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Springhill Institution – Big Win against CSC violation of the *Canada Labour Code*

In a decision dated April 1, 2010 the Public Service Labour Relations Board (the Board) ruled that CSC violated section 147 of the *Canada Labour Code* (C.L.C.) at Springhill Institution.

Under section 147 C.L.C., employers are prohibited from retaliating against employees who exercise their rights under the Code.

On July 29, 2008, the union at Springhill Institution filed a complaint for such a violation, which read in part as follows:

> *"On or about July 11, 2008, Mr. Denis LeClair was ordered by correctional manager Justin Simons, acting under the direction of Warden Ed Muise, to search through human excrement. Mr. LeClair refused to conduct this search because it was not safe. Mr. Simons threatened Mr. LeClair that he would be sent home without pay and fined if he did not obey his order. Mr. LeClair made it clear to Mr. Simons that he maintained his refusal explicitly citing section 128 of the Canada Labour Code. It should be noted that the employer was acting in violation of a previous section 128 resolution on the same subject matter.*
>
> *In flagrant violation of the Canada Labour Code, Mr. Simons, purportedly acting in complicity with institutional management under the direction of Warden Ed Muise, refused to recognize the section 128 work refusal.*
>
> *In violation of section 147, Mr. Simons repeatedly threatened Mr. LeClair to search the human excrement or leave his post and Mr. Simons successively imposed four financial penalties of $160, $320, $480 and $640 on Mr. LeClair for his refusal."*

The Board concluded that CSC violated section 147 of the Code and ordered CSC compensate correctional officer LeClair for time lost.

Management reached new heights as C.M. Simons argued that by immediately ordering D. LeClair home, he could no longer invoke a section 128 work refusal as he was technically off duty! Imagine the precedent if an employer were allowed to thwart a 128 work refusal by immediately ordering the employee off the premises!

At the hearing, the employer objected to the arbitrator's jurisdiction because there was no valid work refusal under section 128 of the Code.

C.M. Simmons, CSC and the Treasury Board also all lost their credibility when confronted with the plain facts of the case.

The decision repeatedly concluded that management at Springhill, CSC and Treasury Board were not credible.

- at paragraph 124

  " I do not find it credible that Mr. Simons would not have quickly come to understand the nature of the situation…"

- On Warden Ed Muise and C.M. Simons justifications for not accepting D. LeClair's 128, at paragraph 126

  " The respondant (CSC through the actions of Muise and Simons) seems to have had a different strategy in mind".

- On C.M. Simons putting D. LeClair off duty, at paragraph 127

  "using that decision as the basis for not considering a section 128 work refusal seems to me to offend the spirit and intent of the Code"

- On C.M. Simons, CSC, and Treasury Boards contention that there was no valid 128 work refusal because D. LeClair was off duty, at paragraph 127

  "the situation (the 128 work refusal) did not cease to exist because Mr. Simons had ordered the complainant to go home."

- On C.M. Simons, CSC and Treasury Boards contention that because a manager had

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performed the duty, there was no longer a 128 work refusal, at paragraph 127

" It (the 128 work refusal) also did not cease to exist because Mr. Simons found someone else, to perform the duty."

- C.M. Simons refusal to entertain a 128 work refusal is contradicted by the Warden's and the Regional CSC representative's written recognitions of the work refusal, at paragraph 128

" I do not believe that the respondent can credibly advance its objection to the Boards jurisdiction by arguing on interpretation of the facts contradicted by the actions and statements of its own representatives."

- and at paragraph 131

" I am thus satisfied that the statements and actions of the respondent's representatives in this case undermine the credibility of its jurisdictional objection. "

At some point in time, someone at CSC or Treasury Board came to see that Springhill Management's actions in this case were a clear violation of the Code and thus the four financial penalties were never implemented. CSC and Springhill management left the prospect of the disciplinary process hang over D. LeClair's head for 1 ½ years. It wasn't till the day before the hearings that the employer let it be known that is was no longer pursuing the disciplinary process!

From this, the employer argued that since the discipline hadn't actually been implemented that there could be no violation of the Code!

Imagine the precedent if an employer could declare the imposition of penalties and a further disciplinary process on an employee that invoked a section 128 work refusal, then claim that it actually changed its mind at a later date thus invalidating the employees complaint of retaliation! The arbitrator brushed aside this notion as follows

- at paragraph 145

"The respondent's original position that there was no discipline, thus rendering the complaint moot, is itself moot. It is not necessary under section 147 that the respondent actually execute discipline. Threatening discipline is sufficient."

In a nutshell, Springhill management, CSC and Treasury Board got the thorough beating that was coming to them.

This case should be used to oppose any like actions by managers at any institution in Canada.

(well worth reading at the PSLRB web site: citation 2010 PSLRB 49)