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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

KYLE REYNOLDS

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Reynolds v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

Before: Margaret T.A. Shannon, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Jacob Axelrod, counsel

For the Employer: Nour Rashid, counsel

Heard at Calgary, Alberta,
October 10 to 12, 2018.

I. Individual grievances referred to adjudication

[1] Kyle Reynolds ("the grievor") alleged that the Correctional Service of Canada (CSC or "the employer") did not properly manage his workers' compensation claim (WCC) by failing to properly implement the requirements of the *Government Employees Compensation Act* (R.S.C., 1985, c. G-5; *GECA*), the *Government Employees Compensation Place of Employment Regulations* (SOR/86-791) the Treasury Board Directives on Workers' Compensation Claims, and Labour Canada's policy on WCCs.

[2] In addition, the grievor alleged that the employer provided extraneous, irrelevant, and intentionally detrimental information with respect to his WCC, to prevent him from obtaining benefits from the Alberta Workers' Compensation Board (AWCB). He alleged that that violated clauses 1.01 and 1.02 of the collective agreement between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - Confédération des syndicats nationaux (UCCO-SACC-CSN), which expired on May 31, 2010 ("the collective agreement").

[3] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2.*

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

II. Question of jurisdiction

[5] The employer raised an objection to the Board's jurisdiction on the basis that s. 12 of the *GECA* is a complete bar to any claim against the employer. The *GECA* provides for redress in an alternate forum, which bars any proceedings related to a WCC proceeding before this Board. The grievor attributes fault to the employer for denying his original worker's compensation board (WCB) claim. The employer complied with its reporting obligations under the *GECA*. The decision to grant the WCC was not the employer's. Nothing it did pursuant to its obligations under the *GECA* is subject to the Board's jurisdiction.

[6] The employer's substantive obligations under the *GECA* cannot be read into the scope and purpose provisions of the collective agreement cited by the grievor. Originally, he relied on the "No Discrimination" article in that agreement, but he later confirmed that he was no longer doing so. Instead, at the hearing, he sought to rely on clause 30.16, titled "Injury-on-duty Leave". That was not argued at all levels of the grievance process and so was barred pursuant to the principles cited in *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.). Without that link to the collective agreement, the Board has no jurisdiction to deal with this case.

[7] For his part, the grievor argued that this grievance was not related to a workplace injury or accident. He did not claim relief for causing an accident. Instead, he sought relief for the employer's reckless exercise of its managerial function in communicating with the AWCB and providing it with false and inaccurate information. The exercise of those managerial functions falls squarely within the collective agreement.

[8] The Board's decision on jurisdiction was held, pending hearing the evidence.

III. Summary of the evidence

[9] The grievor testified that he began his career as a correctional officer (CX) in 1989 at the CSC's Bowden Institution in Innisfail, Alberta ("the institution"). As a result of situations he experienced during his CX career, he suffered from a diagnosed disorder. According to his testimony, it was first diagnosed in 2002, and it reoccurred in 2011. As a result, he left work and used up all his accumulated leave, which carried him through to January 4, 2012, when he made the WCC.

[10] The grievor submitted the employee's statement (Exhibit 2, tab 4) and the report from his physician (Exhibit 2, tab 1). The CSC submitted the employer's report (Exhibit 2, tab 5), which the former Human Resources Social Development Canada (HRSDC)

Labour Program had countersigned.

[11] In its report, the employer referred to discipline imposed on the grievor on September 23, 2011, as the cause of his absence from work, which he disputed. According to him, the disciplinary action had certainly been a stressor for him, but it did not cause his health condition to recur.

[12] According to the grievor, the disciplinary action had been a nuisance to him. It was related to what he had done with a letter addressed to an inmate that discussed lewd and violent acts with children outside the prison that was found in a cell search. He had been frustrated because for the sake of the inmate's privacy, he had not been allowed to take the letter to the police. So, he reported it to the institution's internal security department for action. While working in the inmate-mail screening area, he had opened the inmate's mail, contrary to the employer's policy, looking for more of that material. He was disciplined for doing that.

[13] The discipline he received for breaching the inmate's privacy was not the cause of the grievor's relapse. Instead, it was his sense of hopelessness and uselessness in the face of his inability to protect children from pedophiles and offenders sentenced for child pornography related crimes who were allowed to receive visits and correspondence from offenders at large in the community who had once been incarcerated.

[14] The employer's statement in its report was based on the then-Deputy Warden's assumption. According to the grievor's testimony, the Deputy Warden had the mandate to rid the institution of employees who required accommodation, including the grievor. The statement had been an attempt by the Deputy Warden to accomplish his mandate. The grievor denied that he had ever made any such statement to the Deputy Warden and said that the employer's statement concerning the impact of the disciplinary action had been based on an assumption that the Deputy Warden made and not on anything the grievor had ever said.

[15] The AWCB denied the grievor's claim on the basis that he was off work not due to a workplace injury but rather to stress and anxiety from the disciplinary process (see the letter at Exhibit 2, tab 6). When the claim was denied, the grievor applied for and received long-term disability insurance benefits from Sun Life while he appealed the AWCB's decision. Eventually, in March 2015, his claim was accepted (Exhibit 2, tab 21).

[16] The grievor incurred substantial costs during the appeal process period,which included legal fees (Exhibit 2, tab 23), medication costs, physician report costs, and mileage travelled to appointments. Receipts for all those costs were submitted as exhibits. The employer's action of filing the erroneous report with the AWCB had negative consequences for the grievor's health in that his already weakened condition deteriorated, and he will never work again.

[17] Darren Posyluzny was the correctional manager operations at the institution at the time of the grievor's injury. He was the grievor's direct manager and was required to complete the employer's portion of the workplace injury and hazardous occurrence report. According to his testimony, to complete it, he used information that the grievor had submitted.

[18] The reference to "[r]ecent discipline brought on issues again as reported by employee", noted in Mr. Posyluzny's form, referred to information that the grievor provided in the employee form (Exhibit 3, tab 1). The grievor described discipline as one of the events that had led to his recurrence; he did not say that the discipline had triggered his health condition or that it had prevented him from working. Mr. Posyluzny reported that his role in filling out the employer's report on WCB claims was to include the tombstone information and any information reported by the employee, which is what he did.

[19] The AWCB based its decision on the finding that the grievor's symptoms were related to anxiety and stress resulting from the disciplinary action and from work-related processes, which did not meet the criteria of an acceptable stress claim (Exhibit 3, tab 4). According to Mr. Posyluzny, the AWCB, not him, concluded that the discipline was the cause of the health condition recurrence.

[20] Nancy Shore was the assistant warden operations at the institution during the period (2011 to 2015) in which the grievor's WCC was processed and appealed. Part of her duties included overseeing his file through the WCC process. While the employer monitored the progress of his appeal, after completing its portion of the incident report, it had no further role in the process. According to Ms. Shore, the AWCB never contacted her.

[21] Once the grievor's WCC was approved in 2015, the employer had the right to appeal it, which it did not do. Rather, it approved the grievor's injury-on-duty leave. All the leave he used for the period of the WCC was converted to injury-on-duty leave

(Exhibit 7). That type of leave is granted once an employee has an approved WCC, according to the collective agreement.

[22] According to Ms. Shore, reporting a workplace accident is covered by the employer's *Guidelines 254-2 - Return to Work Program* (Exhibit 3, tab 22). Paragraph 9 of them requires the employer to complete a WCB accident report. According to paragraph 12, the information provided to the WCB on the employer's injury report will form the basis upon which the WCB adjudicator will determine entitlement to compensation benefits.

[23] For 7.5 years, Chantal Rioux was a regional return-to-work advisor for the employer. She provided advice and guidance to managers and supervisors on the return-to-work program, which included WCB claims. She testified that the employer is obligated to provide all the facts of which it is aware when completing its report of an accident. This includes all information related to the accident and any relevant information about the employee's employment or information otherwise deemed relevant. This could include leave usage, discipline issues, grievances, other labour relations issues, observations of the employee in the workplace, or other information that may be relevant.

[24] A provincial WCB assessing a claim under the *GECA* will also consider reports other than the employer's report. According to Ms. Rioux, it will also rely on the employee's report and the medical information submitted.

IV. Summary of the arguments

A. For the grievor

[25] The employer's comments to the AWCB that the grievor's absence from the workplace was due to his fear of disciplinary action were reckless, unreasonable, and a breach of its obligation under the collective agreement to provide accurate information in support of an employee's application for WCB benefits, and concurrently, the employee's entitlement to injury-on-duty leave. This obligation can be inferred from a reading of clause 30.16, the injury-on-duty scheme, and other managerial obligations set out in that agreement.

[26] This grievance is not about a workplace accident or injury. The grievor is not asking the Board to determine compensation for an injury. The grievance is about the employer's use of its management rights to issue an unreasonable and untrue

statement to the AWCB to preclude him from accessing injury-on-duty leave.

[27] While s. 12 of the *GECA* is a statutory bar to civil actions against the employer related to workplace accidents, including grievances, it is not possible for the legislation to exclude all grievances that may result from the same fact situation that might have given rise to an accident, for example a termination of employment while an employee is receiving WCB benefits.

[28] To determine whether the grievance is related to a workplace accident, or is a collective agreement matter, the test is whether it calls into question the employer's violation of the collective agreement with respect to a workplace accident (see *Edmonton Police Service and Edmonton Police Association*, 124 C.L.A.S. 226 at paras. 100 and 104).

[29] In other words, in the context of this case, was the employer's violation of the "Managerial Responsibilities" article of the collective agreement (article 6), which caused the grievor to be ineligible for benefits under clause 30.16, "Injury-on-duty Leave", an action related to a workplace accident? It is important for the Board to note that the employer's obligations in the reporting process are not part of the accident, even if they are legislated. In *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 at para. 67, the Supreme Court of Canada posed the question to be answered as "… whether the conduct giving rise to the dispute between the parties arises either expressly or inferentially out of the collective agreement between them."

[30] In this case, the breach arose out of the employer's violation of its managerial rights in its dealings with the AWCB. The employer did not take reasonable care to ensure that the statements it provided to the AWCB, and upon which the AWCB would make its decision on the grievor's WCC, were accurate. The employer was required to provide accurate and fair information to the AWCB on the grievor's claim.

[31] As a result of the employer's breach of its duty to act fairly and provide accurate information to the AWCB, the grievor incurred three years of additional costs and efforts while he fought to have his claim recognized. Until that WCC was approved, he had no basis upon which to establish his claim under clause 30.16. To answer the question posed in *Weber*, the grievance arose inferentially out of the collective agreement and is therefore within the Board's jurisdiction.

[32] The duty to act reasonably is inferential to the scope of the collective

agreement. By inference, the employer is to act fairly and reasonably when dealing with all matters that arise from the collective agreement. Managerial prerogatives must be exercised fairly and reasonably (see Brown and Beatty, *Canadian Labour Arbitration*, 4th edition, at 4:2322). The employer's duty to act fairly and reasonably towards its employees must be deduced from the interpretation of the collective agreement (see *Amyot v. Treasury Board (Solicitor General - Correctional Service Canada)*, 2001 PSSRB 49 at para. 14).

[33] As part of that duty to act reasonably, the employer had to take reasonable care in providing accurate information to the AWCB, knowing that the AWCB would rely on it to determine to the benefits that the grievor would be entitled to. The employer must take proper due care and attention when exercising its legislated obligations when they overlap with the exercise of management rights (see *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324*, [2003] 2 S.C.R. 157). In this case, the grievor referred to disciplinary action in his WCB accident report, from which the employer drew inaccurate conclusions that the AWCB then relied on. The employer exceeded its managerial rights by inaccurately commenting and by misleading the AWCB, for its benefit.

[34] The Board has accepted the application of *Weber* (see *Amos v. Deputy Head (Department of Public Works and Government Services*, 2008 PSLRB 74). Following the reasoning in *Parry Sound* and the existence of clause 30.16 and through the application of *Weber*, the Board has jurisdiction to deal with this grievance. In addition, according to *Parry Sound*, employment-related statutes fall implicitly within the collective agreement. Section 4 of the *GECA* clearly establishes that it is an employment-related statute, which, according to *Parry Sound*, falls implicitly within the scope of the collective agreement.

[35] The employer must take reasonable care to provide accurate information to a WCB. The Board cannot interpret the collective agreement in a way that undermines statutory rights under the *GECA*. Therefore, the employer must take reasonable care to provide accurate information upon which an employee's eligibility for worker's compensation will be adjudicated and, by extension, injury-on-duty leave.

[36] This proposition is supported by the decision in *Canada Post Corp. v. C.U.P.W.*, 103 C.L.A.S. 34. The employer in that case misinformed a WCB concerning the grievor's injury. The grievor relied on a violation of the employer's duty of care when submitting the workers' compensation information about the injury claim. The grievor also relied

primarily on injury-on-duty leave, which was similar to the leave in this case in that it required an employee to be receiving WCB benefits to qualify for any payments under the collective agreement injury on duty leave article.

[37] The union in that case relied on *Weber* to support the arbitrator's jurisdiction. The employer did not challenge the *Weber* principle but rather argued that the dispute, the WCB's acceptance of the claim, did not arise out of the collective agreement.

[38] The arbitrator in *Canada Post* in that case determined that the injury-on-duty article of the relevant collective agreement would be rendered nugatory if the employer refused to provide information or provided wrong information to a WCB. This would nullify or frustrate the purpose of the article and in terms of the collective agreement would leave a gap in the negotiated arrangements for achieving harmonious relations. He found that the employer was obligated under the collective agreement to provide relevant and accurate information to the WCB upon being notified of the grievor's health condition. The employer's duty was to act in good faith and to take reasonable care to ensure that the WCB received relevant and accurate information. Reading the language in this manner effectuated the common purpose as negotiated in the injury-on-duty article (see paragraphs 71 to 74).

[39] In the case at hand, after 3.5 years, the grievor's WCC was approved, and he qualified for injury-on-duty leave pursuant to clause 30.16. There is no doubt that the AWCB's initial decision was based on the information that it received from the employer. Mr. Posyluzny relied on references to discipline in the employee's report to conclude that they caused the grievor's health condition to recur. He ignored everything else in the letter attached to the employee's report, which more reasonably could be described as a chronology of events.

[40] Mr. Posyluzny's interpretation was not reasonable, given the contextual events that caused the grievor's health condition to recur.

[41] The grievor did not need to show that the employer acted in bad faith or with intent to undermine him. In *Canada Post Corp.*, there was no finding of bad faith. It is clear from the employer's report (Exhibit 3, tab 4 at page 2) that the AWCB determined that the grievor was ineligible for workers' compensation benefits as recent disciplinary action had caused his health issues to recur. As disciplinary action is within the realm of normal job stressors, it did not meet the criteria for acceptability for compensation. The AWCB relied on the employer's report as the source of its

information.

[42] The grievor seeks a declaration that the collective agreement was breached, reimbursement of $28 170.31 for the cost of legal fees to pursue his WCB appeal, and $15 000 as damages for mental distress. In recognition of the fact that he accepts that he might have contributed to the misunderstanding of his claim, he proposes a 25% reduction in the award of damages.

B. For the employer

[43] By applying for workers' compensation benefits, the grievor waived his rights to pursue any civil action, including a grievance against the employer related to the injury he suffered. Section 12 of the *GECA* is a statutory bar to any claim, including a grievance, so any claim for reimbursement related to the accident must fail under this provision. Similarly, any such action is barred pursuant to the *Crown Liability and Proceedings Act* (R.S.C., 1985, c. C-50) and s. 208 of the *Act*.

[44] The only way to determine if the employer was responsible for the denial of the grievor's claim is to reopen and re-evaluate it. The Board has no jurisdiction to evaluate WCCs or to review the decisions of WCBs. If the Board cannot attribute fault for the denial of the claim, it cannot attribute responsibility for the loss.

[45] If the employer acted unreasonably, there is a remedy for it, but the Board cannot go as far as to attribute the AWCB's denial of the grievor's claim to the employer's actions. It is not appropriate for the Board to determine the causality of the denial of the claim. The duty to report is many steps removed from injury-on-duty leave and cannot be inferred into the collective agreement.

[46] The employer relied primarily on the principles in *Burchill* to support its objection to the Board's jurisdiction. The grievor could not argue a new grievance before the Board that was different from the one argued in the grievance process. The reference to adjudication refers only to article 37, "No Discrimination", of the collective agreement, and to nothing else. There is no reference anywhere in the grievance file to clause 30.16. The grievance is moot since the grievor was granted injury-on-duty leave once he was approved for workers' compensation.

[47] The employer had no way to anticipate that the grievor would base his case on clause 30.16 after reading the grievance presentation. An examination of the remedy refers only to being made whole by the reinstatement of salary and benefits, which is

unclear in terms of a collective agreement article being referred to.

[48] The grievor did not meet the burden of proving that the collective agreement was breached. The agreement does not include an obligation on the employer to report injuries. Merely entering documents into evidence does not discharge the burden of proof. He had the onus to clearly demonstrate on the balance of probabilities that what he alleged took place (see *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17).

[49] When dealing with collective agreement language, the adjudicator's role is to determine the parties' true intent (see *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 51). The basic rule of construction is that the clear words of the collective agreement are to be given their ordinary and plain meanings (see *Allen v. National Research Council of Canada*, 2016 PSLREB 76). Clause 30.16 falls under the leave entitlement provisions, which do not infer any reporting obligation on the employer.

[50] Even if accident reporting is rooted in clause 30.16, the employer did not breach that obligation. It was required to provide all relevant information, including about discipline. On the employer's behalf, Mr. Posyluzny complied with all reporting obligations. He accurately and comprehensively completed the employer's report based on the information he had, including the employee's report. He did not provide any extraneous or inaccurate information or mislead the AWCB. He simply summarized the information that the grievor had already provided. Mr. Posyluzny said that the discipline brought on issues of coping with stress, not a recurrence of the grievor's health condition. The AWCB made that conclusion based on its assessment of the employee's report, the employer's report, and the medical information submitted.

[51] In the event that the Board determines that it has jurisdiction to hear this matter, it should find that as the grievor has received workers' compensation benefits as well as injury-on-duty leave retroactive to the date of his claim, he has been made whole, and therefore, no further remedy is needed for the breach.

[52] As to the reimbursement of legal costs, the Board is not empowered to order such a payment (see *Canada (Attorney General) v. Robitaille*, 2011 FC 1218; and *Canada (Attorney General) v. Tipple*, 2011 FC 762). If the Board cannot award costs for its processes, it certainly cannot award costs for other processes, such as an appeal before the AWCB.

[53] It is worthy to note that the itemized statement from the grievor's lawyer (submitted as Exhibit 2, tab 23) does not distinguish between the two claims the grievor was pursuing at the time. In other words, the Board cannot determine which items are attributable to the AWCB appeal and which are attributable to the grievor's other file, which was ongoing and concurrent with the AWCB appeal.

[54] The breach of the collective agreement in this case, if any, should not attract damages as it was not a serious breach (see *Canada (Attorney General) v. Gatien*, 2016 FCA 3). There is a very high threshold to establish an entitlement to damages, and the grievor has not demonstrated behaviour on the part of employer that would meet that threshold.

[55] The *Canada Post Corp.* case on which the grievor's representative relied may be distinguished on the facts. The employer in this case did not act in bad faith and was not negligent as was so in *Canada Post Corp*. The CSC did not make errors in the information it provided to the AWCB. It did not challenge the grievor's claim or provide misleading information. It was not negligent. The fact situations lead to different determinations.

[56] The grievor was receiving long-term disability benefits for the period of his workers' compensation appeal, so he was not without an income. The employer acknowledged that he expended significant time, effort, and expense to pursue his appeal, but the remedy he seeks does not lie with this grievance.

V. Reasons

[57] I believe that I have jurisdiction to decide this matter as the only means by which a CX can take advantage of clause 30.16 is to have been successful in securing WCB benefits. The extent of that jurisdiction would be to review the employer's role in preventing the employee's access to that clause. As receiving WCB benefits is a prerequisite to injury-on-duty leave, the employer's role in securing those benefits must be carried out in good faith, and the Board may examine it for a breach of that obligation.

[58] The employer is obligated by statute and by its policies to complete the employer's portion of accident reports filed with the former HRSDC's Labour program, which initiated the application for WCB benefits. It must do so reasonably and in good faith, as it must exercise all its management rights, knowing that its actions will directly impact the employee's entitlement under the collective agreement as well as

under the *GECA* (see Brown and Beatty, at 4:2322). To apply *Weber*, the employer's obligation arises inferentially out of the collective agreement because the agreement entitlement is dependent upon receiving the statutory entitlement.

[59] An employer cannot be allowed to avoid its collective agreement obligations by hiding them behind the *GECA*. That is essentially what the *Canada Post Corp.* decision stands for, in my opinion. The employer cannot act in bad faith, provide false or misleading information, and make efforts to prevent an employee from receiving WCB benefits, thus negating the obligation it negotiated under the injury-on-duty article of the collective agreement and then claim that its actions are not subject to review under the collective agreement.

[60] As the employer's actions directly impact employees' entitlement to leave under the collective agreement, they are subject to the grievance process. By extension, the report to HRSDC's Labour program that initiates a WCC also initiates an employee's claim under clause 30.16. As in the exercise of all its management rights, the employer must complete those forms honestly and in good faith. Failing to would constitute a violation of its management rights and would unjustly prevent a CX from accessing benefits under clause 30.16 if on the basis of these representations, the CX's claim is denied.

[61] The Board has no authority to review the AWCB's decision to accept or reject the WCC; that is clear. However, it is not without jurisdiction to review the employer's actions that barred the grievor from accessing a benefit under the collective agreement. The Board may review the employer's actions of providing information to or otherwise interacting with a WCB, but it has no authority to review the WCB's decision. That much is crystal clear.

[62] By logical extension then, if a grievor seeks entitlement to injury-on-duty leave, which is not so in this case, an adjudicator would not be able to award it because the condition precedent in clause 30.16 would not exist. The remedy would likely exist in the form of a declaration and damages.

[63] However, the problem the grievor faces in this case is that nowhere in the grievance process did he rely on a violation of clause 30.16, and it was too late to change horses at the hearing and rely on that argument. The law is clear that for an argument to be successful that the employer has violated a specific collective agreement article, the employer must have had the opportunity to address the

argument during the grievance process (see *Burchill*). It is too late at the hearing to raise it. The motherhood articles under article 1, "Purpose and Scope of Agreement", are insufficient to tether this argument and grant me the jurisdiction that I might otherwise have to review the employer's actions.

[64] Having said that, I cannot find that the employer did anything that can be considered dishonest, arbitrary, or in bad faith. Mr. Posyluzny's interpretation of the grievor's report included in the employer's report was a reasonable interpretation of what the grievor told the AWCB. The grievor did not establish any animus or prejudice against him by anyone in management at the institution that would lead me to believe that the employer deliberately provided false information in its employer's report. In fact, the information in it was not false but rather was an interpretation of information that the grievor had already provided to the AWCB.

[65] The grievor requested that the exhibits that contained his sensitive medical information be sealed. I agree and order that those exhibits listed in Appendix A shall be sealed. He also requested that his name be anonymized, which is not granted on the basis that he has not shown why the Board should deviate from its practice of observing the open court principle and publish the name of the grievor.

[66] As stated in the Board's *Policy on Openness and Privacy*, the open court principle is a significant principle in our legal system. In accordance with that constitutionally protected principle, the Board conducts its hearings in public, except in exceptional circumstances. The Board maintains an open justice policy to foster transparency in its processes, accountability, and fairness in its proceedings. Board decisions identify parties and their witnesses by name and may set out information about them that is relevant and necessary to the determination of the dispute. This is a public policy available to anyone and is shared with the parties to the adjudication process.

[67] In exceptional circumstances, the Board may depart from its open justice principles and grant requests to maintain the confidentiality of specific evidence and tailor its decisions to accommodate the protection of an individual's privacy when such requests accord with applicable recognized legal principles. Anonymization is rare in the Board's jurisprudence, particularly when these rights may be protected by other means, such as sealing exhibits. I am satisfied that the grievor's privacy rights can be sufficiently protected by sealing exhibits and heard no argument to the contrary.

[68] The parties provided me with numerous cases to support their arguments. While I have read each one, I have referred only to those of primary significance.

[69] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

VI. Order

[70] The exhibits listed in Appendix A are ordered sealed.

[71] The grievance is dismissed.

April 23, 2019.

Margaret T.A. Shannon,
a panel of the Federal Public Sector
Labour Relations and Employment Board

APPENDIX A

The following exhibits are ordered sealed, as they contain private and personal medical information:

- Exhibit 2, tabs 1, 4, 5, 6, 8, 12, 13, 14, 15, 19, 20, 21 and 22; and
- Exhibit 3, tabs 1, 2, 4, 7, 9, 10, and 12.