

Date: 20060717

File: 166-02-35166

Citation: 2006 PSLRB 90



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

JEAN-PIERRE LABADIE

Grievor

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as
Labadie v. Treasury Board (Correctional Service of Canada)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Jean-Pierre Tessier, adjudicator

For the Grievor: Céline Lalande, Union of Canadian Correctional Officers-Syndicat
des agents correctionnels du Canada-CSN (UCCO-SACC-CSN)

For the Employer: Karl C. Chemsy, counsel

Heard at Québec City, Quebec,
December 1 and 2, 2005.
(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] Jean-Pierre Labadie (“the grievor”) had been working at Correctional Service Canada in a CX-01 position for more than seven years.

[2] On July 2, 2003, the grievor received an injury on duty and had to take leave from work for several months. He submitted a claim for compensation to the Workers’ Compensation Board (WCB), which was approved in August 2003.

[3] The employer granted him injury-on-duty leave for six weeks pursuant to clause 30.18 of the collective agreement. In May 2004, the grievor filed a grievance contesting the period of leave determined by the employer. This grievance was sent to adjudication in September 2004, and the hearing was held in December 2005.

[4] 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

[5] The facts presented by the grievor are consistent with those presented by Suzanne Dessureault, the manager representing the employer. The issue in dispute is whether, under the circumstances, the employer granted injury-on-duty leave with pay for a “reasonable period”, as provided under clause 30.18 of the collective agreement between the parties (Exhibit F-1), which states the following:

...

Injury-on-duty leave

30.18 *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) a personal injury accidentally received in the performance of his or her duties and not caused by the employee’s wilful 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 for 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.

. . .

[6] On July 3, 2003, the grievor injured himself while carrying an unconscious inmate. On July 5, he started to feel discomfort and left work to see a doctor.

[7] On July 7, 2003, the doctor diagnosed a back strain and gave him a medical certificate (Exhibit E-1).

[8] The grievor pointed out that the employer had contested the fact that his disability resulted from a work injury because, according to the employer, he was slow in reporting the accident (Exhibit E-4).

[9] The matter was finally settled after the Union became involved, and the grievor was granted the sick leave by the employer.

[10] However, on August 19, 2003, the grievor received a letter from the employer (Exhibit F-4), advising him that he would be on leave without pay effective August 18 of that year.

[11] All in all, the grievor was granted injury-on-duty leave for approximately six weeks, which is to say from July 27 to August 18, 2003, and, later, received WCB compensation for August 19, 2003, to August 24, 2004.

[12] According to him, the injury-on-duty leave granted by the employer should have applied to a longer period. From the time that an employee starts receiving WCB compensation the employer considers that employee as being on leave without pay and not eligible for employee benefits (sick leave, vacation leave, etc.).

[13] The grievor submits that, on August 19, 2003, the WCB rendered a decision on eligibility under the workers' compensation plan, and that the employer could have granted the grievor injury-on-duty leave for more than six weeks.

[14] Further to this point, the grievor referred to the Treasury Board policy on injury-on-duty leave (Exhibit F-7). Paragraph 3.4 of this policy refers to situations where employees may be granted injury-on-duty leave for more than 135 days. Thus, according to him, the employer could have extended the injury-on-duty leave beyond six weeks.

For the employer

[15] Ms. Dessureault indicated that she had been a unit manager since 2000. She said that she looked into the circumstances surrounding the grievor's accident. She subsequently consulted the Staff Relations Branch to determine the appropriate leave.

[16] In July 2003 she realized that the WCB confirmation was slow in coming. Since the grievor was running out of sick leave credits, she decided to grant him injury-on-duty leave.

[17] At the time of her decision, Ms. Dessureault took into account the medical certificates provided by the grievor's doctor (Exhibit E-3, bundled). Most of the certificates indicated an absence of 60 days or less.

[18] Thereafter, Ms. Dessureault checked the WCB policy on cost allocation (Exhibit E-8), despite the fact that this policy is only offered as a guide applicable to consolidations. According to Ms. Dessureault, the number of weeks projected for the consolidation of an injury could even guide the grievor. In the case of a lumbago, the policy indicates possible consolidation after five weeks.

[19] Thus, Ms. Dessureault indicated that she based the decision to grant injury-on-duty leave for approximately six weeks on the medical certificates and the WCB policy.

Arguments of the parties

[20] In addition to referring to the arguments submitted during his testimony, the grievor submitted that an employee should be granted injury-on-duty leave for the full period of their disability. In fact, according to him, the Treasury Board policy mentions leave of more than 135 days. Thus, the employer could grant injury-on-duty leave for longer periods, which would ensure that employees did not lose certain employee benefits.

[21] For its part, the employer submitted that the wording of clause 30.18 of the collective agreement is explicit on the point that injury-on-duty leave is for a reasonable period as determined by the employer.

[22] Thus, it is a discretionary decision, which the employer is required to apply in a reasonable manner, as was done in this case.

Reasons

[23] I gather from the grievor's arguments that he felt penalized by the employer's decision not to grant him injury-on-duty leave for the full period, or at least the majority, of his disability.

[24] Like him, I see that there were economic consequences and a loss of employee benefits tied to the fact that the injury-on-duty leave that was granted did not cover the entire period of disability. However, this loss of benefits was offset by the fact that the employee received WCB compensation.

[25] The wording of clause 30.18 is very specific, and does not in any way indicate that the injury-on-duty leave period must correspond to the period of disability. In *Colyer v. Treasury Board (Department of National Defence)*, PSSRB File No. 166-02-16309 the adjudicator stated the following:

...

On the basis of the foregoing I can not find that the employer failed to grant the grievor injury-on-duty leave for a reasonable period as required by the collective agreement. In so finding, I am cognizant that the grievor was not without income during the interval in which such leave was refused her. She was in receipt of worker's compensation benefits which provide a measure of protection for an injured employee. While injury-on-duty leave is predicated upon the existence of a valid claim for worker's compensation benefits, I can find no suggestion in the collective agreement that the extent to which injury-on-duty leave shall be granted must necessarily coincide with worker's compensation. If such were the case, there would be no need here in permitting the employer to exercise a reasonable discretion since injury-on-duty leave would almost automatically be the preferred form of relief. Such an intention surely would have been more clearly expressed by simply allowing employees, once they had a claim approved by a worker's compensation board, to substitute a

claim for injury-on-duty leave. That is not what the collective agreement provides here. It permits the employer to grant injury-on-duty leave for as much of the period of absence due to accident or injury as it feels is reasonable.

. . .

[26] In light of the preceding, it remains to be determined whether the employer set a reasonable period for the injury-on-duty leave it granted the grievor.

[27] The certificates provided by the grievor's doctor indicate that the projected absence was less than 60 days. Moreover, the employer referred to the WCB policy, which provides for a five-week period for the consolidation of a lumbago.

[28] I have not been provided with any other medical documents about the grievor as evidence. Unfortunately, I can only find that the disability period extended over several months. In my view, the employer made its decision based on the facts at its disposal at the time.

[29] Absent substantial evidence that would shed doubt on the employer's decision to grant leave for six weeks, and given the circumstances, I do not find that the leave granted was unreasonable.

[30] For all of these reasons, I make the following order:

(The order appears on the following page)

Order

[31] The grievance is dismissed.

July 17, 2006.

**Jean-Pierre Tessier,
adjudicator**