

Date: 20060505

File: 166-34-35119

Citation: 2006 PSLRB 51



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

JOAN MULCAHY

Grievor

and

CANADA REVENUE AGENCY

Employer

EXPEDITED ADJUDICATION DECISION

Before: Sylvie Matteau, adjudicator

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

For the Employer: Sonia Virc

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,
April 28, 2006.

REASONS FOR DECISION

[1] This is a grievance dated March 7, 2002 whereby Joan Mulcahy, the grievor, contests the denial by the employer of her request for leave with pay under subclause 54.01 (a) of the collective agreement between the Public Service Alliance of Canada and the Canada Customs and Revenue Agency of June 23, 2000. The request is for the period of January 7 to 29, 2002.

[2] The parties have agreed to submit this grievance to the expedited adjudication process.

[3] 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").

Summary of the evidence

[4] An agreed statement of facts was tabled by the parties and reads as follows:

...

1. *This grievance relates to the Employer's decision to deny the grievor's request for Leave with Pay for Other Reasons pursuant to article 54 of the collective agreement between the CRA and the Public Service Alliance of Canada for the period between January 7, 2002 and January 29, 2002. Article 54 reads as follows:*

54.01 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 unreasonably withheld;

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

2. *The grievor commenced employment with the Canada Revenue Agency in 1982 and became a PM-03 Team Leader, Client Services, supervising a team of workers varying in size between 18-22 people in February 1998.*

3. *Between October 1, 1998 and January 17, 1999, the grievor was on sick leave. She returned to work on January 18, 1999 on a medical recommendation that she work reduced hours for the first two weeks and full time hours thereafter.*
4. *On April 15, 1999, in an effort to assist the grievor with her SunLife claim, CRA management sent a letter to SunLife Claims Specialist, Gord Boyle, explaining that since returning to work in January 1999, the grievor has only been able to work three of 12 weeks for five consecutive days. Following the letter, SunLife agreed to provide further payment of benefits effective January 25, 1999 to cover those hours the grievor was unable to work.*
5. *From April 15, 1999 to October 5, 1999, the grievor again went on extended sick leave.*
6. *The grievor returned to work on October 6, 1999.*
7. *From March 7, 2001 to April 12, 2001, the grievor left again on extended sick leave.*
8. *The grievor was able to return to work on April 13, 2001 but by August 24, 2001 she went off sick again on sick leave.*
9. *On December 4, 2001, the grievor called Terry Steeves, CRA Compensation Advisor regarding the leave she had taken. The grievor informed Mr. Steeves that she had received a letter from SunLife dated November 27, 2001, denying her claim for benefits and that she was not sure she was well enough to deal with the appeal. (Exhibit "A" - Memo to file from Terry Steeves).*
10. *In a letter dated Friday, December 7, 2001, Rick Beaudry, CRA Staff Relations Advisor informs the grievor's manager, Lori Miller, that he spoke with the grievor and that she has decided to appeal SunLife's decision denying her benefits, that she would be making an appointment with her Doctor in order to provide SunLife with more information regarding her inability to remain at work and that she remains unable to return to work however she is hopeful it will be in the near future. (Exhibit "B" - Email dated December 7, 2001, from Rick Beaudry to Lori Miller).*

11. *On December 17, 2001, the grievor attempted to contact Ms. Miller by phone but was unable to reach her.*
12. *On December 19, 2001, the grievor left a voice mail message with Ms. Miller informing her that she would be attending a CRA retirement seminar on January 7 and 8, 2002, that she would be taking a vacation on January 9, 2002, and that she would be returning to work on Wednesday, January 9, 2002. Her voice mail message further noted that she could not return to her supervisory position.*
13. *The following week was Christmas and the CRA reopened on Thursday, December 27, 2001. Ms. Miller returned the grievor's call and left a message indicating that she would be on vacation on Monday, December 31 and from January 2 to January 4, 2002 and that she would try calling again upon her return to work the following week.*
14. *On Monday, January 7 and Tuesday, January 8, the grievor attended the retirement seminar offered to CRA employees.*
15. *On January 9, 2002, Ms. Miller called the grievor to discuss her return to work given that she had stated that she could not return to her supervisory position.*
16. *Ms. Miller explained that, at the time, she did not have a position for the grievor and asked if the grievor had a medical certificate. It was at that time that the grievor read for the first time the doctor's note dated December 11, 2001, which states as follows:*

"Plan for RTW [return to work] - Jan. 7/02 as tolerated (PT [patient] requesting modified hours and modified duties on RTW)" (Exhibit "C" - December 11, 2001 Note from grievor's doctor)
17. *Ms. Miller explained to the grievor that she would need more information regarding her fitness to work. Although normal CRA practice is to refer employees, who wish to return to work following extended sick leave, to Health Canada for a fitness-to-work evaluation, Ms. Miller agreed to allow the grievor's own doctor to fill out a fitness-to-work questionnaire to be prepared by CRA Staff Relations.*
18. *Ms. Miller hand delivered the fitness-to-work questionnaire to the grievor at her home on*

January 11, 2002. Ms. Miler also agreed to pay for the costs incurred by the grievor for the completion of the questionnaire.

19. *On January 16, 2002, Ms. Miller received the completed questionnaire dated January 15, 2002.*
20. *By January 25, 2002, Ms. Miller was able to secure a position for the grievor as a PM-02 Resource Officer. The grievor would maintain her PM-03 salary level at least until the end of the one-year training program was completed. (Exhibit "D" - Return to work letter and Training Plan)*
21. *That same day, the grievor was contacted to arrange a meeting to discuss her return to work and training plans. The grievor agreed to attend on January 30, 2002.*
22. *On January 30, 2002, the grievor returned to work.*
23. *The grievor has been approved for SunLife benefits retroactive to October 1, 2001, which includes the period in question. In addition, the grievor is no longer employed by the CRA as she is now on medical retirement since February 25, 2005.*

...

Reasons

[5] The issue at hand is to determine whether subclause 54.01 (a) of the collective agreement can be used under the present circumstances. Clause 54.01 quoted above, as is the case for all identical provisions is meant to be " a "catch-all" or residual provision for absences not covered by other the...clauses." as stated by *Nandy v. Treasury Board (Royal Canadian Mounted Police)*, PSSRB File No. 166-2-15442.

[6] Although the grievor submitted that the delays that she encountered between January 7 and 29, 2002 were outside of her control, the employer pointed out that she was, at the time, absent for reasons of illness and was on sick leave prior to that date. That period of time was used to determine her fitness to return to work and to search for a position which would meet with the requirements of her returning to work without supervisory duties.

[7] In my opinion, and based on previous interpretation and understanding of identical provisions in the past, clause 54.01 does not apply in this case. As such, I do not have to determine whether the circumstances were outside of Ms. Mulcahy's control or due solely to the actions of the employer.

[8] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[9] The grievance is denied.

May 5, 2006.

**Sylvie Matteau,
adjudicator**