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166-2-31113

Citation: 2002 PSSRB 107



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

SYLVIE GOYETTE

Grievor

and

TREASURY BOARD

(Solicitor General of Canada - Correctional Service of Canada)

Employer

Before: Jean-Pierre Tessier, Board Member

For the Grievor: Céline Lalande, Union of Canadian Correctional Officers - CSN

For the Employer: Jennifer Champagne, Counsel

Heard at Montréal, Quebec,
October 7 to 11, 2002.



DECISION

[1] Ms Sylvie Goyette has been employed by the Correctional Service of Canada (CSC) since 1983. At the time of the events referred to in this decision, she occupied a position as a Correctional Officer at the Martineau Community Correctional Centre (CCC). This position is classified at the CX-II group and level.

[2] On March 17, 2000, Ms Goyette was notified that she was suspended without pay during an investigation into her absences over the previous few years. The employer argued that Ms Goyette used sick and family leave, but on those occasions was actually working at a second job (Exhibit E-I).

[3] After the results of the investigation were made known on August 21, 2000, the employer notified Ms Goyette that she was dismissed for using her sick leave fraudulently. The employer added that Ms Goyette did not inform the employer that she had another job, thus contravening the CSC's *Code of Discipline and Standards of Professional Conduct*, as well as the *Conflict of Interest and Post-Employment Code for the Public Service*. For all these reasons, the employer concluded that the bond of trust was broken.

[4] Ms Goyette lodged grievances against these two instances of disciplinary action by the employer. These grievances (Board files N° 166-2-31112 and N° 166-2-31113) are to be heard on common evidence.

[5] These grievances were referred to adjudication in February 2002 and heard during the week of October 7 to 11, 2002. The late referral of these grievances to adjudication can be explained by the series of events that occurred from 1997 to 2000.

[6] In fact, 10 grievances have been referred to adjudication. With the consent of the parties, four grievances were argued at hearings held from May 6 to 10, 2002, and four others have been heard at hearings held from October 7 to 11, 2002. The two remaining grievances have been postponed.

[7] Although separate evidence has been adduced in each grievance, the parties have agreed that evidence adduced in one grievance (such as description of duties, workplace, and client group) may be considered in another.

Evidence

[8] Ms Goyette has worked at the Martineau CCC since 1989. This CCC is a small correctional institution that housed approximately 50 inmates in 1989. Since 1990, however, it has housed an average of between 30 and 35 offenders on day or weekend parole. In late December, 1999, this CCC also served other client groups.

[9] In the spring of 1998, Ms Goyette took sick leave from work from February 23 to July 3, 1998. She stated that the strictness of Mr. René Pellerin, her supervisor, caused her stress; as well, in mid-February, Ms Goyette's co-workers filed a complaint, citing Ms Goyette's lack of professionalism and disruption of the work atmosphere.

[10] In the summer of 1998, Ms Goyette was reassigned to the Sherbrooke CCC during investigation into issues of harassment by her superior and the complaint filed against her by her co-workers.

[11] At the end of 1998, following the investigation, Ms Goyette returned to the Martineau CCC. In 1999, she was absent from work from August 27 to September 12, 1999, because of threats uttered against her by an inmate in a penitentiary. On October 1, 1999, an application for injury-on-duty leave was submitted to Quebec's Commission de la santé et de la sécurité du travail (CSST) (Exhibit F-IV).

[12] Mr. Gilles Thibault, Director, Greater Montréal District, testified that he was informed of the fact that, as well as occupying her position at the Martineau CCC, Ms Goyette had another job at Centre Jeunesse Laval.

[13] Mr. Thibault did not recall the exact date he learned that Ms Goyette had another job; he believed it was late in 1999 or early in 2000. He then obtained formal information from Centre Jeunesse Laval that Ms Goyette had been working there for several years; during that time Ms Goyette had been absent from the Martineau CCC for more than 50 days.

[14] On the basis of this information, Mr. Thibault decided to suspend Ms Goyette without pay and to authorize two persons to investigate those absences. Then, given the results of the investigation, he concluded that Ms Goyette would have to be dismissed.

[15] Mr. Thibault considered that having another job was not in itself a serious breach of duty, but that employees had a responsibility to inform their superiors of any other employment. In Ms Goyette's case, he noted that the second job affected Ms Goyette's work at the Martineau CCC and resulted in her taking leave for reasons other than those she formally declared. Concerning Ms Goyette's absences every other Wednesday, Mr. Thibault stated that he was always told that she was absent at those times because she sat on a board of directors.

[16] Ms Annie Bertrand works in the finance department at Centre Jeunesse Laval. She stated that Ms Goyette attended the Wednesday morning team meetings. As is shown on the work certificate (Exhibit E-XI), Ms Bertrand confirmed that, starting in 1995, Ms Goyette worked 6,487 hours at Centre Jeunesse Laval, an average of 1,100 hours annually.

[17] Ms Joyce Malone took part in the investigation into Ms Goyette's two jobs. She stated that Ms Goyette told her she did not inform her supervisors about her job at Centre Jeunesse Laval. During the investigation, Ms Goyette also admitted that it was her practice to use up her days of sick and family leave each year. Ms Goyette admitted that she did use sick leave during a difficult period at her job at Centre Jeunesse Laval, after which she preferred not to come in to work at the Martineau CCC.

[18] Commenting on the chart comparing Ms Goyette's periods of absence from the Martineau CCC and her periods of work at Centre Jeunesse Laval (pages 5 to 7 of the investigation report, Exhibit E-XVI), Ms Malone stated that Ms Goyette's job at Centre Jeunesse Laval was not in itself a problem but that, in this case, the frequent scheduling conflicts constituted a conflict of interest.

[19] Ms Goyette explained that in 1993 she took a holiday and got into debt. Subsequently, she separated from her spouse, and her rental and other costs increased. In 1995, therefore, she decided to take another job in order to pay off her debts. She admitted that she used her sick and family leave fraudulently because she had to report for work at Centre Jeunesse Laval in the evenings, or had just finished working there.

[20] Although her night job at Centre Jeunesse Laval ended later than the time she was to report to work at the Martineau CCC, Ms Goyette stated that most of the time she managed to leave Centre Jeunesse Laval early. However, it did happen that she

was unable to do so and was obliged to take sick leave to justify her absence from the Martineau CCC.

[21] Ms Goyette admitted that she did not inform her immediate superior about her other job at Centre Jeunesse Laval; however, she claimed that she told the investigators about it in the summer of 1998 (page 17 of the harassment investigation report, Exhibit F-I). She also stated that she indicated on a CSST form that she had another job in 1998 (Exhibit F-III) and in 1999 (Exhibit F-IV).

[22] In closing, Ms Goyette stated that she never thought that taking sick or family leave in this manner would cause disciplinary problems for her.

Arguments

[23] The employer emphasized the fact that, according to its policies, employees had a responsibility to inform the employer that they held other employment. The employer argued that Ms Goyette's conduct in using her sick and family leave constituted fraud.

[24] The employer emphasized the fact that Ms Goyette lied to her supervisors about the reasons for her absences on Wednesday mornings by suggesting that she sat on the board of directors of an organization. Although Ms Goyette indicated on the CSST documents or told the investigators that she had another job, she never directly informed the employer about her second job.

[25] Counsel for the grievor argued that, if absenteeism was at issue, the employer should have taken action earlier. Counsel agreed that Ms Goyette acted badly in using her sick leave, but argued that she was far from realizing the seriousness of her actions. Counsel pointed out that, when asked, Ms Goyette admitted that she had a second job.

[26] Starting in 1998, the investigators knew that Ms Goyette had a second job; as well, the documents submitted to the CSST in 1998 and 1999 indicated that she had a second job. The employer delayed taking action. Ms Goyette's use of her leave undoubtedly deserves disciplinary action, but not the "capital punishment" of dismissal.

Decision

[27] In light of the evidence adduced, I find it important to consider the following three points:

- how important it is for employees to inform the employer that they hold other employment;
- whether Ms Goyette's use of sick and family leave starting in 1995 deserves disciplinary action; and
- whether the employer delayed taking action and whether that delay was a factor that would attenuate the disciplinary action.

[28] At the hearing, the employer adduced the CSC's *Code of Discipline* (Exhibit E-III), the CSC's *Standards of Professional Conduct* (Exhibit E-IV), as well as the *Conflict of Interest and Post-Employment Code for the Public Service* (Exhibit E-V).

[29] Article 26 of the *Conflict of Interest and Post-Employment Code for the Public Service* reads as follows:

Outside activities

26. Involvement in outside employment and other activities by employees is not prohibited unless the employment or other activity is such that it is likely to result in a conflict of interest. It is the responsibility of the employee to make a confidential report to the designated official of involvement in an outside activity that could place on the employee demands inconsistent with his or her official duties and responsibilities, or call into question the employee's capacity to perform his or her official duties and responsibilities objectively. The designated official may require that such activity be curtailed, modified, or ceased, when it has been determined that a real or potential conflict of interest exists.

[30] As well, Standard Five of the CSC's *Standards of Professional Conduct* stipulates, "Staff must not enter into business or private ventures which may be, or appear to be, in conflict with their duties as ... employees ..."

[31] The excerpts set out above are sufficiently explicit to warn employees against engaging in activities outside their work that may jeopardize their integrity or their performance as employees.

[32] As was stated by investigator Malone, Ms Goyette's activity at Centre Jeunesse Laval did not in itself constitute a conflict of interest; on examination, however, it appears that the density of work and the scheduling conflicts led Ms Goyette to neglect her responsibilities as an employee of the Martineau CCC.

[33] The fact that Ms Goyette did not inform her superiors of her outside job had the effect of making the employer mistrustful of her absences. This grievance more clearly illustrates the tension that built up between Mr. Pellerin and Ms Goyette when she became angry because her Director refused to allow her to take leave in August 1997 (Board file N° 166-2-31116). In fact, Ms Goyette was absent that day and the employer rightly refused to pay her for the afternoon she was absent, as is indicated in my summer 2002 decision (Board file N° 166-2-31116).

[34] In addition, Ms Goyette lied about the reasons for her absences on Wednesdays. All the witnesses called by the employer testified that the reason Ms Goyette gave for being absent (moving her shift from Wednesday mornings) was her obligation to sit on the board of directors of an organization.

[35] Given the circumstances and the length of time Ms Goyette concealed her second job from her employer, I consider this action by her a breach of duty.

[36] On the second point, concerning use of sick leave, the evidence adduced has established beyond any doubt that Ms Goyette abused the leave and failed to fulfil her duties of honesty and integrity.

[37] Taken in isolation, and taking circumstances into account, an employee's being absent for one or two days a year while not actually being sick is a breach of duty but not in itself a ground for dismissal. In Ms Goyette's case, however, the breaches of duty recurred continually over a five-year period.

[38] The chart comparing Ms Goyette's periods of absence from the Martineau CCC and her periods of work at Centre Jeunesse Laval leaves no doubt that she used leave fraudulently for a reason other than the reasons set out in the collective agreement. We also note that, at the investigation and in her testimony concerning this grievance, Ms Goyette herself admitted that she took leave fraudulently.

[39] Given the fact that Ms Goyette's actions recurred over a lengthy period, I cannot see any attenuating circumstances that would explain them. Ms Goyette stated that

from 1995 to 1998 she had debts to pay off, but what about the period from 1999 to 2000?

[40] As well, I note that Ms Goyette's attitude toward informing or contacting the employer was very aggressive. As Mr. Pellerin noted when he asked Ms Goyette about a period of family leave, Ms Goyette stated that her personal life was none of his business. In addition, according to the disciplinary investigation report (Exhibit E-XVI), in 2000 Ms Goyette stated that her job at Centre Jeunesse Laval was part of her personal life.

[41] Finally, on the last point, I cannot accept the argument by counsel for Ms Goyette that the employer delayed taking action. While it is true that in 1998 Ms Goyette told the investigators that she had another job, in assessing the scope of that statement we must take the context into account.

[42] In the field of labour relations, employers are customarily authorized to conduct administrative investigations into certain events. The 1998 case referred to was an investigation into a claim of harassment. In administrative investigations, investigators are given specific mandates. Employees who are interviewed voluntarily agree to appear before the investigators, and respond in good faith to the questions asked of them. If the investigators uncover information outside their mandate, in my view that information may be noted and may be the subject of recommendations. That said, for the new information to be investigated in greater depth, the investigators' mandate must be formally extended, or the investigators must specifically be given a new mandate; otherwise the rules of the game have been changed.

[43] In the field of labour relations, the rule that persons testifying during administrative investigations must be aware of the investigation mandate ensures the integrity of the investigation process. In this case, a specific investigation into Ms Goyette's absences was conducted in 2000.

[44] Given this background, the investigators in 1998 cannot be blamed for not extending their investigation to cover the nature of the work performed by Ms Goyette in her second job at Centre Jeunesse Laval. The same reasoning applies to Ms Goyette's indications to the CSST in 1998 and 1999 that she had a second job; those indications were made in a very specific context.

[45] It should be borne in mind that having another job is not in itself a breach of duty, but the density of work elsewhere and the scheduling conflicts that encroached on Ms Goyette's duties led her to mislead the employer about her reasons for requesting leave.

[46] Regardless of whether an incident or an information led the employer to conduct an investigation into Ms Goyette's activities, this case involves, not an isolated incident, but recurring actions over a period exceeding five years. Only an in-depth investigation could allow the employer to determine whether Ms Goyette's actions constituted a serious breach of duty.

[47] Given the complexity of this case and the need to compare in detail Ms Goyette's periods of absence and her periods of work at Centre Jeunesse Laval, I consider Ms Goyette's suspension for the duration of the investigation justified.

[48] Since the evidence has established that over a five-year period Ms Goyette used sick leave at times that coincided with her outside job; since she never informed her employer about her outside job; since she did not inform the employer's physicians or her own specialist that she had a second job during her absence in 1998; since she lied about the reasons for her absences on Wednesday mornings; and since she has admitted using her leave fraudulently, I consider that the employer was right to conclude that the bond of trust was broken.

[49] For the above-noted reasons, I dismiss Ms Goyette's grievance concerning her period of suspension, as well as her grievance concerning her dismissal.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, December 20, 2002

PSSRB translation