

**Date:** 20020719

**File:** 166-2-31116

**Citation:** 2002 PSSRB 65



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**SYLVIE GOYETTE**

Grievor

and

**TREASURY BOARD**  
**(Solicitor General Canada — Correctional Service)**

Employer

***Before:*** [Jean-Pierre Tessier, Board Member](#)

***For the Grievor:*** [Céline Lalande, UNION OF CANADIAN CORRECTIONAL OFFICERS  
— SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA —  
CSN](#)

***For the Employer:*** [Jennifer Champagne, Counsel](#)

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Heard at Montréal, Quebec,  
May 6 to 10, 2002.

## DECISION

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[1] Ms. Sylvie Goyette has been employed with Correctional Service Canada since 1983. At all material times, she was a correctional officer at the Martineau Community Correctional Centre (CCC). This position is classified at the CX-II group and level.

[2] On August 22, 1997, Ms. Goyette asked her employer for a day of leave on August 29, 1997. Despite the fact that the employer refused this leave and ordered her to report to work on that day, Ms. Goyette was still absent on August 29, 1997 for health reasons. She was reprimanded for the absence and received a two-day suspension without pay as a disciplinary measure.

[3] The grievor filed a grievance on November 5, 1997. In her grievance she requests:

- (a) that the employer rescind its decision not to grant her annual leave for August 29, 1997;
- (b) that the employer remit the credit and reimburse her for August 29, 1997 (which was deemed to be an unauthorized absence);
- (c) that the disciplinary measure resulting in a suspension without pay on November 3 and 4, 1997 be rescinded and the salary for these days be paid.

[4] This grievance was referred to adjudication on February 7, 2002. The hearing was held during the week of May 6 to 10, 2002. The delay in referring this grievance to adjudication may be explained by a series of events that occurred between 1997 and 2000.

[5] Indeed, ten grievances were referred to adjudication. The parties agreed that four would be argued together at the hearing between May 6 and 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 166-2-31111 challenges her temporary reassignment to another workplace in July 1998;
- grievance 166-2-31117 deals with a refusal to grant leave for the period from December 20, 1999 to January 7, 2000; and

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- this 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.

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

[7] At the outset, the employer filed an objection to Ms. Goyette's grievance dealing with the employer's refusal to grant her annual leave for August 29, 1997. According to the employer, this grievance is untimely, having been filed on November 5, 1997, whereas the employer's written refusal is dated August 22, 1997. This objection is taken under advisement and I will deal with it later.

#### Evidence

[8] Sylvie Goyette has been working at the Martineau CCC since 1989. This is a small correctional facility that accommodated about 50 inmates in 1989. However, since 1990, it has held an average of 30 to 35 inmates on day or weekend parole.

[9] Based on Ms. Goyette's job description (Exhibit F-1), she is responsible for organizing community activities for the residents (inmates) and performs a number of technical tasks related to the operations and the program of the Centre.

[10] The community work requires her to identify and solicit outside resources for community activities. She organizes social activities and accompanies residents to various community events. At other times, she welcomes volunteers and visitors participating in activities within the Martineau CCC.

[11] She is also especially responsible for tasks related to the operations of the Martineau CCC, such as security, repairs, maintenance and the furnishings, as well as the supervision of personal effects, bank accounts and allowances of the residents.

[12] Ms. Goyette oversees the maintenance and housekeeping performed by the residents and some specific work (painting). She does the purchasing and is responsible for accident prevention. She has functional authority over the security guards (evenings and weekends), ensures that whereabouts are controlled, and

controls the issuing of keys. She can be called upon to conduct searches and to collect, sort and send the personal effects of residents.

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

[14] In her testimony, Ms. Goyette explained that on August 22, 1997 she requested leave for August 29, 1997 (a holiday). The leave was refused. This refusal was confirmed in writing on the same day (letter of August 22, 1997, Exhibit E-2). In the letter, the Centre's Director, René Pellerin, ordered Ms. Goyette to report to work on August 29, 1997 and reprimanded her for telling him on August 22, 1997 that she would take leave on August 29, 1997 anyway. Ms. Goyette does not deny that she may have made this comment because she was very angry at being refused the leave.

[15] Ms. Goyette explained that she worked somewhere else on the evening of August 28, 1997 from 4:00 p.m. to 12:30 a.m. During the evening she felt quite anxious and at the end of her shift, around 1:00 a.m. on August 29, 1997, she called the guard on duty at the Martineau CCC to report that she could not come into work on the morning of August 29, 1997.

[16] Ms. Goyette testified that she did not sleep well the night of August 29, 1997 and she decided in the afternoon to go to a medical centre. Dr. Jacques Blais confirmed this visit and submitted an absence certificate (Exhibit F-2).

[17] Ms. Goyette subsequently received notice that her medical certificate (Exhibit F-2) was not accepted, that she was deemed to be absent without pay on August 29, 1997 and that she would be subject to disciplinary action. On October 31, 1997, she received a disciplinary action report informing her that she was being suspended without pay for two days, specifically, November 3 and 4, 1997 (Exhibit F-4).

[18] In light of these facts, Ms. Goyette filed a grievance on November 5, 1997. She objected to the fact that she was refused leave on August 29, 1997 and pointed out that she provided the employer with a medical certificate for her absence on that day. At the end of her testimony, Ms. Goyette mentioned that she found it strange that, at

the same time, that is, on November 4, 1997, she was also sent a negative performance evaluation. She believed that her Director was unfairly attacking her.

[19] For its part, the employer called René Pellerin, Director, Martineau CCC to testify. Mr. Pellerin has been employed with the Correctional Service for 30 years, the last 12 years as Director at the Martineau CCC.

[20] He explained that at the time of the events in 1997 he was supervising two centres, the Martineau CCC and the Ogilvy CCC, and that he was also replacing the Area Director at the Ville-Marie office. With respect to the leave request for August 29, 1997, he pointed out that two parole officers were already going to be absent and that he too was supposed to be away on the same day.

[21] Mr. Pellerin believed that it was important that there always be someone at the Centre with experience in security and discipline. In this case, the Director and Ms. Goyette, as the CX-II, can handle security matters effectively (such as cell searches, etc). The parole officers work directly with certain residents on their progress.

[22] He admitted that when Ms. Goyette takes annual leave, she is not replaced. When she is absent there is no longer a correctional officer at the CX-II group and level; he makes sure that he is present should a security-related action be required although, on occasion, a parole officer may meet with a resident (inmate) to explain the rules to him and resolve any security matters (absence, etc.).

[23] Mr. Pellerin then explained the action that he took with respect to the absence on August 29, 1997. He wrote to Dr. Jacques Blais on October 3, 1997 (Exhibit E-3) to ask him to confirm whether Ms. Goyette was able to work on August 29, 1997. He received a reply from Dr. Blais on October 15, 1997 (Exhibit F-3, bundled).

[24] Mr. Pellerin testified that, in his reply, Dr. Blais merely confirmed the medical visit on the afternoon of August 29, 1997 and that the physician also confirmed that Ms. Goyette could have worked in the afternoon.

[25] While the employer changed its position and accepted the absence in the morning for the medical visit, Mr. Pellerin considered that it did not change the fact that, in his opinion, Ms. Goyette stubbornly decided that she did not want to work on August 29, 1997, that she had already announced her absence and that she deserved a

disciplinary sanction. According to Mr. Pellerin, Ms. Goyette had been absent on several occasions in the past.

### Arguments

[26] The grievor's representative argued that Ms. Goyette was really anxious on the evening of August 28, 1997 and felt unable to work the next day. The absence on August 29, 1997 is justified by a medical certificate and no documentary evidence was submitted relating to Ms. Goyette's previous absences.

[27] Since the employer had never raised the objection regarding timeliness during the various stages of the grievance process, there was tacit consent and consideration should not be given to the fact that shortly before the hearing, the representative for the employer indicated that she would raise an objection with respect to timeliness.

[28] For its part, the employer argued that Ms. Goyette had already announced that she would be absent on August 29, 1997 and the fact that she obtained a certificate for a medical visit did not provide real grounds for her absence. According to the employer, the adjudicator is not bound by the medical certificate and can decide whether the absence was justified.

### Reasons for Decision

[29] The employer raised an objection to my jurisdiction to hear the part of the grievance relating to its refusal to grant leave on August 29, 1997 because the grievance was filed on November 5, 1997, more than two months after the event.

[30] In fact, the grievance covers several items. The grievor challenged the employer's refusal on August 22, 1997 (Exhibit E-1) to grant her annual leave on August 29, 1997. She also challenged the refusal to authorize her absence for illness and the disciplinary measure.

[31] The decisions relating to the authorization of sick leave and the disciplinary measure were transmitted on October 28, 1997 (Exhibit F-3) and October 31, 1997 (Exhibit F-4); the grievance was filed on November 5, 1997.

[32] In this matter, Ms. Goyette asked on August 22, 1997 for authorization not to work (annual leave) on August 29, 1997; the employer denied this leave. However, Ms. Goyette did not work on August 29, 1997 and submitted a medical certificate.

[33] Indeed, the grievance of November 5, 1997 was filed a few days after Ms. Goyette learned by letter dated October 28, 1997 that the employer was contesting the reason for her absence on August 29, 1997 and disciplining her.

[34] Further, in its disciplinary report dated October 31, 1997 (Exhibit F-4), the employer stated as follows:

[Translation]

...

*... Ms. Sylvie Goyette's absence constitutes flagrant insubordination, refusal of an order and a fraudulent attempt to camouflage her absence on medical grounds.*

...

[35] The employer referred not only to the absence from work on August 29, 1997, but also to the events surrounding the request for leave and the order given to Ms. Goyette to report for work on August 29, 1997.

[36] In its documents dated October 28 and 31, 1997, the employer focused the debate not only on the absence of August 29, 1997 but also on the discussions of August 22, 1997 surrounding the request for leave for August 29, 1997. According to the employer's comments, this is more than an unjustified absence, it is a matter of insubordination and refusal to obey an order.

[37] The employer reiterated its position on December 22, 1997 at the second level of the grievance process:

[Translation]

...

*With respect to the two-day suspension imposed by your immediate supervisor, I am upholding the decision because, in my view, this was definitely insubordination.*

...

[38] In previous decisions, adjudicators have found that an application for extension of the time limit under the *PSSRB Regulations and Rules of Procedure, 1993* need not be filed for the adjudicator to take jurisdiction to hear the grievance. This is supported by the decisions in *Kettle* (Board file 166-2-21941) and *Moyes* (Board file 166-2-24629).

[39] In light of the circumstances and the relevant facts in this matter, I believe that allowing the employer to change its position with respect to timeliness at the last minute would cause prejudice to the grievor.

[40] There is no question that Ms. Goyette's objection relates mainly to the disciplinary measure of November 3 and 4, 1997 and the employer's refusal to accept illness as the grounds for her absence on August 29, 1997. It is only as a secondary issue that Ms. Goyette asked the adjudicator to consider the events of August 22, 1997 surrounding the request for leave, given that the employer itself raised these events as justification for adding insubordination to the grounds for disciplinary action.

[41] In my view, the dispute was actually triggered on October 28 and 31, 1997 when the employer sent the notices (Exhibits F-3 and F-4). The allusion to the incident on August 22, 1997 constitutes an allegation by the employer, one that is contested by the grievance of November 5, 1997, which I have jurisdiction to consider.

[42] On the merits of the file, and after reviewing the evidence, I must uphold the employer's position.

[43] Mr. Pellerin explained that there are two types of intervention with the residents (inmates) at the Martineau CCC: one by the parole officers working directly with some inmates on their progress. Also, the Director and the person with responsibilities mostly related to security and discipline, for example, the CX-II, in this case, Ms. Goyette, look after matters relating to supervision, enforcement and discipline.

[44] While this is a small team and, upon occasion, tasks may be interchanged, I do not find unreasonable the position of the Director, Mr. Pellerin, regarding the leave of August 29, 1997. The Director explained that he was supervising another centre at the time and replacing the Area Director at the Ville-Marie office. Since he expected to be away that day, he considered it preferable for the other person responsible for security and enforcement (searches, intervention, absence, etc.) to be present on August 29, 1997.



[45] Another aspect to consider is the fact that Ms. Goyette did not give any strong reason on August 22, 1997 that might have encouraged the Director to accommodate her request. If Ms. Goyette had had a more legitimate reason for being absent (the need to accompany a relative or friend to the physician, etc) then there might be grounds to more closely review the exercise of the right to manage.

[46] Ms. Goyette did not admit the real reason for her being absent on August 29, 1997 until the hearing; the evening of August 28, 1997 she worked for another employer.

[47] In terms of the facts leading to the administrative and disciplinary actions, I accept that Ms. Goyette announced, on August 22, 1997, that she would still be absent on August 29, 1997. I also accept the fact that the evidence presented by Ms. Goyette does not justify an absence for the whole of the workday on August 29, 1997.

[48] Ms. Goyette argued that she felt anxious during the evening of August 28, 1997. If that was the case, she should have left her job with the other employer early, had a good night's sleep and reported for work the next day at the Martineau CCC.

[49] The evidence showed that Ms. Goyette arrived at home around 1:00 a.m. on August 29, 1997. This fact might have explained her reporting to work slightly late in the morning on August 29, 1997 but could not justify an absence for the entire day.

[50] The evidence showed instead that Ms. Goyette stubbornly challenged the employer's refusal to grant her leave on August 29, 1997.

[51] In actual fact, Ms. Goyette decided that she could not and did not want to work on August 29, 1997. Her visit to the physician on August 29, 1997 in the morning is not very conclusive. The medical certificate simply certified that she saw the physician. The physician himself stated that Ms. Goyette could have worked in the afternoon.

[52] Ms. Goyette cannot therefore invoke her own turpitude; her conduct with respect to the absence on August 29, 1997 constitutes an act of negligence in the performance of her duties and a challenge to authority.

[53] Although Ms. Goyette implied that, on November 4, 1997, the negative performance evaluation she also received was an indication that she was being unfairly

attacked and that there was a conflict with her Director, there is no evidence that allows me to arrive at that conclusion.

[54] Accordingly, I believe that the employer was correct in considering Ms. Goyette's conduct to be abuse and insubordination and I find that the disciplinary measure in this case was warranted.

[55] The grievance is dismissed.

**Jean-Pierre Tessier**  
**Board Member**

OTTAWA, July 19, 2002

PSSRB Translation