

Date: 20070105

File: 166-02-36763

Citation: 2007 PSLRB 2



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

LIANNE CARMEL DEMERS

Grievor

and

**TREASURY BOARD
(Department of Social Development)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: Ian R. Mackenzie, adjudicator

For the Grievor: Andrea Dean, Public Service Alliance of Canada

For the Employer: Guy Cyr, Department of Social Development

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,
December 21, 2006.

REASONS FOR DECISION

[1] Lianne Carmel Demers (“the grievor”) has grieved, on September 23, 2004, the failure of her employer to grant her injury-on-duty leave for four days. Her requested corrective action is to have four days of sick leave credits reimbursed to her.

[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.

[3] The parties provided the following “Agreed Statement of Facts”:

...

1. *The grievor, Lianne Demers, is an indeterminate PM-01 employee of the Department of Human Resources and Social Development (Service Canada Initiative).*
2. *At the time of her grievance, the grievor was covered by the Program and Administrative Services Collective Agreement that expired June 20, 2007.*
3. *The grievor was scheduled for annual leave from August 9 to 20, 2004. She nevertheless made arrangements with her team leader to work the mornings of August 10 and 11, 2004, (Tuesday and Wednesday) taking only half days as annual leave.*
4. *In the evening of Wednesday, August 11, 2004, the grievor experienced severe pain in her wrists which appeared to be a recurrence of a workplace injury experienced in 2002.*
5. *On Thursday, August 12, 2004, the employee called her Team Leader, Paulette Démoré to advise of her severe wrist pain. As a result, her annual leave for that date was changed to sick leave, as was the case for August 13, 16 and 17, 2004.*
6. *On August 18, 2004, the employee visited her doctor who indicated that she was unable to attend work due to tendonitis in her wrists, with an expected return date of August 23, 2004.*
7. *The grievor presented a doctor's certificate to her Acting Team Leader, Michel Bisailon. It is at this time*

that the Team Leader suggested that she might want to complete a WSIB claim if her condition was related to a previous injury. The employee subsequently completed the required forms, which were reviewed and a WSIB claim was approved for the August 18, 2004 to August 23, 2004 time period.

8. *The employee filed the present grievance on September 23, 2004, regarding management's failure to advise her that a Workplace Safety and Insurance Board (WSIB) claim form needed to be completed causing her to use four (4) days of sick leave credits.*

...

[4] The parties also provided a number of agreed documents. The grievor grieved that management "... neglected to immediately inform me that a WSIB form needed to be completed. . . ." resulting in her use of sick leave for four days. In an email to her bargaining agent's representative, the grievor noted that she left a message with her supervisor with regard to recurring tendonitis on August 12, 2004. She also called her family doctor and was advised that the first available appointment was on August 18, 2004. She was contacted by her supervisor on August 13, 2004, and her supervisor did not mention filing a claim with the WSIB. In a letter to the employer's representative, the supervisor stated that the details of why the grievor was experiencing pain in her wrists were not raised during the telephone conversation.

[5] The grievor also provided a document from the WSIB that noted the accident date as August 12, 2004.

[6] The two relevant collective agreement clauses are as follows:

...

35.05 *When an employee is granted sick leave with pay and injury-on-duty leave is subsequently approved for the same period, it shall be considered, for the purpose of the record of sick leave credits, that the employee was not granted sick leave with pay.*

...

37.01 *An employee shall be granted injury-on-duty leave with pay for such period as may be reasonably determined by the Employer when a claim has been made pursuant to the Government Employees' [sic] 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) personal injury accidentally received in the performance of his or her duties and not caused by the employee's willful misconduct,

or

(b) an industrial illness or a disease arising out of and in the course of the employee's employment,

. . .

[7] The grievor's representative argued that it is the employer's obligation to notify an employee of his or her rights under the *Government Employees Compensation Act*. The employer and the bargaining agent contemplated, when negotiating the collective agreement, that there would be situations where employees would have to take sick leave prior to getting approved for injury-on-duty leave. The grievor's representative also referred me to the Treasury Board's policies and guidelines, including the references to the obligation of the employer to advise employees of their rights with regard to workplace injuries. The employer did not advise the grievor of her right to file an incident report until August 18, 2004. The WSIB confirmed that the accident date was August 12, 2004, but only approved benefits from August 18, 2004, because there was no doctor's certificate from before that date. This is exactly the situation that the employer and the bargaining agent contemplated when negotiating the relevant clauses.

[8] The employer's representative argued that the identification by the WSIB of the accident date did not change the fact that benefits were only approved as of August 18, 2004. He noted that the reason why the grievor was experiencing pain in her wrists was not raised in the initial conversation with her supervisor. He noted that she had not lost any income. He also submitted that injury-on-duty leave could only be granted to the extent that the WSIB certified that period as being compensable.

[9] I noted at the hearing that my jurisdiction was limited to the language of the collective agreement. It was indeed unfortunate that the grievor did not obtain medical attention or receive a medical certificate from August 12, 2004. However, the collective agreement language is clear: injury-on-duty leave is to be provided when a claim has

been made and the WSIB has certified that the employee is unable to work because of a work-related injury. In this case, the WSIB has only certified that the grievor was injured from August 18, 2004. It is, therefore, consistent with the language of the collective agreement that injury-on-duty leave would be granted for the period certified by the WSIB. In accordance with clause 35.05, sick leave is only reimbursed to the employee for the period that the employee is on injury-on-duty leave.

[10] With regard to the employer's obligation to advise employees of their rights, a critical fact was in dispute. On the evidence before me, I could not come to any conclusion as to whether the grievor advised her supervisor on August 13, 2004, that her injury was possibly work-related. Consequently, I could come to no conclusion as to whether or not the employer failed in its obligation to the grievor.

[11] For all of the above reasons, I made the following order:

(The Order appears on the next page)

Order

[12] The grievance is dismissed.

January 5, 2007.

**Ian R. Mackenzie,
adjudicator**