

Date: 20060303

File: 166-02-34162

Citation: 2006 PSLRB 21



*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

JEAN-PAUL LAROCHE

Grievor

and

**TREASURY BOARD
(Department of Agriculture and Agri-Food)**

Employer

EXPEDITED ADJUDICATION DECISION

Before Sylvie Matteau, Adjudicator

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

For the employer: Joanne Gratton

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 Ottawa, Ontario,
February 24, 2006.
(P.S.L.R.B. Translation)

[1] Mr. Laroche grieved his employer's refusal to grant him leave on February 11, 2003 under subclause 52.01(a) (Leave for Other Reasons) of the collective agreement.

[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 *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 ("the former Act").

[3] The parties adduced a joint Statement of Facts, which reads as follows:

[Translation]

...

- 1- *Jean-Paul Laroche is a Cleaner, GS-BUS-03, employed by Agriculture and Agri-Food Canada, Dairy and Swine Research and Development Centre, Lennoxville. He has been working for Agriculture and Agri-Food Canada since October 1987.*
- 2- *At the time of his grievance, Mr. Laroche was governed by the collective agreement for the Operational Services group, which came into effect on November 19, 2001.*
- 3- *On Tuesday, February 11, 2003, Mr. Laroche learned through the newspaper La Tribune that there had been a cannabis seizure on one of his properties in Asbestos on Friday, February 7, 2003 . . .*
- 4- *On February 11, 2003, Mr. Laroche contacted his supervisor to tell him that he was not feeling well and would not be coming into work.*
- 5- *Upon his return to work, Mr. Laroche submitted a request for leave under Article 52 of the collective agreement, Leave With or Without Pay for Other Reasons.*
- 6- *Clause 52.01 of that article states that: "At its discretion, the Employer may grant:*
(a) leave with pay when circumstances not directly attributable to the employee prevent his or her

reporting for duty; such leave shall not be reasonably withheld;

(b) leave with or without pay for purposes other than those specified in this Agreement.

- 7- *The request for leave for other reasons was denied, as the employer believed that sick leave was more appropriate under the circumstances.*
- 8- *Mr. Laroche filed his grievance on February 26, 2003 . . .*
- 9- *On February 28, 2003, the delegated manager responded to the grievance at the first level of the grievance procedure . . .*
- 10- *On March 4, 2003, the delegated manager responded to the grievance at the second level of the grievance procedure . . .*
- 11- *On February 13, 2006, Mr. Laroche submitted a statement concerning the events that led to his absence on February 11, 2003 . . .*

[4] Mr. Laroche is therefore seeking application of subclause 52.01(a) of the collective agreement. However, as he verbally told his supervisor on the day for which he requested leave that he was [translation] “not feeling well” enough to work, the employer maintains that the request should be for sick leave. Mr. Laroche acknowledged that he made this statement when making his request.

[5] Mr. Laroche then went to his property to inspect it. The property is located some 50 kilometres from his home. When he returned home in the afternoon, he was still upset and did not feel well enough to go to work.

[6] It is understood that it is not the seizure itself that prevented Mr. Laroche from reporting for duty, because the seizure had occurred seven days earlier. Rather, the leave was used to verify the condition of the property and any possible damage resulting from the seizure or alleged illegal activities by the tenants. The leave also gave Mr. Laroche time to compose himself. The psychological strain to which Mr. Laroche referred is directly related to the circumstances of the case and, in my view, forms an integral part of these circumstances.

[7] I therefore find that the situation involved circumstances that were not directly attributable to the employee and that prevented him from reporting for duty. I believe that this article of the collective agreement is specifically designed for the type of situation in which Mr. Laroche found himself that day. Mr. Laroche was not simply ill or indisposed. Moreover, the element of psychological distress is not such as to prevent the leave from qualifying under subclause 52.02(a) of the collective agreement. The circumstances must be considered in their entirety.

[8] For these reasons, I make the following order:

(The Order appears on the following page)

Order

[9] The grievance is allowed.

March 3, 2006.

P.S.L.R.B. Translation

**Sylvie Matteau,
Adjudicator**