

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

RAYMOND RENAUD

Grievor

and

TREASURY BOARD
(National Archives of Canada)

Employer

Before: Richard Labelle, Board Member

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

For the Employer: Richard Wex, Counsel

Heard at Ottawa, Ontario,
June 3, 1996.

DECISION

This case concerns the reference to adjudication of a grievance in respect of a disciplinary measure imposed on Mr. Raymond Renaud.

The grievor works for National Archives of Canada, Fleet Services, in Ottawa, as a truck driver (GL-MDO-5).

On October 18, 1994, his supervisor, Russ Shannon, advised him that he was suspended from duty without pay from 10:30 a.m. to 3:45 p.m., September 23, 1994.

The memorandum (Exhibit E-4) reads as follows:

Suspension From Duty

On September 23, 1994 you were sent home from work at 10:30 a.m. when it was noticed by me that your breath had a strong odour of alcohol and your speech was slurred. On October 3, 1994 you were given a memo stating that I was prepared to accept a request for vacation leave to cover the time you were off the job on September 23, 1994. You were also informed that you would face immediate disciplinary action the next time you reported for work in a condition that I considered to be unfit for work.

On October 18, 1994 you met with my supervisor, Charles Lemieux and you were informed that if by the end of the work day, you did not submit a request for vacation leave to cover September 23, 1994 the letter dated October 3, 1994 would be rescinded.

The purpose of this letter is therefore to advise you that the letter dated October 3, 1994 is hereby rescinded and that you are suspended from duty without pay from 10:30 a.m. to 15:45 p.m. September 23, 1994, for being at work on that day in a condition which I considered to render you incapable of driving a departmental vehicle.

Please be advised that under no conditions will I allow you to go out on the road if it is suspected you might be impaired in any way. If I should find it necessary to remove you from your duties in the future for similar reasons, further, more severe disciplinary action will be taken.

Mr. Russell Shannon, Mr. Charles Lemieux and Mr. Tom Louks testified on behalf of the employer. The grievor, Mr. Raymond Renaud, Mr. André Albert and Mr. Alexander J. MacDonald testified for the grievor.

At the hearing, the witnesses were excluded at the request of the grievor's representative.

Summary of Evidence

Mr. Shannon works for the National Archives of Canada. In September 1994, he was the grievor's immediate supervisor. The grievor's duties consisted of the pick up and delivery of government documents. On September 23, 1994, the witness asked the grievor to go and pick up documents at a government satellite building. The witness did not notice anything unusual with respect to the grievor's condition at that time.

At approximately 9:00 a.m., the grievor telephoned the witness to tell him he was having problems loading his truck. At that time, the witness noticed that the grievor's speech was slurred and that he was agitated.

The witness testified that the grievor returned to his office around 10:15 a.m.. The witness spoke with the grievor at that time and noticed a strong smell of alcohol and that his eyes were bloodshot. The witness asked the grievor if he had been drinking. The grievor responded: "Yes, last night". The witness then requested that the grievor go home since he seemed unfit to drive. The witness then contacted his supervisor, Mr. Lemieux. The grievor and Mr. Lemieux then spoke together and he also suggested that the grievor go home.

The grievor asked if he could stay on the job and work in the office or use his annual leave for that day. The witness refused that request. The grievor's shop steward also came to speak to the witness and asked him to give the grievor an annual leave form. This request was also refused by the witness. Mr. Shannon then reported the incident to the staff relations officer, Mr. Tom Louks (Exhibit E-2).

The witness testified that he initially decided to take disciplinary action against the grievor in the form of a one-day suspension without pay. He testified that he then decided to request a leave form from the grievor. The grievor refused to submit a leave form as requested in the memorandum of October 3, 1994 given to him by the witness (Exhibit E-3). The grievor refused to submit a leave form and then grieved the memorandum of October 3, 1994 (Exhibit E-3), which was subsequently withdrawn. The witness testified that he then implemented the one-day suspension (Exhibit E-4).

Under cross-examination, the witness testified that there had been no conversation with the grievor when he picked up his truck keys at 7:15 a.m. or so, and he did not notice anything wrong at that time. The witness said that it was only when the grievor called him from his point of pick up to tell him he was having difficulties loading his truck that he noticed the grievor was agitated and slurring his words. It was only when the witness saw the grievor back at the office that he noticed his demeanor and the smell of alcohol. The witness said that he asked the grievor if he had been drinking and that the grievor answered "Yes, the night before".

Mr. Charles Lemieux has been employed by the National Archives of Canada for 20 years. He was the immediate supervisor of Mr. Shannon.

The witness testified that on September 23, 1994, he received a call at around 10:00 a.m. or 10:30 a.m., approximately, from Mr. Shannon asking him to come to Mr. Shannon's office. It was there that he smelled the odour of alcohol coming from Mr. Shannon's office.

The witness said that he was approximately five or six feet away from the office at that time and that both the grievor and Mr. Shannon were in the office. Mr. Shannon told the witness that the grievor was in no condition to work that day. The witness also agreed. After the grievor left, both the witness and Mr. Shannon discussed what should be done. The witness then contacted the labour relations officer, Mr. Tom Louks. He told them that they should consider offering the grievor an annual leave form. Both the witness and Mr. Shannon did not accept this suggestion at the time. The witness testified that later on he met with the grievor and told him to submit a leave form or face suspension.

The witness testified that Mr. Shannon was justified in sending the grievor home that day because of his condition.

Under cross-examination, the witness testified that he was possibly 10 or 12 feet away from the grievor but he smelled the odour of alcohol.

Mr. Tom Louks, the staff relations officer, testified that he understood that the grievor's shop steward asked for permission to be given for the grievor to use annual leave rather than face disciplinary action. He suggested that the employer let the grievor use his leave and give him a warning.

The witness testified that on October 3, 1994, Mr. Shannon gave the grievor a memorandum advising him that an annual leave form would be acceptable for his day of absence, September 23, 1994, when he was sent home (Exhibit E-3). The grievor refused and submitted a grievance. The employer withdrew the memorandum and gave the grievor a one-day suspension.

Under cross-examination, the witness testified that the October 3, 1994 memorandum was a warning to the grievor and indicated that a further similar situation would bring on disciplinary action.

The grievor, Mr. Raymond Renaud, testified that on September 23, 1994 he arrived at work at approximately 7:05 a.m. and went to Mr. Shannon's office at about 7:25 a.m. to pick up his keys. He was told to go to a satellite building on Leeds Avenue and Innis Road to pick up a load and return to the federal disposal area back at the office.

The grievor testified that he went to his pick up point and lowered the tail gate of his truck; he then rang the bell to ask Mr. Alexander MacDonald (supervisor) to open the overhead door and inserted the dock level to the base of his truck. The grievor counted six skids of material (odd sizes, unevenly piled onto skids). Because of the uneven weight of the boxes on the skids, they toppled over when he was putting them into the truck. The grievor said that Mr. MacDonald came to help him put the boxes back onto the skids. The grievor then proceeded to rearrange the rack of boxes on the skids since he could not get them side by side. The grievor testified that he became annoyed with this problem. He then phoned his supervisor, Mr. Shannon, to tell him about the problem. Mr. Shannon realized that the grievor was agitated and told him to load up and come back to the office. The grievor testified that when he got back to the office he saw Mr. Shannon, who asked him if he had been drinking. He replied: "Yes, last night". Back in Mr. Shannon's office, Mr. Lemieux was there (Mr. Shannon left the office) and Mr. Lemieux told the grievor that he agreed with Mr. Shannon that he should go home, that he could smell the alcohol on his breath. The grievor testified that he said: "OK, I will go". He then reached for a leave form and was told: "No leave form. This is going downtown, leave without pay". The grievor then decided to file a grievance and he did that on site. The grievor stated that he was not intoxicated that day.

Under cross-examination, the grievor admitted that he had been drinking the night before until about 1:30 a.m. knowing that his shift started at 7:15 a.m. He said that he had started playing cards at around 8:00 p.m. and had approximately nine or ten beers. He said that a friend drove him home at around 2:30 a.m.. The grievor stated that he gets up at 5:45 a.m., which gave him approximately three hours of sleep.

The grievor stated that it was possible that he was hung over but he thought that he could go to work.

The grievor stated that on his return to the office, he met Mr. Shannon and Mr. Shannon asked him if he had been drinking and he replied: "Yes, last night". The grievor stated he then had a conversation with Mr. Lemieux in Mr. Shannon's office and was told to go home. He stated that he wanted a leave form but that it was refused that day. It was only a few days later that the employer was ready to accept a leave form.

The grievor stated that the memorandum of October 3, 1994 only gave him until 3:00 p.m. to accept. He was insulted by the wording warning him of disciplinary action in the future if there was a similar incident and decided not to submit a leave form covering the balance of his shift on September 23, 1994.

Mr. André Albert has worked for the National Archives of Canada almost 20 years. In September 1994, he was the shop steward. The witness recalls meeting with the grievor on September 23, 1994 and the grievor told him that he was being sent home. The witness stated that the grievor was mad or upset about this but that he spoke normally; he did not slur his words but he looked tired. The witness stated that he did not smell alcohol on the grievor's breath and that he was approximately three feet away from him. The witness stated that he then asked Mr. Shannon if the grievor could put in a leave form and that Mr. Shannon answered no.

Under cross-examination, the witness stated that he knew the grievor for approximately 14 or 15 years. They were working colleagues and occasionally went to a bar at lunch time. The witness reiterated that he spoke with the grievor for approximately one hour and he did not smell alcohol on the grievor's breath at that time.

The witness stated that on September 23, 1994, he asked both Mr. Shannon and Mr. Lemieux if the grievor could put in for leave but they both said no at that time. He stated that, when the employer agreed that it would accept a leave request, the grievor refused.

The witness stated that he knew both Mr. Shannon and Mr. Lemieux as fair and reasonable people and that he could not see them making up this story about the grievor.

Mr. Alexander MacDonald stated that on September 23, 1994 he was working at the Leeds Avenue Building when the grievor arrived to pick up boxes. He helped the grievor put the skids on the truck because the boxes were falling off. The witness mentioned that the grievor seemed a little angry but otherwise he seemed okay. He did not smell alcohol on the grievor's breath. The grievor called his supervisor because he was having a difficult time loading his truck but otherwise there was nothing to indicate that the grievor was not okay at that time.

Under cross-examination, the witness stated that the grievor told him he had a few beers the night before and that he was hung over. The witness stated that he knew both Mr. Shannon and Mr. Lemieux and that they were fair and reasonable people and that he could not see them making up this story about the grievor.

Argument for the Employer

Counsel for the employer, Mr. Wex, stated that it has been established that the grievor went to work on September 23, 1994 in a condition unfit to perform his duties safely. The disciplinary action taken, suspension of the balance of the grievor's shift, is in good faith.

The testimony of Messrs. Shannon and Lemieux and of the grievor clearly establishes that the grievor was unfit to perform his duties. A truck driver should be alert at all times.

Both Mr. Shannon and Mr. Lemieux saw the grievor that day and both observed the same symptoms: (1) smell of alcohol on the grievor's breath; (2) bloodshot eyes; (3) slurred speech; and (4) the grievor looked tired and was agitated.

Counsel for the employer stated that the grievor was offered a break - take vacation leave and no disciplinary action would be taken. The employer, after a few days, took the grievor up on his initial request to put in for leave.

The grievor's testimony is that he drank nine or ten beers until the early morning hours and he admitted he had slept for only three hours. The grievor's own witness stated that the grievor told him that he was hung over.

The action taken by the employer was appropriate in this case and the grievance should be denied.

Reference was made to the following decisions: Gros-Louis (Board files 149-2-105 and 166-2-21667); Roy (Board file 166-2-19519); Edison (Board file 166-2-19659); Vallières (Board file 166-2-16897); and Gaudreau (Board file 166-2-19453).

Argument for the Grievor

Mr. Nadeau questioned whether there is a basis to impose this discipline. The grievor thought he was being accused of drinking on the job. The grievor was not drinking on the job. The witnesses for the grievor, Messrs. Albert and MacDonald, testified that they did not smell alcohol on the grievor's breath.

The grievor's representative referred to the third level reply to the grievance whereby it states that the versions of Messrs. Shannon and Lemieux are different. He stated that it was obvious that Messrs. Shannon and Lemieux had it in for the grievor. It does not make sense that they could smell alcohol on his breath.

Mr. Nadeau referred me to the third paragraph of Exhibit E-4. What is the evidence that the grievor was unfit to drive? The allegation of the smell of alcohol was not corroborated by Mr. MacDonald. The problem of putting the skids on the truck was not unusual. There is no other evidence that could lead me to believe that the grievor was unfit to do the job.

The grievor's representative stated that Mr. Shannon testified that the grievor's speech was slurred when he spoke to him on the phone, although there is no mention of this in the third level reply to the grievance (second paragraph).

Mr. Nadeau said that Mr. Shannon would have noticed the smell of alcohol when the grievor went to pick up his keys at his office since it is a small office. Therefore, there is no preponderance of evidence that the grievor was unfit to perform his duties that morning.

Mr. Nadeau stated that if I accept that the grievor was unfit for work, I should refer to Exhibit E-3 where the employer put in writing a warning and therefore a written reprimand for the grievor's conduct.

He referred to the grievance filed by the grievor (Exhibit E-6) and the reply by the employer whereby it upheld the grievance (Exhibit G-1). He stated that the employer had no right to impose another penalty for the same event (Exhibit E-4). He stated that there was no evidence that the grievor was unfit to perform his duties that day. I should, therefore, uphold the grievance.

He cited Canadian Labour Arbitration, by Brown & Beatty, at paragraph 7:4240, "Multiple penalties".

Reply by the Employer

Counsel for the employer stated that there is no reason to believe that Messrs. Shannon and Lemieux had it in for the grievor. There is confusion over how far away witnesses were from the grievor. At the third level of the grievance, Mr. Shannon could not recall how far away he was from the grievor. (He says 10 or 12 feet.) Mr. Lemieux said he could smell alcohol even before he entered Mr. Shannon's office.

The employer never said that the grievor had been drinking on the job. He referred to the letter of October 18, 1994 (Exhibit E-4). It was said that the grievor was not fit to do his job.

The employer based its decision to suspend on many factors: (1) bloodshot eyes; (2) the smell of alcohol; and (3) slurred speech, and not only on the problem that the grievor had in loading his truck.

Counsel referred me to Exhibit E-2 which made reference to the grievor's slurred speech. He stated that it was true that Mr. Shannon should have noticed this

when the grievor picked up his keys but Mr. Shannon was busy giving out duties to his other drivers.

Counsel said that Exhibit E-3 proves that there was not a double penalty. This was not a disciplinary action. The employer made an offer at the grievor's request and the grievor refused the offer. Exhibit G-1 shows that the employer upheld the grievor's request to withdraw the letter of October 3, 1994.

Reasons for Decision

I have examined all the evidence, as well as the decisions put before me. The issue is very simple. What must be decided is whether or not the employer has proven, based on the balance of probabilities, that Mr. Renaud was unfit to perform his duties on September 23, 1994.

The facts were detailed earlier in this decision and so it is not necessary to repeat them here.

Mr. Renaud has admitted that on the day of the incident he had had only three hours of sleep and that he had consumed nine or ten beers the previous evening, from approximately 8:00 p.m. until 1:30 a.m., or thereabouts. He admitted to Mr. MacDonald, when he went to pick up his load with his truck on September 23, that he was hung over.

I can understand that the grievor became agitated or angry when he had difficulty getting the skids onto the truck and therefore called his supervisor, Mr. Shannon, about his problem, who told him to come back to the office.

Two witnesses testified that the grievor smelled of alcohol when they spoke to him and two witnesses testified that they did not smell alcohol on the grievor's breath. We have here, therefore, a stalemate. Since the burden of proof is on the employer, I am satisfied on the balance of probabilities that the employer has not established that the grievor did smell of alcohol on the day in question.

The employer has a responsibility for its employees and in this case also for the public's safety. The employer had reason, even without smelling alcohol on his breath, to believe that Mr. Renaud on that day was not capable of performing his

duties and asked him to go home. Mr. Renaud asked for a leave form at that time and was refused. It was only a few days later that the employer offered to allow the grievor to apply for leave to cover his absence on the day in question and also indicated that in future if it happened again he would face disciplinary action (Exhibit E-3).

The grievor testified that he was insulted by the tone of the October 3, 1994 memorandum and therefore refused the employer's offer to apply for leave for that day, September 23. The employer, therefore, suspended the grievor for one day (the balance of shift).

The grievor testified that he went to work on three hours' sleep, that he had had nine or ten beers the night before, and that he was hung over. The employer in this case took its responsibilities seriously and could not for safety reasons allow the grievor to go around for the rest of the day driving his truck.

Mr. Lemieux testified that he later met with the grievor and told him to submit a leave form for the balance of September 23, 1994, or face suspension. Since the grievor rejected this offer, the employer imposed a suspension upon the grievor for the period of his absence. Contrary to what was argued by the grievor's representative, this does not constitute the imposition of more than one penalty for the same offense.

For all these reasons, I must conclude that a one-day suspension without pay is fair and reasonable. Therefore this grievance is dismissed.

**Richard Labelle,
Board Member**

OTTAWA, February 27, 1997.