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File: 166-2-31108

Citation: 2002 PSSRB 105



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

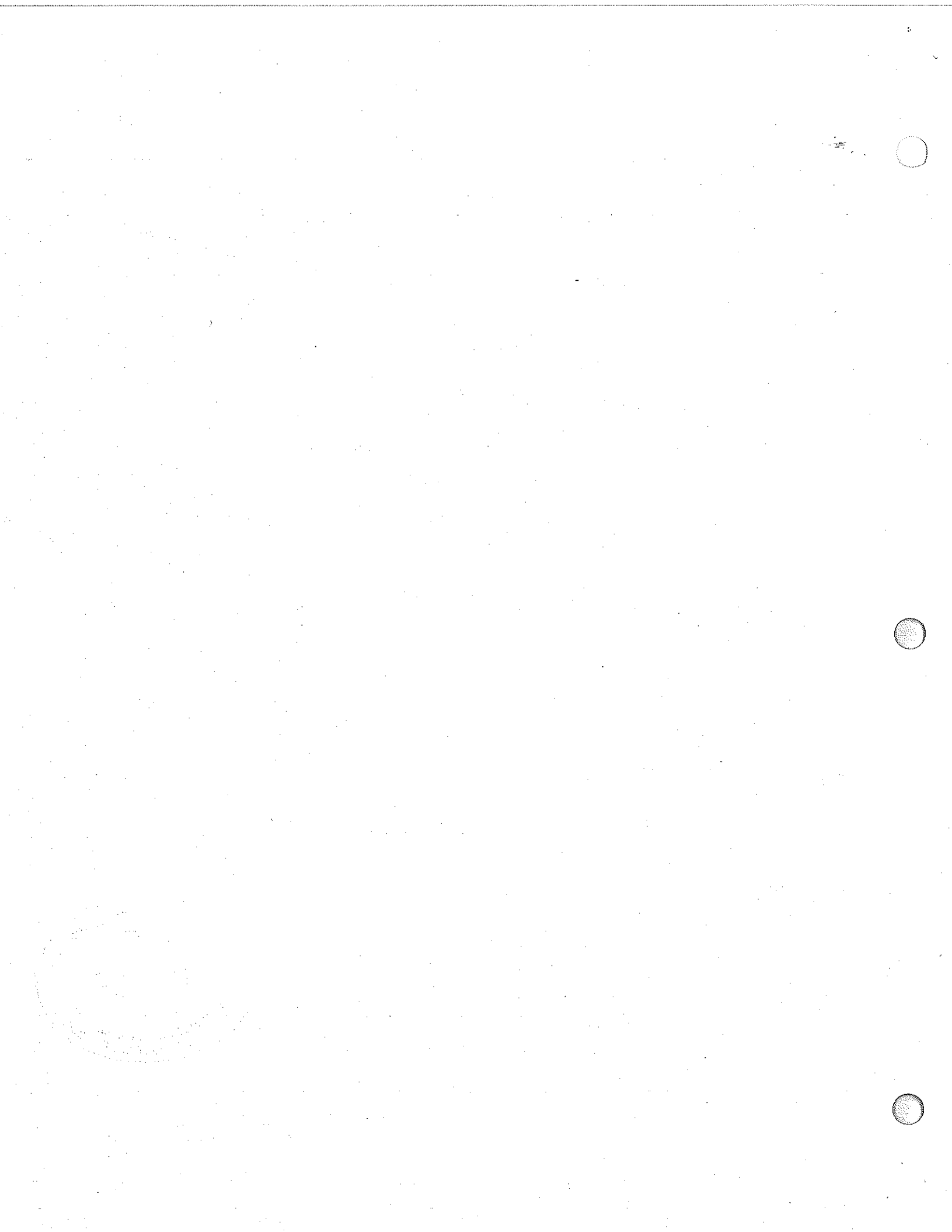
Before: Jean-Pierre Tessier, Board Member

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] Ms Goyette took sick leave from work from February 23 to July 2, 1998.

[3] On the basis of medical reports, on June 12, 1998 the employer decided not to authorize the leave starting on April 14, 1998, and therefore requested that Ms Goyette repay the sick leave from April 14 to 29, 1998.

[4] On July 23, 1998, Ms Goyette lodged a grievance against this disciplinary action by the employer. This grievance was referred to adjudication on December 15, 2001, and heard during the week of October 7 to 11, 2002. The late referral of this grievance to adjudication can be explained by the series of events that occurred from 1997 to 2000.

[5] 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.

[6] 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

[7] 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.

[8] Ms Goyette is responsible for community activities for the resident offenders and for technical duties related to the CCC's program and operations.

[9] Ms Goyette testified that, following the arrival of Mr. René Pellerin as Director of the Martineau CCC in March 1997, the work atmosphere deteriorated. In her opinion, Mr. Pellerin showed some degree of severity, not to say aggression, toward her.

[10] Ms Goyette felt less involved in team meetings. The Director did not take her comments into account. In August 1997, he refused to authorize her vacation leave (this incident is the subject of a grievance, concerning which I have rendered a decision (Board file N° 166-2-31116)). In the fall, the Director gave her a negative performance evaluation. Ms Goyette stated that she then felt tense, had headaches, and sometimes experienced insomnia.

[11] In December 1997 at a meeting to discuss a grievance, Ms Goyette told Mr. Gilles Thibault, Director, Greater Montréal District, that she was experiencing a difficult situation with Mr. Pellerin.

[12] Ms Goyette also stated that, in 1998 as she was leaving the Martineau CCC on her lunch break, Mr. Pellerin, who was near the exit, asked her where she was going. Ms Goyette kept on going and did not answer. Apparently Mr. Pellerin then tried to block her way and demanded that she tell him where she was going.

[13] On February 19, 1998 at a third-level grievance hearing, Ms Goyette discussed with Ms Lachapelle, a regional official, the problem with Mr. Pellerin. At that time Ms Lachapelle mentioned the possibility of mediation, but no follow-up action was taken.

[14] That same day, Ms Goyette received a letter informing her that two employees had filed a complaint against her (Exhibit F-6). Ms Goyette was upset; when she happened to meet Mr. Corbeil, her former Director, who was then visiting the Martineau CCC, she spoke to him and began to cry.

[15] Over the following weekend, she had cramps in the chest as well as headaches. Immediately on Monday, February 23, 1998, she consulted her general practitioner, who advised her to rest and gave her a medical certificate recommending that she stop work from February 23 to March 4, 1998. Other medical certificates were issued at two-week intervals until July 22, 1998 (submitted together as Exhibit F-7).

[16] While recuperating, Ms Goyette visited her mother's condominium in Florida for a number of weeks, from March 18 to April 7, 1998. While she was absent, the employer tried to contact her on several occasions in order to request a second medical opinion. When she returned, Ms Goyette contacted the employer, and an appointment with Dr. Carl Giasson on April 14, 1998, was made. Dr. Giasson submitted a medical report (Exhibit F-8), to which I shall refer later.

[17] Following her appointment with Dr. Giasson, Ms Goyette saw Dr. Nowakowski, a psychiatrist, on April 16, 1998 (Exhibit F-10). Then, the employer asked Ms Goyette to see Dr. Guérin, the Health Canada psychiatrist designated by the employer, on June 11, 1998.

[18] In April and May, Ms Goyette saw a psychologist once a week. She talked about her work. Since Dr. Nowakowski anticipated that Ms Goyette would return to work in mid-July, in June Ms Goyette contacted Mr. Raymond Lussier, the new Director of the Martineau CCC, to discuss her return to work.

[19] On June 12, 1998, Ms Goyette received a letter from the employer asking her to report to work on June 22. Ms Goyette did not know what to do; Dr. Fleury, her general practitioner, told her to wait; she decided not to report to work on June 22.

[20] On June 18, 1998, Ms Goyette filed a complaint with Quebec's Commission de la santé et de la sécurité au travail (CSST), stating that she had health problems because of harassment and abuse of power by her immediate superior.

[21] Since Ms Goyette did not report to work on June 22, the employer decided to impose a financial penalty (Exhibit F-15) on her. Given all these occurrences, in late June Ms Goyette tried to see the Deputy Commissioner, Correctional Services. Since the Deputy Commissioner was absent, she saw Mr. Vinis, who confirmed to her that she was obliged to return to work. At this dead end, Ms Goyette said she had no choice but to return to work.

[22] It should be noted that the employer then learned that Ms Goyette had a second job at Centre Jeunesse Laval at that time. On this point, Ms Goyette admitted that she held another job starting in 1995. She testified that she worked at the second job before and during her absence from the Martineau CCC from February 22 to

July 3, 1998, but on the usual basis, that is, two days per week, evenings, nights or weekends.

[23] Concerning her second job at Centre Jeunesse Laval, Ms Goyette stated that she mentioned this job to Dr. Fleury, her general practitioner. She argued that this job did her good psychologically. She considered it important to work elsewhere, even though she was having some physical problems. In fact, in her opinion the work atmosphere at the Martineau CCC was the cause of the stress she was experiencing at that time. Ms Goyette admitted that she did not discuss the second job with Dr. Giasson or Dr. Gu erin, the physicians designated by the employer, or with the psychiatrist she consulted in April 1998.

[24] Under cross-examination, Ms Goyette admitted that she used vacation and family leave on days she worked at Centre Jeunesse Laval, and on days before or after she worked at Centre Jeunesse Laval.

[25] In his testimony, Dr. Nowakowski reiterated the following conclusions, which he had indicated in the medical report following the April 16, 1998 assessment (Exhibit F-10):

[Translation]

Since early 1997, Ms Goyette has been subjected to various stressors at work, the cumulative effect of which has been an adjustment disorder with anxiety and depression affect, as well as temporary total disability, starting on February 18, 1998.

At the time I examined Ms Goyette, the temporary total disability could be expected to last for approximately three months, after which time Ms Goyette would be fit to return to another workplace.

For Ms Goyette to be able to return to the same workplace, it would be of the utmost importance, first of all, to complete successfully a mediation and conflict resolution process between Ms Goyette and her employer.

[26] Dr. Nowakowski confirmed that, at the time of the April 16, 1998 assessment, Ms Goyette did not have any apparent lack of concentration, memory or understanding. However, as soon as he brought up the subject of her difficulties in the workplace, he noted a high level of emotion characterized by anxiety and discouragement.

[27] Under cross-examination, when told that Ms Goyette worked elsewhere during her sick leave, Dr. Nowakowski stated that it was possible for Ms Goyette to have worked elsewhere because the stress was different from the stress apparently associated with her work at the Martineau CCC. Dr. Nowakowski agreed that, if he had known about the second job, he would have recommended that Ms Goyette stop working at the second job at Centre Jeunesse Laval.

[28] Witnesses Nathalie Sauriol and Carole Rinfret, co-workers of Ms Goyette, added little to Ms Goyette's testimony. It was true that sometimes the work atmosphere at the Martineau CCC was tense. The secretaries were critical of the parole officers for being absent and for submitting reports containing errors in French.

[29] Ms Goyette was critical of Mr. Mastoras for being absent from security duties; he resented having to make the residents work when Ms Goyette was absent.

[30] The employer called Mr. Pellerin as a witness. Mr. Pellerin has been a centre director for a number of years; in 1995, he had an opportunity to supervise Ms Goyette after becoming Director of the Martineau CCC. In 1996, changes were made and construction work undertaken at the Martineau CCC. Mr. Pellerin returned to the Martineau CCC in 1997, staying until the summer of 1998. He noted that, when he returned to the Martineau CCC in 1997, the work atmosphere among certain employees was tense.

[31] In this context, Mr. Pellerin was anxious to clarify certain matters with Ms Goyette. In his opinion, Ms Goyette enjoyed a great deal of latitude in her work and showed some resistance to monitoring and structuring of her work. In particular, Mr. Pellerin referred to a previous incident when he questioned Ms Goyette about a request for family leave, pointing out that she was single. Mr. Pellerin said she told him, [translation] "You don't have any business in my bedroom."

[32] Mr. Pellerin wanted Ms Goyette's comings and goings to be more structured. For example, he stated that she was once absent for two hours to have a key made.

[33] In the summer of 1997, an altercation occurred with Ms Goyette about a request for leave on August 29. When the Director refused the leave, Ms Goyette apparently shot back that she was going to take leave anyway.

[34] In order to make matters clear, in November 1997 Mr. Pellerin issued a preliminary evaluation to Ms Goyette, noting that he considered her behaviour with the residents severe and that certain employees had commented on her tardiness and absences. He compiled the absences and leave taken by Ms Goyette and noted that every year she used up all her days of leave. He stated that Ms Goyette asked that her shift be moved from Wednesday mornings every other week because, she said, she sat on the board of directors of a volunteer organization.

[35] Specifically concerning the sick leave taken in the spring of 1998, Mr. Pellerin noted that a complaint was filed against Ms Goyette by co-workers and that subsequently she was absent from work starting on February 23. He then tried unsuccessfully to contact her by telephone. Ms Goyette never responded except by providing the medical certificates, which were delivered to the security officer at the Martineau CCC in the evenings or on weekends. In an effort to contact Ms Goyette, Mr. Pellerin left a note for her (Exhibit E-6) with the security officer on April 6, 1998.

[36] Earlier, on March 20, 1998, Mr. Pellerin sent Ms Goyette a letter requesting that she see Dr. Carl Giasson on March 26. Because of the difficulty of contacting Ms Goyette, she saw Dr. Giasson only on April 14. Various letters (Exhibits E-7 to E-10) were then sent, requesting that Ms Goyette report to work or, after Ms Goyette submitted a report from the psychiatrist whom she had seen on April 16, asking her to see Dr. Guérin on June 11.

[37] From a medical point of view, Dr. Giasson commented on the medical report (Exhibit F-9) he submitted following the April 14, 1998 assessment. He stated that he explained to Ms Goyette that he was conducting the assessment at the employer's request. He noted Ms Goyette's comments about the difficult work atmosphere and the harassment by the employer to which she felt she was subjected.

[38] In Dr. Giasson's opinion, on April 14, 1998, Ms Goyette's physical condition appeared normal; there was no clinical evidence of a disabling pathological condition. Dr. Giasson stated that he explained to Ms Goyette that rest would do nothing to alter the difficult situation she was experiencing at work. In his opinion, there was no point medicalizing difficult interpersonal relations, which should be resolved by means of discussions among the parties.

[39] In conclusion, Dr. Giasson admitted that his assessment was limited to Ms Goyette's physical condition, although his experience allowed him to detect psychic or psychiatric conditions. In addition to submitting his report, Dr. Giasson orally recommended to the employer that a second psychiatric opinion be obtained to corroborate these conclusions.

[40] Dr. Guérin did not testify; the parties have agreed to refer to the report he submitted (Exhibit F-12). On June 11, 1998, Dr. Guérin concluded that the difficulty adjusting at work [translation] "has, however, been resolved, and today I detect no sign of active psychiatric pathology; nor did Dr. Giasson note any such pathology on April 14, 1998." Dr. Guérin added, [translation] "[I] suggest that a meeting be organized at which [Ms Goyette] can provide explanations to her co-workers, and that she subsequently resume her duties without restriction."

[41] Mr. Lussier, the new Director of the Martineau CCC starting on June 1, 1998, then explained that he telephoned Ms Goyette shortly after assuming his duties. In fact, on June 5 he met with Ms Goyette in order to make her aware of her situation. At that time, Ms Goyette gave him the medical report of the assessment by Dr. Nowakowski. Mr. Lussier sent Ms Goyette a letter asking her to see Dr. Guérin. There was discussion about the need to restore the work atmosphere; Ms Goyette spoke of mediation with her co-workers.

[42] Concerning mediation, Mr. Lussier confirmed that he mentioned this possibility to the two other employees most concerned, but added that they were not willing to pursue the mediation process. He considered that mediation was not possible.

[43] On June 12, after receiving the report on the assessment by Dr. Guérin, Mr. Lussier sent Ms Goyette (Exhibit F-13) a letter, notifying her that he was unable to authorize her sick leave starting on April 14, 1998, and asking her to report to work as soon as possible and no later than June 22, 1998.

[44] Mr. Lussier also emphasized that at that time (in mid-June) he contacted Mr. Thibault, Director, Greater Montréal District, to discuss Ms Goyette's case. He stated that, on June 22, noting that Ms Goyette was not on duty and had not contacted him, he considered that she had abandoned her position; he discussed the situation with Mr. Thibault, who shared his view.

[45] Mr. Thibault, Director, Greater Montréal District, indicated that he took note of the employer's difficulty contacting Ms Goyette during her absence from February to June 1998. Under cross-examination, Mr. Thibault agreed that Ms Goyette provided medical certificates; however, he considered it unacceptable that Ms Goyette did not return the telephone calls from her supervisors, Mr. Pellerin and Mr. Lussier, and did not respond to the letters sent to her, by not reporting to work. For these reasons, on June 22, 1998, he imposed a financial penalty on Ms Goyette. (N.B.: This penalty is the subject of a grievance, which will be the subject of a separate decision.)

[46] It should be noted that on July 3, when Ms Goyette reported to work, Mr. Lussier recommended that Mr. Thibault conduct an investigation into the claims of harassment made by Ms Goyette and into the complaint filed by some employees. Mr. Lussier recommended that during the investigation Ms Goyette be transferred to another centre, which was done a few days later.

Arguments

[47] Ms Goyette has claimed that the work atmosphere was tense since the arrival of Mr. Pellerin, Director, in 1997. She has argued that she experienced physical problems such as tension and insomnia in late 1997 and early 1998. The employer and specifically the regional officers whom she contacted did nothing to resolve the conflict with Mr. Pellerin.

[48] Ms Goyette has claimed that during her absence she provided medical certificates and that in June 1998, despite the employer's requests, she spoke with Dr. Fleury, her general practitioner, on whose recommendation she decided not to report to work. After her last effort to see the Deputy Commissioner, Correctional Services, she resigned herself to reporting to work because she feared she would lose her job. According to information obtained, because Ms Goyette filed a complaint with the CSST, she felt that she was protected.

[49] The employer, on the other hand, has argued that Ms Goyette did not co-operate with the employer during her absence. In particular, it has argued that she did not answer the telephone or return messages, and delivered her medical certificates clandestinely in the evenings or on weekends.

[50] The employer has argued that the medical aspect must be considered as evidence: in June, although Ms Goyette spoke of mediation with other employees, she tried to see the Deputy Commissioner. Since the Deputy Commissioner was absent, she saw Mr. Vinis; she stated that she was subjected to harassment and confirmed that she did not want to return to the Martineau CCC.

Reasons for decision

[51] In this case, I need not determine the cause of Ms Goyette's illness or discomfort. The combined effect of supervision by Mr. Pellerin and criticism by co-workers undoubtedly created a stressful situation.

[52] The facts have established that the work atmosphere between Ms Goyette and Mr. Pellerin, her supervisor, was tense. In the months following his arrival at the Martineau CCC in 1997, Mr. Pellerin wanted to show Ms Goyette that he intended to monitor her activities and absences more closely.

[53] The employer did not question Ms Goyette's illness from February 23 to April 14. It was only following the medical report by Dr. Giasson, confirmed by Dr. Guérin, a psychiatrist, that the employer questioned the reasons for Ms Goyette's absence.

[54] The evidence has established that, starting on March 20, 1998 (Exhibit E-5), Mr. Pellerin, Director of the Martineau CCC, was concerned about Ms Goyette's absence and asked her to see a physician. Following the medical report by Dr. Giasson, on April 22, 1998, the employer asked Ms Goyette to report to work (Exhibit E-7).

[55] On April 28, 1998 (Exhibit E-9), the employer wrote to Ms Goyette, noting that she had to consult a psychiatrist. This letter reads in part as follows:

[Translation]

*So that we can assess your absence in an equitable manner,
please authorize us to send this report to the Health Canada
assessing physician designated by us, by May 6, 1998, at...*

[56] On June 2, 1998 (Exhibit E-12), the employer wrote to Ms Goyette, asking her to see Dr. Guérin, a psychiatrist, on June 11. Following the report by Dr. Guérin, the employer concluded that Ms Goyette was able to return to work starting on June 14. The employer requested that Ms Goyette repay the sick leave from April 14 to 29, and

imposed on her a financial penalty because of her lack of co-operation and her refusal to report to work.

[57] It is true that Ms Goyette's attitude and lack of co-operation did not help the employer in reaching its decisions. Ms Goyette left on February 23, 1998, delivered her medical certificates in the evenings or on weekends, did not return telephone calls, and did not tell either Dr. Giasson or her own physician that she was working elsewhere. Although at the interview with Mr. Lussier, the new Director of the Martineau CCC, she spoke of mediation and co-operation concerning a return to work, she then tried to contact the Deputy Commissioner, Correctional Services, in an effort to convince that person that she was a victim of the system and unable to return to work.

[58] Although Ms Goyette's behaviour may have caused delays in the leave justification process, she eventually complied with the employer's requirements that she see the physicians designated by the employer.

[59] Although in his report Dr. Giasson noted that Ms Goyette could return to work starting on April 14, 1998, during his testimony he admitted that he had telephoned the employer in order to ensure that his opinion was confirmed by a psychiatrist.

[60] On reading the medical reports adduced in evidence, I note that all the physicians state that Ms Goyette expressed anxiety about returning to work. Dr. Nowakowski and Dr. Guérin recommended that the employer organize a meeting between Ms Goyette and others in order to restore the work atmosphere and allow her to return to work.

[61] Mr. Lussier also clearly understood the situation since, when Ms Goyette returned to work on July 3, he recommended a discussion of the work atmosphere, as well as an investigation into Ms Goyette's claims of harassment and the complaint filed by her co-workers. He also recommended that Ms Goyette be reassigned to another centre during the investigation.

[62] Mr. Pellerin's undoubtedly justified mistrust of Ms Goyette may have influenced the decisions of other managers.

[63] If the employer had followed the physicians' recommendations and asked Ms Goyette to report to the Human Resources Directorate to discuss the situation, an agreement on mediation or reassignment might have been reached before July 3, 1998.

[64] In light of the orders to return to work sent to her by the employer, I agree in part with Dr. Nowakowski's medical report stating, "At the time I examined Ms Goyette, the temporary total disability could be expected to last for approximately three months, after which time Ms Goyette would be fit to return to another workplace" and adding, "For Ms Goyette to be able to return to the same workplace, it would be of the utmost importance, first of all, to complete successfully a mediation and conflict resolution process between Ms Goyette and her employer."

[65] Although the medical reports dated April 14 and 25 indicated that Ms Goyette appeared physically able to work, she nevertheless expressed a great deal of emotion and anxiety about returning to work at the Martineau CCC.

[66] I see nothing in the report by Dr. Nowakowski that justifies a three-month recuperation period beginning on April 25, 1998. However, I agree with Dr. Nowakowski that Ms Goyette's anxiety could have given rise to a fear of returning to work. A discussion meeting between the employer and Ms Goyette during the subsequent few weeks could have dissipated her anxiety and made it possible for her to return to work in May or June.

[67] In light of the points set out above, I consider that Ms Goyette has met her obligations in part. The evidence adduced has not convinced me that the employer was justified in refusing to authorize Ms Goyette's absence from March 14 to April 29, 1998, and thus demanding repayment of the sick leave for that period.

[68] I therefore allow the grievance, and order the employer to grant Ms Goyette the sick leave for the period from March 14 to April 19, 1998.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, December 20, 2002

PSSRB translation

