Date: 20211020

File: 566-02-14446

Citation: 2021 FPSLREB 115

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

SIMON MACKEY

Grievor

and

DEPUTY HEAD
(Correctional Service Of Canada)

Respondent

Indexed as
Mackey v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Brian F.P. Murphy, QC

For the Respondent: Andréanne Laurin

Heard by videoconference,
September 13, 14, and 15, 2021.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] When an employee is terminated for valid and invalid reasons, do the latter trump the former? That is the question before me.

[2] On May 19, 2017, Simon Mackey ("the grievor"), a 12-year employee with the Correctional Service of Canada (CSC or "the employer"), was terminated, effective February 10, 2017 (Exhibit E1, Tab 49). In her termination letter, Adele MacInnis-Meagher, the warden at the CSC's Springhill Institution in Springhill, Nova Scotia, listed these three grounds:

> 1) The grievor failed to report to work and to follow procedure to report his absences on October 5, November 29 and 30, and December 5 to 8, 2016.
> 2) He committed two offences under the *Criminal Code* (R.S.C., 1985, c. C-46) relating to driving while impaired on November 1, 2016.
> 3) He committed three offences under the *Criminal Code* relating to inappropriate actions with a minor.

[3] I should note that as of May 19, 2017, the grievor had only been charged with the offences listed in the second and third grounds. The charges had been read in open court, but he had pleaded not guilty. That fact formed the central thrust of his attack on the reasonableness of the employer's decision to terminate him.

II. Summary of the evidence

A. The hearing

[4] The hearing took place via videoconference on September 13, 14, and 15, 2021. Five days had originally been scheduled for the hearing. However, the parties were able to agree on some of the facts and much of the evidence, which reduced the time needed. In particular, and after reviewing the binders of documents that both parties had provided to each other and to the Board, counsel agreed that the binders could be entered into evidence respectively as Exhibit E1 and Exhibit U2. The parties agreed that the documents in the binders, most if not all of which were correspondence and internal memos, could be accepted as having been sent and received by their respective authors and recipients and that they could be relied upon, subject to weight.

[5] This being a discipline case, the employer went first. I heard the testimony of Gisèle Smith, who held numerous senior management positions with the employer

before her retirement and who had been retained to conduct a disciplinary investigation into certain charges under the *Criminal Code* against the grievor. I also heard that of Adele MacInnis-Meagher, warden of Springhill Institution, who had made the decision to terminate the grievor.

[6] I also heard the testimony of the grievor on his own behalf.

[7] There was really little difference between the parties as to the facts. The issues that divided them had more to do with the inferences to be drawn from those facts or the law to be applied. The central dispute turned on whether the employer was correct in its assessment of whether the grievor had committed the second and third acts noted in the termination letter and whether it should or could have relied on them to justify its decision to terminate him.

B. The background facts

[8] In 2005, the grievor obtained a job with the employer, first as a correctional training program recruit (CTP), then as a correctional officer (CX-1). He remained in that position until his termination.

[9] As a CX-1, the grievor's main duties involved the security and control of the inmate population in a correctional facility. He worked at Springhill Institution, which is a medium-security federal corrections facility. At the relevant time, it had roughly 400 inmates. The CX-1 officers occupy 12 to 15 posts there, ranging from the front entry (where visitors are screened for contraband) to door control (to make sure that only authorized staff and visitors enter any particular area) to observing, supervising, and controlling inmate activities. CX-1s are present every hour of every day of the week. For 16 hours on weekdays and 24 on weekends, they are the only staff present.

[10] Ms. MacInnis-Meagher testified that CX-1s are also expected to be role models for the inmates. They need to model in her words the "right behaviour" for the inmates. She suggested as well that the public expects CX-1s (and indeed, all public servants) to be law abiding and reasonable in their conduct. The grievor did not seriously challenge her testimony concerning the duties and responsibilities of CX-1s and the employer's expectations of their conduct.

C. The grievor's work record

[11] Counsel for the employer submitted a timeline of the key events (Exhibit E3) drawn from the documents in Exhibit E1, which the grievor did not challenge.

[12] Five times in the summer and fall of 2013, the grievor failed to report to work or reported late. A sixth such event happened on April 10, 2014. As a result, the employer held a disciplinary hearing with him on July 18, 2014. He offered a number of excuses or explanations. In a letter dated July 22, 2014, the employer advised him that his behaviour was "unacceptable and will not be tolerated." A written reprimand was imposed on him (Exhibit E1, Tab 16).

[13] Two months later, on October 9, 2014, the grievor was late reporting to work, then left work without authorization. A disciplinary hearing was held on October 24, 2014. He was also absent from work without authorization on November 24 and 27, 2014. In a letter dated December 8, 2014, the employer imposed a 15-day suspension without pay on him for his breach of duty on October 9. He was warned that additional acts of misconduct could lead to further discipline, up to and including termination. He was reminded that if he required personal support, the Employee Assistance Program ("EAP") was available to him (Exhibit E1, Tab 21). This discipline was not grieved.

[14] The two absences from work in November 2014 resulted in a disciplinary hearing on December 22, 2014. Shortly after that hearing (and before a decision was reached), the grievor reported for work in a state other than normal on December 30, 2014, which in turn resulted in another disciplinary hearing on January 2, 2015 (Exhibit E1, Tab 32).

[15] On May 22, 2015 (while waiting for the results of the October 2014 and January 2015 disciplinary hearings), the grievor left his post and the worksite without authorization. He was also late for duty and then reported in a state other than normal on June 10, 2015.

[16] On August 10, 2015, the employer issued its decision with respect to the October 2014 and January 2015 disciplinary hearings. It imposed a 20-day suspension without pay on the grievor. He was warned that additional acts of misconduct could lead to further discipline, up to and including termination. He was reminded that if he

required personal support, the EAP was available (Exhibit E1, Tab 32). This discipline was not grieved.

[17] On November 18, 2015, the employer held a disciplinary hearing with respect to the May 22 and June 10, 2015, incidents (Exhibit E1, Tab 36).

[18] On February 25, 2016, the employer issued its decision with respect to the November 2015 disciplinary hearing. It imposed a 30-day suspension without pay on the grievor. He was warned that additional acts of misconduct could lead to further discipline, up to and including termination. He was reminded that if he required personal support, the EAP was available (Exhibit E1, Tab 36). This discipline was not grieved.

[19] The grievor returned to work on April 21, 2016. On October 5, 2016, he failed to report to work. On November 4, 2016, he called his supervisor to advise that he had been charged with driving under the influence, contrary to the *Criminal Code*. It was the third time he had been so charged. On November 29 and 30, 2016, he failed to report to work. He did the same on December 5, 6, 7, and 8, 2016.

[20] On December 5, 2016, Ms. MacInnis-Meagher wrote to the grievor to advise him that a disciplinary hearing to discuss these incidents would take place on December 9 (which was later changed to December 14). He was warned that after that hearing, and after all relevant circumstances were considered, a decision with respect to disciplinary measures would be made, up to and including termination (Exhibit E1, Tab 38).

[21] The disciplinary hearing took place on December 14, 2016 (Exhibit E1, Tabs 38 and 49). Ms. MacInnis-Meagher testified that she had asked the grievor to explain his failure to report for work and his concomitant failure to provide suitable notice that he would be absent. She explained at the hearing that procedures were in place that required employees who would miss a scheduled shift to provide sufficient notice, to enable the employer to find a replacement. Failing to provide that notice meant that someone had to be mandated to stay beyond the end of his or her shift or that a CX-1 had to be moved to another position, all of which caused safety concerns as well as poor morale.

[22] At the disciplinary hearing, the grievor provided a number of explanations, which included having problems with his cell phone and the absence of a landline,

none of which were convincing to Ms. MacInnis-Meagher. He also denied that he had been driving under the influence, which struck her as unconvincing, given that he had already received two such previous charges.

[23] Ms. MacInnis-Meagher testified that following the December 14 hearing, she contacted her human resources department to seek advice about the grievor's history of failing to show up for work and failing to take responsibility for it.

[24] On January 10, 2017, the grievor did not report for duty and did not call in for his shift. He was recorded as being absent without leave and without pay (Exhibit E1, Tab 39).

[25] Events then took a turn for the worse. On January 19, 2017, the grievor called the deputy warden at Springhill to advise that on January 18, 2017, he had been charged with sexual assault on a minor (his 11-year old daughter), contrary to the *Criminal Code*. He denied the charge. He stated that the mother of his daughter and her partner had made up — or encouraged — the allegation as a way to deny him visitation rights. (At the hearing, he testified that he and the child's mother had never lived together and that they had merely dated a few times before she became pregnant. He has never lived with the mother or the child. He has paid support and has had some access for visits.)

[26] Ms. MacInnis-Meagher, not surprisingly, took the charge seriously. She issued a convening order to Ms. Smith to conduct a disciplinary investigation into the allegation of off-duty conduct (Exhibit E1, Tab 40). The grievor was suspended without pay as of February 10, 2017 (Exhibit E1, Tab 43).

[27] Ms. Smith then took up the investigation into the sexual assault allegation (Exhibit E1, Tabs 41 and 42). She interviewed the grievor, the girl's mother and stepfather, the Royal Canadian Mounted Police (RCMP) investigation officer, and the deputy warden and correctional manager at Springhill Institution. The grievor was cooperative throughout the investigation; he maintained his innocence and his position that the girl's mother and stepfather had manufactured the charge.

[28] Ms. Smith delivered her report on February 22, 2017 (Exhibit E1, Tab 44). She concluded that the issue of whether the grievor had committed the act for which he was charged was "inconclusive". That finding is not surprising, given that she had only

hearsay evidence from the daughter (via the mother and stepfather and the RCMP officer). However, she also concluded that the grievor had breached the standard two of the employer's "Standards of Professional Conduct".

[29] Ms. Smith's finding that the grievor had breached the employer's Standards of Professional Conduct was based on the following analysis.

[30] First, standard two provided as follows:

> *Conduct and appearance*
>
> *Behaviour, both on and off duty, shall reflect positively on the Correctional Service of Canada and the Public Service generally. All staff are expected to present themselves in a manner that promotes a professional image, both in their words and in their actions. Employee dress and appearance while on duty must similarly convey professionalism, and must be consistent with employee health and safety.*
>
> …

[31] Second, the charges against the grievor had been read out in open court on February 6, 2017. Accordingly, Ms. Smith reasoned that the charges were the following (Exhibit E1, Tab 44, page 42):

> *… now public information and that more staff who work in the CSC locations near Amherst and Springhill are aware of the sme [sic] as well as members of the RCMP in Amherst and Springhill, members of his immediate family, his daughter's school administration, and residents living in the surrounding communities of Amherst and Springhill including former and current inmates and offenders.*

[32] Ms. Smith concluded that the public's awareness that the grievor had been charged with behaviour that did not reflect positively on the employer constituted a breach of standard two.

[33] It should be noted that Ms. Smith's conclusion on this point was based on a misinterpretation of standard two, which refers to employee behaviour. Hence, the employer must have reasonable grounds to conclude that an employee has in fact engaged in the prohibited behaviour. Once that finding is established, the employer is then entitled to take into account whether that behaviour reflects negatively on its reputation.

[34] The difficulty in this case is that Ms. Smith's conclusion appeared to skip the first step and go directly to the second. She had already concluded that the sexual assault allegations were "inconclusive." But having concluded that the allegation with respect to the "behaviour" was inconclusive, she (and hence the employer) could not go on to consider whether its reputation had been negatively impacted by the grievor's off-duty conduct.

[35] Ms. MacInnis-Meagher received a copy of the report. She reviewed it. She concluded that on a balance of probabilities, the grievor had committed the act for which he had been charged. She testified to that effect at the hearing before me.

[36] I pause to note that Ms. Smith did not reach that conclusion insofar as the sexual assault charges were concerned. Indeed, and as already discussed, she had concluded that a determination on that point could not be made, given the information then available to her.

[37] Ms. MacInnis-Meagher convened a disciplinary hearing on April 14, 2017. At the hearing, she discussed with the grievor Ms. Smith's report as well as the earlier incidents that had led to the December 14, 2016, disciplinary hearing. On May 19, 2017, she decided to terminate him, effective February 10, 2017 (Exhibit E1, Tab 49).

[38] In the termination letter, Ms. MacInnis-Meagher stated as follows:

> …
>
> *I have carefully reviewed the facts and circumstances of the three allegations which resulted in the aforementioned disciplinary hearings and have determined, on a balance of probabilities, you:*
>
> *- failed to report to work and to follow procedure to report your absence on the following dates: October 5, 2016, November 29-30, 2016, December 5-8, 2016;*
>
> *- committed two offences under the Criminal Code of Canada relating to driving while impaired on November 1, 2016 (offences under Section 253 1)a)–driving while impaired and b) driving with a blood alcohol level over the limit);*
>
> *- committed three offenses [sic] under the Criminal Code of Canada relating to inappropriate activities with a minor (offenses [sic] under Sections 151-Sexual Interference, 266-Assault and 271-Sexual Assault).*
>
> …

[39] Ms. MacInnis-Meagher made her conclusion on the second and third grounds despite that there was no evidence before her, other than the charge, as to whether the grievor had in fact committed the offences of driving while under the influence. In addition, Ms. Smith's report had refrained from making any finding as to whether the alleged sexual assaults had been committed.

[40] In coming to her decision, she took into account his years of service, his service record, his explanations, and the fact that he held a position of trust. She noted that over the years, he had "demonstrated a pattern of misconduct for a prolonged period, which has frequently placed offenders, your colleagues and the Service at risk" (Exhibit E1, Tab 49, page 2).

III. Summary of the submissions

A. For the employer

[41] Counsel for the employer submitted that CXs are role models for inmates. As such, it was reasonable for the employer to set high standards for their conduct.

[42] Counsel noted that the termination was grounded on three reasons. Only one had to be a sufficient ground for termination. So, for example, if the failure to report for duty was found sufficient to justify the termination, it did not matter that the grievor might not in fact have driven while impaired or committed the assault for which he had been charged.

[43] In this case, the grievor violated the employer's standards 1 and 2, as well as its "Code of Professional Conduct".

[44] Insofar as the driving while impaired charge is concerned, counsel noted that the grievor had denied it. Given that some inmates were incarcerated because of drunk-driving charges, it was important that CXs not be seen as receiving special treatment. Driving while impaired is a serious offence. CXs are expected to set the right example. Moreover, in this case, the grievor was eventually convicted of it. That fact could retroactively justify the employer's decision.

[45] Turning to the assault charge, counsel noted that the grievor did not provide an explanation (other than to deny that it happened). The fact that his lawyer might have counselled him not to discuss the circumstances was no excuse; see *Hughes v. Parks Canada Agency*, 2015 PSLREB 75 at paras. 142 and 143. As with the other charge, some

inmates had been convicted of sexual assault. Such a charge against a CX affects the employer's reputation, both with the prison population and with the public at large.

[46] Counsel relied upon the following decisions: *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62; *Dekort v. Deputy Head (Correctional Service of Canada)*, 2019 FPSLREB 75; *Ewart-Wilson v. Deputy Head (Correctional Service of Canada)*, 2021 FPSLREB 32; *Hughes*; *Lapostolle v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 138; *Murdoch v. Deputy Head (Canada Border Services Agency)*, 2015 PSLREB 21; *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26; *Peterson v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 29; *Rahim v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 121; *Richer v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 10; *Tobin v. Treasury Board (Correctional Service of Canada)*, 2011 PSLRB 76; and *Tobin v. Canada (Attorney General)*, 2009 FCA 254 ("*Tobin* FCA").

B. For the grievor

[47] Counsel for the grievor focussed his submissions on the sexual assault charge. He stressed the fact that in the end, the grievor pleaded guilty only to simple (common) assault. The sexual assault and sexual interference charges were withdrawn.

[48] Counsel submitted that it was clear from the termination letter that the sexual assault charge was the determining factor in the employer's mind. Counsel submitted that the employer made too hasty a decision. It ought to have awaited the outcome of the charges before making a decision. The grievor had been sent home and so was not at the worksite. The mere fact that the charges were read out in open court in a small community was not sufficient to harm the employer's reputation. Indeed, no evidence suggested any such impact. Assuming otherwise would in effect convict him. That approach would be contrary to the fundamental principle of our justice system, which is that an accused is innocent until proven guilty beyond a reasonable doubt. The employer's reputation and the safety of his colleagues would not have been damaged or endangered while the grievor was not at work.

[49] Counsel submitted that the decision to terminate the grievor was based on three grounds. Hence, all three had to be established. If one failed, then the termination decision also failed.

[50] Counsel acknowledged that the grievor had not been a model employee and that at the relevant time, his reputation had been under a cloud. But that alone did not warrant termination. He also submitted that the evidence suggested that medical issues were behind the grievor's repeated failure to report to work on time or at all.

[51] Counsel submitted that the employer had failed the test in *Millhaven Fibres Ltd. and Oil, Chemical & Atomic Workers International Union, Local 9-670* (1967) 1(A) UMAC 328 (Anderson), where an employer is entitled to complain of an employee's off-duty conduct only if it seriously impacted the employer's reputation. In this case, the employer offered no evidence to suggest that the charges the grievor faced affected its reputation in any way.

[52] Counsel concluded by noting that this was a long-service employee who was terminated solely because of the "colour" associated with the sexual assault charges, which ultimately had not been proven. Once those charges were taken out of the mix, the other two grounds relied upon by the employer were insufficient to justify terminating him.

[53] Counsel relied on the following authorities: *Aujla v. Deputy Head (Correctional Service of Canada)*, 2020 FPSLREB 38; *Basra v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 53; *Dekort*; *F.H. v. McDougall*, 2008 SCC 53; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115; and *Tobin* FCA.

C. The employer's reply

[54] Counsel submitted that hearings before an adjudicator are fresh hearings. That means that any defects in the original decision can in effect be cured by evidence or facts that are developed by the time of the hearing.

[55] Counsel pointed out that there was no evidence — and certainly nothing from the grievor — to suggest that medical issues were behind his failure to report to work on time. In any event, the employer had repeatedly offered EAP services to him, which had not been taken. Nor had he ever sought accommodation for any drug or alcohol problems that might have existed.

[56] As far as the *Millhaven* approach is concerned, it has been superseded by *Tobin* FCA.

IV. Analysis and decision

[57] This is a discipline case. I must consider these three things (see *Basra v. Canada (Attorney General),* 2010 FCA 24):

1) Was there reasonable cause for discipline?
2) If so, was the discipline imposed excessive?
3) If so, what alternate discipline, if any, ought to be imposed?

A. The three questions in a discipline case

1. Was there reasonable cause for discipline?

[58] I am satisfied that the first ground noted in the termination letter — the failure to report for work or to follow procedure with respect to such failures — alone constituted grounds for discipline. To put it another way, I was not satisfied that the other two grounds were the determining factor in the decision to terminate. The Employer would have come to the same decision even if the other two grounds had not existed.

[59] It is clear that failing to turn up for work on a scheduled shift — or failing to provide notice of the absence — imposed a heavy penalty on the employer, co-workers, and indeed, possibly, the inmates. When the employer lacked notice in time to call in a replacement, it had to ask other employees to stay beyond their normal shifts or had to shift employees from other stations, possibly resulting in shutdowns. All this could affect the morale of the remaining employees, who have to alter their personal lives to accommodate the defaulting employee's failure to show up for work on time and fit for duty.

[60] Moreover, the grievor's failures to report for duty on different dates in October, November, and December 2016 were made all the more serious — and all the more worthy of discipline — given that that conduct was identical to the conduct that had generated the following:

- a written reprimand on July 22, 2014;
- a 15-day suspension without pay on December 8, 2014;
- a 20-day suspension without pay on August 10, 2015; and
- a 30-day suspension without pay on February 25, 2016.

[61] I was satisfied then that the employer did establish (and it had the onus to) that it had reasonable cause to discipline the grievor as of February 2017 for his failures to report to work in October, November, and December 2016.

2. Was the discipline imposed excessive?

[62] The first ground offered by the employer for its decision to terminate the grievor was his long-standing history of failing to show up for his scheduled shifts on time and fit for duty. Had that been the only reason, I would have been satisfied that the employer had just cause for its decision.

[63] The misconduct was serious. It was repeated. It led to increasingly harsh disciplinary measures. The employer had provided the grievor with clear notice of its displeasure with the misconduct and of its expectations of him.

[64] Its decisions to impose discipline in the past had been coupled with warnings that further misconduct could result in discipline, up to and including termination. But the warnings seemed to have fallen on deaf ears. The grievor had continued to misconduct himself in the same way, even after being called into disciplinary meetings and receiving discipline for it.

[65] The employer's use of suspensions without pay for increasing periods (progressive discipline) was intended to bring home to the grievor the seriousness with which the employer viewed his misconduct, and the risk he ran by repeating it. But he continued to misconduct himself in the same way. Clearly, the suspensions without pay did not have the desired effect of curbing his behaviour. At that point, clearly, the employment relationship was broken. Nor was there any evidence that discipline less severe than termination would have made any difference or would have caused any change in the grievor's conduct. He had been suspended without pay three times, the last time for 30 days. Since suspensions without pay were not having the desired effect of bringing him to heel, the only reasonable option left to the employer was termination.

[66] However, this was not the only ground for termination offered by the employer at the time. The other two grounds related to the *Criminal Code* charges, which stemmed from off-duty conduct that the employer alleged brought its reputation into

disrepute and violated its Standards of Professional Conduct and its Code of Professional Conduct.

[67] The question then becomes this:

- Did the other two grounds justify imposing discipline on the grievor?
- If not, did that negate the first ground?

a. Did the other two grounds justify imposing discipline on the grievor?

[68] The second and third grounds listed in the termination letter related to the *Criminal Code* charges against the grievor. The letter stated that he had "committed" the actions for which he had been charged. But the employer had no evidence — independent of the charges — with respect to the charges related to driving under the influence on which to ground that finding. The fact that he might have been convicted of driving under the influence in the past is not evidence that he did so on the date referenced in the charge against him. And while there was some evidence relating to the assault charges, it was double hearsay from potentially biased witnesses, and it lacked the grievor's side of the story. Such evidence lacked the weight necessary for a finding on a balance of probabilities, let alone proof beyond a reasonable doubt.

b. Damage to the employer's reputation

[69] The employer's fallback position is that the fact that charges of that type were read out in open court in a small, tightly knit community damaged its reputation. I was not persuaded that this alone was sufficient to ground a finding that the grievor had *acted* in a manner likely to discredit the employer. First, and as already noted, there was insufficient evidence for a finding that the grievor had committed the actions that gave rise to the charge. Second, the *act* that the employer was concerned about — the impact of the charge on the community — was not that of the grievor. It was an act of the state.

[70] In saying this, I appreciate that the employer had inmates who had been convicted of acts similar to those in the charges levelled against the grievor. And I appreciate and accept that CXs are important role models for those inmates. However, equally important to the employer — and to its inmates and employees — is the fundamental principle of our justice system, which is that a person is innocent until proven guilty.

[71] To ground a termination solely on the basis of a charge being read out in court would do as much if not more damage to the employer's reputation as any caused by publicity associated with charges against the grievor. Had these been the only grounds for the employer's decision, I would have thought that a more reasonable alternative to termination would have been — as the grievor's counsel argued — to place the grievor on leave without pay until the charges were resolved. But these were not the only grounds. Thus, the first ground was not negated.

c. Determination

[72] Given the grievor's disciplinary history, given that the employer had already held a disciplinary hearing with respect to his most recent failures to report to work on time and fit for duty, and given the absence of any evidence from him to negate that conduct, I am satisfied that the employer had just cause to terminate his employment when it did. The disciplinary measure was not excessive. I am also satisfied that it would have made the same decision — and with the same justification — even had the *Criminal Code* charges that arose after the disciplinary hearing not occurred. The employer's reference to them was an unnecessary gilding of the lily.

3. What discipline, if any, ought to be imposed?

[73] My determination in the last paragraph renders this question moot.

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

(The Order appears on the next page)

V. Order

[75] The grievance in Board File No. 566-02-14446 is dismissed.

[76] The file is closed.

October 20, 2021.

Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board