mr. Beauchamp could not pay the amount requested by Mr. Nowen and his insistence is a significant aspect of his behaviour.

[50] Counsel for the employer submitted the following decisions: *Farnum* (Board file 166-2-15213) relating to credibility; *Wilson* (Board file 166-2-25841) relating to the parameters for the penalty; *Lachance* (Board file 166-2-26840) and *Bouchard and Larouche* (Board files 166-2-25952 and 166-2-25953) relating to a three-day suspension; *Lo* (Board file 166-2-27825) and *Matthews* (Board file 166-20-27336) relating to the Board's lack of jurisdiction to award a grievor compensation for legal costs and the legal foundation to award aggravated damages; and *Tipple v. Canada*

[1985] F.C.J. No 818 (Appeal No A-66-85) relating to the procedural unfairness of the employer's investigation.

For the Grievor

[51] Mr. Nowen explained that nobody had problems with his request for travel expenses with the exception of Mr. Beauchamp who made it a personal endeavour not to give it to him. The national union requested Mr. Beauchamp to reimburse the grievor and Mr. Beauchamp refused.

[52] Mr. Nowen showed up at the Beauchamp residence to serve Court papers and not to harass him; Mr. Nowen cannot understand Mr. Beauchamp's decision to call the R.C.M.P. after 20 minutes. He was surprised by the harassment complaint of April 14, 1999, and considered that the April 26<sup>th</sup> letter should be a second complaint. The investigators showed no compassion or empathy. The employer sent a letter to Sun Life Insurance to discredit him and increase his stress.

[53] He challenged by his grievance the penalty of \$2900 (equivalent to 15 days of salary). He did not want to reopen the harassment investigation after he submitted his grievance. The employer did not respect the time limit to reply to the grievance at the different levels of the grievance procedure and thereby increased the damages to the grievor.

[54] As stated in his testimony, Mr. Nowen submitted that the Commissioner's Directive 255 was not properly applied and he disagrees with the position of the Regional Chief Anti-Harassment (Exhibit E-19).

[55] Mr. Nowen submitted that each one of the following corrective measures he requested in his grievance are within the jurisdiction of an adjudicator appointed under the PSSRA:

1. *The financial penalty be rescinded. I find the financial penalty awarded by Mr. Kassen in the amount of \$2,698.00 to be severe since I have not had any prior convictions for harassment on my record.*
2. *A written apology from Mr. Kassen. His comments were unfounded and insulting.*

3. *That I be publicly exonerated as per Mr. Kassen [sic] commitment given to me at our October 4, 1999 meeting.*
4. *Corrective action be taken against Mr. Beauchamp and his wife Glenda Stewart for falsifying reports and statements.*
5. *Mr. Beauchamp writes a letter of apology to the RCMP for inappropriate use of RCMP resources with a copy to National Union, The Warden and myself. The call for the RCMP was unwarranted.*
6. *Mr. Beauchamp writes a letter of apology to the National Union, the Local Union with a copy to myself for his disgraceful behaviour in his handling of union business and dealing with members.*
7. *Mr. Beauchamp submit a letter of resignation from his position as President of the Local Union with copies to Mr. Rick Grovet, Regional Vice-President, National Headquarters and myself.*
8. *All information and paperwork with respect to this investigation and complaint be removed from my files held by the Correctional Service of Canada.*
9. *Reinstatement of at least 50% of my sick leave and annual leave credits used during the period of May 21, 1999 to September 30, 1999 for hindering recovery of a medical condition.*
10. *Special paid leave for a period of one month in duration to enable me to recuperate from the ordeal of this lengthy investigation.*

### Reasons for Decision

[56] The objection submitted by the employer's counsel relating to the fact that he was taken aback by the grievor's argument on the irregularity of the harassment investigation is dismissed.

[57] Counsel for the employer should be aware that the grievor alleged, at pages 13 of 14 of his grievance, that his rights under Commissioner's Directive 255 were violated. The grievor stated that the one-year time frame for filing a complaint was not respected by Mr. Beauchamp, who made allegations going back 14 years. The

grievor also stated that the report on the harassment investigation was issued outside of the 30-day time limit.

[58] Furthermore, Mr. Nowen indicated that the Deputy Commissioner and Assistant Commissioner, Corporate Review, have the responsibility to appoint harassment investigators and to ensure the report on an investigation is issued within 30 working days of the receipt of the complaint.

[59] Consequently, the arguments submitted on those grounds by the grievor, at the hearing, did not take the employer by surprise.

[60] However, I cannot accept the argument submitted by Mr. Nowen in support of his request that I rescind the financial penalty on the ground that the harassment investigation was irregular and illegal in light of the harassment policy (CD-255).

[61] My jurisdiction on a grievance referred to adjudication under subparagraph 92.1(b)(i) of the *PSSRA* is provided for in section 93 of the *PSSRA*:

*The Board shall assign such members as may be required to hear and adjudicate on grievances referred to adjudication under this Act.*

[62] I have to “hear and adjudicate” on the grievance referred to adjudication by Mr. Nowen contesting the disciplinary action (financial penalty equivalent to 15 days of pay subsequently reduced to three days’ pay) he received on October 4, 1999 (Exhibit E-1, tab P).

[63] The issue of the grievance is related to the disciplinary action taken by the employer on the grounds of alleged misconduct by the grievor for actions considered as unprofessional and inappropriate against a co-worker (Exhibit E-1, tab P).

[64] The employer based its decision on the harassment investigation Case Report completed by two investigators (Exhibit E-1, tab O), but presented evidence of the wrongful actions of the grievor through Mr. Beauchamp’s testimony. I have to consider the evidence adduced by the employer to be able to evaluate the grounds and the appropriateness of the disciplinary penalty. Mr. Nowen had the opportunity to submit evidence in support of his position and that evidence will be considered as well.

[65] As an adjudicator, I gave both parties to the grievance an opportunity to be heard and I shall render a decision after considering the grievance, as stated in subsections 97.(1) and (2) of the *PSSRA*.

[66] Consequently, the alleged irregularity in the harassment investigation performed prior to the employer's decision to discipline cannot be taken into consideration to allow the grievance. The grievor received full notice of the allegations against him by Mr. Beauchamp's testimony and had full opportunity to respond to them. The principle that "unfairness is wholly cured by the hearing *de novo* before the Adjudicator" was stated by the Federal Court of Appeal in *Tipple v. Canada (Treasury Board)* (*supra*), and has to receive application in the present case.

[67] On the merits of the grievance, the following actions by Mr. Nowen against his co-worker, Mr. Beauchamp, were established at the hearing.

[68] The starting point for Mr. Nowen's actions was his request to the union local for reimbursement of travelling expenses for representation at a fourth level grievance hearing on February 3, 1999. At the meeting of the union local held on February 26, 1999, Mr. Nowen tabled a motion and it was agreed to reimburse him \$300 for his travelling expenses. At the next meeting of the union local held on March 10, 1999, it was explained, in Mr. Nowen's presence, that the reimbursement was denied by the union local on the basis that the motion should have never been brought to the membership because it is against the union local's By-laws.

[69] Following the meeting, Mr. Beauchamp explained the refusal to pay Mr. Nowen, who requested verbally to be reimbursed. Mr. Nowen's request was made in writing on March 24, 1999 (Exhibit E-1, tab D) and given to Mr. Beauchamp on the picket line. Again, the refusal to reimburse was explained clearly to Mr. Nowen.

[70] At the workplace, Mr. Nowen repeated his request to Mr. Beauchamp every time he got the chance to be near him: after briefings, at breaks or at lunch time. Mr. Beauchamp's testimony was not contradicted on this point. Mr. Nowen did not deny that he made repeated phone calls to Mr. Beauchamp at his workstation located at the Main Gate of the Institution. Those phone calls could occur three to four times in one working shift. Mr. Nowen was told many times to stop that behaviour, to no avail. To avoid confrontations with Mr. Nowen, Mr. Beauchamp stopped taking lunches or break times outside his workplace. His supervisor excused him from briefings and

changed his schedule to avoid encounters with Mr. Nowen. Mr. Nowen's behaviour had a serious impact in the workplace and was a major disturbance to Mr. Beauchamp, who was upset by the situation.

[71] Mr. Nowen's admission that he made about 15 phone calls to Mr. Beauchamp between the end of February and the April 8<sup>th</sup> incident gives full credibility to Mr. Beauchamp's version.

[72] Mr. Nowen visited Mr. Beauchamp at his workstation at the Main Gate at least on one occasion on April 2, 1999. Mr. Altman, who gave evidence at Mr. Nowen's request, clearly established confrontation between the two relating to the reimbursement requested. This incident showed me clearly that the situation was deteriorating rapidly as a result of Mr. Nowen's behaviour.

[73] Mr. Nowen went further in his insistence by intruding on Mr. Beauchamp at his residence (i.e. by repetitive phone calls and a visit on April 8, 1999) thereby increasing the stress and this led to the harassment complaint.

[74] Mr. Nowen's behaviour was clearly demonstrated with respect to the April 8<sup>th</sup> incident when he went to Mr. Beauchamp's residence at about 11:30 a.m. to deliver a Court claim. He repeatedly stated that he had been at the house for only 22 minutes when the R.C.M.P. talked to him and he refused to acknowledge the fact that he was there from 11:30 a.m. to 3:00 p.m. as appears from his own testimony. These facts were corroborated by the testimony of Mr. Beauchamp and the R.C.M.P. Officer. Furthermore, Mr. Nowen maintained that he had the right to request reimbursement and that he did not show excessive insistence. He acted as someone ignoring the stress and anxiety created for Mr. Beauchamp by his behaviour, notwithstanding the warnings from Mr. Beauchamp to stop and his demonstration of irritation.

[75] The fact that the U.S.G.E. National Office recommended payment of the amount claimed, on June 29, 1999, does not alter the conclusion that Mr. Nowen's actions between March 6 and April 8, 1999 constituted harassment.

[76] Mr. Nowen's behaviour, involving a series of incidents, was inappropriate, vexatious in nature, distressing and irritating to Mr. Beauchamp. Mr. Nowen's conduct was not regarding a legitimate work-related purpose and it detrimentally affected



Mr. Beauchamp's work environment and Mr. Nowen should have known that his conduct was unwelcome.

[77] The disciplinary penalty equivalent to 15 days of salary, reduced to the equivalent of three days at the third level of the grievance procedure, is not too harsh a penalty in the circumstances. Mr. Nowen's grievance is therefore denied.

**Léo-Paul Guindon,  
Board Member**

OTTAWA, May 10, 2001.