

**Date:** 20030812

**Files:** 166-2-30053  
166-2-30054

**Citation:** 2003 PSSRB 69



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

---

BETWEEN

**GILBERT DIONNE**

Grievor

and

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

Employer

***Before:*** Léo-Paul Guindon, Board Member

***For the Grievor:*** Giovanni Mancini, lawyer, UCCO-SACC-CSN

***For the Employer:*** Jennifer Champagne, lawyer

---

Heard at Montréal, Quebec,  
April 23, 2003.

## DECISION

---

[1] Gilbert Dionne filed a grievance contesting his suspension without pay for an indeterminate period imposed on him on October 4, 1999 (Board file 166-2-30053), and his dismissal on March 2, 2000 (Board file 166-2-30054).

[2] Mr. Dionne was employed by Correctional Service Canada (CSC) at the Port-Cartier Institution as a Correctional Officer I (CX-01) from 1992 until his dismissal.

[3] On the night of October 3, 1999, Constable Yves Bourque, with the Sept-Îles municipal police, was doing his patrol and decided to check out a vehicle in the parking lot of the *Impact* bar because its occupants were behaving suspiciously. As he got out of his patrol car, the constable observed the two occupants leaving their vehicle and heading into the bar, and on the console between the front seats, he saw a cigarette pack with what appeared to be white powder on top of it. He called out to the person who had been in the driver's seat (Mr. Dionne) and asked him to open the door to his vehicle so he could check it out. After opening the door, Mr. Dionne took the cigarette pack on the console, shook it and placed it in a compartment in the console.

[4] At the constable's request, Mr. Dionne opened his wallet to remove his driver's licence. The constable then noticed the correctional officer badge in his wallet. The car belonged to Mr. Dionne's spouse.

[5] The constable took the cigarette pack out of the console compartment. From the console compartment, he removed approximately 0.2 grams of the white powder he found therein. He then told the two suspects that he believed this white powder to be drugs. Mr. Dionne then asked him to give him a break or he would lose his job. The constable replied that he would not give a break to a correctional officer caught in possession of drugs. Mr. Dionne and his companion, Gaétan Boisvert, were then arrested by Constable Bourque for possession of narcotics.

[6] After a summary search, the suspects were taken to the police station, where they were interrogated by constables Yves Bourque and Richard Bujold after being advised of their rights and their right to an attorney. During the interrogation, Mr. Dionne specified that the white powder was cocaine that a friend had given him in the bar. He added that Mr. Boisvert had not had anything to do with the cocaine.

[7] On October 4, 1999, the Institution's Acting Director, Serge Gagnon, was notified of the situation during a meeting held at the request of the local union's Vice

President (Richard Therrien), which was not attended by Mr. Dionne. Mr. Gagnon was informed that charges of drug possession would be laid against Mr. Dionne and Mr. Boisvert. The following day, on October 5, 1999, Mr. Gagnon received a phone call from Mr. Dionne, confirming this information and indicating that the substance was cocaine.

[8] Mr. Gagnon informed management officials, and a meeting with the Sept-Îles police was arranged for October 6, 1999. At this meeting, the Acting Director of the Institution was informed of the contents of the police report on the October 3, 1999 event (Exhibits E-14 and E-15).

[9] The Director suspended Mr. Dionne and Mr. Boisvert without pay and denied access to the facility (Exhibits E-2 and E-3) on October 4, 1999, and informed Mr. Dionne of this decision at a meeting held on October 6, 1999. Mr. Dionne was accompanied by his union representative. Mr. Dionne's work schedule for the September 30 to October 13 period indicated that he was off on October 4, 5, 6 and 13, 1999 (Exhibit E-2).

[10] On December 10, 1999, Mr. Dionne was informed that the decision about his suspension was pending additional information (Exhibit E-6).

[11] A certificate of analysis by Health Canada, dated January 7, 2000, and issued in response to the request made by the municipal police (Exhibit E-4) indicated that the substance was cocaine.

[12] A charge for possession of cocaine was laid against Mr. Dionne (Exhibit E-5), who pleaded not guilty at his court appearance.

[13] The Acting Assistant Director, Gilles Ringuette, informed Mr. Gagnon that a reporter for the *Le Nord-Est* paper had called him on February 22, 2000, to inquire about Mr. Dionne's status following the charge for possession of cocaine. Mr. Dionne's arrest and the charges for drug possession were broadcast on the news on March 7, 2000, by the Sept-Îles radio station (*CKCN-AM Radio*), which was heard by Mr. Gagnon (Exhibit E-10). The news bulletin was read out on March 7, 2000, five days after his dismissal.

[14] At the February 29, 2000 disciplinary meeting called by Mr. Gagnon, Mr. Dionne said that the cocaine belonged to his wife and that the cigarette pack did not belong to him. He indicated that he had accepted responsibility to protect his wife. He admitted

that he had asked the police officer to give him a break at the time of his arrest but that it was because of his consumption of alcohol, not the cocaine (Exhibit E-8). Mr. Dionne was accompanied by his union representative for this meeting.

[15] Mr. Gagnon informed Mr. Dionne of his dismissal, effective October 4, 1999, at a disciplinary meeting on March 2, 2000, in the presence of the union representative. He was given a letter stating the reasons for the decision, which said (Exhibit E-1):

*[translation]*

*You were found in possession of a white powder (cocaine) following your arrest by Sûreté municipale de Sept-Îles police officers on October 3, 1999, at approximately 1:45 a.m., in the parking lot of 680 boulevard Laure in Sept-Îles. Charges were laid against you by the Deputy Crown Prosecutor for the simple possession of narcotics, for which you appeared at the Palais de Justice de Sept-Îles on February 7, 2000.*

*This is unacceptable, unworthy of a Correctional Service Canada employee and totally incompatible with your role as a peace officer. As a result of these actions, you have tarnished the reputation of Correctional Service and lost the confidence of your employer. Consequently, pursuant to section 11 of the Financial Administration Act and the authorities delegated to me, you are hereby dismissed as of October 4, 1999. Please return your ID card and uniform to the security division in our facility by March 17, 2000.*

*If you wish to contest this decision, you may file a grievance at the last level of the grievance process.*

[16] At the March 2, 2000 meeting, Mr. Gagnon read Mr. Dionne his declaration, filed as Exhibit E-8, and gave him an opportunity to change its content, which he refused to do. He clarified the meaning of the second paragraph of the letter of dismissal (Exhibit E-1), indicating that the actions of which he was being accused were inconsistent with their mission of CSC, which aimed to reintegrate inmates into society as upstanding citizens. Correctional officers are central to the reintegration process and drug possession and charges of possession are inconsistent with their responsibilities. The Port-Cartier Institution enforced a zero-tolerance policy with regard to the consumption or possession of drugs.

[17] He also indicated to Mr. Dionne that CSC's reputation had clearly been tarnished by his actions, since the media had been informed of his arrest and the reasons for it (Exhibit E-10).

[18] During his testimony at the hearing into this matter, Mr. Gagnon clearly stated that the institution could not trust a correctional officer who had been caught with drugs in his possession since he thereby became a breach in the security system. Drug possession and charges of drug possession are inconsistent with the status and role of a peace officer as these pertain to the duties of a correctional officer. Peace officers are required to apply the law and must at all times show respect for the law, which is entirely inconsistent with the drug possession of which Mr. Dionne had been accused. He had attempted to conceal his misconduct by shaking the cigarette pack to clean off the drugs and by trying to pass the responsibility onto his spouse. He had used his status as a correctional officer to try to extricate himself from the situation with the police officer. He had aggravated the situation by changing his version of the facts.

[19] The employer had run an awareness campaign for all employees about addiction issues in consultation with Employee Assistance Program (EAP) officials. The information campaign aimed to familiarize them with the EAP and encourage employees who suffered from addictions to take advantage of the service before having to deal with the consequences of an arrest and job loss.

[20] The employer did not take any disciplinary measures against Mr. Boisvert, who was with Mr. Dionne during the night of October 3, 1999, since the latter took full responsibility for his actions. Mr. Boisvert was therefore reinstated to his duties and privileges following the employer's investigation.

[21] Mr. Dionne's performance evaluations had been satisfactory throughout his employment, with only one disciplinary mention on his file for being late in the past two years. In 1998, Mr. Dionne rescued a colleague from an assassination attempt by an inmate.

[22] In his testimony at the hearing into this matter, Mr. Dionne pointed out that he had obtained the cocaine from the barman at Mr. Boisvert's request. They had consumed the cocaine in the car. Mr. Dionne indicated that he did not have an addiction. He had taken drugs several years before and had been off them for a long

time. He attributed the October 3, 1999 consumption to marital problems at the time. He did not see any risk of a recurrence in the future.

[23] He knew the risks related to the purchase of drugs and indicated that he had taken a chance that he would not get caught. He had asked the police officer to give him a “break”, realizing that he would lose his job if he was arrested for drug possession. The night of the arrest, he had agreed with Mr. Boisvert that he would take full responsibility in order to save one of the two jobs. Afterwards, based on his lawyer’s advice, he tried to pass the responsibility onto his spouse at the two disciplinary meetings with the employer in order to save his job.

[24] Since his dismissal, Mr. Dionne has been taking courses in welding and rigging at the *A.W. Gagné* centre. He had worked for a sub-contractor for the *Alouette* company since 2000, and has been employed full-time since 2002.

### Arguments

[25] The employer demonstrated that Mr. Dionne had effectively committed the actions of which he had been accused and which were set out in the letter of dismissal.

[26] Drug (cocaine) possession must be assessed by the adjudicator in the specific context of CSC. Correctional officers are peace officers who are required to apply the law and ensure that it is respected within the penitentiary. The correctional officer’s duties are an important aspect of the security he/she is required to ensure in the establishment, in regard to both inmates and employees. The trust of the employer and colleagues towards a correctional officer are essential and basic to the security system.

[27] Drug possession is incompatible with the role of a correctional officer, who is responsible for inmates who are frequently incarcerated for drug-related crimes.

[28] Mr. Dionne tarnished the CSC’s reputation by getting caught in possession of cocaine and trying to use his status as a correctional officer to get out of a bind. The media coverage of the information on the infractions with which Mr. Dionne was charged clearly harmed the CSC’s reputation and the evidence of this coverage is admissible even if it came after the dismissal since it is subject to the substance of the supporting reasons.

[29] The version of events provided by Mr. Dionne changed during the process and showed his lack of honesty, which, on top of the other elements, resulted in an irreparable loss of confidence in him by the employer.

[30] CSC proved that:

- the grievor was guilty of a serious infraction, that of possession of cocaine;
- the grievor's conduct tarnished the image and reputation of CSC;
- his misconduct rendered him incapable of performing his duties; and
- the grievor's conduct was harmful to the operations and staff of the Institution.

[31] The employer's lawyer filed the following decisions in support of her arguments: *Flewwelling v. Canada*, [1985] F.C.J. No. 1129; *Boisvert* (Board files 166-2-25435 and 166-2-26200); *Fleming* (Board files 166-2-13488 and 166-2-13489); *Kikilidis* (Board files 166-2-3180 to 166-2-3182); *Courchesne* (Board file 166-2-12299); *Wells* (Board file 166-2-27802); *Sharma* (Board file 166-2-14588); *Cunningham* (Board file 166-2-18834); *Renaud* (Board files 166-2-30897 and 166-2-30898); *Lalla* (Board file 166-2-23969) and *Sarin* (Board file 166-2-15600).

[32] Mr. Dionne's lawyer submitted that the infraction in question was for a small amount of drugs. The infraction was less important than those underlying the decisions submitted by the employer's lawyer.

[33] Mr. Dionne committed the infraction outside his workplace and there was no suggestion that he was involved with the world of crime. The media coverage of the incident was restrained and limited. The evidence showed that Mr. Dionne was well respected at his work and did not demonstrate that the incidents of which he was accused had a negative impact in this regard.

[34] Based on the principles set out in the statement published by Mr. Brown and Mr. Beatty, the employer must clearly demonstrate that the infraction committed by an employee outside the workplace had a significant impact on the performance of his duties and on the perceptions of other employees towards him. These elements have not been demonstrated in this matter.

[35] The employer suspended and proceeded to dismiss Mr. Dionne without assessing the possibility of rehabilitation and accommodation in his case. From the outset of the disciplinary process, the employer was convinced that the possession of cocaine was incompatible with employment as a correctional officer. All it took was the official identification of the nature of the drug in his possession for the employer to proceed with the dismissal and support the suspension without pay for the time required to analyze the substance. This attitude on the part of the employer is inconsistent with the EAP policy, which aims to provide support to people with a drug or alcohol problem.

[36] The employer's loss of confidence in Mr. Dionne has not been demonstrated in this matter. On the one hand, the employer accepted the fact that Mr. Dionne exonerated Mr. Boisvert from any blame by accepting full responsibility and, on the other hand, gave no credibility to his version of the facts on all other aspects of the incidents. The employer did not lose confidence in Mr. Boisvert, who had been involved in the same incidents, and should have had the same attitude towards Mr. Dionne. Even though Mr. Dionne provided incorrect versions of the events, he acted out of fear of losing his job and on the advice of his lawyer, who was representing him in his criminal case.

[37] Mr. Dionne's lawyer presented the following decisions in support of his arguments: *Larson* (Board files 166-2-30267 to 166-2-30269); *Re Tober Enterprises Ltd. and United Food & Commercial Workers, Local 1518* (1989), 8 L.A.C. (4th) 232 and *Canada (Treasury Board) v. Phillips* (1991), 23 L.A.C. (4th) 403.

#### Reasons for decision

[38] The employer demonstrated that Mr. Dionne was caught in possession of cocaine on October 3, 1999, during a police search, and that a charge of narcotics possession was laid against him by the Crown Prosecutor. These facts were admitted by Mr. Dionne at the hearing.

[39] In his letter of dismissal (Exhibit E-1), the employer indicated that this fact was unacceptable, unworthy of a CSC employee and totally incompatible with the role of a peace officer. At CSC, correctional officers have to be able to perform their role as peace officers, which involves applying and upholding the law. I am in agreement with the Federal Court position in *Flewwelling (supra)*, which reads as follows:



[...]

*It appears to me that there are forms of misconduct which, whether they are prohibited by regulations or by the Criminal Code or by any other statute, are of such a character that they are readily recognizable by any reasonable person as incompatible and inconsistent with the holding by one involved in such conduct of a public office and in particular of an office the duties of which are to enforce the law. As Chief Justice Dickson recently had occasion to say for the Supreme Court in Fraser v. Public Service Staff Relations Board, unreported, decided on December 10, 1985:*

*The federal public service in Canada is part of the executive branch of government. As such, its fundamental task is to administer and implement policy. In order to do this well, the public service must employ people with certain important characteristics. Knowledge is one, fairness another, integrity a third.*

[...]

[40] In my view, drug (cocaine) possession, even in small quantities, is a form of misconduct that is readily recognizable by any reasonable person as incompatible and inconsistent with the duties of a correctional officer. Mr. Dionne was well aware, at the time of his arrest by the Sept-Îles municipal police, that his job was at stake. The agreement reached between Mr. Boisvert and Mr. Dionne “to save one of the two jobs” confirms that Mr. Dionne considered his misconduct as being incompatible with his job. The fact that he tried to appease the police officer into giving him a break also supports this fact.

[41] Moreover, in trying to appease Constable Bourque by falling back on his status as a correctional officer, Mr. Dionne tarnished the CSC’s reputation before a police force that, from time to time, was relied upon to act in partnership with CSC.

[42] The charge of narcotics possession laid against Mr. Dionne was broadcast by the media (*CKCN-AM Radio* in Sept-Îles), and although this broadcast took place five days after his dismissal (Exhibit E-10), this is admissible as evidence since it speaks to the factors that were known to the employer at the time the latter decided to dismiss Mr. Dionne. The *Le Nord-Est* journalist in Sept-Îles contacted the Port-Cartier Institution to verify his information on February 22, 2000 (Exhibit E-10), thereby demonstrating that the media and the community were already aware of Mr. Dionne’s misconduct before

the decision was made to dismiss him. In my view, these two elements confirm that Mr. Dionne's actions tarnished the CSC's reputation in the community.

[43] The employer lost confidence in his employee, mainly because the latter's actions were incompatible with his duties as a correctional officer and could result in Mr. Dionne's being a breach in the Institution's security system. To me, the risk posed by Mr. Dionne to the Institution's security and that of his colleagues and inmates is obvious, and is directly linked to his employer's loss of confidence in him, something that is certainly shared by his colleagues. I agree with the Deputy-Chairperson, M. Falardeau-Ramsay, who indicated in *Courchesne (supra)* :

[...]

*I would concur in the following comments made by Arbitrator Smith who writes as follows at page 4 and 5 of Kikilidis:*

*"The Employer considers the Grievor to be a security risk. The Employer has the responsibility for the safety of the personnel and inmates and the security of the institution. An adjudicator should not attempt to second guess the Employer in this regard. Correctional Officers and the Penitentiary Service has responsibilities and tasks quite different than those in most other areas of the Public Service. An Adjudicator must not only weigh the interests of the Employer and those of the Employee, but the interests of other employees, inmates, and the public at large must also be taken into account.*

[...]

[44] The rules made by Anderson, J., which have since become known as the Millhaven criteria, are applicable in this case since the official's misconduct occurred outside the workplace. Board Member R. Vondette Simpson applied them as follows in *Wells (supra)* :

[...]

*In the Flewwelling case (Board file 166-2-14236) as in this case, the majority of the conduct giving rise to the disciplinary action arose away from the workplace. The adjudicator stated, at pages 15 to 17:*

*The test commonly applied by arbitrators to determine whether management has the right to discharge an employee are (sic) set forth in the frequently cited case of Re Millhaven Fibres Ltd., Millhaven Works, and Oil Chemical and Atomic Workers Int'l., Local 9-670 (1967), 1(A) Union-Management Arbitration Cases, 328 (Anderson).*

*In that case at page 329, Judge Anderson sets forth rules that have become known as the Millhaven criteria and his words are worth repeating here:*

*There are a number of arbitration cases which deal with disciplinary matters arising out of the conduct of an employee at a time when he is not in the Plant. Generally speaking, it is clear that the right of management to discharge an employee for conduct away from the Plant, depends on the effect of that conduct on Plant operations.*

*In other words, if the discharge is to be sustained on the basis of a justifiable reason arising out of conduct away from the place of work, there is an onus on the Company to show that:*

- (1) the conduct of the grievor harms the Company's reputation or product*
- (2) the grievor's behaviour renders the employee unable to perform his duties satisfactorily*
- (3) the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him*
- (4) the grievor has been guilty of a serious breach of the Criminal Code and thus rendering his conduct injurious to the general reputation of the Company and its employees*
- (5) places difficulty in the way of the Company properly carrying out its functions of efficiently managing its works and efficiently directing its working forces.*

[...]

[45] In this matter, I conclude that the grievor's conduct harmed the CSC's reputation and that his behaviour rendered him unable to perform his duties satisfactorily for the above-mentioned reasons.

[46] I cannot accept the argument used by the grievor's lawyer to the effect that Mr. Dionne suffers from a drug addiction and that his misconduct is a direct result of this illness. On the one hand, I have not been given any evidence that Mr. Dionne shows any

symptoms of drug addiction or that his drug consumption is a result of a pathology. Mr. Dionne himself testified that his drug consumption did not present a problem and that the October 3, 1999 incident was an isolated incident resulting from a difficult period in his marriage. I do not believe that an occasional drinker or drug user such as Mr. Dionne has an addiction. Prior to the October 3, 1999 arrest, the employer had no reason to believe that Mr. Dionne had such a problem.

[47] For the above-mentioned reasons, after reviewing all of the relevant factors, I conclude that the dismissal was not an unreasonable measure under the circumstances.

[48] Considering the circumstances in this case, the employer was justified in suspending Mr. Dionne without pay from the moment he was informed of his arrest and that charges would be laid against him for drug possession. The seriousness of the allegations of misconduct were such that the employer was required to remove Mr. Dionne from his workplace for the time required to conduct the investigation and collect all the facts related to his arrest.

[49] Consequently, the grievances are dismissed.

**Léo-Paul Guindon,  
Board Member**

OTTAWA, August 12, 2003.

P.S.S.R.B. Translation