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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**KANWALBIR DOSANJH**

Grievor

and

**TREASURY BOARD**

(Solicitor General Canada - Correctional Service)

Employer

**Before:** Joseph W. Potter, Vice-Chairperson

**For the Grievor:** Leo McGrady, Counsel

**For the Employer:** John Jaworski, Counsel

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Heard at Vancouver, British Columbia,  
September 10 to 13, September 24 to 26, 2002,  
and January 7 to 9, 2003.



## DECISION

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[1] Kanwalbir Dosanjh was a Correctional Officer at the Regional Health Centre (RHC), Pacific Region employed by Correctional Service of Canada (CSC). His employment was terminated effective May 25, 2001, and he filed a grievance concerning this action. This decision pertains thereto.

[2] The letter of termination was dated August 9, 2001, and was signed by Terrance Sawatsky, Executive Director, RHC. The letter reads in part (Exhibit E-11):

*Further to our disciplinary meeting on July 9 and 13, 2001, I have now completed a comprehensive review of this entire matter.*

*The disciplinary report was shared with you and your union representative. In our meeting of July 13, 2001, the fact that you have denied all of the allegations and there is no evidence of remorse has been considered. I accept the findings of the disciplinary investigation report that you were in serious violation of the Service's policy on the use of the electronic network and that you were abusive by word or action to Regional Health Centre's staff members.*

*Your actions constitute an extremely serious contravention of the Code of Discipline and the Standards of Professional Conduct. The employer-employee trust has been severely breached and is, in my opinion, beyond repair.*

*Based on my review and analysis, and in accordance with Section 11 (2) (f) of the Financial Administration Act, I have concluded that your actions warrant termination from the Correctional Service of Canada effective May 25, 2001.*

[3] Mr. Dosanjh's grievance was referred to the Public Service Staff Relations Board on December 13, 2001. Following a series of unsuccessful attempts to resolve the matter short of an adjudication hearing, the case was heard commencing on September 10, 2002. The employer filed 48 exhibits and presented 13 witnesses in support of its case. The bargaining agent filed 11 exhibits and I heard from six witnesses in support of its case.

[4] At the outset of the hearing, the parties requested an order for the exclusion of witnesses. This request was granted.

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Background

[5] Mr. Sawatsky testified that there were three incidents involving Mr. Dosanjh that were the subject of an internal investigation (Exhibit E-26), the results of which led Mr. Sawatsky to conclude that termination of the grievor's employment was the only recourse he could take. Also considered was Mr. Dosanjh's disciplinary record. Those three incidents can be identified as follows:

The Kitchen Incident

[6] Gordon Robertson, a Correctional Officer at the RHC, was working on March 25, 2001, and one of his tasks was to count the inmates as they proceeded to the meal line. This task necessitated the presence of two officers and fellow Correctional Officer Kellie Rhyness was supposed to be helping Mr. Robertson.

[7] Ms. Rhyness was working with the grievor, Mr. Dosanjh, in another area at the RHC when she received a call on her radio from Mr. Robertson instructing her to report to the kitchen area to conduct the inmate count. Mr. Dosanjh had previously instructed Ms. Rhyness to remain where she was and perform her duties there. Upon hearing the radio request, Ms. Rhyness left and proceeded to the kitchen area to do the inmate count.

[8] Upon arriving in the kitchen, Ms. Rhyness explained to Mr. Robertson that she was late because Mr. Dosanjh had instructed her not to leave. Mr. Robertson told Ms. Rhyness that proper procedure was for her to assist in the inmate count in the kitchen.

[9] A few minutes later, Mr. Dosanjh entered the kitchen area. Ms. Rhyness testified Mr. Dosanjh appeared angry and he said to her that she was not doing her job properly and that she did not listen.

[10] Mr. Robertson interjected and told Mr. Dosanjh that it was necessary to have two people to conduct the count. Ms. Rhyness testified that at that juncture, Mr. Dosanjh yelled and swore at Mr. Robertson, calling him a "fucking idiot". This was done in front of the inmates who were present in the kitchen. Ms. Rhyness was asked to write an incident report on this event, which she did (Exhibit E-47).

[11] Mr. Robertson's testimony did not differ in any material way from that of Ms. Rhyness. After being called a "fucking idiot", Mr. Robertson followed Mr. Dosanjh to the staff side of the kitchen and said to him: "you can't talk to me like that". Mr. Dosanjh replied: "I can talk to you however the fuck I want". This conversation was heated and two supervisors approached Messrs. Robertson and Dosanjh and told them to stop. They did.

[12] Mr. Robertson then left the kitchen area and returned to his office, where he wrote up a note on his computer concerning this incident (last page of Exhibit E-28). He stored this note in his "M" drive on his computer, which was an area where he stored personal matters. Later Mr. Robertson filed a formal complaint concerning this incident (Exhibit E-45).

[13] Mr. Dosanjh's evidence did not differ materially from that cited above up to the point where Mr. Robertson interjected into the conversation between Mr. Dosanjh and Ms. Rhyness, saying Ms. Rhyness was supposed to be there. Mr. Dosanjh testified that he turned to Mr. Robertson and said: "I'm not talking to you" and started to walk away. Mr. Robertson followed him and said: "carry on, you fucking idiot". Mr. Dosanjh kept walking away and Mr. Robertson continued to follow him, at which point a heated discussion ensued and Mr. Dosanjh told Mr. Robertson to "fuck off". The supervisor intervened, again as described above.

[14] This incident was ultimately investigated but not until after incident number two, which involved an access to Mr. Robertson's e-mail file (see Exhibit E-10).

#### The E-Mail Incident

[15] Mr. Robertson was working the day shift on April 21, 2001, and was situated in an office called the Nova Concord, CCRU office (Exhibit G-3). Mr. Robertson was working at the computer inputting data on random urinalysis testing that was to be done later that day on selected inmates. Working in the CCRU office with Mr. Robertson that day were Correctional Officers David Acker and Rene Froese. There is only one computer in the CCRU office.

[16] In doing this work, Mr. Robertson had to log on to the computer and access his e-mail. The records indicate he logged on at 7:56 A.M. on April 21 (see Exhibit E-24).

[17] Fellow Correctional Officer, Arnold Vis, was working in an area directly beside but separate from the CCRU office, in an area called the bubble (see diagram Exhibit G-3). This is essentially a control post where the officer responds to inmates' needs and the officer can electronically open and close cell doors.

[18] At 8:30 a.m., Mr. Vis asked Mr. Robertson to relieve him so he could go to the kitchen and get some breakfast. Mr. Robertson left the CCRU office, inadvertently leaving the computer on, and went into the bubble to relieve Mr. Vis, who only left for about five minutes. Following Mr. Vis' return, Mr. Robertson remained in the bubble and spoke to Mr. Vis for about 15 or 20 minutes before leaving. Mr. Robertson did not go back into the CCRU office, but instead he exited the bubble and went out to the hallway to speak to two correctional supervisors who were passing by, and secured their signatures on his urinalysis forms.

[19] Following this, Mr. Robertson went to the admission and discharge (A and D) area to prepare it for the urinalysis testing. This required him to log on to the computer in the A and D area, and he did so at 9:02 a.m. according to the computer log which shows what time everyone at the RHC logs on to a computer (Exhibit E-32).

[20] After doing the inmate urinalysis testing, Mr. Robertson went into his e-mail file and noticed some files were empty, including the urinalysis files he had recently worked on. He thought that odd, so he checked the deleted files, and they too were empty. He then went to a recovery program and was able to retrieve his files. In doing so, he noticed an e-mail containing some of his files had been sent to an account labelled k\_dosanjh @ hotmail.com. Among the items in the file was his personal account of the kitchen incident involving himself and Mr. Dosanjh, cited earlier.

[21] Mr. Robertson returned to the CCRU office and inquired as to why his folders were empty. In the office were Messrs. Froese and Acker and both said they had not done it. Mr. Froese suggested Mr. Robertson call the supervisor, which he did.

[22] Mr. Acker testified that he was assigned to work in the CCRU on April 21, 2001, along with Messrs. Robertson and Froese. Mr. Acker observed Mr. Robertson working on the CCRU computer doing urinalysis-related work, when he (Mr. Acker) and Mr. Froese left to go to the kitchen to assist with the inmate meal line.

[23] After completing their kitchen assignment, Mr. Acker said he returned to the CCRU office with Mr. Froese. Under cross-examination, he could not recall if Mr. Dosanjh accompanied the two officers back from the kitchen or not.

[24] In any event, Mr. Acker said when they returned to the CCRU, Mr. Robertson was still there on the computer. Mr. Dosanjh came in and Mr. Robertson left, and Mr. Dosanjh went on to the computer. Mr. Acker did not see specifically what Mr. Dosanjh did on the computer but did notice the screen going blue.

[25] Mr. Dosanjh then logged off, and Mr. Acker logged on to check his e-mails. The records indicate that Mr. Acker logged on to the computer at 08:55 (exhibit E-32). These same records indicate Mr. Froese had logged on prior to Mr. Acker, but Mr. Acker stated he did not recall Mr. Froese being on the computer. Mr. Acker was asked if he sent the e-mail to Mr. Dosanjh's home and he stated he did not, and furthermore he did not know Mr. Dosanjh's home e-mail address.

[26] Mr. Froese's recollection of the events was different from that of Mr. Acker. Upon finishing their kitchen line work, Messrs. Froese and Acker returned to the CCRU office. Mr. Dosanjh accompanied them, discussing what Mr. Dosanjh felt was an important and somewhat controversial e-mail in which he provided his view of a union representative acting in a managerial position (Exhibit E-35).

[27] Mr. Dosanjh sought Mr. Froese's opinion about the e-mail, but Mr. Froese had not seen it, so they proceeded to the CCRU office to look for the e-mail in question. Mr. Robertson was not in the CCRU office when the three officers arrived.

[28] Mr. Froese stated he logged on to the computer but there was no e-mail there from Mr. Dosanjh, so he logged off. He chatted with Mr. Dosanjh for 5-10 minutes, then Mr. Froese stated he left the CCRU office to get a cup of coffee. While he was in the CCRU office, he said he was the only one to log on to the computer.

[29] In cross-examination, Mr. Froese acknowledged that he wrote an observation report on April 21, 2001, stating that he, Mr. Dosanjh and Mr. Acker left the kitchen area at 08:40 and went to the CCRU office. He stated it would take 4-5 minutes to walk from the kitchen to the CCRU office. Mr. Froese acknowledged that Exhibit E-32 indicates he had logged on to the computer at 08:51. Additionally, Mr. Froese's report

also indicates Mr. Dosanjh remained in the CCRU office for 10 minutes before leaving (Exhibit E-29).

[30] The evidence of Mr. Dosanjh differed from that of Messrs. Robertson and Acker, but was similar to that of Mr. Froese.

[31] According to Mr. Dosanjh, he met both Mr. Acker and Mr. Froese in the kitchen and he asked Mr. Froese about a specific e-mail that he (Dosanjh) had sent out earlier that morning (Exhibit E-35).

[32] Mr. Froese stated to Mr. Dosanjh that he had not received the e-mail, so the three correctional officers left the kitchen area and walked to the CCRU office where Messrs. Froese and Acker were assigned. As they approached the door to the CCRU office, Mr. Dosanjh stated that Mr. Robertson was just exiting the office and slammed the office door shut in the face of Mr. Dosanjh.

[33] Mr. Dosanjh testified that the three correctional officers entered the CCRU office and Mr. Froese immediately logged on to the computer. No one else was logged on to the computer at that point. Mr. Froese checked his e-mail and none had been received from Mr. Dosanjh.

[34] Then, Mr. Dosanjh went on to the computer, but the work he was about to do did not require him to log on. He completed his work, then left.

[35] Doug Richmond, the Deputy Executive Director of the RHC, was called on his pager while returning from Vancouver on April 21 and was told about the e-mail incident. Mr. Richmond proceeded directly to the RHC. Mr. Richmond noticed that Mr. Dosanjh was in the area, so he spoke to Mr. Dosanjh, telling him an officer had filed a complaint about accessing the officer's files on the computer. When asked if he had any knowledge of this, Mr. Dosanjh replied he did not.

[36] Mr. Richmond then instructed Mr. Dosanjh to resume his duties and informed him that an investigation would likely ensue.

[37] Mr. Dosanjh offered to bring his home computer into the RHC. Mr. Richmond said it was not necessary but asked Mr. Dosanjh to check his e-mails when he got home. He did so. What Mr. Dosanjh found upon checking his computer were three files which belonged to Mr. Robertson and which had been forwarded to Mr. Dosanjh's



home computer. A copy of these files was made by Mr. Dosanjh and eventually given to management (Exhibit E-28). The documents show Mr. Robertson's files were sent to Mr. Dosanjh's home hotmail account at 08:48 the morning of April 21, 2001.

[38] The next person Mr. Richmond spoke to was Mr. Robertson who appeared to be very tense and his voice was trembling. Mr. Robertson explained that his e-mail account had been accessed and it appeared Mr. Dosanjh had gone into his files and transferred them. Mr. Richmond then spoke to the correctional supervisor who assigned work and asked that Messrs. Dosanjh and Robertson not be scheduled to work together or in close proximity.

[39] In the afternoon of April 21, Gary Ellison, a Correctional Officer at RHC, received a telephone call from Mr. Dosanjh asking that the staff addresses on the computer be checked to see if Mr. Dosanjh's home e-mail address was contained therein. Mr. Ellison checked and noted that Mr. Dosanjh's home e-mail address was not there and informed Mr. Dosanjh of this.

[40] When Mr. Ellison next reported for work, on April 23, he learned that Mr. Dosanjh was being investigated for reasons related to his home e-mail account. Mr. Ellison then checked the computer and found Mr. Dosanjh's home e-mail address had been added.

[41] Upon seeing this, Mr. Ellison spoke to the Section Head of Client Services, Troy Nikirk, and asked if it could be determined when the address book was changed.

[42] Mr. Dosanjh testified he has never denied adding his home e-mail address to the computer system at work, and he did this so fellow employees could contact him at home about a social outing he was organizing for all RHC employees.

[43] (Note: The investigation report, Exhibit E-26, at page 17 states that the file which contained a listing of addresses showed Mr. Dosanjh's home e-mail address had been added on April 22, 2001, at 11:02 p.m. There was no dispute that this was when Mr. Dosanjh added his home e-mail address to this computer file at work.)

[44] On April 23, 2001, a convening order establishing a Board of Inquiry was drawn up by Mr. Richmond (Exhibit E-8).

[45] After the e-mail incident, Mr. Robertson was off on sick leave. Upon his return, he wrote an incident report describing the e-mail events (Exhibit E-46). A verbal reprimand was ultimately issued to Mr. Robertson for leaving the computer on when he left the CCRU office.

[46] An investigation was conducted and Mr. Dosanjh maintained he had nothing to do with accessing the computer in the CCRU office and deleting files belonging to Mr. Robertson. He also maintained he had nothing to do with forwarding e-mails or messages to his home computer. He maintained that position during the adjudication proceeding, as well.

[47] In April 2001, Mr. Nikirk was the computer information specialist at the RHC. Mr. Nikirk testified in detail about how a message on someone's work computer can be forwarded to his or her home computer. I do not feel it is necessary to delineate this as there was no dispute on the technical manner in which this was done. Mr. Nikirk did state that the e-mail system in use at the RHC was password protected, so individuals could only access their own e-mail system by inputting their own personal password.

[48] On April 23, Mr. Richmond informed Mr. Nikirk that there was some computer activity which took place on April 21 and he was asked to seize Mr. Dosanjh's computer. He wrote an observation report concerning this (Exhibit E-22).

[49] Mr. Nikirk then seized the hard drive of two computers used in the RHC. After that, he examined the data another computer generated relating to the time employees log on to the different computers in the RHC. He created a file, sorted by work station, of this data (Exhibit E-24).

[50] The file (Exhibit E-24) shows that Mr. Robertson logged on to the CCRU computer at 7:56 a.m. on April 21, 2001. The next person to log on to that same computer was Mr. Froese at 8:51 a.m., followed by Mr. Acker at 8:55 a.m. (see page 3). Mr. Nikirk testified that it is not possible for someone to log on to the computer until the previous person is logged off. The system does not reveal when a person logs off.

[51] The third incident which led the Warden to conclude that Mr. Dosanjh should be terminated will be called the relief incident.

The Relief Incident

[52] On the evening shift of April 28, 2001, Mr. Dosanjh was assigned to work in the CCRU office with Jack Mar, a Correctional Officer, level 2.

[53] During the shift, the phone rang in the CCRU office and an officer by the name of Clint Jackson was calling looking for relief. Mr. Dosanjh volunteered to provide the relief, and he left to go to the location where Mr. Jackson was working.

[54] In order to access the area where Mr. Jackson was, a barrier door had to be opened. It was partly opened when Mr. Dosanjh arrived and as he proceeded to go through the barrier, the door started to close. He stepped back, as it was a large steel door. Mr. Jackson was the individual who could open and close the door electronically.

[55] As Mr. Dosanjh stepped back, the door started to open again, and so Mr. Dosanjh was about to proceed through when it suddenly started to close, so he again stepped back. This opening/closing pattern continued for 3-4 minutes before Mr. Dosanjh left the area and returned to the CCRU office, saying he would not provide the relief.

[56] This incident was also investigated by the Investigation Board (Exhibit E-26).

[57] Mr. Dosanjh testified that the first time he was made aware of this incident was when he received a copy of the Investigation Report which was July 3, 2001. Mr. Dosanjh was asked to provide his side of the story to all the incidents which were investigated.

[58] Upon reading the April 28 incident, Mr. Dosanjh called Mr. Jackson at his home and asked him if he recalled the incident. He replied he did, and he wrote a letter of explanation to Mr. Dosanjh which was appended to Mr. Dosanjh's rebuttal (Exhibit G-2).

[59] Mr. Jackson said he opened and closed the gate in a humorous gesture and he apologized for doing so at the hearing.

Repercussions of the Incidents

[60] Mr. Sawatsky said he reviewed the Investigation Report (Exhibit E-26), as well as Mr. Dosanjh's rebuttal (Exhibit G-2), and concluded that Mr. Dosanjh was responsible

for moving the e-mail of Mr. Robertson to his own personal e-mail account. Mr. Dosanjh later tried to add his personal e-mail account to an internal software program in an attempt to mask what he had done.

[61] These incidents, coupled with the Kitchen incident of March 25 and the Relief incident of April 28, as well as Mr. Dosanjh's past disciplinary record, and the continued denial of the events, led Mr. Sawatsky to conclude that he could no longer trust Mr. Dosanjh. The past disciplinary record of Mr. Dosanjh included a written reprimand issued on July 28, 2000, and a \$90. financial penalty issued on December 14, 2000. Mr. Sawatsky felt that Mr. Dosanjh's continued presence at the RHC could jeopardize fellow correctional officers, and the work location required all officers to act as a team. The letter of termination (Exhibit E-11) dated August 9 was then signed by Mr. Sawatsky.

#### Employer Argument

[62] The facts here indicate that there was no question the e-mail was sent from Mr. Robertson's file to Mr. Dosanjh's home e-mail account.

[63] On April 21, 2001, Mr. Robertson was doing urinalysis testing in the CCRU office on the computer. At about 8:30 a.m., Mr. Vis, working in an adjacent office, asked Mr. Robertson to replace him for a few minutes.

[64] Mr. Robertson then left the CCRU office, inadvertently leaving the CCRU computer on, and went to replace Mr. Vis, staying there for 20-25 minutes.

[65] At 8:40 a.m., Messrs. Acker, Froese and Dosanjh left the kitchen area and proceeded to the CCRU office, a walk of some 4-5 minutes.

[66] According to Mr. Acker's evidence, Mr. Dosanjh went on to the CCRU computer after entering the office. We know Mr. Robertson was still logged on and Exhibit E-32 shows he had logged on at 7:56 a.m. The next person to log on to the CCRU computer is Mr. Froese at 8:51 a.m., then Mr. Acker at 8:55 a.m. Mr. Robertson then logged on to the A and D computer at 9:02 a.m.

[67] We know the e-mail was sent to Mr. Dosanjh's home address at 8:48 a.m., April 21, 2001, as evidenced in Exhibit E-28.

[68] What is not known is when an employee logs off the computer. However, before anyone new can log on, the individual using the computer has to log off, or someone has to log off on his or her behalf.

[69] Consequently, at 8:51 someone had to log Mr. Robertson off the computer in order for Mr. Froese to log on. There were only three employees in the CCRU office at that time, so one of them had to send the e-mail.

[70] Mr. Acker stated that when they entered the CCRU office, Mr. Dosanjh was the first to go on to the computer. Mr. Dosanjh admitted he was on the computer, but stated he did not need to log on in order to do his work.

[71] The issue comes down to credibility.

[72] Mr. Dosanjh said he spoke to Mr. Froese about an e-mail he had recently sent, seeking Mr. Froese's view on it. As Mr. Froese had not seen it, they proceeded to the CCRU office and Mr. Froese logged on but couldn't find the e-mail. Mr. Acker logged on, but Mr. Dosanjh did not ask Mr. Acker to show Mr. Froese the e-mail, even though it had been important to Mr. Dosanjh. The matter was simply dropped.

[73] The logs show Mr. Dosanjh logged on to other computers that day, but he did not send this important e-mail to Mr. Froese until the next day. If it were a true story, Mr. Dosanjh would have taken the time to retrieve the e-mail while in the CCRU office and get Mr. Froese's view on it.

[74] Mr. Froese did not mention this event in his initial statement to management, made on April 21 (Exhibit E-29). Then, on June 7 he included this aspect in a report he wrote for Mr. Dosanjh (Exhibit G-2).

[75] We know the e-mail was sent from the CCRU office at 8:48 a.m., and there were only the three employees in the office at that time. It is unlikely Mr. Froese sent the e-mail to Mr. Dosanjh as Mr. Froese is his friend, and there was never a suggestion Mr. Froese did it. Mr. Acker could not have done it as he said he did not know Mr. Dosanjh's home e-mail address. That only leaves Mr. Dosanjh.

[76] The e-mail incident is the most serious of the allegations. Mr. Dosanjh has repeatedly denied his involvement. Had he admitted it, we probably would not be here.

[77] The incident in and of itself is not the most serious of breaches. The continued denial makes it serious, as correctional officers must be honest and trusted.

[78] Counsel for the employer referred me to the following adjudication decisions: *Dhanipersad*, 2001 PSSRB 72 (166-32-30072); *Trevena* (Board file 166-2-28562); *Dupont Canada Inc. v. Communication, Energy and Paperworkers Union of Canada, Local 28-0 (Panter Grievance)*, [2001] O.L.A.A. No. 676; *Welsh*, 2001 PSSRB 29 (166-2-29492).

#### Argument for the Grievor

[79] Until the fall of 2000, Mr. Dosanjh had a good record and had received a number of commendations including one for bravery.

[80] The work environment was a difficult one, and it was made more difficult by virtue of the raid that began in 2000 when the current bargaining agent raided the Public Service Alliance of Canada.

[81] It is significant when one reads the investigation report into the incident in that it suggests Mr. Dosanjh must come up with the alternative explanation, and if he can't he must be guilty.

[82] The bargaining agent has no onus to come up with an alternative possibility. While the bargaining agent believes Mr. Dosanjh was set up by someone, there is no obligation to delve into this theory.

[83] All of the evidence is circumstantial and should not be sufficient to meet the higher standard of a criminal charge, which is essentially what this is.

[84] The employer has not met the higher test, which is to prove the allegation to a high degree of probability on the basis of clear, cogent and convincing evidence. The employer's investigation used the lower standard of proof, not the higher one, in finding Mr. Dosanjh guilty.

[85] Only Mr. Dosanjh was investigated. There was no one else the employer turned its mind to, to investigate.

[86] The employer alleges Mr. Dosanjh tried to cover up his actions. What did he actually do? He cooperated at every possible turn. He checked his home computer and called Mr. Richmond to say he had the e-mails in question. Is this the conduct of

someone engaged in a cover-up? This is absolutely contrary to the actions of a guilty man.

[87] He printed a copy of the e-mails, and gave them to the investigator, which is hardly evidence of a cover-up.

[88] He has never denied putting his home e-mail in the system. He did this openly, so other employees could contact him at home about social events he was organizing.

[89] The information in the e-mails is of no value to Mr. Dosanjh. He knew about the kitchen incident, so why risk his career to get a document he did not need? It makes no sense to suggest he did it.

[90] To suggest that the e-mail had to be sent by one of the three employees in the CCRU office ignores the fact Mr. Robertson was there, too, and he could have sent the files as likely as not. Mr. Dosanjh stated he saw Mr. Robertson exiting the CCRU office just before they entered.

[91] Mr. Acker stated he went on the computer after Mr. Dosanjh, but the logs show Mr. Froese went on the computer before Mr. Acker. Mr. Froese's evidence is consistent with this and should be believed.

[92] Any penalty imposed on Mr. Dosanjh should be minor for the kitchen incident. That is the only one that should be considered here.

[93] Mr. Dosanjh should be reinstated and jurisdiction should be retained to deal with this element, and items related thereto, like benefits.

[94] The following cases were referred to me by counsel for the grievor: *Steele*, [2001] B.C.L.R.B.D. No. 77; *Emergency Health Services Commission -and- Ambulance Paramedics of British Columbia, Canadian Union of Public Employees, Local 873* (Arbitrator Rod Germaine, May 9, 2001); *Chénier*, 2002 PSSRB 40; *Holliday* (Board file 166-2-14297); *Corus Premium Television -and- Communications, Energy and Paperworkers Union of Canada, Local 1900*, (Arbitrator P.A.L. Smith, Q.C., June 12, 2002).

Reply

[95] For the bargaining agent to suggest Mr. Robertson sent the e-mail to Mr. Dosanjh's home account would have required Mr. Robertson to know, in advance, that Mr. Dosanjh was about to enter the CCRU office. He simply could not have known it as Mr. Dosanjh could have been walking to any number of other destinations.

[96] Interest cannot be awarded in cases like this: *Ogilvie and Treasury Board (Indian and Northern Affairs)* (1984), 15 L.A.C. (3d) 405; *Matthews* (Board file 166-20-27336).

Decision

[97] There were three alleged incidents that led to the decision to terminate Mr. Dosanjh's employment. Two of those were less serious and I will deal with them first.

[98] The "kitchen" incident involved Mr. Dosanjh and Mr. Robertson engaging in a heated exchange. Mr. Dosanjh claims he was sworn at by Mr. Robertson, and Mr. Robertson claimed it was Mr. Dosanjh who was swearing.

[99] An impartial observer in the heated exchange was Ms. Rhyness. She testified it was Mr. Dosanjh who yelled and swore at Mr. Robertson. Her written report, completed immediately after the incident, indicates the same thing.

[100] I was not made aware of any reason why Ms. Rhyness would fabricate her testimony. In fact, Ms. Rhyness and Mr. Dosanjh were friends. Ms. Rhyness' evidence as to the way the events unfolded was consistent with that of Mr. Robertson. I find, where the evidence of Mr. Dosanjh differs from that of Mr. Robertson on this incident, I prefer the evidence of Mr. Robertson.

[101] In light of this, I find Mr. Dosanjh did confront Mr. Robertson and engaged in a heated exchange in front of inmates. This is not an appropriate way to resolve differences of opinion and I accept the employer's finding in regard to this incident.

[102] Insofar as the "relief" incident is concerned, Mr. Dosanjh has admitted he did not provide relief to Mr. Jackson. However, the reason he did not do so was that Mr. Jackson, in a joking fashion, pushed the open and close button on the gate, causing Mr. Dosanjh to back off rather than proceed through.



[103] This event is, in my view, such a minor incident as to be virtually insignificant. I have absolutely no doubt in my mind that this incident would have attracted no attention from management if it were isolated. Even coupled with the other events, in my view nothing untoward was done by Mr. Dosanjh. He did not provide relief, but the reason for it was fully explained, in my mind, by Mr. Jackson.

[104] This leaves the third incident, one I termed the e-mail incident. This is, in the employer's submission, the most serious. I agree. Mr. Dosanjh has continually denied he sent Mr. Robertson's files to his home computer.

[105] Counsel for the bargaining agent conceded that it was one of four people who actually pressed the "send" button on the CCRU computer and sent Mr. Robertson's files to Mr. Dosanjh's home e-mail address. Those four possibilities were Mr. Robertson, Mr. Acker, Mr. Froese or Mr. Dosanjh.

[106] Mr. Acker stated he did not know Mr. Dosanjh's home e-mail address and this was never refuted. He could not have done it.

[107] For Mr. Robertson to have done it, he would have had to have been in the CCRU office at the time the e-mail was sent, namely 8:48 a.m. Mr. Vis testified that he asked Mr. Robertson to relieve him in the bubble at 8:30, which Mr. Robertson did. In doing so, Mr. Robertson left the CCRU office.

[108] Mr. Vis stated that he left for five minutes or so, which means he returned at 8:35 a.m. He testified, and this was unshaken, that Mr. Robertson remained in the bubble where they chatted for some 15-20 minutes. This would bring the time to 8:50-8:55 a.m. This is after the time the e-mail was sent to Mr. Dosanjh's home.

[109] This version corresponds with what Mr. Robertson stated took place.

[110] Mr. Dosanjh stated that, as he was about to enter the CCRU office, Mr. Robertson was exiting and he slammed the CCRU office door in Mr. Dosanjh's face. According to Mr. Froese's written report on the incident, at Exhibit E-29, the three officers left the kitchen area at 8:40 a.m. There was no dispute that it would take 4-5 minutes to walk from the kitchen to the CCRU office.

[111] This means the three officers arrived at the CCRU office at 8:44 or 8:45 a.m. Mr. Dosanjh testified Mr. Robertson was exiting the CCRU office as they got there.

Therefore, by Mr. Dosanjh's own testimony, Mr. Robertson was not in the CCRU office at 8:48, when the e-mail in question was sent.

[112] Where this version differs from any other, I prefer the evidence of Mr. Vis, another impartial observer, who testified Mr. Robertson was not in the CCRU office at 8:48, the time the e-mail was sent. Consequently, Mr. Robertson could not have sent the e-mail to Mr. Dosanjh's home account.

[113] Mr. Froese was a friend of Mr. Dosanjh and there was never any insinuation that he sent the e-mail to Mr. Dosanjh's home account.

[114] If we simply eliminate all potential people, except the grievor, who could possibly have done it, the only one left who could have done it is the grievor himself. Although he has continually denied it, I can come to no conclusion other than that he sent Mr. Robertson's files to his home e-mail address. By the grievor's own admission he was in the CCRU office at 08:48 when the e-mail was sent from Mr. Robertson's account to the grievor's home e-mail address. The grievor was seen working at the computer and the records do not show he logged on. I believe he went to the computer, which was still on from when Mr. Robertson was working on it, so there was no need to log on. The records indicate Mr. Froese logged on at 08:51, followed by Mr. Acker at 08:55. Mr. Acker testified that Mr. Dosanjh was the first of the three officers to go on to the computer. I believe him. This would mean the grievor was on the computer prior to 08:51, and would, I believe, be consistent with the grievor sending the e-mail to his home address at 08:48.

[115] Having concluded that, I must now turn my mind to the issue of penalty. Is this worthy of discharge?

[116] Mr. Dosanjh is 51 years old and was hired by CSC in 1975. He has 27 years service with a citation for bravery and other commendations on his file.

[117] Mr. Dosanjh has never admitted to the sending of the e-mail. Counsel for the employer stated if he made this admission, in other words accepted guilt, we would not be here. The matter would have been handled in another fashion.

[118] I agree it is troubling when one does not accept responsibility for one's actions. However, I do not feel the bond of trust is irrevocably broken in this case.

[119] In *Corus Premium Television* (supra) the grievor, a four-year employee, was terminated for accessing another employee's e-mail file and making public a document found therein. The grievor initially denied his involvement, but later admitted to having done so.

[120] At pages 10-11 of the decision, Adjudicator P.A.L. Smith, Q.C., wrote:

*I have no doubt that the Employer was justifiably concerned about the conduct of the Grievor, and subjectively, is of the view that the employment relationship has been permanently harmed by the Grievor's conduct. But the test to be ultimately applied with respect to this matter is an objective one - that is, having regard to the nature of the offence and the factual context in which it occurred and having regard to the individual Grievor and his prior work and discipline and work history, is it a reasonable conclusion that the employment relationship has been so damaged by the Grievor's breach of trust or dishonest conduct that no relief should be granted against the penalty of discharge. In this case, I am satisfied that the Union has met its onus that the discharge ought to be relieved against.*

*In that regard, the Employer urged me to disregard the specifics of the e-mail that was the subject of complaint about the Grievor's conduct. I am not prepared to do so. In particular, while, I agree that every act of unauthorized access to another employee's e-mail account is a breach of confidentiality and privacy, it is not every such unauthorized intrusion into another's mail or files which justifies dismissal. The e-mail in question was widely distributed directly by the sender. To conclude that there was any great expectation of privacy associated with it would be a stretch. The Grievor obtained no gain or other advantage from accessing and printing the e-mail, although one could conclude quite fairly that its contents were of great interest to him given that it expressed what could only be described as a vitriolic attitude to the Union. I also accept that the conduct was motivated by dislike of the sender, which is not a rational or even reasonable excuse. But the Grievor indicated that he did not distribute the e-mail, and there was no reason to disbelieve his evidence. Therefore, while the offence was serious in terms of the Employer's clear policy with respect to confidentiality and privacy protection, the actual circumstances suggest what I would term a modest intrusion of privacy.*

[121] Adjudicator Smith then went on to examine a number of mitigating factors and concluded a one-month suspension was warranted.

[122] In looking at the mitigating factors as they apply to Mr. Dosanjh, as stated earlier, he is an employee with some 27 years service with CSC. Included therein are various citations, including one for bravery.

[123] There is no question in my mind that this was an isolated, spur of the moment, incident. Mr. Robertson inadvertently left the computer on, and Mr. Dosanjh would have had no way of knowing this prior to entering the CCRU office. It was an incident created by opportunity, not planned in advance.

[124] The disciplinary record of Mr. Dosanjh indicates he received a written reprimand on July 28, 2000, and a \$90. financial penalty on December 14, 2000. While these are on the record, I hardly think that termination, given the facts of this case, would be an appropriate next step.

[125] There was no gain, that I was made aware of, that accrued to the grievor as a result of accessing the files in question. By deleting Mr. Robertson's urinalysis files, Mr. Dosanjh could have created some difficulty for Mr. Robertson. He may have had to re-do the work. However, these files were of no value to Mr. Dosanjh. The report by Mr. Robertson on the kitchen incident would have been of interest to Mr. Dosanjh, but if the matter was investigated, he would have seen the report and been required to respond. So, ultimately, he would have been made aware of the document.

[126] In looking at all of the facts surrounding this case, I am of the view that a disciplinary suspension of three months without pay should be substituted for the termination. Therefore I am directing that the grievor be reinstated in his previous position as of August 25, 2001, which would result in a suspension of three months given the information contained in the letter of termination. I am directing the employer to reimburse the grievor for all salaries and benefits from the above date. The grievor must report back to work within one week of the date of this decision.

[127] The kitchen incident was, in my view, a serious altercation given the fact it was in full view of the inmates. This is not a good example to set for the inmates, nor is it a demonstration of what a proper role model should be.

[128] The e-mail intrusion was also serious. However, I believe the three-month suspension is significantly lengthy in this situation to send the proper message to Mr. Dosanjh that this type of behaviour is not to be condoned. I can only hope that

this message is received and that any working difficulties which have been experienced between Mr. Dosanjh and other correctional officers in the past will remain in the past. The RHC is an institution requiring the cooperation of all officers, and I can only hope this will occur in the future.

[129] Counsel for Mr. Dosanjh requested that I retain jurisdiction concerning remedy. Given the fact I have ordered reinstatement, I will retain jurisdiction with respect to this award for the period up to May 1, 2003, in the event there is any difficulty between the two parties concerning the implementation of the award.

[130] Finally, I would sincerely like to thank both counsel for their presentation of all the evidence before me. Each left no stone unturned in representing his client, and they are to be commended for the way they handled this matter.

**Joseph W. Potter,  
Vice-Chairperson.**

OTTAWA, February 26, 2003.

