

Date: 20051107

File: 166-02-33099

Citation: 2005 PSLRB 158



*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

MICHEL MAHEU

Grievor

and

**TREASURY BOARD
(Department of Veterans Affairs)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: Yvon Tarte, adjudicator

For the Grievor: Cécile La Bissonnière, Public Service Alliance of Canada

For the Employer: Jean Lajeunesse, Treasury Board Secretariat

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Saint-Sauveur, Quebec,
October 19, 2005.
(P.S.L.R.B. Translation)

[1] Mr. Maheu's grievance relates to the interpretation of a collective agreement concerning the granting and use of sick leave. The parties agreed on the following Agreed Statement of Facts:

[Translation]

...

[1] *The complainant, Michel Maheu, has been employed at Ste. Anne's Hospital since August 27, 1979 as an Orderly, HS-PHS-05, and is subject to the Operational Service Group collective agreement.*

[2] *St. Anne's Hospital is a long-term care hospital for veterans. In 2003, Ste. Anne's Hospital was home to approximately 542 patients, whose average age was 83.*

[3] *As was the case every year, a message on the nursing care replacement unit answering machine indicated that employees required a medical certificate in the event of any sick leave during the school break. The message was as follows:*

Effective March 3, at 7:30 a.m., until March 10, 2003, at 7:30 a.m., any sick leave taken during the school break will have to be covered by a medical certificate.

[4] *Michel Maheu was off on March 3, 2003 and scheduled to work on March 4, 2003 from noon to 8:00 p.m.*

[5] *On March 4, 2003, at 1:00 a.m., Michel Maheu left a message on the replacement unit voice mail saying that, due to illness, he would be unable to work the March 4, 2003 shift starting 11 hours later.*

[6] *On March 5, 2003, Michel Maheu was scheduled for time off for union business for his entire shift.*

[7] *On March 5, 2003, Michel Maheu's supervisor, Ginette Lalonde, called him at the union local for an explanation of his absence on March 4, 2003. Michel Maheu indicated that:*

- *he was aware of the employer's requirement;*
- *he had not seen a doctor and did not have a certificate for his March 4, 2003 absence; and*
- *he did not agree with the employer's requirement.*

[8] On March 5, 2003, during the phone call, the supervisor indicated to Michel Maheu that the requirement was clear and that she would get back to him.

[9] On April 8, 2003, the supervisor again spoke to Michel Maheu to give him another opportunity to explain himself and to convince her that he had been unable to work on March 4, 2003, but Michel Maheu was unable to convince his supervisor.

[10] On April 16, 2003, Michel Maheu's supervisor issued him a disciplinary letter, specifically a written reprimand, informing him that his absence on March 4, 2003 was unauthorized.

[11] On April 29, 2003, Michel Maheu filed a grievance contesting the supervisor's decision and the failure to comply with clauses 36.02 and 36.03 of the collective agreement.

[12] Clauses 36.02 and 36.03 of the OPERATIONAL SERVICES GROUP collective agreement cover the granting of sick leave, and stipulate that:

36.02 An employee shall be granted sick leave with pay when he or she is unable to perform his or her duties because of illness or injury provided that:

a) he or she satisfies the Employer of this condition in such manner and at such time as may be determined by the Employer,

and

b) he or she has the necessary sick leave credits.

36.03 Unless otherwise informed by the Employer, a statement signed by the employee stating that because of illness or injury he or she was unable to perform his or her duties, shall, when delivered to the Employer, be considered as meeting the requirements of paragraph 36.02(a)

...

[Emphasis in the original]

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to

adjudication must be dealt with in accordance with the provisions of the former *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

[3] In general, all that is required for the granting of sick leave under the provisions of the collective agreement is a simple statement by an employee that he or she is sick. However, in specific cases, the employer may ask an employee to provide a medical certificate justifying one or more absences due to illness. However, the collective agreement provisions do not entitle the employer to circumvent the collective agreement and to require all employees to provide medical certificates for all absences due to illness, as was done in this case.

Order

[4] The grievance is allowed.

November 7, 2005.

P.S.L.R.B. Translation

**Yvon Tarte,
adjudicator**