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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

JOANNE RICHMOND

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Richmond v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Joanne Archibald, a panel of the Federal Public Sector Labour Relations
and Employment Board

For the Grievor: Paul Champ, counsel

For the Respondent: Richard Fader, counsel

Heard at Vancouver, British Columbia,
February 20 to 22, 2024; written submissions received November 14, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Joanne Richmond, was formerly employed by the Treasury Board (“the employer”) at the Correctional Service of Canada (“CSC”) as a program assistant, classified CR-04, at the CSC’s Pacific Institution (“PI”) in Abbotsford, British Columbia.

[2] On November 8, 2013, the grievor was suspended with pay, and on December 11, 2013, she was suspended without pay, pending the outcome of a disciplinary investigation into her off duty conduct on November 7, 2013.

[3] By letter dated May 16, 2014 (“the letter of termination”), signed by Terry Hackett, PI’s warden (“the warden”), the grievor’s employment was terminated, effective December 11, 2013. The relevant portion of the letter of termination states as follows:

...

On December 6, 2013, a disciplinary investigation was convened in relation to allegations of inappropriate conduct that occurred, on or about November 7, 2013, while you were off duty. Following the investigation, it was determined that you were charged, by the Abbotsford Police Department, with offences contrary to the Criminal Code, R.S.C. , 1985, c. C-46. More specifically, it was determined that you were charged with the following offences: i) section 349 of the Criminal Code for being in a dwelling / house without a lawful excuse; ii) section 266 of the Criminal Code for assault; and iii) two separate charges under section 430(4) of the Criminal Code for mischief (\$5,000.00 or under).

On December 11, 2013, you were suspended without pay pending the above referenced investigation and a letter was provided to you outlining the reasons for same.

In determining the level of disciplinary action warranted in this case, I have thoroughly reviewed the Disciplinary Investigation Report, completed on March 17, 2014, and taken into consideration the information provided during the Disciplinary Hearings held with you and your union representative on April 2, 2014 and May 12, 2014.

On April 2, 2014, during the first Disciplinary Hearing, you acknowledged that you were angry as a result of observing your partner with another woman and that you damaged a painting while at your partner’s residence. You failed to take any responsibility for any other damage to the residence, other than the painting, and further stated that your behaviour was a normal reaction. You stated that you did not assault your partner and that

your entry into his residence through a window was something that you did numerous times before.

On May 12, 2014, another Disciplinary Hearing was held with you and your union representative. The purpose of this meeting was to provide you with an opportunity to explain your behavior. During the meeting, you stated that your reaction was due to a similar incident with a previous partner. You indicated that you were attending counseling regularly. I note that, during this meeting, you continued to fail to recognize the seriousness of your actions. You also continued to blame your actions and the resulting criminal charges on the previous incident, the landlord, and the police. You felt that the findings in the Disciplinary Investigation Report were harsh. You further called into question the Investigator's findings and stated that the report was wrong. During both of the above referenced meetings, you failed to explain how you violated the code of conduct.

The Correctional Service of Canada (CSC) expects all employees to conduct themselves in a manner consistent with, inter alia, the CSC Standards of Professional Conduct and Commissioner's Directive (CD) 060 Code of Discipline. Based on all evidence and information gathered, I find that your behavior is unacceptable within the context of both the Standards of Professional Conduct and Code of Discipline. More specifically, it has been determined that you: i) acted, while on or off duty, in a manner likely to discredit the Service; and ii) committed an indictable offence or an offence punishable on summary conviction under any statute of Canada or any province or territory, which may bring discredit to the Service or affect your continued performance with the Service.

You have admitted that during the above referenced events you damaged only a painting and denied damaging a laptop. However, there is no mention of damage to a painting in the police report. The police description of the charges for mischief describe that you willfully damaged a laptop and this was further corroborated by the landlord, who witnessed you destroying the laptop. I find that you were aware of the damage to the laptop, but you intentionally withheld this information. You further admitted that you entered your partner's residence; however, you minimized your actions in relation to this particular event and did not admit to assaulting your partner. Nonetheless, on a balance of probabilities, I find that you did commit this assault. During the first disciplinary hearing, you admitted that you were angry, kicking, and that your partner had to physically hold you down. As a result, he then threw you out of the suite. Finally, you did not admit to causing the additional damage to your partner's residence; however, I also find that you did cause this damage. The police report stated that the holes in the walls were consistent with stiletto heels which you were wearing the night of the incident.

I note that there are two (2) active disciplinary actions on your personnel file, one of which demonstrates a disciplinary history pertaining to misconducts of a similar nature. That similar

incident has resulted in you being placed on a peace bond, for a period of nine (9) months, pursuant to section 810 of the Criminal Code.

...

It is apparent from your continued lack of responsibility for your actions and your inability to correct your behavior that it is likely for this type of behavior to repeat itself. This is unacceptable to me as a Public Servant who is expected to act within the Code of Values and Ethics of the Public Service.

Consequently, in light of the above, I must inform you that a decision has been made to terminate your employment for disciplinary reasons. Therefore, pursuant to section 12(1)(c) of the Financial Administration Act and by the authority delegated to me by the Deputy Minister, I am terminating your employment with CSC effective December 11, 2013.

...

[4] On May 29, 2014, the grievor grieved the termination, and the grievance was denied. On December 17, 2020, it was referred to the Federal Public Sector Labour Relations and Employment Board (“the Board”) pursuant to s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) as “... a disciplinary action resulting in termination, demotion, suspension or financial penalty ...”.

[5] As detailed in this decision, I find that the employer discharged the evidentiary burden of proving misconduct that provided cause for discipline. The discipline imposed was commensurate with the misconduct. Therefore, the grievor’s termination was warranted. The grievance is denied.

II. Summary of the evidence

[6] The grievor began working for the CSC in 2007 for a specified term of employment in a mailroom. The position was classified CR-03. Near the end of her term, she received an offer for another term appointment as a program assistant and inmate pay clerk at PI. Soon after, she was appointed indeterminately to the position. By September 2012, she was working at the Community Corrections Administration Office, pending the outcome of a disciplinary investigation concerning an occurrence in August 2012. It predated the incident of November 7, 2013, which is central to this matter.

[7] The stated objective of the CSC’s Commissioner’s Directive 060 (“CD 60”), as set out in article 1, is “[t]o ensure high standards of conduct for employees of the Service.”

Central to this adjudication are articles 7 and 8 of CD 60. They appear under the heading “Infractions”, and the relevant portion provides as follows:

7. Behaviour, both on and off duty, shall reflect positively on the Correctional Service of Canada and on 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....

8. An employee has committed an infraction, if he/she:

...

c. acts, while on or off duty, in a manner likely to discredit the Service;

d. commits an indictable offence or an offence punishable on summary conviction under any statute of Canada or of any province or territory, which may bring discredit to the Service or affect his/her continued performance with the Service;

...

[8] The CSC has also published two documents, entitled “Code of Discipline in the Correctional Service of Canada” (“the Code”) and “Standards of Professional Conduct” (“the Standards”), which flow from the Code. The provisions of CD 60, article 8, are repeated in paragraph 2 of the Code. Paragraph 2 of the Standards also refers to an employee’s behaviour on and off duty. Further, it states as follows:

...

Employees who commit criminal acts or other violations of the law, particularly if the offences are repeated or serious enough to result in imprisonment, do not demonstrate the type of personal and ethical behaviour considered necessary in the Service. Accordingly, any employee who is charged with an offence against the Criminal Code or against other federal, provincial, or territorial statutes must advise his or her supervisor before resumption of duties.

...

[9] The CSC requires its employees to complete a declaration to acknowledge that they have received the Code and the Standards that govern their employment. In her testimony, the grievor stated that she knew of the Code and Standards and that they applied to her conduct both on and off duty.

A. Incident of November 7, 2013

[10] The grievor gave evidence recounting the November 7, 2013, incident. It involved a boyfriend. Throughout this decision, he is identified as “NL”.

[11] She testified that she thought that NL was away from his residence on November 6, 2013, as he had not responded to her telephone calls and text messages. Early on November 7, 2013, she went to his residence, to surprise him on his return. To enter, she crawled through an unlocked kitchen window, as she had heard that others had accessed the residence by that method. In her testimony, she maintained that she did not consider it an act of breaking and entering.

[12] It should be noted that throughout the hearing, the parties described the charge under s. 349 of the *Criminal Code* (R.S.C., 1985, c. C-46; “the *Criminal Code*”) as “breaking and entering”. Where their abbreviated description is used in this decision, it should be understood to encompass the provisions of s. 349.

[13] According to the grievor, as she came through the window, NL intercepted her and said, “It’s not what it looks like.” The grievor then found a woman in the bedroom.

[14] The grievor testified that she “lost control”, “went ballistic”, and “freaked out”. She remembered that NL responded by “bear hugging” her to keep her from damaging his property. She pushed him off and recalled intentionally kicking some paintings. Her foot went through the wall, but she did not intend to damage it. While she did not recall damaging a laptop, she testified that she had watched the videotaped police interview in which she stated that she had damaged it. She accepted responsibility for the damaged wall.

[15] The grievor recalled that the police laid criminal charges against her. Initially, there was a “no contact” order preventing her from contacting NL, but it was rescinded. She testified that she did not agree with the breaking and entering charge because she was welcome at NL’s residence, and the window was unlocked. She testified that she wrestled with NL after entering, but she did not intend to assault him.

[16] A witness present at NL’s residence on November 6 and 7, 2013, testified during the hearing. Throughout this decision, she is identified as JD.

[17] JD testified that near midnight on November 6, 2013, while asleep in NL's bedroom, she became aware of someone walking back and forth on the porch outside. A motion-activated light woke her. Eventually, she fell asleep again. Then, in the early hours of November 7, 2013, she awoke to a crash from the kitchen. She saw an individual burst into the bedroom, struggling with NL.

[18] JD described the individual as tall with dark hair that was auburn or light brown. She stated that NL later identified the individual as his girlfriend, who was the grievor in this proceeding.

[19] NL yelled to JD to call the police. She left the bedroom and ran to the landlord's suite. The police were called.

[20] JD identified photographs showing NL's injuries. She stated that she did not recall that NL had any injuries before the grievor's arrival. When shown pictures of a hole in the wall and a painting knocked from its frame, she stated that she did not remember anything being broken before the grievor's entry. She identified a picture of a broken laptop, stating that it was hers. She had left it on a countertop. When she returned with the landlord, she found it smashed.

[21] JD recalled NL's concerns about the grievor working for the CSC and the consequences for her if criminal charges were laid. He told her that charges would ruin the grievor's life.

[22] On November 8, 2013, the grievor contacted the CSC to advise it that criminal charges were laid against her on November 7, 2013. She provided contact information for the investigating officer.

[23] In response, the CSC placed the grievor on annual leave and directed her not to report to work until the seriousness of the offences could be determined.

B. Investigation report and disciplinary hearing

[24] On December 6, 2013, the CSC directed an investigator to conduct a disciplinary investigation. The grievor received a copy of the convening order.

[25] On December 11, 2013, Vince LeBlanc, PI's former warden, wrote to the grievor, informing her of the disciplinary investigation. In part, the letter stated this:

I have received information that leads me to believe that you have committed an indictable offence, or an offence punishable on summary conviction (under any statute of Canada or of any province or territory) which may bring discredit to the Correctional Service.

Specifically, on or about November 7, 2013, you are alleged to have been involved in inappropriate activities which resulted in your having been charged by the Abbotsford Police Department with the following offences:

- 1. Section 349 of the Criminal Code of Canada, for being in a dwelling-house without a lawful excuse;*
- 2. Section 266 of the Criminal Code of Canada, for Assault;*
- 3. Two separate charges under Section 430(4) of the Criminal Code of Canada, for Mischief \$5000 or under.*

Such action, if founded, constitutes a serious breach of CSC's Standards of Professional Conduct and/or CSC's Code of Discipline. Consequently, I have mandated Nigel Harper, Regional Investigator to conduct an internal disciplinary investigation into this matter starting immediately.

...

While this investigation is ongoing, you are suspended without pay as outlined in the letter provided to you today....

...

[26] Shortly after that, Mr. Harper died, and Cindy Lewis ("the investigator") assumed the conduct of the disciplinary investigation.

[27] On December 11, 2013, the CSC formally notified the grievor by letter of her suspension without pay. The letter stated, in part, as follows:

...

This is to inform you that effective immediately you are hereby suspended indefinitely without pay pending the completion of the disciplinary investigation into the allegations that on or around November 7, 2013 you were criminally charged with the following offences:

- 1. Section 349 of the Criminal Code of Canada, for being in a dwelling-house without a lawful excuse;*
- 2. Section 266 of the Criminal Code of Canada, for Assault;*
- 3. Two separate charges under Section 430(4) of the Criminal Code of Canada, for Mischief \$5000 or under.*

I have reviewed whether you are able to report to work in your substantive job in a full or modified capacity. I note that you currently have a no contact order in place against an employee at

Pacific Institution pending the outcome of outstanding charges stemming from an incident on August 11, 2012. For this reason you were first re-assigned [sic] to the CCAO office and then Matsqui Institution. Due to the nature of the new allegations, identified above, I have determined that there are no other options available other than suspension without pay. Your presence in an institution or another Government of Canada work location would present a serious safety and security risk to the Service and would adversely affect our Public reputation.

During this period of suspension, you are not to enter CSC premises without the permission of myself or my representative. I will continue to review the information on your file on a regular basis to determine if suspension without pay is warranted.

[An] investigation has been convened and the convening order is being provided to you today. You will be contacted by the Investigator shortly.

...

[28] The grievor did not file a grievance against the suspension without pay.

[29] On March 17, 2014, following the investigation, the investigator presented her findings.

[30] According to the disciplinary investigation report, the grievor denied damaging a laptop and stated that the injury to NL was actually a healing scab that had been dislodged. Moreover, according to her, NL told the police that she had free access to the residence.

[31] The investigation report summarized the incident of November 7, 2013, as follows:

...

*... At approximately 01:00 hours, Ms. Richmond attends the residence of [NL], her boyfriend at the time, and climbs through the kitchen window. She finds her boyfriend in bed with his ex-girlfriend and there is a confrontation between Ms. Richmond and [NL]. During the confrontation property is damaged. The landlord walks down two floors to the suite and witnesses Ms. Richmond assaulting [NL]. She tries to call out to [NL] and tells Ms. Richmond to leave when Ms. Richmond approaches her and says "f*** you" and slams the door in her face. The landlord and the other woman leave the suite. The landlord calls the Abbotsford Police and they attend [NL]'s suite. Prior to the arrival of the police Ms. Richmond leaves and goes to her home where the Abbotsford Police attend*

and arrest her. Ms. Richmond is detained and spends the night in lock up.

...

[32] The investigator concluded on a balance of probabilities that the grievor had violated CD 60, the Code, and the Standards.

[33] After receiving the disciplinary investigation report, the warden proceeded with a disciplinary hearing. It consisted of two interviews with the grievor, accompanied by her representative, on April 2 and May 12, 2014.

[34] The warden recalled that the grievor denied the reported incident and stated that she disagreed with everything in the disciplinary investigation report. He testified that during the disciplinary hearing, he wanted her to convince him that the bond of trust between her and the employer could be salvaged. He wanted her to acknowledge the events of November 7, 2013.

[35] The first day of the disciplinary hearing convened on April 2, 2014. The warden testified that although the grievor admitted to details of entering the residence and damaging a painting, she minimized the extent of her actions. She told him that she had climbed through the kitchen window 30 times before to gain access to NL's residence. Later, she admitted that she had entered through the window only once, and that was on November 7, 2013. She denied damaging the walls and insisted that the photographs showing damage were taken after NL was evicted from the residence. She acknowledged damaging one painting. She stated that she had received counselling since the 2012 incident. She changed counsellors in January 2014, to address issues of anger management.

[36] The warden stated his concern that the grievor was not truthful during the first day of the disciplinary hearing. Therefore, he scheduled a second hearing date of May 12, 2014. He testified that he hoped that she would reflect on the events and be more forthcoming. For him, telling the truth about the past was a predictor of behaviour in the future. He expected ownership and transparency from her.

[37] According to the warden, during the second day, the grievor acknowledged that she had lost her temper. She insisted that she had permission to enter through the kitchen window and that she did not assault NL. She added that the police

misunderstood or made wrong assumptions when they decided to charge her with assault. She maintained that she damaged only a picture and that she had no involvement in damaging a laptop. She stated that she did not damage the walls of the residence.

[38] The grievor testified that when she was interviewed during the disciplinary investigation, she was terrified of losing her employment and therefore minimized her actions. She agreed that she did not admit to damaging the laptop. She believed that she told the police what happened, with honesty and transparency. She wanted to give the police as much information as they needed.

[39] When determining the disciplinary consequence for the 2013 incident, the warden testified that he considered the grievor's performance appraisals and her actions in coming forward on November 8, 2013, to provide the CSC with the name and contact information of the investigating police officer. He did not consider an email from NL, which provided his opinion that the matter was personal and did not impact the grievor's work performance and therefore, no disciplinary consequences should be imposed.

[40] The warden testified that he was troubled that the grievor minimized her behaviour. The criminal charges were serious, and the warden wanted to understand whether there was an underlying cause. The 2012 incident was a relevant consideration. It, too, involved a partner and resulted in criminal charges. In both cases, the grievor exhibited an uncontrolled reaction. She appeared to lose her temper and control of her reactions. In 2012, she broke a window. In 2013, she entered through a window, damaged a painting and other property, and assaulted NL. The CSC disciplined her for the 2012 incident for off duty conduct that breached the Code and the Standards.

[41] While she admitted to the police that she had damaged the laptop, she denied it to the former warden. She testified that she was mortified by her actions at NL's residence. She believed that she had violated the Code by damaging property but not by entering the residence.

[42] The warden summoned the grievor to a meeting on May 16, 2014, during which he delivered the letter of termination.

C. Police investigation and criminal charges

[43] Detective Daryl Young of the Abbotsford Police Department testified that he was the lead investigator in domestic cases. Referring to his notes, he recalled attending NL's residence on November 7, 2013, where he took separate audio statements from NL and JD. I have not relied on either statement. Firstly, NL did not appear during the hearing. He did not give evidence and could not be examined on his statement. Secondly, JD gave evidence and testified directly concerning the events of November 7, 2013. Accordingly, I found it unnecessary to place weight on either statement.

[44] Photographs taken during the attendance by the police at the residence were entered into evidence, including photographs of NL's injuries, two damaged laptops, holes in walls, and the window through which the grievor entered.

[45] The police later arrested the grievor at her home and then conducted an interview at the police station. The video recording of the police interview of November 7, 2013, was entered into evidence.

[46] During the interview, the grievor explained that she accessed the residence by copying the reported actions of someone else who had entered earlier by sneaking through the kitchen window. She acknowledged kicking two paintings with the intention of damaging them. She admitted destroying a laptop, although she had no knowledge of a second damaged laptop. She described being restrained by NL and kicking him as she struggled to resist. She stated that she did not mean to harm him.

[47] Documents confirm that police laid four criminal charges against the grievor: being unlawfully in a dwelling or house without lawful excuse (described as "break and enter" by the parties), assault, and two charges of mischief under \$5000. On May 5, 2014, the Court addressed the criminal charges by ordering her to enter into a recognizance.

D. Prior discipline

[48] The letter of termination referred to two active disciplinary matters, details of which follow.

[49] On March 19, 2013, the grievor received a two-day suspension without pay for an incident in 2012 when she made a late-night visit to a former boyfriend, also a CSC

employee, who is identified in this decision as “TN”. It resulted in her breaking a window in frustration when he shut the door and locked her out. Police were summoned, and she was criminally charged.

[50] The following passage is from the letter of discipline issued by Carole Chen, the acting deputy warden, on March 19, 2013, following a disciplinary hearing:

...

I have completed a full review of the findings of the Disciplinary Investigation convened by A/Warden, Terry Hackett on October 16, 2012 regarding the following allegations that on or around August 6, 2012 you:

- 1. Were involved in an incident which resulted in you being criminally charged for Mischief under \$5000.00;***
- 2. The events which took place on or around August 6, 2012 resulted in conditions that you not contact [TN], attend [TN]’s residence, or attend [a municipal address in Langley, B.C.];***
- 3. Failed to conform to the Correctional Service Canada’s Standards of Professional Conduct, specifically but not inclusive to Standard two, Conduct and Appearance.***

On November 22, 2012, a disciplinary hearing was held with A/Warden Terry Hackett to provide you with an opportunity to discuss the investigation report and clarify facts. He met with you and your union representatives, Les Holland and Ben Schmidt. Today we are meeting to award the discipline. Prior to the meeting today, I reviewed the discipline report as well as the notes from the hearing on November 22, 2012. Accountability involves the notion of being willing and able to explain, answer to and justify the appropriateness of actions and decisions. In the hearing, you failed to provide an explanation for your actions and at no time did you take any responsibility for the actions taken on August 6, 2012. Your version of events changed repeatedly throughout the investigation process including at the disciplinary hearing.

I consider your behavior unacceptable within the context of the Correctional Service of Canada’s Standards of Professional Conduct and Code of Discipline, specifically that an employee has committed an infraction, if he/she:

- a. Act [sic], while on or off duty, in a manner likely to discredit the service;*
- b. Commits an indictable offence or an offence punishable on summary conviction under any statute of Canada or any province or territory, which may bring discredit to the Service or affect his/her continued performance with the Service.*

As a Federal public servant who has over 5 years of service within [sic] the Correctional Service of Canada, it is more than reasonable to expect that you understand and apply all relevant standards both on and off duty and that your behavior should 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 actions. It is clear that you failed to fulfill these fundamental behaviors on this occasion.

*You currently have no discipline on file. After careful consideration of this, the delay in the completion of the investigation, the findings and your statements provided during the disciplinary hearing, I find these acts of misconduct serious and have determined that your misconduct warrants a **two (2) day suspension without pay commencing on March 20, 2013** in accordance with paragraph 12(1) (c) of the Financial Administration Act....*

It should be noted that all staff must take care to observe departmental requirements and standards in the discharge of their duties and to behave in a manner which reflects positively on the Correctional Service of Canada. Severe misconduct is viewed seriously by the department and will not be tolerated. Any recurrence of this behavior or any other infractions will result in the imposition of more severe disciplinary action, up to and including termination. I sincerely hope that such action will not be necessary.

...

[Emphasis in the original]

[51] The grievor did not grieve the disciplinary action. She testified that she understood that the CSC imposed the two-day suspension because she had breached the Code. With the letter of discipline, she received information concerning the Employee Assistance Program. She then attended counselling, at which she addressed anger management, controlling her behaviour, and responding appropriately.

[52] On November 26, 2013, the grievor received a 10-day suspension for 9 absences without authorization during the period of October 16 through November 8, 2013. The following passage is from the letter of discipline that was issued following a disciplinary hearing:

...

At the disciplinary hearing you failed to provide an adequate explanation for your failure to inform Ms. Lapierre that you would be absent. Ms. Lapierre reiterated the process that you had been given on numerous occasions when one of her employees was reporting an absence. Ms. Lapierre provided continuous assistance

and opportunities to correct the issues and you failed to cooperate. Furthermore, during the hearing you failed to take any responsibility and in fact stated that Ms. Lapierre should of just understood she was sick and should in fact have questioned why you showed up for work, not why she wasn't there.

I consider your behavior unacceptable within the context of Correctional Service Canada (CSC) Standards of Professional Conduct and Code of Discipline. More specifically, your behavior demonstrates:

- Absences from duty without authorization;
- Failure to obey lawful orders or commands of any other employee who is in charge or superior in line of authority by not following the instructions to call in when being absent from the workplace.

*After careful consideration of your statements provided during the disciplinary hearing, your failure to accept any responsibility for not informing the employer of your absences, and taking into account your previous discipline on record, I find that these acts of misconduct are serious and have determined that your misconduct warrants a **ten (10) day suspension without pay commencing on November 27, 2013 until December 10, 2013, inclusive**, in accordance with Section 12(1)(c) of the Financial Administration Act....*

...

It should be noted that all staff must take care to observe departmental requirements and standards in the discharge of their duties and to behave in a manner which reflects positively on the Correctional Service of Canada. Misconduct is viewed seriously by the department and will not be tolerated. Any recurrence of this or any other infractions may result in the imposition of more severe disciplinary action, up to and including termination. I sincerely hope that such action will not be necessary.

...

[Emphasis in the original]

[Sic throughout]

[53] The grievor did not grieve the 10-day suspension.

III. Summary of the arguments

A. For the employer

[54] This is a case of progressive discipline that includes a two-day suspension for similar conduct that was imposed not long before the incident at issue. The grievor lied throughout the investigation and discipline processes.

[55] The CSC was not obliged to establish the conduct described in each ground cited in the letter of termination. The grounds that are established are weighed against the criteria for termination for cause.

[56] The Code and the Standards indicate that it is a breach for an employee to commit an offence under a statute of Canada which may bring discredit to the CSC or affect their continued performance within the CSC. The CSC need show only commission and not conviction. The applicable evidentiary standard is the balance of probabilities.

[57] As for the entry into NL's residence, s. 349 of the *Criminal Code* provides as follows:

349 (1) Every person who, without lawful excuse, enters or is in a dwelling-house with intent to commit an indictable offence in it is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or of an offence punishable on summary conviction.

(2) For the purposes of proceedings under this section, evidence that an accused, without lawful excuse, entered or was in a dwelling-house is, in the absence of any evidence to the contrary, proof that he entered or was in the dwelling-house with intent to commit an indictable offence therein.

349 (1) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration sommaire de culpabilité quiconque, sans excuse légitime, s'introduit ou se trouve dans une maison d'habitation avec l'intention d'y commettre un acte criminel.

(2) Aux fins des poursuites engagées en vertu du présent article, la preuve qu'un prévenu, sans excuse légitime, s'est introduit ou s'est trouvé dans une maison d'habitation fait preuve, en l'absence de toute preuve contraire, qu'il s'y est introduit ou s'y est trouvé avec l'intention d'y commettre un acte criminel.

[58] The grievor crawled through a window without knocking or attempting to gain entry with consent. She did not reside on the premises and was not invited to enter. The grounds for unlawfully entering a dwelling house are established. Additionally, she admitted to Detective Young that November 7, 2023, was the first time she entered the residence through that access point. She misled the CSC by telling the former warden that she had done it 30 times before then.

[59] Sections 265(1)(a) and 266 of the *Criminal Code* set out the following provisions for assault:

265 (1) <i>A person commits an assault when</i>	265 (1) <i>Commet des voies de fait, ou se livre à une attaque ou une agression, quiconque, selon le cas :</i>
(a) <i>without the consent of another person, he applies force intentionally to that other person, directly or indirectly;</i>	a) <i>d'une manière intentionnelle, emploie la force, directement ou indirectement, contre une autre personne sans son consentement;</i>
...	[...]
266 <i>Every one who commits an assault is guilty of</i>	266 <i>Quiconque commet des voies de fait est coupable :</i>
(a) <i>an indictable offence and is liable to imprisonment for a term not exceeding five years; or</i>	a) <i>soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;</i>
(b) <i>an offence punishable on summary conviction.</i>	b) <i>soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</i>

[60] The photographs in evidence show the injuries to NL's chest, face, arms, and hands. There is no suggestion that NL agreed to the force applied to him. The preponderance of the evidence demonstrates that he acted to defend his property and that he was assaulted as a result.

[61] Concerning the mischief charges, ss. 430(1)(a) and (b) and (4)(a) and (b) of the *Criminal Code* provide as follows:

430 (1) <i>Every one commits mischief who wilfully</i>	430 (1) <i>Commet un méfait quiconque volontairement, selon le cas :</i>
(a) <i>destroys or damages property;</i>	a) <i>détruit ou détériore un bien;</i>
(b) <i>renders property dangerous, useless, inoperative or ineffective</i>	b) <i>rend un bien dangereux, inutile, inopérant ou inefficace [...]</i>
...	[...]
(4) <i>Every one who commits mischief in relation to property, other than property described in subsection (3),</i>	(4) <i>Quiconque commet un méfait à l'égard d'un bien, autre qu'un bien</i>

visé au paragraphe (3), est coupable :

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

a) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans;

(b) is guilty of an offence punishable on summary conviction.

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

[62] During the police interview, the grievor admitted to “destroying” two paintings and a laptop computer while at NL’s residence. She wilfully damaged property and rendered one laptop useless.

[63] The employer submitted that the evidence established a breach of the Code and the Standards. The grievor was aware of the requirements and knew from the earlier two-day suspension that off duty conduct of this type warranted discipline, up to and including termination.

[64] The warden provided the grievor with a second opportunity to tell the truth when he scheduled an additional interview with her. She still did not tell the truth about the events of November 7, 2013. The warden considered that she intentionally withheld information, such as the damage to the laptop and the second painting. She denied the assault and told him that the police misunderstood. He remained concerned about her inability to control her reactions.

[65] The employer argued that it met the burden of showing a breach of the Code and the Standards. The grievor’s behaviour paralleled behaviour for which she had previously received discipline. She failed to show a timely, honest expression of remorse for her conduct during the disciplinary process.

[66] Additionally, the bond of trust between the CSC and the grievor could not be rebuilt on a foundation of lies. She did more than minimize her conduct — she lied because she was afraid of losing her job. The warden sincerely offered the second interview to give her time to reflect and be candid. Instead, she repeated what she had said before.

[67] Given the grievor’s prior disciplinary record, the termination of employment was justified.

B. For the grievor

[68] The grievor conceded that there was cause for discipline but argued that termination was an excessive penalty for this off duty conduct.

[69] The grievor was an administrative employee, and she was good at her job, according to the disciplinary investigation report. There is no evidence that her off duty conduct influenced her ability to perform her duties.

[70] The situation in which the grievor was placed on November 7, 2013, was deeply personal and private. There is no question that her conduct was inappropriate, but it was a strong, spontaneous reaction to the circumstances.

[71] It was not workplace misconduct but because it resulted in criminal charges, it came to the employer's attention and led to consequences for her continued employment.

[72] Beyond entering the premises, seeing the situation, and damaging goods, the granular details of the event are not helpful.

[73] The grievor was honest with the Abbotsford Police Department. It is uncontested that she was not completely forthright with the CSC. As a result, she minimized some things. However, it would be unfair to say that she lied about everything.

[74] The former warden expressed no concern for the grievor's well-being. Contrary to his explanation, by conducting two disciplinary interviews, he merely wanted to build a stronger termination case.

[75] She has suffered humiliation, embarrassment, and extreme financial hardship.

IV. Analysis

[76] The employer bears the burden of proof on the balance of probabilities in a termination case. I am satisfied that the employer has discharged that burden.

[77] My assessment of this matter follows the three-part analysis set out in *Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1977] 1 Can. L.R.B.R. 1 ("*Wm. Scott*") at para. 13, as follows:

... arbitrators should pose three distinct questions in the typical discharge grievance. First, has the employee given reasonable cause for some sort of discipline by the employer? If so, was the employer's decision to dismiss the employee an excessive response in all of the circumstances of the case? Finally, if the arbitrator does consider discharge excessive, what alternative measures should be substituted as just and equitable?

A. Has the employee (the grievor) given reasonable cause for some form of discipline?

[78] For the reasons that follow, I find that the grievor's conduct on November 7, 2013, constituted a breach of CD 60 as reflected in the language of both the Code and the Standards.

[79] I note that the Code and the Standards flow from CD 60. The Federal Court of Appeal, in *Tobin v. Canada (Attorney General)*, 2009 FCA 254, found that the CSC commissioner's issuance of CD 60 was a proper exercise of his delegated authority. CD 60 governs employees' conduct on and off duty. On this authority, I have weighed the grievor's conduct relative to the provisions of the Code and the Standards, without the need to refer to the criteria in *Millhaven Fibres Ltd. v. Oil, Chemical & Atomic Workers Int'l Union, Local 9-670*, [1967] O.L.A.A. No. 4 (QL), for assessing off duty misconduct.

[80] Specific to this case, CD 60 provides that:

...

8. An employee has committed an infraction, if he/she:

...

c. acts, while on or off duty, in a manner likely to discredit the Service;

d. commits an indictable offence or an offence punishable on summary conviction under any statute of Canada or of any province or territory, which may bring discredit to the Service or affect his/her continued performance with the Service;

...

[81] As a first step, I considered whether the grievor breached paragraph 8(d) of CD 60. I note first that CD 60 refers to commission and not to conviction. To be clear, the grievor was not convicted of the offences with which she was charged.

[82] To obtain a conviction, the Crown would have been required to prove, beyond a reasonable doubt, that the grievor committed the offences in question. In the civil context, the applicable standard is the balance of probabilities. In other words, before the Board, the respondent was only required to show that it was more likely than not that the grievor committed the offences with which she was charged.

[83] In the analysis that follows, I have weighed the grievor's off duty conduct against the elements of the offences using the civil standard of the balance of probabilities to determine whether the evidence demonstrates that she breached the Code by committing the offences with which she was charged. My conclusion does not bear on any finding of criminal liability.

[84] Firstly, the grievor entered NL's residence without permission or invitation. She protested in her evidence that she did not "break and enter" the premises, but she did not suggest any lawful excuse or provide evidence to justify her presence in the dwelling. It is insufficiently convincing for her to say that she was welcome there. Her description of NL's response and her actions in the residence militate against her explanation. The evidence before me persuades me on the civil standard of the balance of probabilities that the grievor committed the offence of which she was charged under s. 349 of the *Criminal Code*.

[85] Secondly, concerning assault, there are photographs in evidence showing NL with scratches and cuts when the police attended the residence on November 7, 2013. JD testified that she did not see the injuries before the incident. The grievor made it clear that she resisted NL's attempts to restrain her.

[86] It is reasonable to infer that the harm occurred while she and NL grappled. There is no evidence to suggest that NL consented to the force that the grievor applied to him. I find that on the civil standard, the elements of the offence of assault have been established, and that the grievor committed the offence of which she was charged under ss. 265 and 266 of the *Criminal Code*.

[87] Thirdly, with respect to mischief, by the evidence of the videotaped police interview of November 7, 2013, I am satisfied that the grievor damaged not one but two paintings and a laptop computer. It is reasonable to infer that she damaged the wall behind the paintings as well. She admitted the damage to property during the interview. JD confirmed that her laptop computer was destroyed. On the civil standard,

I am satisfied that the elements of the offence of mischief under s. 436 of the *Criminal Code* of which the grievor was charged are made out.

[88] On the basis of this analysis, I am satisfied on the balance of probabilities that the elements of the offences of unlawfully entering a dwelling, assault, and mischief have been made out. This analysis supports the CSC's conclusion that the grievor committing indictable offences or offences punishable on summary conviction under a statute of Canada. Accordingly, the grievor's conduct constituted an infraction of paragraph 8(d) of CD 60.

[89] The letter of termination also refers to the grievor acting "... while on or off duty, in a manner likely to discredit the Service ...".

[90] Objectively, the offences with which the grievor was charged are serious. I do not doubt the grievor's description of her devastation when she encountered JD with NL at his residence. In her evidence, she described her reaction as freaking out, going ballistic, and losing control. However, the provocation that she experienced did not excuse her conduct. She alone bears responsibility for the choices that she made that day. She entered a residence without lawful excuse, assaulted NL, and damaged or destroyed the property of others. It set in motion the sequence of events that placed her where she finds herself.

[91] When the grievor answered the criminal charges in court, she was ordered to enter a recognizance, subject to conditions that included reporting to a probation officer. The recognizance noted that a failure to adhere to the conditions was punishable under s. 811 of the *Criminal Code* as an indictable offence or by summary conviction.

[92] As the Court stated in *Tobin*, at para. 62, the question of whether the grievor's conduct brought the CSC into discredit is answered by "... the application of common sense and measured judgment." I note that actual discredit need not be proven. (See *Stene v. Deputy Head (Correctional Service of Canada)*, 2016 PSLREB 36.)

[93] Accordingly, I find that the grievor's conduct constituted an infraction within paragraph 8(c) of CD 60.

[94] Viewing the totality of the evidence, I find that a reasonably informed bystander would conclude that the grievor's off duty conduct on November 7, 2013, was likely to

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discredit the CSC contrary to paragraph 8(c) of CD 60, and as set out in paragraph 8(d) of CD 60 "... may bring discredit to the Service or affect his/her continued performance with the Service". I find this to be particularly so given the relationship of criminal conduct to the CSC's mandate to provide the safe, responsible management of an offender population.

B. Was the employer's decision to dismiss the grievor an excessive response in all the circumstances of the case?

[95] To assess whether the employer's decision to dismiss the grievor was excessive, it is necessary to look at both the mitigating and aggravating factors (see *Wm. Scott*).

[96] I take particular note that the grievor engaged in markedly similar conduct on August 6, 2012. Discipline was meted out to her on March 19, 2013, in the form of a 2-day suspension. I place less weight on the 10-day suspension issued on November 26, 2013, for unexcused absences, although I consider it relevant to establishing her history as it existed as of the present disciplinary process.

[97] I accept that the grievor was not forthcoming with the CSC when she was questioned about her conduct on November 7, 2013. She falsely asserted to the warden that she often entered NL's residence by the kitchen window. However, she made it clear to the police that November 7, 2013, was the first and only time she did so.

[98] During the disciplinary hearing, the grievor denied assaulting NL. She withheld details from the CSC of damaging not one but two paintings and denied any damage to a laptop, although she had admitted all those details to the police.

[99] The grievor knew that termination of employment was a potential consequence of breaching the Code and the Standards. The CSC informed her of the possibility in March 19, 2013, when it suspended her for the 2012 incident. The letter of discipline stated, in part, as follows:

...
... Severe misconduct is viewed seriously by the department and will not be tolerated. Any recurrence of this behavior or any other infractions will result in the imposition of more severe disciplinary action, up to and including termination. I sincerely hope that such action will not be necessary.

...

[100] This was repeated in the letter of discipline of November 26, 2013, when she received discipline for unauthorized absences.

[101] Before me, the grievor testified that she was “mortified” and “terrified” when she faced the CSC’s investigation and disciplinary hearing about the November 7, 2013, incident. She stated that she felt “dread” at the prospect of losing her job.

[102] The grievor’s lack of forthrightness in response to direct questions about the events of November 7, 2013, is problematic. I accept that her economy with the truth during the disciplinary hearing reflected her concern for preserving her employment but does not excuse it.

[103] In *Brazeau v. Deputy Head (Department of Public Works and Government Services)*, 2008 PSLRB 62 at para. 190, the former Board held, “The grievor’s lack of forthrightness during the respondent’s investigation constitutes, from my perspective, a determinant factor with regard to the rehabilitation of the grievor and the necessary bond of trust.”

[104] I adopt the reasoning in *Brazeau*. The grievor’s failure to be forthright harmed the trust that is the foundation of the employer-employee relationship.

[105] These considerations support the conclusion that the termination of employment was appropriate in the circumstances. It was commensurate with the seriousness of the breaches, the repeated behaviour, and the grievor’s absence of forthrightness during the disciplinary process.

[106] The termination was effective December 11, 2013, coinciding with the commencement of the grievor’s leave without pay. I adopt the finding in *Basra v. Deputy Head (Correctional Service of Canada)*, 2014 PSLRB 28 at para. 153, where the former Board stated that “... the facts upon which the termination is based existed as of the date chosen to give effect to the termination ...”. There is no basis to interfere with the termination date.

C. If the adjudicator does consider discharge excessive, what alternative measure should be substituted as just and equitable?

[107] I do not find that discharge was an excessive penalty in the circumstances of this case. Therefore, alternative measures are not a consideration.

D. Sealing order

[108] The employer requested redactions from Exhibit 1, tabs 4 and 5 of biographical information relating to individuals who were not before the Board and whose conduct was not the subject of this proceeding. The grievor's counsel indicated that he did not object to the redaction of these exhibits.

[109] In addition, the parties requested that Exhibit 1, tab 23 and Exhibit 3 be sealed. Exhibit 1, tab 23 is the record of a CSC disciplinary investigation. It refers to many individuals who did not appear in this matter, as well as the street addresses of CSC employees and members of the public.

[110] Exhibit 3 is a video recording of the grievor's police interview of November 7, 2013. It includes multiple references to members of the public who were not before the Board and whose conduct was not the subject of this proceeding.

[111] In balancing the open court principle with the risk of unnecessary disclosure of personal information, I accept the submissions and order Exhibit 1, tabs 4 and 5 to be redacted as provided by the employer. Exhibit 1, tab 23 and Exhibit 3 will be sealed.

V. Conclusion

[112] Based on the evidence before me, I find that the grievor's off duty conduct on November 7, 2013, breached CD 60, the Code, and the Standards. Given the seriousness of the breach as reflected in the gravity of the conduct, her relevant disciplinary history for the 2012 incident, and her absence of forthrightness during the disciplinary process for the events of November 7, 2013, I am satisfied that the employer had just cause to terminate her employment. The termination of her employment was neither excessive nor unreasonable in these circumstances.

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

(The Order appears on the next page)

VI. Order

[114] The grievance is denied.

[115] Exhibit 1, tabs 4 and 5 are ordered redacted. Exhibit 1, tab 23 and Exhibit 3 are ordered sealed.

December 4, 2024.

**Joanne Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**