

Date: 20010222

File: 166-18-29542

Citation: 2001 PSSRB 17



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

TORVUL MONDRIAN BERRY

Grievor

and

**STAFF OF THE NON-PUBLIC FUNDS,
CANADIAN FORCES**

Employer

Before: Léo-Paul Guindon, Board Member

For the Grievor: Eric O'Brien, Counsel

For the Employer: Brenda A. Dagenais, Canadian Forces Personnel
Support Agency

Heard at Ottawa, Ontario,
January 16, 2001.

DECISION

[1] Mr. Torvul Mondrian Berry was hired as a Chef at the Hylands Golf Club, with the Staff of the Non-Public Funds, Canadian Forces, in Ottawa, on April 6, 1999. He was released from probation for cause on July 6, 1999.

[2] On August 19, 1999, Mr. Berry filed a grievance claiming payment for 297 hours of overtime which he had allegedly worked and for which he had not been compensated.

[3] The grievance was referred to adjudication on February 21, 2000.

[4] On March 23, 2000, the employer requested that, prior to the hearing, the Board rule on a preliminary objection based on three primary grounds:

- a) the adjudication process is not open to a probationary employee, according to the collective agreement;
- b) Mr. Berry has not presented his grievance up to the final level of the grievance process; and
- c) the grievance would not be adjudicable under subsection 92(1) of the *Public Service Staff Relations Act (PSSRA)*.

The Board forwarded that letter to Mr. Berry on March 23, 2000.

[5] On April 6, 2000, Mr. Berry responded to the objections raised by the employer.

[6] The employer's reply to Mr. Berry's response was filed with the Board on April 27, 2000.

[7] A hearing in this matter was scheduled for August 3 and 4, 2000, and the grievor was notified by registered letter dated June 28, 2000.

[8] On the morning of the hearing, Mr. Berry's counsel advised that it was impossible to locate Mr. Berry. A postponement of the hearing was granted, as Mr. Berry's testimony was required in this matter.

[9] Mr. Berry was notified, by registered letter, of the postponement of the hearing. He was also notified that, unless he informed the Board in writing of his intention to proceed in this matter by no later than August 25, 2000, the Board would assume that he did not wish to proceed with his grievance.

[10] On August 28, 2000, Mr. Berry informed the Board that he intended to proceed with his grievance and that he would attend at the hearing to testify.

[11] On August 29, 2000, the parties were notified that the hearing was rescheduled for December 18 and 19, 2000.

[12] On September 8, 2000, Mr. Berry confirmed that he could attend the hearing. However, due to the parties' limited availability, the hearing could not be rescheduled prior to January 16, 2001. The employer, Mr. Berry and his counsel were notified of the date of the rescheduled hearing by registered mail.

[13] The hearing commenced on January 16, 2001. In the absence of Mr. Berry, a further postponement was requested as he had declined communications with his counsel since the end of August 2000. The employer objected to such further postponement.

[14] I refused a postponement and ordered the parties to proceed with the hearing.

[15] Counsel for Mr. Berry had no evidence to submit in support of the grievance in the absence of the latter and the employer requested that I dismiss the grievance accordingly.

[16] I reserved my decision until January 30, 2001 to allow Mr. Berry to get in touch with the Board to explain his absence at the hearing on January 16, 2001. Since the Board received no communication from Mr. Berry, and considering all the circumstances described above, the lack of justification for Mr. Berry's absence at the hearing and that no evidence was submitted in support of the grievance, the grievance is dismissed and the Board's file is closed.

**Léo-Paul Guindon,
Board Member**

OTTAWA, February 22, 2001.