



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

BARRY A. STANOVIE

Grievor

and

**STAFF OF THE NON-PUBLIC FUNDS,
CANADIAN FORCES**

Employer

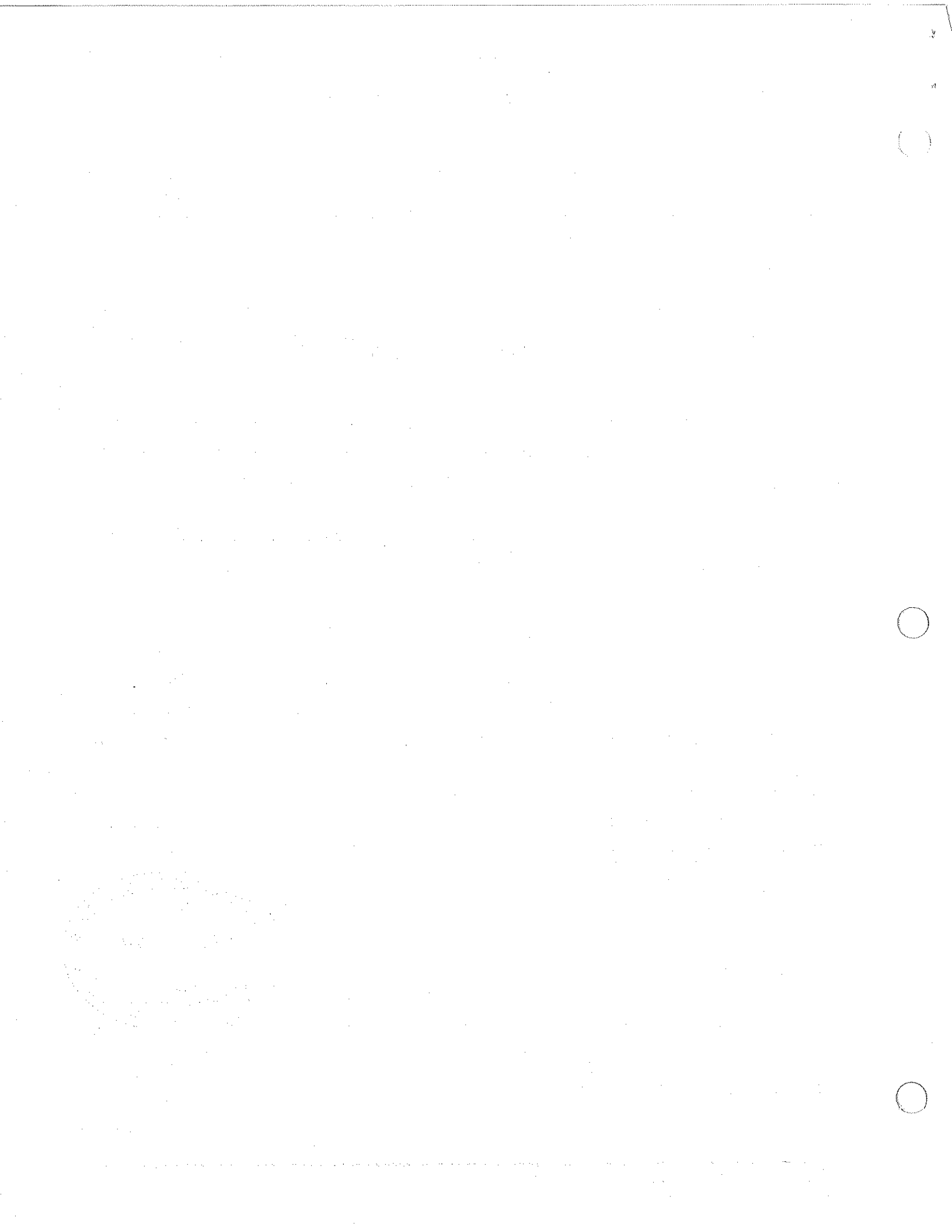
Before: Richard Labelle, Board Member

For the Grievor: Georges Nadeau, Public Service Alliance of Canada

For the Employer: Shalene Curtis-Micallef, Counsel



Heard at Ottawa, Ontario,
March 1, 1996.



DECISION

The grievor, Mr. Barry A. Stanovie, is grieving the employer's refusal to grant him sick leave benefits as per the collective agreement.

As corrective action, the grievor requests that "all payment of funds related to sick leave benefits be reinstated as per collective agreement".

Summary of Evidence

Two witnesses testified: the grievor, on his own behalf, and Mr. Patrick Johnston, Chief Personnel and Administration Officer, on behalf of the employer.

The grievor was a Produce Supervisor (level 16), NPF/Canex, Canadian Forces Base Petawawa, Ontario, where he had been employed part-time from November 1986 until he became full-time beginning in January 1988 until January 1995.

The grievor's representative tabled Article 16, clause 16.01, of the relevant collective agreement between the Staff of the Non-Public Funds, Canadian Forces, and the Public Service Alliance of Canada (Exhibit G-1).

The grievor started to work for the employer in 1986 as a part-time employee until he became a full-time employee in January 1988 (Exhibit G-2). In March 1990, the grievor became Produce Supervisor until the position became redundant in May 1995. The grievor was advised of a temporary lay-off on January 3, 1995 to take effect as of January 16, 1995 (Exhibit G-3).

The grievor obtained a medical certificate, dated January 13, 1995, from Dr. M. Ede which indicated that the grievor would be unable to work from January 13, 1995 until February 12, 1995 (Exhibit G-4). Apart from January 13, 1995, the grievor was laid off throughout this period.

The grievor was scheduled to work on January 13, 1995. He gave his employer his medical certificate on January 13 and the employer agreed to pay sick leave benefits for that day only since his temporary lay-off notice indicated that this would commence as of January 16, 1995. (January 13 was a Friday. The lay-off became effective on January 16 which was a Monday.)

The witness for the employer, Mr. Patrick Johnston, is responsible for administration of Canex employees coast to coast. Canex is part of the Staff of the Non-Public Funds (NPF), Canadian Forces, established as a separate employer under the *Public Service Staff Relations Act*. Canex is a principal generator of money: retail stores; supermarkets; food service outlets; and miscellaneous other services across the country at Canadian Forces Bases.

The witness testified that the Retail Manager is responsible for the initial analysis of the operations. This is run as a business. Sales are restricted to Base employees and military personnel.

The reason for the lay-off was erosion of the customer base. A large deployment of troops was scheduled for Bosnia at that time; as a result, sales decreased and operations were reduced due to lack of sales. The grievor's sick leave benefits were granted only for one day, January 13, 1995, since he was scheduled to work that day and was laid off as of January 16, 1995 and there is no salary to protect after a lay-off.

Under cross-examination, the witness described the employer as a separate employer which is not covered under the *Public Service Employment Act*. Canex collective agreements vary from Base to Base and Canex has constraints that normal businesses do not have.

Arguments

The grievor's representative submitted that the grievor was to be temporarily laid off January 16, 1995. Prior to the lay-off, the grievor fell sick and obtained a medical certificate for January 13, 1995 to February 12, 1995. He referred to clause 16.01, "Sick Leave Plan", paragraph c of the collective agreement.

The grievor's representative submitted that an employee cannot be laid off when he is not at work or is on sick leave. The grievor meets the requirements of the collective agreement. The medical certificate covers the period of his sick leave. The employer can not lay off an employee who is on sick leave. The grievor's representative indicated that the employer should not refuse sick leave benefits to the grievor.

I was referred to the following cases in support of his submission:

Collective Agreement Arbitration in Canada, Second Edition, Palmer, page 571;

Canadian Labour Arbitration, Third Edition, by Brown and Beatty, page 8-72;

City of London and Canadian Union of Public Employees, Local 107 (1988), 34 L.A.C. (3d) 92;

City of Toronto and Canadian Union of Public Employees, Local 43 (1974), 7 L.A.C. (2d) 160;

Canadian Broadcasting Corporation and Canadian Union of Public Employees, Broadcast Bargaining Units Council (1985), 18 L.A.C. (3d) 317;

Hoyles Escasoni Complex (Newfoundland Hospital & Nursing Home Association) and Newfoundland Association of Public Employees (1992), 27 L.A.C. (4th) 231;

Herb Fraser and Associates Ltd. and United Steelworkers, Local 7022 (1979), 23 L.A.C. (2d) 311;

United Automobile Workers, Local 112, and De Havilland Aircraft of Canada Ltd. (1970), 21 L.A.C. 236;

Nestle Enterprises Ltd. and Retail, Wholesale and Department Store Union, Local 488 (1982), 7 L.A.C. (3d) 422.

Counsel for the employer submitted that the facts in this case are not in dispute. The lay-off notice given to the grievor on January 3, 1995 indicated that the lay-off would take effect as of January 16, 1995. This issue is about interpretation of the collective agreement (clause 16.01, paragraph b). This clause of the collective agreement is about salary protection. This is an income protection plan. As of January 16, 1995, the grievor had no salary; therefore he is not entitled to sick leave benefits.

The Canex contract does not define lay-off. The employer states that since no salary exists, there is no salary to protect.

On January 13, 1995, there was a salary to protect; therefore the grievor obtained sick leave benefits for that day since he was scheduled to work. On January 16, 1995, there was no salary to protect since the grievor had been advised of his being laid off as of that date.

In support of her submission, counsel for the employer referred me to the following cases and definition:

definition of the word "protection";

Price (Nfld.) Pulp & Paper Ltd. and International Brotherhood of Pulp, Sulphite & Papermill Workers, Local 63 (1972), 1 L.A.C. (2d) 69;

United Brotherhood of Carpenters, Local 2995, and Abitibi Power & Paper Co. Ltd. (1962), 13 L.A.C. 138;

Canadian Labour Arbitration, Third Edition, by Brown and Beatty, The Collective Agreement;

Collective Agreement Arbitration in Canada, Third Edition, by Palmer (sick pay).

In rebuttal, the grievor's representative submitted that, if the employer had wanted sick leave provisions to end with a lay-off, it should have negotiated this in the agreement. The grievor meets the conditions of salary protection for specific periods of time. The grievor was on sick leave from January 13, 1995 to February 12, 1995. Therefore, the grievor should be paid accordingly.

Reasons for Decision

The pertinent provisions of the collective agreement are:

ARTICLE 16

LEAVE GENERAL

16.01 Sick Leave Plan

- a. All full-time employees who have completed their probation period are included in this plan.
- b. Sick leave benefits provide the employee with salary protection as follows:

Continuous full-time Service

Entitlement

3 months but less than 2 years

17 weeks at 66 2/3% of salary

2 years but less than 5 years

First 4 weeks at 100% salary and remaining 13 weeks at 75%

*5 years but less
than 7 years*

*First 9 weeks at
100% salary and
remaining 8 weeks
at 75%*

*7 years but less
than 10 years*

*First 13 weeks at
100% salary and
remaining 4 weeks
at 75%*

10 years and over

*17 weeks at 100%
salary*

c. The following conditions govern the entitlement to sick leave:

(1) the employee must contact his immediate supervisor prior to his regular starting time on the first day of absence or as soon as possible, at which time he will indicate the reason for the absence and the expected date of return;

(2) a doctor's statement must be provided for each absence in excess of five (5) working days. However, the Employer reserves the right to require an employee to produce a medical certificate for any period of illness provided he is asked for a certificate before he returns. Prolonged illness may require additional certificates from the doctor.

....

In this case, the grievor had been advised of a temporary lay-off as of January 16, 1995 on January 3, 1995 (Exhibit G-3). It is between this time and Friday, January 13, 1995 that the grievor went to see his doctor and obtained a medical certificate indicating that he was unable to work from January 13, 1995 to February 12, 1995. The grievor was scheduled to work on January 13, 1995. The employer paid him sick leave benefits for that day. I do not see anything in the collective agreement between the parties that stipulates that the employer will pay sick leave benefits even if an employee has obtained a medical certificate for a period of time while that person has been advised that he will be laid off as is the case before me. The grievor was paid his benefits for January 13, 1995 since he was scheduled to work that day. I do not see why the employer should pay sick leave benefits during a lay-off period since the employee has no salary to protect.

For all these reasons, the grievance is denied.

**Richard Labelle,
Board Member**

OTTAWA, February 19, 1997.