

CANADA / JUDGMENT

Mehari v. Canada (Attorney General)

2026 FC 462

COURT

Federal Court

DECIDED

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Date: 20260409

Docket: T-599-25

Citation: 2026 FC 462

Ottawa, Ontario, April 9, 2026

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SEMERE MEHARI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

- [1] This is an application for judicial review of a Final Grievance Response dated March 18, 2024 [Decision] which upheld the suspension and related termination of the Applicant from his work assignment as a Point-of-Sale [POS] Clerk at the Inmate Canteen [Canteen] of the Beaver Creek Institution [BCI], medium security facility.
- [2] The Applicant was suspended and terminated from his work assignment for failing to comply with policy, and refusing to participate in the work assignment as intended.
- [3] The Applicant asserts that there was no basis for his suspension and that he was given insufficient instructions and warnings related to his alleged negative conduct.
- [4] As set out below, the application is allowed as it is my view that the Decision failed to fully engage with the Applicant's core argument and is without sufficient transparency and justification when considered in the context of the governing legislative scheme.

I. Background [5] The Applicant, Semere Mehari, is an inmate at BCI. Before September 2023, he worked as a POS Clerk at the BCI Canteen.

- [6] On September 19, 2023, Mr. Mehari allegedly used, or allowed use of, the computer keyboard at the POS terminal without staff supervision. This locked out the POS until an information technology technician could restore the system. Mr. Mehari was suspended, and ultimately terminated, from his job at the Canteen, pursuant to paragraph 46 of Commissioner's Directive 730: Offender Program Assignments and Inmate Payments (2016-08-22) [CD-730].
- [7] Sections 97 and 98 of the Corrections and Conditional Release Act, SC 1992 c 20 [Act], provide the Commissioner of Corrections with authority to create directives that carry out the purposes and provisions of the Corrections and Conditional Release Regulations, SOR/92-620 [Regulations] and that govern the operations of the Correctional Service of Canada [CSC]. CD-730 is created pursuant to this authority to further the purposes set out in subsection 104(1) of the Regulations. Pursuant to paragraph 46 of CD-730, a Program Supervisor may suspend an inmate from their program assignment who, "without reasonable excuse, leaves a program assignment, or whose actions demonstrate a refusal to participate in a program assignment".
- [8] On September 21, 2023, Mr. Mehari filed an Initial Grievance Complaint [Complaint], arguing against his suspension. In the Complaint, Mr. Mehari asserted that he did not violate paragraph 46 of CD-730 and challenged whether there was any proof he had used the POS keyboard in an unauthorized manner. He asserted that it was impractical to log out of the system every time he stepped away and that he was not provided with any rules governing the use of the POS terminal, nor provided with any written warning regarding unauthorized use.

- [9] A response to the Complaint was issued on October 31, 2023. In preparing the response, CSC interviewed Mr. Mehari's employer who advised that it had been "made clear" to Mr. Mehari "on more than one occasion" that he was not to access the POS terminal or to leave it unattended once logged in, and that instructions had been communicated to him verbally. Although Mr. Mehari was also invited to provide further information, he did not elaborate on his Complaint. Based on the interviews, CSC concluded that Mr. Mehari violated staff direction and demonstrated a "refusal to participate in the work program as it [was] intended to be administered". The response stated that being advised verbally not to operate a POS machine or to leave it unattended constituted a "justifiable order" that was to be respected and followed.
- [10] On November 29, 2023, Mr. Mehari filed an Initial Grievance, contesting the response to his Complaint. Mr. Mehari took issue with the interpretation given to CD-730, arguing that any failure to follow instructions could not amount to a refusal to participate in his work program. He also contested receiving instructions on how to turn off the POS terminal, or any restrictions relating to its use, and asserted that any directions regarding the terminal should have been provided in writing.
- [11] On December 28, 2023, CSC denied Mr. Mehari's Initial Grievance. The Assistant Warden Intervention was assigned to investigate the grievance and interviewed both Mr. Mehari and his manager. While Mr. Mehari did not expand on his written comments, the manager provided contrary verbal evidence, stating that Mr. Mehari was informed about the proper use of the POS terminal on multiple occasions, both in a group setting and individually, and that he was aware that he was not to access the POS unsupervised and/or to leave it unattended. Based on these investigations, the decision-maker found it reasonable to conclude that Mr. Mehari refused to "appropriately participate" in his work assignment, concluding also that informal measures were attempted to correct Mr. Mehari's behaviour prior to his suspension. On January 15, 2024, Mr. Mehari filed his Final Grievance, reasserting his arguments that his behaviour did not amount to "refusing to work" and that CSC had not properly instructed him on the restrictions associated with using the POS terminal.
- [12] On March 6, 2024, CSC issued the Decision denying the Final Grievance. In reaching the Decision, CSC reviewed the Offender Suspension form, the Applicant's Final Grievance, his previous submissions and the corresponding responses, and conducted a further interview with the Program Supervisor. Relying on the evidence from the Program Supervisor, CSC found that sufficient instruction had been given and that Mr. Mehari's actions "demonstrated an unwillingness to comply with the requirements of [his] work assignment", constituting "a refusal to participate in the program assignment as intended", which justified his suspension.

- [13] On May 30, 2024, counsel for Mr. Mehari wrote to the Warden of BCI requesting that Mr. Mehari's suspension be reversed and that his job as POS Clerk be reinstated. The letter emphasized that written instructions were not, but should have been, received regarding the proper use of the POS terminal. The letter also noted that Mr. Mehari had not been screened for a learning disability to determine if he could properly process information given orally.
- [14] On August 1, 2024, CSC responded to the letter, restating the key findings made in the Decision. CSC noted there was no evidence in Mr. Mehari's file indicating that he could not understand verbal directions.

II. Analysis [15] The overriding issue for determination is whether the Decision was reasonable. A reasonable decision is one that is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 85. A decision will be reasonable if when read as a whole, and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at para 99.

- [16] The Applicant raises two central arguments as to why the Decision was unreasonable. First, the Applicant argues that CSC erred in their interpretation of "refusal to participate in a program assignment" under paragraph 46 of CD-730. Second, he argues that the Decision was grounded on an insufficient evidentiary record as there was no written record detailing the instructions provided to Mr. Mehari regarding use of the POS terminal, nor were proper instructions and warnings provided.
- [17] In my view, these two arguments, when taken together, render the Decision unreasonable.
- [18] As noted earlier, paragraph 46 of CD-730 states that a Program Supervisor may suspend an inmate from their program assignment who, "without reasonable excuse, leaves a program assignment, or whose actions demonstrate a refusal to participate in a program assignment".
- [19] The Applicant contends that CSC should have applied a literal interpretation of "refusal to participate", which requires an inmate to refuse to obey an order to complete a work task or refuse to work at all before they can be suspended. The Applicant refers to this Court's decision in *Johnson v Canada (Correctional Service)*, 2013 FC 1211 [Johnson] as support for this interpretation. In that case, an inmate was suspended from full-time employment in a business and rehabilitation program within CSC because of an altercation with another inmate. The issue before Justice Manson was whether a suspension for fighting invoked an interpretation of "refusal to participate" under the predecessor paragraph to paragraph 46 of CD-730 that was consistent with the overriding purpose of the governing provision under subsection 104(1) of the Regulations. At paragraphs 25-26 of Johnson, Justice Manson emphasized the plain meaning that should be given to "refusal to participate" when this phrase is considered in context with the Act and Regulations as a whole:

- [25] The plain meaning of the phrase “refusal to participate” does not support an interpretation that the Applicant “refused” to participate in the program by virtue of his actions on May 11, 2011. It is not reasonable to find that the Applicant rejected the demands placed on him at work by verbally confronting a fellow inmate about using an air gun, and subsequently being attacked. Instead, a “refusal” to participate suggests activity such as the Applicant not obeying an order to complete a work task, or refusing to work at all.
- [26] Such an interpretation is bolstered by a reading of this provision in context with the Act and Regulations as a whole. The title of section 104 is “Inmate Pay.” This is in contrast to section 24 of the Regulations, which is titled “Inmate Discipline,” suggesting that subsection 104(1) is not focused on disciplinary infractions such as fighting. Instead, it provides a mechanism to suspend inmates who are not reporting to work or complying with work orders. Furthermore, the Act clearly has a process by which fighting is dealt with: subsection 40(h) of the Act notes that fighting is a disciplinary offence, and subsection 44(1)(b) provides a sanction described as: “loss of privileges.”
- [20] The interpretation of “refusal to participate” given by Justice Manson in Johnson accords with Annex A of CD-730, which also provides a definition of “program refusal” that accords with its plain meaning and literal interpretation:

Program refusal: an offender is considered to be refusing a program when he/she refuses to attend and participate in an upcoming program or qualifies the refusal (e.g., “yes, I’ll take the program but not right now”, “yes, I’ll take the program, but I won’t transfer to that institution to take it”, etc.). Unemployed inmates who refuse to complete an application for available work assignments are also considered to be refusing a program assignment.

- [21] Like in Johnson, the negative occurrence here, which took place on September 19, 2023, is defined as a disciplinary offence. Subsection 40(a) of the Act states

40 An inmate commits a disciplinary offence who

40 Est coupable d’une infraction disciplinaire le détenu qui :

(a) disobeys a justifiable order of a staff member;

a) désobéit à l’ordre légitime d’un agent;

[. . .]

[. . .]

- [22] Disobeying a justifiable order contrary to subsection 40(a) of the Act may be resolved informally (section 41 of the Act) or may be subject to disciplinary sanctions (section 44 of the Act).

[23] In the Decision, CSC reasoned that the Applicant's refusal to obey this justifiable order on multiple occasions amounted to an unwillingness to comply with the requirements of the work assignment and a refusal to participate in the work assignment as intended:

You contest that you did not "refuse" to participate in your program assignment as per the definition of "refuse" provided in the Miriam Webster Dictionary which states, "to show or express unwillingness to do or comply with". However, considering you were instructed on multiple occasions to not access the POS system unsupervised, and as it has been confirmed that you disobeyed a justifiable order from your work supervisor by repeatedly refusing these direct instructions, it has been determined that your actions demonstrated an unwillingness to comply with the requirements of your work assignment and thus, constituted a refusal to participate in the program assignment as intended. Therefore, the decision to suspend you was made in accordance with paragraph 46 of CD 730.

[24] The rationale for suspending the Applicant was therefore grounded on the fact that multiple infractions had allegedly taken place where the Applicant used the POS terminal without supervision or left it unattended.

[25] The Applicant disputes these facts and further asserts that the details of these alleged infractions (i.e., what took place, when it took place, and what was conveyed to the Applicant regarding consequences, if anything) are not clear from the Decision. He contends that he should not have been suspended without proper written instruction and warning.

[26] The Applicant argues that CSC was required to provide instructions and any warnings regarding use of the POS terminal in writing. In his written submissions, he refers to paragraphs 45, 49, 56, 57 and 47 of CD-730 to argue that written representation and records are an important part of inmate work programs. Paragraphs 45, 49, 56 and 57 do not appear to relate to the manner for conveying instructions relating to work assignments. Paragraph 45 requires that written reasons be given to inmates to justify their assigned payment level. Paragraph 49 states that an inmate must notify their work supervisor if they are withdrawing from a work assignment, while paragraphs 56 and 57 requires notice in writing for certain steps in the suspension process. Paragraph 47 emphasizes that a program supervisor "will normally try to resolve" an offender's negative behaviour informally prior to suspending an inmate from a program assignment and suggests that one informal mechanism may be to establish a behavioural contract. Although, it does not make such a behavioural contract a requirement.

[27] In supplementary written submissions the parties also commented on paragraphs 9(1), 9(2) and 34 of CD-730. These paragraphs require an inmate's program supervisor to conduct an initial orientation that reviews any specific rules and regulations associated with the job, and for the inmate and Program Supervisor to sign off on their mutual understanding of the main duties and expectations of the work assignment. These provisions also require that it be made clear to the inmate how their work performance will be evaluated and for inmate performance evaluations to be conducted and documented every six months:

9. The inmate's program/work supervisor will:
 1. provide an assessment of the inmate's participation in the program assignment using the Inmate Performance Evaluation form (CSC/SCC 1138), at least once within six months of the program assignment start date, every six months thereafter, and any time the program assignment ends
 2. provide employment orientation to inmates, for work assignments, as outlined in the Inmate Employment Orientation section of this policy.

[...]

34. Prior to an inmate commencing a work assignment, the work supervisor will, at a minimum:
 1. provide an orientation to the work area, including the health and safety procedures, and any specific rules and regulations
 2. review the main duties and expectations of the work assignment, as outlined in the generic work description. Both the work supervisor and the inmate will sign and date a copy of the work description to confirm that the orientation has taken place
 3. review the Inmate Performance Evaluation form (CSC/SCC 1138) with the inmate, and ensure that he/she is informed of, and understands, how his/her performance will be evaluated.

[28] The Respondent asserts that there is nothing in the record to suggest the Applicant did not receive the required orientation or performance reviews. They contend that paragraphs 9 and 34 are not relevant and did not require that there be written instruction on the operation of the POS system. The Respondent argues that the Applicant's assertion that he was not provided with any instructions on the use of the POS terminal runs contrary to the factual findings made by CSC through their interviews.

[29] As noted in the Decision, the evidence from the Program Supervisor was that "numerous conversations had occurred with all canteen workers instructing them that the use of the POS system without staff supervision [was] strictly prohibited". The Decision also refers to evidence from the Program Supervisor given during earlier stages of the grievance process, which indicated that Mr. Mehari was verbally informed of these restrictions both in a group and individually on multiple occasions. However, there are limited details on these exchanges and on the alleged prior incidents involving Mr. Mehari.

- [30] Considering the language of paragraph 46 of CD-730 and the requirements set out in paragraphs 9 and 34 of CD-730, in my view, it was at least relevant for CSC to look for and consider what was included in the Applicant's work assignment description and what had been reported in his performance evaluations when determining whether a pattern of activity had occurred that could be characterized as an unwillingness to comply with the requirements of the work assignment and a refusal to participate in the work assignment.
- [31] In this case, the basis for the Applicant's suspension was his alleged repeated failure to follow instructions relating to use of the POS terminal. The facts relating to the instructions and warnings given by CSC were contested by the Applicant throughout the grievance process. Therefore, it would be reasonable to expect CSC to check the Applicant's file for any documents that might be relevant to these contested facts. Considering the requirements set out in paragraphs 9 and 34 of CD-730, this would include the work assignment description and the Applicant's performance evaluations.
- [32] The subsequent letter from CSC on August 1, 2024 indicates that at least three performance evaluations were conducted but does not refer to the content of those evaluations. The letter indicates only that the evaluation stated Mr. Mehari's ability to communicate was "Good" and that he listens carefully and understands directions, requesting clarification as required. The letter does not provide details on the actual assessments made of the Applicant's performance. The performance evaluations are not mentioned at all in the Decision, nor is it clear if these evaluations were considered when investigating the relevant facts associated with the grievance and whether the Applicant had met his work assignment expectations.
- [33] While it is possible that the Program Supervisor's instructions and alleged verbal warnings were never documented, it is unclear from the Decision whether this was verified. If there was no instruction or warnings in writing relating to prohibited uses of the POS terminal, it was material for CSC to consider whether it should have been in writing in view of paragraphs 9 and 34 of CD-730, particularly as it was the Applicant's argument that clear instruction and the correct disciplinary procedure were not followed. Without doing so, in my view, CSC failed to fully engage with the Applicant's core argument and the Decision lacks sufficient transparency and justification.
- [34] For all these reasons, the application is granted.
- [35] The Applicant requests a prerogative remedy, and asks that the Court order CSC to:
1. Have his suspension cancelled, be reinstated in his job in the canteen and provided written instruction, or;
 2. In lieu of his job, receive his full back pay as per CD 730 paragraph 57(a), and;
 3. Have his file amended to reflect his side of the story as per s. 24(1) & (2) of the CCRA.

[36] However, the Court's power to give a directed verdict should only be considered in exceptional circumstances, where it is clear that referring a matter back for redetermination would inevitably lead to the directed outcome: *Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 at para 14; *Ali v Canada (Minister of Employment and Immigration) (TD)*, 1994 CanLII 3480 (FC) at 81-82. I do not consider this to be such a case. Here, it is my view that the Decision lacks sufficient transparency and justification as CSC did not fully engage with the Applicant's argument and all possible relevant evidence. Because of these deficiencies, the outcome is not inevitable.

[37] As such, I shall order that the matter be sent back for redetermination in accordance with the directions given in these reasons.

[38] As costs were not requested, none shall be awarded.

JUDGMENT IN T-599-25

THIS COURT'S JUDGMENT is that:

The application is granted. The Final Grievance Response dated March 18, 2024 is set aside and the matter is referred back for redetermination in accordance with the Court's reasons.

There is no order as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-599-25

STYLE OF CAUSE:

SEMERE MEHARI v ATTORNEY GENERAL OF CANADA

APPLICATION FOR JUDICIAL REVIEW CONSIDERED IN WRITING IN ACCORDANCE WITH THE JOINT REQUEST FOR DETERMINATION IN WRITING DATED NOVEMBER 18, 2025

FURTHER SUBMISSIONS PROVIDED APRIL 1, 2026 (RESPONDENT) AND APRIL 2, 2026 (APPLICANT)

JUDGMENT AND REASONS:

FURLANETTO J.

DATED:

aPRIL 9, 2026

WRITTEN REPRESENTATIONS BY:

Adrian Halpert

For The Applicant

Oliver Backman

For The Respondent

SOLICITORS OF RECORD:

Adrian Halpert

Barrister and Solicitor

Kingston, Ontario

For The Applicant

Attorney General of Canada

Ottawa, Ontario

For The Respondent

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