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File: 166-02-35763

Citation: 2006 PSLRB 97



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

BERTRAND LAHAYE

Grievor

and

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

Employer

Indexed as

Lahaye 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

For the Employer: Karl Chemsî, counsel

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

Grievance referred to adjudication

[1] Mr. Lahaye (“the grievor”) had been worked at the Correctional Service of Canada for more than 19 years. He had been in a CX-01 position and, after 2001, in a CX-02 position.

[2] On October 20, 2004, the employer denied his request for sick leave and docked the grievor one day’s pay because of his absence on April 26, 2004.

[3] On October 20, 2004, the grievor contested the employer’s action and filed a grievance. The grievance was referred to adjudication in January 2005, 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”).

Evidence for the grievor

[5] The grievor explained that he had to attend a shooting training session on April 26, 2004.

[6] The grievor testified that he came down with a strong cold during the night and, in the morning, saw that it was raining. He did not feel up to going to work (shooting training) and called a CX-06 officer, who was in charge of schedules, to notify him of his absence.

[7] The grievor only filled out his request for leave form on June 4, 2004, and requested sick leave without a medical certificate for April 26, 2004 (Exhibit F-2).

[8] The grievor pointed out that several other employees had taken sick leave in April 2004, even though their work schedules had them slated to take part in shooting training.

[9] During cross-examination on the event of April 26, 2004, the grievor could not confirm that he had not received the employer’s 2002 memo regarding the requirement to justify absences from shooting training (Exhibit E-2). He indicated that

he did not remember getting any oral reminders regarding this 2002 memo during training sessions in 2003 and 2004.

[10] Alexandre Gagnon was in a CX-01 position. He had been working for two years at the Donnacona Institution, having previously been employed at Port Cartier.

[11] He indicated that in spring 2004 he had to take sick leave when he was supposed to take part in shooting training. He called his supervisor that morning to explain that he was sick. His sick leave was approved without his needing to provide a medical certificate. His shooting training was postponed until September.

Evidence for the employer

[12] Odette Duranleau is the unit assistant at pavilion "H" at the Donnacona Institution. At the time of the 2004 event, the grievor was reporting to Louis-Marie Perron during the absence of Jean-Marc Charbonneau.

[13] In early May 2004, Ms. Duranleau was informed by Mr. Perron that the grievor had not attended the shooting session on April 26, 2004, and had not filled out a request for sick leave, even though he had called in sick that day. Mr. Perron asked the grievor to fill out a request for sick leave and to provide a medical certificate.

[14] According to Ms. Duranleau, under the policy in force, the grievor was required to submit a medical certificate with his request for sick leave in order to justify his absence due to illness from a shooting training.

[15] On this point, she referred to a 2002 memo (Exhibit E-2), which had been sent to employees and covered the subject of absence from shooting training. The employer asked that employees provide documentation or a medical certificate. It also mentioned that employees could contact the official in charge of training if a major obstacle arose.

[16] According to Ms. Duranleau, the employer is entitled to request specific explanations when an employee misses a training session. A great deal of time and money go into organizing these training sessions. Work schedules have to be worked out around the employees, replacements scheduled and sessions organized outside the office. In this case, the training was moved to the military base at Valcartier, 30 km

north of the Donnacona Institution. Ms. Duranleau tabled several policies on training (Exhibits E-3 to E-6) that address the importance of justifying any absence.

[17] She commented on the grievor's allegation that other employees had missed the shooting training due to illness (Exhibit F-4). She explained that every employee's name was recorded on the training schedule, even though some of them may have been on leave. She tabled the work schedules (E-1) and pointed out that, in Mr. Caron's case, it was an extended absence. She also pointed out that in Mr. Deschênes' case, it was a matter of recurrent absences, and, in Mr. Anctil's case, he was often absent in spring 2004 and generally provided medical certificates.

Summary of the arguments

[18] The grievor estimated that he had met the requirements of clauses 31.02 and 31.03 of the collective agreement (Exhibit F-1) by calling in his absence and subsequently submitting a request for sick leave. The collective agreement clauses that are applicable to the granting of sick leave read as follows:

...

Granting of Sick Leave

31.02 *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.*

**

31.03 *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 31.02(a).*

...

[19] In reference to the testimony given by Mr. Caron, a work colleague, the grievor pointed out that the employer had not required a medical certificate for every absence.

[20] He also indicated that it was difficult to determine whether the 2002 memo had been brought to the attention of all employees in 2003 and 2004.

[21] The employer pointed out that, according to clause 31.02, it was up to the employee to convince the employer of his or her inability to work in the manner and at the time determined by the employer.

[22] The shooting training is necessary, and any absence creates serious problems. Employees must provide valid justification. Not only did the grievor take a long time submitting his request for leave, but on April 26 he provided no explanation to either his supervisor or the shooting instructor.

[23] Since the grievor was slow in producing his leave form, it is understandable that the employer should have required a medical certificate. If the grievor had been prompt in indicating that he did not have a medical certificate, the employer could have tried to get a verbal explanation justifying his absence in the days following April 26, 2004.

Reasons

[24] In referring to clause 31.02 of the collective agreement, the grievor argued that providing a signed statement indicating that his absence was due to illness met the requirements of clause 31.02. This is a general rule. However, clause 31.03 of the collective agreement specifies that this principle applies unless otherwise informed.

[25] The employer's April 2002 memo indicates that, in the event of absence from shooting training, a number of specific requirements had to be met in order to be eligible for sick leave. The requirements of the 2002 directive (Exhibit E-2) provide employees with several options. Given the importance of shooting training, they strike me as reasonable, and the grievor did not argue otherwise. These requirements are as follows:

Translation

...

In the event of an absence from shooting training, you must attest to this by providing valid documentary evidence or a medical certificate.

Annual leave will not be granted for this mandatory training.

You can always contact the official in charge of the training session in case a major obstacle arises.

...

[26] In this case, the grievor did not contact the official in charge of the training. He did not provide any documentary evidence, and he did not produce a medical certificate.

[27] In fact, according to Ms. Duranleau's testimony, the employer accused him of not providing any explanation at the time of his absence on April 26, 2004. He did not alert his immediate supervisor on that day, but only left a message with another official. He did not attempt to convince the employer that he had a valid reason for being absent, which, in this case, was not acceptable.

[28] It is true that a work colleague had previously been granted sick leave without a medical certificate. However, he had contacted his supervisor and, it would appear, managed to convince him that he was facing a major obstacle or had a valid reason for being absent. The grievor did not prove that Mr. Gagnon's situation was parallel to his.

[29] The grievor indicated that he had come down with a cold during the night and that it was raining on the morning of April 26, 2004, as reasons for his decision not to go to work. He was slow in filling out his request for leave.

[30] The grievor did not make the necessary efforts to meet the employer's requirements, and was unable to convince the employer that he was dealing with an exceptional situation or a disability on April 26, 2004. Thus, the employer was entitled to deny his request for leave.

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

(The Order appears on the next page)

Order

[32] The grievance is dismissed.

August 17, 2006.

**Jean-Pierre Tessier,
adjudicator**