

Date: 20020719

File: 166-2-31111

Citation: 2002 PSSRB 63



**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)**

Employer

Before: Jean-Pierre Tessier, Board Member

For the Grievor: Alain Lachance, UNION OF CANADIAN CORRECTIONAL
OFFICERS — SYNDICAT DES AGENTS CORRECTIONNELS DU
CANADA — CSN

For the Employer: Jennifer Champagne, Counsel

**Heard at Montreal, Quebec,
May 6 to May 10, 2002.**

DECISION

[1] Ms. Sylvie Goyette has been employed with Correctional Service Canada since 1983. At all material times, she held the position of correctional officer at the Martineau Community Correctional Centre (CCC), 10345 St-Laurent Boulevard, Montreal, Quebec. The position is classified as CX-II.

[2] On July 9, 1998, Ms. Goyette received a memorandum informing her that she was temporarily assigned to Sherbrooke CCC, 2196 Sherbrooke Street in Montreal, 10.5 km from Martineau CCC.

[3] The grievor filed a grievance on July 24, 1998, challenging this decision, which she viewed as a disciplinary measure. She asked to return to Martineau CCC to work and in the meantime demanded that her travel time be recognized as work time and that she be reimbursed for her travel expenses.

[4] The grievance was referred to adjudication on February 6, 2002. The hearing of this grievance was held during the week of May 6 to May 10, 2002. The delay in referring the grievance to adjudication may be explained by a series of events that occurred between 1997 and 2000.

[5] In fact, ten grievances were referred to adjudication. With the parties' agreement, arguments were heard in four grievances at the hearing held between May 6 and May 10, 2002:

- grievance 166-2-31110 relates to a financial penalty equivalent to one day's pay, imposed for eating a meal at the employer's expense;
- grievance 166-2-31116 involves a refusal to grant leave for August 29, 1997, and a disciplinary measure imposed for being absent from work on that day;
- grievance 166-2-31117 deals with a refusal to grant leave for the period from December 20, 1999 to January 7, 2000; and
- grievance 166-2-31111 challenges her temporary reassignment to another workplace in July 1998.

[6] Although separate evidence was led for each of the four grievances, the parties agreed that the evidence placed on one file (including position description, workplace, clientele, etc.) could be considered in the other files.

Evidence

[7] Ms. Sylvie Goyette has worked at Martineau CCC since 1989. This is a small penal institution that accommodated about 50 inmates in 1989. However, since 1990, between 30 and 35 inmates, on average, have been placed there, on day or weekend parole.

[8] Ms. Goyette was in charge of community programming for the residents (inmates) and performed technical duties related to the operations and program of the Centre.

[9] In 1997, in addition to the Director, Mr. René Pellerin, four parole officers, two secretaries, a correctional officer (CX), namely, Ms. Goyette, and security guards worked at Martineau CCC.

[10] In her testimony, Ms. Goyette indicated at the outset that relations were difficult with the former Director, Mr. René Pellerin, especially in 1997-1998. In July 1997, the Director reorganized Ms. Goyette's workload (Exhibit F-3). On November 3 of that year, the Director gave her an annual evaluation attesting to her unsatisfactory performance (Exhibit F-4).

[11] Ms. Goyette pointed out that, during meetings of the team, Mr. Pellerin ignored her comments and spoke to her in an aggressive tone.

[12] In December 1997, at a meeting with the Regional Director, Mr. Thibault, Ms. Goyette spoke to him about the communication problems between her and the Director of Martineau CCC, Mr. René Pellerin.

[13] In February 1998, Ms. Goyette had an altercation with a co-worker, Mr. Spiros Mastoras. Subsequently, he and his co-workers signed a complaint exposing Ms. Goyette's lack of professionalism (Exhibit F-5). In the complaint, Ms. Goyette was charged with putting down her fellow workers and damaging the work atmosphere.

[14] With no news from the Regional Directorate in respect of the dissatisfaction she had expressed regarding Mr. Pellerin's attitude and in view of the complaint made by her co-workers on February 18, 1998, Ms. Goyette felt overwhelmed and on her doctor's advice she stopped working from February 23 to July 3, 1998. According to her, it was on her employer's insistence that she returned to work in July. On April 9, 1998, Mr. Pellerin informed Ms. Goyette that the employer required a medical assessment to set a date for her return to work.

[15] During her absence, there were changes at Martineau CCC. Mr. Lussier became the new Director. Ms. Goyette described a telephone communication between her and Mr. Lussier in which she asked him to resolve the work atmosphere problem between her and her co-workers.

[16] Finally, Ms. Goyette indicated that the employer, on August 31, 1998, had stopped reimbursing her for her travel expenses to Sherbrooke CCC. Two of Ms. Goyette's co-workers confirmed that Mr. Pellerin spoke to Ms. Goyette in an aggressive manner, but did not go further.

[17] Mr. Lussier, the new Director of Martineau CCC, noted on his arrival in June 1998 that the work atmosphere was "uncertain". He talked to each employee about the complaint filed against Ms. Goyette. He was also aware of her dissatisfaction with respect to the attitude of Mr. René Pellerin; however he saw no reason to act on this because Ms. Goyette was on sick leave and Mr. Pellerin was no longer at Martineau CCC.

[18] When Ms. Goyette returned in July 1998, Mr. Lussier informed her that she would be reassigned to Sherbrooke CCC. Mr. Lussier pointed out that, even before Ms. Goyette's return, he had discussed this possibility with the Regional Directorate. In view of the fact that a complaint had been made against Ms. Goyette and that she alleged having been harassed by her former Director, Mr. Pellerin, Mr. Lussier thought it was best to clarify the situation and separate the people concerned in the meantime.

[19] Mr. Lussier maintained that, at Martineau CCC, the work area was small, which meant that employees had their offices side-by-side. The other two co-workers involved were parole officers with individual cases to manage. For the good of the service, Mr. Lussier thought that it was better to move Ms. Goyette.

[20] It was Mr. Lussier who made the recommendation to the Regional Director, Mr. Gilles Thibault, to move Ms. Goyette temporarily to give them time to look into the problems raised both by the other Martineau CCC employees and Ms. Goyette with respect to Mr. Pellerin.

[21] Mr. Thibault, the Director of the Metropolitan Centre since 1989, confirmed what Mr. Lussier had said. He noted that things were tense and decided to investigate the employees' complaint and Ms. Goyette's allegations (Exhibit E-2).

[22] Mr. Thibault followed Commissioner's Directive No. 255 on discrimination and harassment in the workplace (Exhibit E-3) and called for an investigation. He admitted that Ms. Goyette did not file a written complaint with the employer regarding the harassment problem. However, in a case that she presented to the Commission de la santé et sécurité au travail du Québec, Ms. Goyette alleged that she had been the victim of abuse of authority and harassment on the part of her supervisor, Mr. Pellerin. In addition, a few months earlier, she had raised the problem in a meeting with Mr. Thibault.

[23] Mr. Thibault said that he had considered the harassment problem and the complaint of Ms. Goyette's co-workers in his decision to request an investigation. He found it advisable to have some clarification on these matters before Ms. Goyette returned to her workplace after her sick leave.

[24] Mr. Thibault thought that it was a good idea to separate the people with differences of opinion while the investigation was ongoing.

[25] Mr. Thibault admitted that he did not consult Ms. Goyette regarding her temporary assignment to Sherbrooke CCC. He explained that, generally, when an employer separates adversaries, there may be a transfer to another position and section within the same institution (e.g., a penitentiary). In such cases, it is a good idea to talk to the employee who is being transferred to other duties. However, in the case of Ms. Goyette, he recommended a switch of positions with the employee who performed the same duties as Ms. Goyette at Sherbrooke CCC.

Arguments

[26] The grievor submitted that the employer could not rely on Commissioner's Directive No. 255 (Exhibit E-3) to make a temporary reassignment since she had never filed a harassment complaint in writing with her employer and, in July 1998, moreover, Mr. Pellerin was no longer her Director. If the employer had to act, he should have done so with care when Ms. Goyette had raised the problem. No specific comment was made regarding the travel expenses issue.

[27] The employer submitted that there was no reason to apply a formal rule to investigate an allegation of harassment or any other form of discrimination. The employer acted in good faith to try to clarify the problematic situations before Ms. Goyette resumed her duties at Martineau CCC after her sick leave.

Reasons for Decision

[28] I do not have to determine whether there was harassment or abuse of authority on the part of Mr. Pellerin. Likewise, I do not have to determine who is right or wrong in the matter of the complaint made by Ms. Goyette's co-workers.

[29] In this case, the issue is whether at the time of the events there was a situation that warranted investigation and justified keeping the people with differences of opinion apart while the investigation was conducted.

[30] On the first issue, considering the evidence before me, I find that Mr. Thibault acted correctly when he took Mr. Lussier's recommendation. Mr. Lussier thought that, upon Ms. Goyette's return to work, it would be advisable to clarify the tense situation that existed at the time Ms. Goyette left so that it could be rectified, if necessary, all with a view to improving the work atmosphere.

[31] It must be remembered that Ms. Goyette herself had asked Mr. Lussier to see to restoring a good atmosphere on or before her return from sick leave. The employer's decision to hold an investigation arose from a real situation.

[32] With regard to the second issue, I believe that, while an investigation is going on, it is desirable to separate the people with differences of opinion given that the workplace is small; Martineau CCC only has a few employees. The temporary reassignment of Ms. Goyette to another institution resulted from the decision to hold

an investigation. The evidence leads me to conclude that the employer acted in good faith and that the temporary reassignment of Ms. Goyette cannot be considered as retaliation or punitive action. The employer's action is based on Commissioner's Directive No. 255 for all the matters related to the investigation. Ms. Goyette was temporarily reassigned to a position identical to the one that she held.

[33] The employer's decision to stop paying travel expenses is based on the policy in force at Correctional Service Canada as alleged by the employer in his memo dated August 28, 1998 (Exhibit F-10).

[34] The evidence shows that the employer corrected his own mistake by ceasing to pay travel expenses, which he should not have paid, since Sherbrooke CCC, at 2196 Sherbrooke Street, is 10.5 km from Martineau CCC, at 10345 St-Laurent Boulevard (Exhibit E-5).

[35] Accordingly, I cannot allow Ms. Goyette's grievance.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, July 19, 2002

PSSRB Translation