

Library

Date: 20020719

File: 166-2-31117

Citation: 2002 PSSRB 66



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

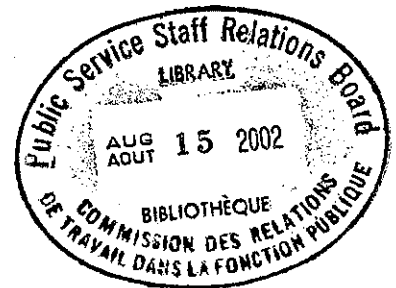
SYLVIE GOYETTE

Grievor

and

TREASURY BOARD
(Solicitor General 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 Martineau Community Correctional Centre (CCC). The position is classified as CX-II.

[2] In October 1999, Ms. Goyette asked her employer to grant her leave for the period from December 20, 1999, to January 7, 2000.

[3] On November 29, 1999, the employer confirmed to her (in writing) that, for the time being, he could not grant her the annual vacation leave because of possible problems with the transition to the year 2000 (the Y2K bug) (Exhibit F-2).

[4] Ms. Goyette disagreed with this decision and filed a grievance on December 22, 1999.

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

[6] In fact, ten grievances were referred to adjudication. With the agreement of the parties, 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 166-2-31111 challenges her temporary reassignment to another workplace in July 1998;
- 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; and
- grievance 166-2-31117 deals with a refusal to grant leave for the period from December 20, 1999, to January 7, 2000.

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

Evidence

[8] 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.

[9] As appears from the description of Ms. Goyette's duties (Exhibit F-1), she was in charge of community programming for the residents (inmates) and performed technical duties related to the operations and program of the Centre.

[10] The community programming required her to identify and solicit outside resources relevant to community activities. She organized social activities and accompanied the residents to certain community activities. On other occasions, she took care of receiving volunteers and visitors participating in activities within Martineau CCC.

[11] In particular, she was responsible for theoretical tasks related to the operations of Martineau CCC, including those relating to security, repairs, maintenance and furnishings, and the supervision of personal effects, bank accounts and residents' allowances and pensions.

[12] Ms. Goyette supervised the maintenance and housekeeping done by the residents as well as various specific jobs (painting). She did the purchasing and saw to accident prevention. She exercised functional authority over the security guards (evenings and weekends), saw that whereabouts were monitored and oversaw the issuance of keys. She might be called on to conduct searches and she took care of collecting, classifying and forwarding the residents' personal effects.

[13] Until early in December 1999, four parole officers, two secretaries, a correctional officer (CX), namely, Ms. Goyette, and security guards, in addition to the Director, Mr. Raymond Lussier, worked at Martineau CCC.

[14] It should be noted that, during the month of December 1999, there were two major changes that meant that the employer had to accept other residents, which led to a change in Ms. Goyette's duties, beginning on December 20, 1999.

[15] Ms. Goyette explained that, at that time, her mother lived in a condominium in Florida. Ms. Goyette hoped to be able to spend her vacation there, which is why she insisted in November 1999 that the Director authorize the annual leave she had requested.

[16] She confirmed that her duties changed as of December 20, 1999, because Martineau CCC had to receive additional residential clients who had mental health problems. They required more staff in the evening and during the weekend since they rarely left the Centre.

[17] Despite this fact, Ms. Goyette believed that her presence at work was not essential to cope with the difficulties anticipated for the transition to Y2K. She explained that her co-workers had access to the information she used in her work. In matters of security, the whereabouts as well as the issuance of keys, everything was recorded manually. Ordinarily, she was not replaced when she took a vacation.

[18] In closing, Ms. Goyette stressed the point that she had been unable to take her vacation early in the year 2000.

[19] The Director, Mr. Raymond Lussier, explained that regional headquarters, for the transition to the year 2000, required community centres to keep a certain number of employees on the job. It was feared that, if there was a panic in 2000, some people would commit crimes, and the centres had to be kept open in case inmates were transferred. Martineau CCC had to get a generator in case of power failures.

[20] An unexpected event, a fire early in December 1999 at the Thérèse Casgrain Centre, forced Martineau CCC to accept the female residents of that institution. The Director admitted, however, that this did not affect Ms. Goyette's duties, because the employees from the Thérèse Casgrain Centre were also transferred and assigned to Martineau CCC. Furthermore, there was no CX position at the Thérèse Casgrain Centre.

[21] The other major event was Martineau CCC's change in status beginning on December 20, 1999. The CCC also had to receive residents (inmates) suffering from mental problems. For the additional supervision requirements at night and on weekends, the Regional Directorate allocated four additional CX positions.

[22] To receive the new residents, bedding, a microwave and various pieces of furniture had to be purchased.

[23] The Director, Mr. Raymond Lussier, explained that, for the New Year's Day 2000 period, however, he did grant leave to Ms. Rinfrette, a parole officer at Martineau CCC, and he thought that another employee was absent during that period. The Director also admitted that management at Martineau CCC had never required strict observance on the employees' part of the dates provided for in the collective agreement for annual leave requests.

Arguments

[24] The grievor claimed that the Director could have granted her leave. According to her, the employer did not show that he had made reasonable efforts to facilitate her taking her annual leave. Ms. Goyette's representative requested that the adjudicator retain his jurisdiction in the event that the grievance was allowed.

[25] For his part, the employer argued that he was required to maintain service during the period of leave requested by Ms. Goyette and furthermore, specific events, such as Martineau CCC's change in status as of December 20, 1999, would in any event have required him to use Ms. Goyette's services.

Reasons for Decision

[26] The grievor submitted that she was usually not replaced when taking her annual leave. Furthermore, as shown in the decision in *Goyette v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2002 PSSRB 65 - (166-2-31116), the employer thought it was important to have at least one employee, such as a CX, or the Director himself, with training in applying the regulations and disciplinary measures present at Martineau CCC.

[27] In this case, the Director, Mr. Raymond Lussier, did not argue that he had to be away and he wanted Ms. Goyette to be present. On the contrary: because of the anticipated problems with the transition to the year 2000, he and a certain number of employees had to be at work.

[28] Nothing in the evidence submitted by the employer leads to the belief that Ms. Goyette's presence was necessary to his organizational plans for the transition to the year 2000. The Director granted leave to one employee and another parole officer was absent as well.

[29] The fact that the Centre had to receive the residents of the Thérèse Casgrain Centre had nothing to do with Martineau CCC's employees taking leave, because the Thérèse Casgrain Centre employees were also transferred to Martineau CCC.

[30] Still to be reviewed is Martineau CCC's change in status as of December 20, 1999. The employer argued that if Ms. Goyette had been given the leave he might have had to call her back to work.

[31] The main reason given by the employer, i.e., the problems anticipated in relation to the transition to the year 2000, is hypothetical. Moreover, I daresay that the directors of prison services must have considered this possibility when altering the status of Martineau CCC on December 20, 1999. If there had been a real problem, the change in status would have been planned for January 2000 rather than December 1999.

[32] I understand that, as of December 20, 1999, the Director had to work even harder to recruit other employees and that staff transfers are difficult at that time of the year. However, this situation attributable to the regional organization whose intention to alter the status of Martineau CCC was communicated to the Director of Martineau CCC only at the last minute -- at least after November 29, 1999 -- for he makes no mention of it in his letter refusing leave to Ms. Goyette on November 29, 1999.

[33] For all these reasons, I allow Ms. Goyette's grievance.

[34] Considering that Ms. Goyette was not able to take her vacation during the 1999-2000 work year and considering that during the hearing the parties did not make submissions on the consequences of refusing vacation leave, I ask the parties to settle these issues and, in the event of a disagreement, I will remain seized until December 1, 2002.

Jean-Pierre Tessier,
Board Member

OTTAWA, July 19, 2002.

PSSRB Translation

