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Files: 149-2-214
166-2-28831
166-2-28832

Citation: 2000 PSSRB 12



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

RUSSELL BEATTIE

Applicant/Grievor

and

TREASURY BOARD
(National Defence)

Employer

Before: Marguerite-Marie Galipeau, Deputy Chairperson

**For the Applicant/
Grievor:**

Himself

For the Employer:

André Garneau, Counsel



Heard at Montréal, Quebec,
June 7 and November 16, 17 and 18, 1999.
(Written arguments submitted on December 14, 1999.)

[1] This case concerns two grievances (Board files 166-2-28831 and 166-2-28832) referred to adjudication by Russell Beattie, a records support clerk (CR-02), G1 Records, Department of National Defence, Montreal, as well as an application for extension of time (Board file 149-2-214) related to one of the grievances (166-2-28831).

[2] One of the grievances (166-2-28831) deals with the interpretation of the collective agreement. The Public Service Alliance of Canada, Mr. Beattie's bargaining agent, informed the Board that it was withdrawing its support for the pursuit of this grievance. Accordingly, this file (166-2-28831) and the file dealing with the application for extension of time (149-2-214) are closed.

[3] There remains only the grievance (166-2-28832) related to Mr. Beattie's termination.

[4] The Public Service Alliance of Canada also refused to represent Mr. Beattie with respect to his termination grievance (166-2-28832).

[5] In June 1999, at the outset of the hearing and in response to a request by Mr. Beattie, I adjourned the hearing to give him an opportunity to find a lawyer. When the hearing reconvened in November 1999, Mr. Beattie appeared without counsel and without witnesses. I informed him of the risks of representing himself, even offering to adjourn the hearing again so that he could find a lawyer or a representative. He declined the offer.

[6] From the start of the hearing, Mr. Beattie made comments that appeared to be confused, sometimes illogical and even incoherent. I had difficulty following Mr. Beattie's train of thought. I explained to him how an adjudication proceeding runs, including the examination and cross-examination of witnesses, and the fact that, should he wish, he could testify himself and call his own witnesses. He chose to remain at his table and to make comments while the employer called its witnesses. Unfortunately, his interventions by and large were confusing, making it difficult to understand the point of his comments.

[7] The employer called eight witnesses. For his part, Mr. Beattie only filed documents in evidence, which I took under consideration in light of the objections of counsel for the employer.

[8] On July 28, 1998, Mr. Beattie was informed that he was being terminated for incapacity as of July 30, 1998. Below is a summary of the employer's evidence.

[9] Mr. Beattie was on leave from work since March 19, 1997. At the employer's request, he underwent a psychiatric assessment on April 15, 1997. Dr. René Laperrière, a psychiatrist retained by Health Canada, found that Mr. Beattie was suffering from "a thought disorder indicative of the appearance of a delusional disorder and/or paranoid schizophrenia" (Exhibit A-9). He recommended that Mr. Beattie remain on leave for at least six months and that his return to work be subject to an examination to ensure his mental stability.

[10] After an absence of six months, and prior to allowing him to return to work, the employer asked Mr. Beattie to undergo a new psychiatric assessment with Dr. Laperrière. Mr. Beattie missed two appointments and then, finally, showed up at Dr. Beattie's office on November 25, 1997. During his meeting with Dr. Laperrière, he refused to cooperate and left ten minutes later. Dr. Laperrière concluded as follows (Exhibit E-17):

[Translation]

...

It is my view that this person has a psychotic condition that has been deteriorating for several months; he appeared delusional to me and I was able to observe an increase in mistrust and a threatening attitude. Perhaps because of his refusal to undergo treatment, there appears to have been a deterioration in his condition.

In my view, he is completely incapable of resuming work in the short or medium run for an indeterminate period. He would be unable to deliver even a minimum of work because of his mental state.

...

[11] On December 18, 1997, after having been informed that Mr. Beattie had been seen by two psychiatrists and a general practitioner of his choice, Dr. Laperrière wrote an additional report (Exhibit E-18):

[Translation]

...

CONCLUSION

Before making a definite pronouncement on this man's state, it is essential that I obtain copies of the files of Dr. Mahood, Dr. Massac and Dr. Lizondo to be able to make a fair and equitable assessment of this man and, subsequently, to determine his ability to work.

I hope that this information will be useful and I wish to assure you of my full cooperation for any further action.

[12] Mr. Beattie objected to Dr. Laperrière obtaining information from his physicians (Exhibit E-27).

[13] On April 28, 1998, Mr. Beattie again failed to appear for an appointment at Dr. Laperrière's office.

[14] On May 7, 1998, in a supplementary report (Exhibit E-22) prepared after reading the medical opinion (Exhibit A-7) of Dr. Charles-Henri Massac, psychiatrist, Dr. Laperrière concluded that he was unable to determine Mr. Beattie's condition since he had been unable to interview him and conduct a psychiatric assessment.

[15] Dr. Laperrière explained that the psychological assessment from Elaine Kennedy, psychologist (who did not testify), a copy of which he had received only the day before testifying, contained contradictory statements that remain unclear, such as Mr. Beattie's inability to accept reality, his fragmented approach to reality, his concern about adjusting reality to fit his perceptions of it, and Ms. Kennedy's conclusion that he is not suffering from any psychosis.

[16] Dr. Laperrière also testified that the "report" (Exhibit A-11) of Dr. Lizondo, psychiatrist, lacked sufficient detail for him to be able to draw any conclusions from it.

[17] Dr. Laperrière concluded that, under the circumstances, he had no choice but to uphold his original diagnosis that Mr. Beattie was incapable of performing the duties of his position because of his mental health.

[18] Sergeant Anne Sylvie Duquette testified that, in February 1997, one month prior to Mr. Beattie's departure, she requested (Exhibit E-11) that Mr. Beattie undergo a psychiatric assessment because of his behaviour, which caused her to fear for her personal safety and that of Mr. Beattie's colleagues. She was afraid that [Translation] "something fatal would happen and, every morning, she looked to see if Mr. Beattie was carrying a weapon". She was concerned that Mr. Beattie would become violent.

[19] Mr. Beattie's immediate supervisor, Master Corporal Antoine, confirmed in his testimony that he was also worried about a violent outburst from Mr. Beattie. He also stated that, despite on-the-job coaching, Mr. Beattie did not regularly meet the minimum objectives that had been set for him.

[20] For his part, the Land Force Headquarters Commanding Officer André Mouton testified that he supported the request from his subordinates (Exhibit E-5) that Mr. Beattie undergo a medical examination.

[21] Lastly, Major Daniel Ferland testified that, when Mr. Beattie's sick leave of approximately six months was over, he asked Mr. Beattie to undergo a second medical examination (Exhibit E-16) with Dr. Laperrière in order to assess his ability to return to work. Despite two requests (Exhibits E-25 and E-26), Mr. Beattie did not undergo the medical examination.

[22] In January 1998, Mr. Beattie was called to a hearing where he was asked to agree to have his physicians contacted.

[23] On March 3, 1998, Dr. Vigneault from Health Canada wrote (Exhibit-19) to Mr. Beattie's superiors that, because Mr. Beattie had refused to allow Health Canada access to the files of Dr. Mahood, Dr. Massac and Dr. Lizondo, he supported [Translation] "the conclusion signed by Dr. Laperrière on December 5, 1997".

[24] On March 16, 1998, Mr. Beattie's superiors received Dr. Massac's medical opinion (Exhibit E-28), which was sent to Dr. Vigneault. Mr. Beattie was asked to meet with Dr. Laperrière. He did not do so. Subsequently, a summary of Mr. Beattie's situation (Exhibit E-30) was prepared and, on July 9, 1998, he was given three options: (1) voluntary resignation; (2) medical retirement; (3) termination for incapacity. On July 20, 1998, through his lawyer, Mr. Beattie declined the three options. His lawyer

wrote (Exhibit E-30): [Translation] "The issue of Mr. Beattie's ability to work can only be resolved once and for all through adjudication ...".

Arguments

[25] Mr. Beattie indicated that he wanted the statement that he made at the opening of the hearing to be used as his argument. Mr. Garneau submitted a written argument to which Mr. Beattie did not reply.

[26] The employer's written argument is as follows:

[Translation]

1. During the three days of the hearing of this case, the employer called several witnesses, and filed several documents in support thereof to show the fairness of its decision with respect to Mr. Beattie. The employer maintains that it complied with its obligation to provide sufficient evidence to justify its decision to terminate Mr. Beattie's employment for non-disciplinary reasons (incapacity).

The facts

2. The evidence clearly showed that Mr. Beattie had serious problems at work with regard to performance and behaviour and that he was also very disturbed. The testimony of his supervisors, Master Corporal Antoine, Sergeant Duquette and Captain St-Jean, revealed the many problems they had had with Mr. Beattie during the 1996/1997 period: difficulty understanding simple instructions, incoherent speech, recriminations, unjustified complaints and, in particular, behaviour disturbing for those working close to him.

3. The evidence also revealed management's fears with respect to Mr. Beattie's troubled and sometimes threatening behaviour. Let us recall the testimony of Major Dufour when he spoke of his meeting on February 18, 1997 with Mr. Beattie during which the latter mentioned that he was so upset that he could no longer control his actions. In Major Dufour's mind, this was clearly a problem that fell outside his management skills. And what about the testimony of Sergeant Duquette, Mr. Beattie's immediate supervisor, when she mentioned that she was so afraid of Mr. Beattie that she could no longer handle it and submitted a written report of several pages to her superiors describing her fears and those of her staff regarding Mr. Beattie's conduct.

4. The evidence also showed, through the testimony of Dr. Vigneault and Dr. Laperrière, that Mr. Beattie suffers from a serious and incapacitating medical condition. Dr. Laperrière, a psychiatrist, commented at some length on his report to Health Canada in 1997 regarding Mr. Beattie. Dr. Laperrière explained in detail all the elements of his report leading to his prognosis of Mr. Beattie's incapacity. In his testimony, Dr. Laperrière also clearly explained Mr. Beattie's behaviour

problems during his visits to Dr. Laperrière's office. Both Dr. Vigneault and Dr. Laperrière testified as to Mr. Beattie's lack of cooperation in failing to show up for several appointments and also for refusing to sign and return the consent forms to provide medical information to Health Canada.

5. For his part, Mr. Beattie did not provide strong medical evidence to demonstrate that he was able to work. None of the medical documents presented by Mr. Beattie was supported by testimony from his physicians. Dr. Massac's report, initially transmitted in an incomplete form to the employer by Mr. Beattie during the grievance procedure (the last three pages were missing and it was not signed), as well as the last three pages of this same report submitted by Mr. Beattie at the hearing, do not shed any clear light on Mr. Beattie's ability to return to work. The report from psychologist Kennedy, again filed by Mr. Beattie himself at the hearing, contains several contradictions but, in fact, reaches the same conclusions as Dr. Laperrière. These examples illustrate the jumble in the medical evidence presented by Mr. Beattie. What needs to be borne in mind from all of this is the clarity of the medical opinion and comments of Dr. Laperrière compared with the confusion of the medical opinions offered by Mr. Beattie.

Arguments

6. At the time that the employer made the decision to terminate Mr. Beattie's employment, it had every reason to believe that he was incapable of performing his duties. Considering all the medical information he had at the time, and Mr. Beattie's refusal to undergo any new medical examinations and sign consents for the release of medical information, it was reasonable for the employer to conclude that Mr. Beattie was unable to work and there was no reason to think otherwise in the foreseeable future.

7. In support of its position, the employer refers to the following case law:

□ Campbell and Treasury Board 166-2-25616: In this case, the employee refused on several occasions to authorize his physician to discuss his state of health with HWC or to be examined by a physician selected by HWC. The adjudicator found that, at the time of the termination, it could not be reasonably assumed that the employee would be able to fulfil his duties in the near future.

□ Tobin and Treasury Board 166-2-18410: This is also a case where the employee refused to cooperate with the employer in order to undergo a medical examination.

□ Foscolos and Treasury Board 166-2-28266: This decision also deals with a problem of cooperation on the part of the employee. The adjudicator found that employers are required to deal with their employees' situation and that employees are also required to cooperate.

□ McCormick and Treasury Board 166-2-26274: *In this instance, the adjudicator established that to be able to terminate an employee for incapacity, the employer must show that the employee, at the time of termination, was unable to work and that he would not be able to return to work in a foreseeable future. The adjudicator found that, at the time of his termination, the employee was unable to perform the duties of his position and he would likely be unable to do so in the foreseeable future.*

□ Funnel and Treasury Board 166-2-25762: *Here again, the case involves an employee who was not cooperating and the adjudicator found that, at the time of the termination, the employer was justified in concluding that the employee was unable to perform the duties of his position and would likely be unable to do so in the foreseeable future.*

Conclusion

8. Therefore, based on the above, the employer requests that Mr. Beattie's grievance be dismissed.

[27] Mr. Beattie's statement reads as follows:

[Translation]

I had been an employee since July 18, 1988 with FLQAHQ (Land Force Quebec Area Headquarters), previously located in Westmont county, Quebec, Canada and now located on a military base at Longue Pointe in Montréal, Quebec, Canada. I held a CR2 position (pay scale) as a file clerk. From the time of my arrival at Records, now G1 Records, there were conflicts between two female civilians, which escalated to between civilians and military personnel throughout 1990. From the start, I had witnessed several incidents in my own department; investigation by the Human Rights Commission (federal), harassment complaints, harassment grievance against a Sergeant, a Captain and a civilian, not to mention hidden hazing, verbal and physical abuse, attempted murder, etc.

*The victims were civilians who held the same position in the same department; they all ended up quitting their jobs except for one female employee (a civilian) who won her grievance and was transferred to another department. And the female soldier? She was dismissed, it seems, for psychological problems. During the investigation of this grievance, management wanted to prove that the civilian employee was incompetent even though her performance reports were unblemished, for the civilian and military staff, the female employee was **prompt??, a liar??** and her body odour?? threatened the well-being of the department. A similar situation occurred between 1990 and 1991 when a sergeant was transferred from Records because of body odour following numerous complaints from the civilian staff. We were without supervision for a year; the Sergeant and Chief Warrant Officer came from time to time for administrative formalities and to ensure that the situation was under control.*

Time went by and I became the next victim, innocent of the hostilities, reporting to work became a chore. I suffered from insomnia, headaches, anxiety, and stress, as well as other symptoms characteristic of assault.

Thrown on the streets by my employer (Department of National Defence), I was not entitled to unemployment insurance, I relied on community kitchens and food banks, divorced, without financial resources, I was unable to continue support payments for my daughter. I lost my life insurance (C\$100,000), a financial debt (C\$10,000), and received a bad credit rating. I lived on \$386 Canadian per month from welfare (Emploi et Solidarité Québec), being a person capable of working but not employed. Today, my employer owes me a significant amount of money since March 24, 1997, the day I was dismissed.

Why did my employer dismiss me? for "unusual" behaviour or I knew too much, much too much? Why did my employer and the Treasury Board offer me a chance to receive disability insurance? Who is Dr. René Laperrière? Why was he sued? Were DND and the Public Service Alliance aware of this lawsuit? Why was the Deputy Minister of National Defence interested in my file regarding my meeting with Dr. René Laperrière? Why was the investigator from the Canadian Human Rights Commission so anxious to close my file? Why has the Department of National Defence been delaying its reply to the Human Rights Commission regarding my complaint of discrimination since the end of August 1999? And why has the Commission taken such drastic action since November 8, 1999 to move ahead with its investigation, etc.

Are we seeing a new wave of medical dismissals among federal employees?

I have not come HERE to defend myself but for the sake of my ex-wife and my daughter, who are the real victims of the federal system. I am just an orphan, a victim like others, another statistic in workplace violence in the federal Public Service at the Department of National Defence.

My key witness will be here tomorrow.

Thank you for giving me this time, I ask for your patience, understanding and non-judgment in order to learn the facts. Thank you!

Reasons for Decision

[28] In this matter, the burden of proof rested with the employer. It is my view that the employer has established, on the balance of probabilities, Mr. Beattie's inability to work.

[29] Dr. Laperrière testified that, under the circumstances, he had no other choice but to uphold his initial diagnosis, according to which Mr. Beattie was unable to perform the duties of his position because of his mental state. At the hearing, Mr. Beattie filed second opinions from a number of physicians who did not share

Dr. Laperrière's opinion and believed that he (Mr. Beattie) was able to work. However, because Mr. Beattie did not call these physicians to testify, Dr. Laperrière's testimony remains uncontested. Further, Dr. Laperrière's medical opinion was examined during the hearing, while the second opinions filed by Mr. Beattie could not be, which has a direct bearing on the consideration I can give them.

[30] The testimony showed that Mr. Beattie's conduct was alarming enough for his superiors to believe that it was more caution to have him undergo a medical examination by Health Canada. The employer was justified in ensuring that Mr. Beattie did not represent a threat to the workplace.

[31] Mr. Beattie refused in various ways to cooperate with the employer during his sick leave.

[32] In reading the letters in the file, I find that the Public Service Alliance of Canada also had difficulty obtaining Mr. Beattie's cooperation at the time that it was still involved in the case.

[33] Lastly, during the hearing, Mr. Beattie did not offer enough convincing evidence to contradict that of the employer.

[34] Having said this, I must add that I found it difficult and unfortunate that Mr. Beattie represented himself. However, without his cooperation, it is not easy to see how the employer could have offered him any assistance, or how I could have helped him, since he did not present sufficient convincing evidence to contradict that of the employer and allow me to find that his return to work was possible in the foreseeable future.

[35] For these reasons, I cannot allow Mr. Beattie's grievance (166-2-28832) challenging his termination of employment.

**Marguerite-Marie Galipeau,
Deputy Chairperson**

OTTAWA, February 11, 2000

Certified true translation

Serge Lareau