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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

ALAIN BOUCHARD

Grievor

and

TREASURY BOARD

(Solicitor General of 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: Karl G. Chemsî, Counsel

Heard at Montréal, Quebec,
June 5 and 6, 2002.



DECISION

[1] Alain Bouchard worked as a Correctional Officer at the Archambault Institution from 1992 to 1998. He currently works at the Leclerc Institution.

[2] On March 5, 1997, he filed an accident report and, that same day, his doctor diagnosed a herniated disk L5-S1 and authorized leave from work.

[3] The employer gave Mr. Bouchard paid leave for an injury-on-duty from March 5, 1997, to May 31, 1997. The CSST later compensated Mr. Bouchard from June 1, 1997, to May 13, 1998.

[4] The grievor filed a grievance contesting the length of the paid leave allowed by the employer and indicated that clause M-21.11 of the collective agreement had been breached.

M-21.11 Injury-on-duty leave

An employee shall be granted injury-on-duty leave with pay for such reasonable period as may be determined by the Employer when a claim has been made pursuant to the Government Employees' Compensation Act, and a Workers' Compensation authority has notified the Employer that it has certified that the employee is unable to work because of:

a) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct,

or

b) an industrial illness or a disease arising out of and in the course of the employee's employment,

if the employee agrees to remit to the Receiver General of Canada any amount received by him or her in compensation for loss of pay resulting from or in respect of such injury, illness or disease providing, however, that such amount does not stem from a personal disability policy for which the employee or the employee's agent has paid the premium.

The evidence

[5] At the beginning of the hearing, the parties filed a joint statement of evidence (Exhibit F-1). Paragraph two (2) was corrected by substituting the words "d'intervention d'incendie" [fire intervention] for "d'intervention d'urgence" [emergency intervention].

1. *Alain Bouchard worked as a correctional officer 1 at the Archambault Institution from October 1992 to June 1998. Mr. Bouchard currently works at the Leclerc Institution;*
2. *In 1997, Mr. Bouchard was a member of the Archambault Institution's Fire Intervention Team;*
3. *On March 4, 1997, while using force with an inmate, Mr. Bouchard fell down with the inmate and another correctional officer. Mr. Bouchard felt something crack in his lower back. After restraining and cuffing the inmate, Mr. Bouchard and the other officer lifted the inmate, who kept struggling over a distance of approximately 400 feet;*
4. *On March 5, 1997, Mr. Bouchard, upon feeling strong pain in his lower back and numbness in his left leg, filled out an accident report form. That same evening, Mr. Bouchard went to a doctor who diagnosed a herniated disk L5-S1 and authorized time off work;*
5. *On March 10, 1997, Mr. Bouchard applied to the Commission de santé et sécurité au travail du Québec in connection with his injury-on-duty;*
6. *On or around April 25, 1997, the Commission de santé et sécurité au travail du Québec recognized Mr. Bouchard as having had an injury-on-duty;*
7. *The employer granted Mr. Bouchard paid leave for an injury-on-duty from March 5, 1997, to May 31, 1997;*
8. *Mr. Bouchard's injury-on-duty was not contested by Correctional Service Canada to the CSST;*
9. *In view of the failure of the conservative approach taken to treating his herniated disk, Mr. Bouchard underwent surgery, a right L5-S1 diskectomy, on December 5, 1997. Mr. Bouchard was then referred for physiotherapy;*
10. *Dr. Chérif Tadros, an orthopaedic surgeon, performed Mr. Bouchard's operation;*
11. *The CSST compensated Mr. Bouchard from June 1, 1997, to May 13, 1998.*

[6] During his testimony, Mr. Bouchard explained the circumstances surrounding his injury-on-duty, which required that he and one of his colleagues restrain an inmate and transport him over a distance of 400 feet. When he fell, Mr. Bouchard felt a crack in his lower back.

[7] Another colleague of Mr. Bouchard's testified that before the incident with the inmate, Mr. Bouchard had carried two respiratory protective devices during a fire in the Archambault Institution's paint workshop.

[8] For his part, Serge Doyon, a labour relations manager, indicated that he had consulted with Dr. Jacques Murray, who was an expert for Health Canada. Mr. Doyon pointed out that in the May 8, 1997 consultation report (Exhibit E-3a), Dr. Murray had suggested therapy for a four to six-week period subsequent to Mr. Bouchard's two-month absence. Mr. Doyon indicated that he had checked with several people and had taken into account the standards for sick leave allowed by the employer in cases similar to that of Mr. Bouchard. According to Mr. Doyon, the average duration is two to three months.

[9] Although Dr. Murray's report mentions Mr. Bouchard's history and points out that this employee had an "old degenerative diskarthrosis," Mr. Doyon confirms that the employer did not contest the injury-on-duty.

Arguments

[10] The grievor maintained that his health was excellent on March 4, 1997, since he was able to carry two respiratory protective devices during a fire in the Archambault Institution's paint workshop. The employer's decision caused him to lose employment benefits even though the CSST compensated him from June 1, 1997, to May 13, 1998.

[11] The employer pointed out that clause M-21.11 calls for the duration to be determined by the employer. In this regard, the adjudicator cannot overrule the latter unless it can be demonstrated that the employer improperly exercised its discretion by acting in a discriminatory or unreasonable manner.

Reasons for decision

[12] The facts are not contested. This matter calls for an interpretation of clause M-21.11 of the collective agreement.

[13] Clause M-21.11 clearly states that the employer is the one who determines the duration of the paid leave.

[14] The current evidence indicates to me that the employer approved paid leave for three months on the basis of Dr. Murray's opinion (Exhibit E-3a) according to which, by adding four to six weeks of leave to Mr. Bouchard's two months' leave, the latter would significantly improve his state of health.

[15] It is true that Mr. Bouchard had undergone a right L5-S1 diskectomy on May 12, 1997, and that his convalescence continued until May 13, 1998 (Exhibit F-5).

[16] In his May 8, 1997 report, (Exhibit E-3a), Dr. Murray indicated that ["the event described by the employee...should not be used as an etiological and responsible cause of the compressed disk pathology..."]. Dr. Murray also noted that Mr. Bouchard had been off work for a few days in 1995 with a sprained back because of an occurrence similar to that of March 4, 1997 (Exhibit E-3b).

[17] However, one fact remains: the employer did not contest the injury-on-duty. Thus, the employer agrees that the March 4 incident played a part in the deterioration of Mr. Bouchard's health but, like Dr. Murray, deemed that three months of therapy would significantly improve Mr. Bouchard's health.

[18] Under the circumstances, the evidence presented does not convince me that the employer acted unreasonably. Hence, I cannot allow the grievance.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, August 26, 2002

PSSRB Translation