

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

LOUIS DESROCHERS

Grievor

and

**TREASURY BOARD
Solicitor General of Canada**

Employer

Before: Marguerite-Marie Galipeau, Deputy Chairperson

For the Grievor: Alfred La Bissonnière, Public Service Alliance of Canada

For the Employer: Richard Turgeon

Heard at Drummondville, Quebec,
June 26, 27 and 28, 1996; January 14, 15, 16 and 17, 1997; April 8, 9, 10 and 11, 1997;
June 9, 10, 11, 12 and 13, 1997; and November 4 and 5, 1997.

DECISION

This decision is further to the hearing of a grievance sent to adjudication by Louis Desrochers, Correctional Officer (CX-COF-02), at the Drummond Institution in Drummondville, Quebec.

The grievance relates to the termination of employment (Exhibit E-41) of Louis Desrochers on June 17, 1994.

The first two paragraphs of the letter dated June 17, 1994 (Exhibit E-41) give the reasons for the dismissal:

[TRANSLATION]

You have been absent from work, without authorization, since June 5, 1994. On June 2, 1994 you informed an employee of the institution that you were ill, when you are required to formally inform your supervisor in such circumstances and provide him with the reasons for your absence. In addition, you did not, as requested by your employer on several occasions, provide a medical certificate in support of your absence due to illness within seventy-two (72) hours of the start of your inability to perform your duties.

Your negative attitude, your problematic absenteeism from work, your extensive disciplinary record, and the failure of numerous interventions by the employer on your behalf, clearly indicate that you are not making the necessary effort to change your conduct. Management has lost all trust in you.

...

At the request of Louis Desrochers's representative, witnesses were excluded from the hearing.

EVIDENCE

Before beginning the summary of the evidence, it is useful to provide an overview of this case.

One day, in June 1994, on the grounds that he was ill, Louis Desrochers informed an employee of the institution that he would not be coming into work. In response to this absence, in the days that followed and at a time when it was already trying to meet with him concerning another incident, the employer intensified its

efforts to meet with Louis Desrochers. In spite of more than one warning about the pending termination of his employment and in spite of an ultimatum given on June 13, 1994 (Exhibit E-39) to return to work on June 17, 1994, Louis Desrochers did not appear. This was the straw that broke the camel's back or, if you wish, the culminating incident. The same day the employer terminated Louis Desrochers's employment. This decision was the culmination of a long and difficult history that covered a period of five years during which, as we will see, Louis Desrochers gave his employer a hard time. His employment record with the Department includes suspicious absences, disciplinary measures and mishaps, during which he regularly displayed such a negative attitude that the employer felt that nothing further could be done with him.

The following pages contain a summary of the hearing which lasted 17 days, during which 17 witnesses testified, including several of Louis Desrochers's supervisors. In addition to the testimonial evidence, 300 documents covering a period of approximately five years were filed in evidence in support of the position of one or the other of the parties.

EMPLOYER'S EVIDENCE

In order to facilitate understanding of this evidence, I have summarized the facts in chronological order. Here are the facts as presented in the employer's evidence:

1. Period from March 31, 1989 to April 20, 1990

This period covers the first years of the employment relationship between Louis Desrochers and his employer. At the end of this period, Louis Desrochers's superiors considered his performance merited an overall rating (Exhibit E-6) of "fully satisfactory".

However, it is clear from reading the evaluation report (Exhibit E-6) that problems with Louis Desrochers's behaviour were already beginning to surface. The employer set as objectives for Louis Desrochers the need to improve his relations with his superiors and his exchanges with his colleagues, as well as to put an end to a "pattern of absenteeism".

During his testimony, the author of the evaluation report (Exhibit E-6), Correctional Supervisor Laurier Nolet, confirmed the statements in the report and added that Louis Desrochers's colleagues did not like working with him and complained about his lack of team spirit. In addition, inmates were complaining about the way he treated them.

His absences were also becoming suspect. It was noticed that they often occurred on the days immediately before or after days of rest or weekends (Exhibits E-42 and E-44). While it accepted these absences, the employer still had doubts about the validity of the reasons given by Louis Desrochers for them.

On January 11, 1990, the employer reprimanded him (Exhibit E-7) for having ignored a request to provide a medical certificate.

Three months later, on April 15, 1990 (Exhibits E-42, E-44, E-45 and E-46), the employer questioned the validity of the leave used by Louis Desrochers. For example, it pointed out that he had taken two periods of leave for family-related responsibilities and two periods of sick leave in combination with four days of rest. The employer informed him (Exhibit E-45) that for a period of six months, he would have to provide a medical certificate on his return to work after any absence on sick leave.

A month and a half later on May 22, 1990, the employer noticed (Exhibit E-47) that, just since the beginning of the fiscal year, Louis Desrochers had already used up the five days of leave for family-related responsibilities to which he was entitled and informed him that all future absences for family-related responsibilities would be at his own expense and would have to be accompanied by supporting documents.

2. Period from April 20, 1990 to May 31, 1991

During this second period, the situation worsened. At the end of the period, Louis Desrochers's performance was rated as "satisfactory" (Exhibit E-8). It should be noted that Louis Desrochers's performance was evaluated by a new supervisor, Daniel Thérien.

As with the previous report, this performance evaluation (Exhibit E-8) mentioned shortcomings in Louis Desrochers's relations with employees and inmates and highlighted his absenteeism problem. His superiors set Louis Desrochers's

objectives as improvement in these aspects of his work relations, including his relations with his superiors.

The testimony of Daniel Thérien, Louis Desrochers's supervisor, provided the following information.

When Daniel Thérien became Louis Desrochers's supervisor, he was aware of the situation. He spoke to the employee about it. Louis Desrochers complained that the other supervisors were on his back ["sur son dos"].

Thinking to improve things, Daniel Thérien decided to wipe the slate clean. He told Louis Desrochers that he was starting from scratch. As proof of this, he cancelled the administrative measure (Exhibit E-45) which required Louis Desrochers to provide a medical certificate whenever he returned from sick leave.

Despite this fresh start, Louis Desrochers did not change the behaviour he had adopted during the previous evaluation period.

Various types of leave were claimed back to back for various reasons. The employer noticed a pattern in Louis Desrochers's absences and had doubts as to their legitimacy.

During the period in question (April 20, 1990 to May 31, 1991), Louis Desrochers received a one-day suspension (Exhibit E-13) for being absent from work and not submitting a medical certificate, and a two-day suspension (Exhibit E-12) for not giving a valid reason for a request for leave without pay.

As a result of adjudication, both disciplinary measures were removed.

During the same period (April 20, 1990 to May 31, 1991), Louis Desrochers was absent on April 23, 24, 25 and 26, 1991 and later received a five-day suspension (Exhibit E-11) in connection with this absence.

Note that toward the end of this period, on March 5, 1991, a new supervisor, Gérald Francoeur, took over.

Gérald Francoeur was not familiar with Louis Desrochers's file. On March 14, 1991, Louis Desrochers informed him that he was under an administrative measure

(that which required him to submit a medical certificate leave on his return to work whenever he was absent on sick leave (Exhibit E-45)). He asked Gérald Francoeur to allow him to take sick leave without a medical certificate in order to get ready for a trip. As his predecessor had done, Gérald Francoeur adopted a conciliatory approach and allowed Louis Desrochers to take this leave. This proved to be a mistake because, contrary to what had been agreed, Louis Desrochers was absent from work for two days, March 15 and 16, 1991 (Exhibit E-44), rather than one day. Beginning at this point, and as we will see later on, Gérald Francoeur lost trust in Louis Desrochers. In spite of this lack of trust, he did not take disciplinary action when Louis Desrochers failed to report to work on time on May 5, 1991 (Exhibit E-52) because this was the first time he had been late to Gérald Francoeur's knowledge.

3. Period from June 1, 1991 to May 31, 1992

This period was marked by the deterioration of the working relationship between Louis Desrochers and his employer. Absences increased, disciplinary measures piled up and Louis Desrochers's superiors grew increasingly dissatisfied with his behaviour.

The period ends with a performance evaluation (Exhibit E-9) in which Louis Desrochers's performance was rated unsatisfactory in terms of his relations with inmates and his fellow workers, and his attendance at work. Both his absenteeism and his behaviour toward his superiors were criticized. The performance evaluation report (Exhibit A-9) contained an appended list of numerous meetings with Louis Desrochers held to encourage him to change his attitude, to provide reasons for his absences and to acknowledge the times he was late for work, for which he was unable to provide any valid explanation.

Here is the list of incidents reported during this period, in chronological order:

On June 8, 9 and 10, 1991, Louis Desrochers was absent from work. On June 18, he was late for work (Exhibit E-53). That day the employer asked him (Exhibit E-54) to provide a medical certificate for his absences on June 8, 9 and 10, 1991 and told him that he could be subject to disciplinary action. The same day Louis Desrochers refused in writing (Exhibit E-56) to provide a medical certificate. Still on the same day, Gérald Francoeur informed him (Exhibit E-55) that in future he would

have to provide a medical certificate or some other supporting document for all of his absences. Later that day, Gérald Francoeur found Louis Desrochers asleep on the job. For the latter incident Louis Desrochers was suspended (Exhibits E-10 and E-14) from his duties on June 28, 29 and 30, 1991. [Following adjudication of a grievance of this suspension, I upheld (Exhibit E-14) the three-day suspension.] On June 30, 1991, he was told (Exhibit E-57) he could not change shifts until March 31, 1992.

The following month, Louis Desrochers was suspended on July 17, 18, 19, 20 and 21, 1991 (Exhibit E-11) because of unexplained absences (April 23, 24, 25 and 26, 1991). On July 17, Louis Desrochers asked to change shifts (Exhibit E-58) despite the restriction from doing so (Exhibit E-57) mentioned earlier. The fellow worker with whom he wanted to change, Denis Lemire, testified that it was he who filled out the request (Exhibit E-58) and that Louis Desrochers told him that he did not know that he was prohibited from changing shifts.

On August 16, 1991 (Exhibit E-59), Gérald Francoeur wrote to Louis Desrochers informing him that he would have to provide a satisfactory explanation to his employer for all future absences.

A new unit manager, David Lévesque, was appointed in September 1991. In the presence of the correctional supervisor, Gérald Francoeur, he tried (Exhibit E-83) to make Louis Desrochers understand that his attitude toward the inmates was too strict and that rather than handing out forms to them which would encourage them to complain, it would be better if he performed his duties as a caseworker. Louis Desrochers would not budge and displayed an attitude that indicated he did not care. David Lévesque did not take any disciplinary action against Louis Desrochers because, according to his testimony, it was his first encounter with Louis Desrochers and he wanted to avoid taking a hard line. In short, like Gérald Francoeur and Daniel Thérien had done before him, he began by trying to get along with Louis Desrochers.

It was a wasted effort. The incidents continued to build up.

On September 29, 1991, David Lévesque saw Louis Desrochers rolling cigarettes rather than performing his duties (Exhibit E-84).

On October 18, 1991, Louis Desrochers reported for work 45 minutes late (Exhibit E-60).

On October 22, 1991, David Lévesque called him to a meeting and rather than punishing him by imposing a disciplinary measure, he expressed his dissatisfaction over the cigarette incident, the tardiness and Louis Desrochers's attitude toward the inmates.

The next day, October 23, 1991, Louis Desrochers was late again, this time reporting for work 50 minutes late (Exhibits E-62 and E-86). The same day at a meeting with Louis Desrochers (Exhibits E-61 and E-87) to discuss the latter's upcoming evaluation, Gérald Francoeur, his immediate supervisor, pointed out that this was the second time he had been late in the past few days. A few days later, David Lévesque also spoke to Louis Desrochers about his most recent tardiness (Exhibit E-62) and again, instead of imposing a disciplinary measure, he chose to give him only a verbal warning.

Beginning on October 29, 1991, Louis Desrochers was absent for seven consecutive days. He said he was ill. David Lévesque contacted him (Exhibit E-87) to tell him that, in accordance with the instruction (Exhibits E-55 and E-59) he received on June 18, 1991 and which was confirmed on August 16, 1991, he would have to provide a medical certificate.

Louis Desrochers submitted a medical certificate (Exhibit E-89) on his return to work. David Lévesque called the physician who had signed the certificate. The latter stated that he had seen Louis Desrochers only on November 7, 1991 and had signed the certificate based on Louis Desrochers's statement as to his own state of health. Gérald Francoeur recommended (Exhibit E-87) to his superiors not to accept the medical certificate and to impose a disciplinary measure on Louis Desrochers. The decision was later made not to impose a penalty but simply to give Louis Desrochers a verbal warning, while approving the sick leave for the days in question (Exhibit A-8).

On November 8, 1991 (Exhibit A-1), the Warden of the institution informed employees that henceforth "all requests to exchange positions or shifts would be approved by the correctional supervisors without restriction, provided that the employees concerned carried out all of their duties". The union representative and

president of the Drummond local, Sylvain Lavigne, testified that the employer agreed to allow shift changes as a result of a request by the union and following a strike; the purpose of this decision was to improve labour relations. According to Sylvain Lavigne, this permission by the employer did not supersede any administrative measures that might have been imposed on individual employees. It was he who suggested that management not mention specific cases not entitled to shift changes because he felt such information was not the concern of all employees. As we will see later on, Louis Desrochers moved quickly to use the removal of restrictions (Exhibit A-1) granted to employees to his own ends.

On December 27, 1991, Louis Desrochers left his position without authorization. Once again, instead of punishing him with a disciplinary measure in keeping with his previous disciplinary record, he was given a written reprimand (Exhibit E-15).

On December 31, 1991, Louis Desrochers asked to change shifts for the period from February 10 to 17, 1992 (Exhibit E-63) despite a specific warning (Exhibit E-57) that he was not allowed to change shifts until March 31, 1992, unless there was a good reason and only with the approval of his supervisor. When Louis Desrochers's supervisor, Gérald Francoeur, found out that the change had been approved by Jean-Roch Roussel by mistake because he was not familiar with Louis Desrochers's file, he overturned the decision (Exhibit E-63); the employees involved in the change of shifts complained to Gérald Francoeur's superior, David Lévesque, because they had made arrangements on the basis of the initial approval. David Lévesque reversed Gérald Francoeur's decision in response to these concerns. Once again, he did not take any disciplinary action. Gilles Landry, one of the employees involved in the change of shifts in question, testified that Louis Desrochers did not tell him that he was under a restriction with respect to shift changes (Exhibit E-57). It was only later that Gilles Landry learned through a memorandum from Gérald Francoeur (Exhibit E-63, page 2) that Louis Desrochers was not allowed to change shifts. It is worth noting that the evidence does not show whether Louis Desrochers was told in person that the notice (Exhibit A-1) about unrestricted shift changes did not apply to him.

On February 6, 1992, Louis Desrochers was on standby. Wanting to avoid having to pay overtime, his superiors used the standby system, phoned Louis

Desrochers and asked him to change shifts. He stated that he was not available and that, in any case, he had an agreement with his fellow worker, Archambault. Correctional supervisor André Bellemare told him that he would call him back. André Bellemare was later unable to contact Louis Desrochers. According to his inquiries, there was no agreement with Archambault.

When Louis Desrochers returned to work, David Lévesque again decided not to take punitive action.

On February 10, 1992, Louis Desrochers received a written reprimand (Exhibit E-15) for leaving his position on December 27, 1991. The same day (that is, the shift from February 10 to 11, 1992), he was not in a normal state when he reported for work and admitted drinking some wine. He was sent home and he received a written reprimand (Exhibit E-16).

From February 10 to February 17, 1992, he received the benefit of the shift change that had initially been refused but was ultimately approved so that the other employees could meet their commitments. Then on February 17, 1992, he made another request (Exhibit E-64) to change shifts (for the period from March 12 to 19, 1992). In order to obtain this change, he asked the officer with whom he wished to make the change to fill out the form. He warned the employee, André Bellemare, that he would have problems getting the change approved (it was he who filled out the form) because, as he explained, he too had had problems obtaining permission to do so. He did not tell André Bellemare that he was under an administrative measure and it was only later that André Bellemare learned of it from the correctional supervisor, Gérald Francoeur.

On February 19, 1992, Gérald Francoeur extended the restriction (Exhibits E-65 and E-93) on changing shifts to September 31, 1992. [This restriction extended the one (Exhibit E-57) that had been issued on June 30, 1991.]

On February 21, 1992, Louis Desrochers was given the written reprimand for reporting to work in an abnormal state after drinking wine.

On February 24, 1992, Louis Desrochers was 50 minutes late for work.

On March 4, 1992, he received a written reprimand (Exhibit E-17) as a result of this tardiness.

On March 8, 1992, he reported to work 25 minutes late. He was suspended (Exhibit E-18) from his duties for one day, April 29, 1992.

On March 11, 1992, Louis Desrochers asked to be assigned to the morning shift (Exhibit E-95) in order to take courses. When asked by David Lévesque to provide more information on the courses, Louis Desrochers refused saying that he would not roll out the red carpet ["le tapis rouge"].

On March 14, 1992, Gérald Francoeur noticed (Exhibit E-67) that, instead of making his rounds, Louis Desrochers, who was working overtime that day, was taking extended breaks when he should have been patrolling. He asked Louis Desrochers to give him a written explanation. He did not receive any reply and the matter was left unresolved. No disciplinary action was taken because, according to Gérald Francoeur, he was afraid of being accused of harassment.

Still on March 14, 1992, Louis Desrochers left during the evening shift saying that he was ill. On March 24, 1992, David Lévesque asked him to submit a medical certificate (the evidence is not clear as to the length of the absence). Louis Desrochers wrote to him (Exhibit E-96) that he would submit a medical certificate after his physician had seen him. He also told David Lévesque that his actions amounted to harassment. David Lévesque answered him (Exhibit E-97) saying that he would be on leave without pay (Exhibit A-4) as of March 19, 1992 because he had used all of his sick leave, and that he would have to submit a medical certificate before April 2, 1992. In the end the employer accepted the medical certificate (Exhibit A-3) Louis Desrochers submitted.

On April 8, 1992, Gérald Francoeur wrote (Exhibit E-68) to Louis Desrochers again to tell him that, because of his absences (Exhibits E-51a and E-75), he would have to provide the employer with a satisfactory explanation for all absences.

On April 29, 1992, Louis Desrochers served the suspension (Exhibit E-18) for being late on March 8, 1992.

That ends the period covered by the performance evaluation (Exhibit E-9).

4. Period from May 31, 1992 to October 30, 1992

For this period, there is an incomplete evaluation report (Exhibit A-164) submitted in evidence by Louis Desrochers in which his objectives are to submit his requests for leave promptly on his return to work, to improve his interpersonal relations and to improve his attendance. This document was allegedly obtained as a result of a request under the Freedom of Information Act.

5. Period from October 30, 1992 to October 30, 1993

This period was marked by the continued deterioration of relations between Louis Desrochers, his fellow workers and his superiors. The number of absences increased and the employer pursued Louis Desrochers regarding this problem, even going so far as to impose disciplinary measures. The evaluation report (Exhibit E-23) states that he did not meet the objectives set for him the previous year.

During this period both André Raymond and Gérald Francoeur acted as Louis Desrochers's supervisors. It was Gérald Francoeur who prepared the performance evaluation report (Exhibit E-3) after gathering comments from Louis Desrochers's other supervisors.

According to Gérald Francoeur it is unusual to have to set as an objective for an employee to provide leave requests promptly on the return to work.

The unit manager, Noël St-Amant, reviewed the evaluation (Exhibit E-23).

According to his testimony, he decided that, in light of what had occurred in the past, he would not start back from square one for this evaluation period as had been done by Louis Desrochers's previous superiors.

Here, in chronological order, are the key elements of evidence for this period.

Louis Desrochers was absent from January 6 to February 23, 1993. The employer questioned this absence.

On February 25, 1993, the Warden of the institution, Michel Gilbert, took remedial action (Exhibit E-19) requiring Louis Desrochers to give the correctional supervisor on duty three hours advance notice of any absence and the reason for it.

This requirement was in place until August 31, 1993. Further, if the absence was for medical reasons, he was required to provide a medical certificate within 72 hours of the start of the absence.

On February 26, 1993, the employer tried to obtain (Exhibit E-127) further clarification on the absence from January 6 to February 24, 1993 from the physician who had signed a medical certificate covering this period. The physician refused on the grounds of doctor-patient confidentiality (Exhibit E-128). We do not know when he allegedly saw Louis Desrochers.

On March 5, 1993, following an incident, unit manager François Gendron reminded Louis Desrochers (Exhibit E-98) that, beginning on March 8, 1993 and for the next six months, whenever he was absent he was required to contact the supervisor in charge of the correctional institution directly and not some employee at central control.

On April 22 and May 9, 11, 12 and 13, 1993, Louis Desrochers was absent from work.

On May 19, 1993, correctional supervisor André Raymond (Exhibit E-99) asked Louis Desrochers to explain his absence on his return. We will see later on what happened.

Louis Desrochers was absent again (Exhibit E-76) from May 30 to June 24, 1993.

On June 10, 1993, during this latest absence, Richard Lamontagne, Acting Warden of the Drummond Institution, wrote (Exhibit E-100) to Louis Desrochers and asked him to undergo a medical examination by a physician selected by Health Canada. This request (Exhibit E-100) related to the absences of April 22 and May 9, 11, 12 and 13, 1993, as well as to the absence that began on May 30, 1993.

On June 15, 1993, Louis Desrochers saw the physician selected by Health Canada but refused (Exhibits E-129, E-130 and E-131) to undergo a medical examination.

On June 18, 1993, the employer tightened up the remedial action (Exhibit E-19) of February 25, 1993. It required Louis Desrochers to provide a medical certificate for the absence that began on May 30, 1993 and ended on June 24, 1993, as well as for

that of April 22 and May 9, 11, 12 and 13, 1993. Louis Desrochers was also asked his reasons for refusing to undergo the examination by the physician selected by Health Canada.

On July 5, 1993, because Louis Desrochers had not complied with the instruction issued on February 25, 1993 (Exhibit E-19), had not explained his absences of April 22 and May 9, 11, 12 and 13, 1993, had not contacted the correctional supervisor on duty, and had not provided medical certificates within the prescribed time limits, his requests for sick leave for these dates were refused (Exhibit E-132). He was also refused leave for family-related responsibilities for May 28 and 29, 1993 (Exhibit E-132).

On July 20, 1993, the employer imposed a \$1,000 fine (Exhibit E-21), which amounts to 10 days net earnings. This fine was for Louis Desrochers's actions and omissions in connection with his absences on April 22 and on May 9, 11, 12 and 13, as well as his absence from May 30 to June 24, 1993.

At this point, we need to go back in time.

Before this disciplinary action was taken, Louis Desrochers submitted three medical certificates (Exhibits A-6, E-122 and E-123) in support of his absences; these certificates were signed by psychologist Jean-Guy Grenier on June 28, 1993.

On July 5, 1993, the employer checked with the psychologist (Exhibit E-124). The psychologist explained (Exhibit E-125) that he had not seen Louis Desrochers before June 28, 1993 and that Louis Desrochers had not been referred to him by a physician. The psychologist admitted his own lack of vigilance, acknowledged that it would have been preferable to have written that, on June 28, 1993, Louis Desrochers came to his office to begin therapy.

Psychologist Jean-Guy Grenier provided further clarification during his testimony.

First of all, he explained that the only information on the three medical certificates that had been written by him was that in black ink, specifically, the date of "28-06-93", his signature and his licence number. He explained that he had not entered in the departure and return to work dates, nor had he crossed out the part

reserved for the physician. Further, he was certain that the departure and return dates were blank when he signed the certificates. When asked why he had agreed to sign the certificates (Exhibits A-6, E-122 and E-123), he said it was out of kindness ["de complaisance"]

Deputy Warden Richard Lamontagne testified that, before imposing the \$1,000 fine (Exhibit E-21) mentioned earlier, he examined the medical certificates (Exhibits A-6, E-122 and E-123) signed by psychologist Grenier and the letter (Exhibit E-125) from psychologist Grenier explaining what had happened. He did not recall seeing a medical certificate (Exhibit A-7) for the absence from May 30 to June 29, 1993 that was issued by a psychiatrist by the name of Bélec.

In September, Louis Desrochers was absent again and the employer questioned the validity of the reasons he gave when he requested leave. It was the combination of the various types of leave that raised doubts.

On September 2, 1993, Louis Desrochers was absent for the day on sick leave. In November 1993, he still had not submitted a request for leave form and the employer had to remind him (Exhibit E-74). No request was submitted.

On September 21 and 22, 1993, he was absent again. This absence followed a period of rest. Louis Desrochers requested (Exhibit E-102) two days of leave for family-related responsibilities. He was granted one day of family leave even though he had used all of his family leave credits (later on November 9, 1993, he was told (Exhibit A-12) that because he had used up all of his credits, he would have to take leave for family-related responsibilities as leave without pay and that such leave would have to be accompanied by supporting documents) and one day, September 22, 1993, as leave without pay.

Louis Desrochers was absent because of illness from September 24 to 26, 1993. These absences were combined with annual leave on September 27, three days of rest on September 28, 29 and 30 and annual leave on October 1, 1993. This meant that he was away from work from September 21 to October 2, 1993. It would appear that he worked on September 23, 1993 but the evidence on this point is not conclusive.

On October 6, 1993, his supervisor, Gérald Francoeur, informed him that there would be disciplinary action. On October 10, he asked him for a medical certificate. Louis Desrochers said that he had nothing to explain.

Lastly, on October 15, 1993, the employer extended (Exhibit E-22) to April 15, 1994, the remedial action (Exhibits E-19 and E-19(a)) that placed certain requirements (already mentioned) on Louis Desrochers whenever he was absent.

Because Louis Desrochers refused to explain his family-related responsibilities on September 21 and 22, 1993, the employer imposed a disciplinary measure on him (Exhibit E-24) in November 1993 (\$100 fine).

Louis Desrochers was on annual leave on October 25, 27 and 28. As we will see later, this leave was also an administrative headache for the employer.

This ends the evaluation period covered by the fourth performance evaluation (Exhibit E-23). It ended on October 30, 1993.

6. Period from November 1, 1993 to June 30, 1994

Now begins a period of approximately eight months (November 1, 1993 to June 30, 1994) for which no performance evaluation report was prepared because it ended with the termination of employment of Louis Desrochers (Exhibit E-41).

This period began with a disciplinary hearing (November 3, 1993), followed by a disciplinary measure in the form of a \$100 fine (Exhibit E-24) on November 25, 1993. As I mentioned in the description of the previous period, this measure was imposed because of Louis Desrochers's refusal during the November 3, 1993 disciplinary hearing to explain his family situation in light of his previous efforts to obtain leave for family-related responsibilities. The evidence does not show whether a grievance was filed as a result of this disciplinary measure.

On November 4, 1993, the day after the disciplinary hearing, Louis Desrochers took annual leave.

On November 8, 1993, his supervisor, Gérald Francoeur, wrote to him (Exhibit E-69) to remind him to submit his requests for annual leave for October 25, 27 and 28, 1993

(see the previous period), as well as for November 4, 1993, and to submit a medical certificate for September 2, 1993 (see previous period). (As of November 28, 1993, he still had not submitted a medical certificate for the absence on September 2, 1993 (Exhibit E-74)). The evidence does not show whether the certificate was eventually submitted.

On November 12, 1993, Gérald Francoeur invited Louis Desrochers (Exhibit E-70) to a disciplinary hearing on November 16, 1993 because Louis Desrochers still had not provided the documents requested.

On November 15, 1993, Louis Desrochers indicated that he was not available for the hearing (Exhibit E-71), that he had other obligations on November 16, 1993, but that he would be available on November 18, 1993.

As of November 23, 1993, the meeting still had not taken place and Louis Desrochers was absent from work, claiming that he was on "family leave". He was refused leave for family-related responsibilities. Gérald Francoeur wrote to him (Exhibit E-72) on the same day asking him to remain after his shift on November 24, 1993 for a meeting about a disciplinary measure and so that he could explain his absence on November 23, 1993. Also on November 23, 1993, Gérald Francoeur ordered him (Exhibit E-72) to remain after his shift on November 24, 1993 in order to discuss the above-mentioned matters. That same day, correctional supervisor Jean-Roch Roussel gave Louis Desrochers the same order. Louis Desrochers told him (Exhibit E-103) "that he did not have time to waste on such things because he had personal obligations during the day". In his deposition, Jean-Roch Roussel testified that not only were these the exact words Louis Desrochers used but he had also said "he had already won an appeal on the fact that he had not submitted a medical certificate to justify his absence and he did not care about the rest of the disciplinary process because he could win that too"; all of this was said in an arrogant tone. Jean-Roch Roussel was with Mario Godin at the time of this conversation because he had anticipated Louis Desrochers's arrogance and thought it best that he have a witness.

Not only did he refuse to obey the order from his superiors to come to a hearing, but Louis Desrochers wrote to them (Exhibit E-72, page 2) on November 24, 1993 as follows:

[TRANSLATION]

On 23-11-93 at about 11:15 p.m., when I was on the morning shift, I was given your letter of the same date telling me to remain after my shift for a disciplinary measure and hearing; this was with 8 hours notice.

Therefore, I wish to inform you that, for your information, on 24-11-93, I have family-related responsibilities to meet and therefore am unable to meet with you.

Lastly, the way in which you force employees to submit to your administrative control is just another example of your personnel management skills.

...

On November 24, 1993, Gérald Francoeur told (Exhibit E-73) Louis Desrochers that he was not allowed to make changes in shifts until May 31, 1994, except for "exceptional reasons" when he would have to make a written request to his supervisor or the unit manager. In the eyes of management, Louis Desrochers's absences (Exhibit E-76) remained suspicious.

On November 25, 1993, Louis Desrochers received a \$100 fine for his refusal to explain his request for family leave in connection with his absence on September 22, 1993, which was mentioned as part of the events in the preceding period (see page 14).

On November 29, 1993, Louis Desrochers was late by 20 minutes (Exhibit E-74). Gérald Francoeur asked him to explain in writing why he was late (Exhibit E-74). The same day, Louis Desrochers referred to him as a "delivery boy".

[TRANSLATION]

Subject: Your letter of 28/11/93

RE: Late to work on 29/11/93

Further to your above-mentioned letter, the reason I was late by 20 minutes for the morning shift on 29-11-93 was because of the "periodic harassment" to which I am subjected by the

administration of Drummond Institution and for which you are the delivery boy.

As a result of the many restrictions imposed on me by you, my sleep has been altered and having worked 16 hours on 28/11/93, I had had hardly any sleep between 4:00 p.m. and 11:31 p.m. on 28/11/93. I set my alarm for 10:00 p.m. on 28/11/93 but I did not hear it when it rang. One of two things happened, either what I have said is true or my alarm is broken ...

P. S. My tardiness did not result in any O.T.

Also on November 29, 1993, Louis Desrochers was asked (Exhibit E-77) to provide documentation showing he had a common-law spouse. This was necessary to ensure that he was entitled to leave for an illness in the family and to leave for family-related responsibilities. We will see later how he responded to this request on December 8, 1993.

On December 3, 1993, Louis Desrochers asked to change shifts and to work only on the morning shift (Exhibit E-105). He submitted this request to the security coordinator, Daniel Châteauneuf, despite the instruction (Exhibit E-73) of November 24, 1993 informing him that he was not allowed to request any shift changes except for exceptional reasons, and if he did submit such a request it had to be made to his supervisor or the unit manager. In his deposition, unit manager Noël St-Amant testified that, in his opinion, Louis Desrochers had tried to get in a devious way that which he had been refused in the past. He explained that the security coordinator prepares the timetables and records changes in shifts but does not have the authority to approve shift changes. Since Louis Desrochers was not allowed to change shifts (Exhibit E-73), Daniel Châteauneuf brought the request (Exhibit E-105) to the attention of the unit manager. The latter refused to approve it and wrote (Exhibits E-106 and E-107) to Louis Desrochers telling him that he was not allowed to change shifts until May 31, 1994.

On December 8, 1993, Louis Desrochers answered the employer's request to prove that he actually had a common-law spouse (Exhibit E-77) as follows:

[TRANSLATION]

RE: Requirement by Supervisor G. Francoeur to provide written explanations immediately on 8/12/93 at 6:40 a.m.

In response to the above letter and the express requirement from Supervisor Francoeur to respond immediately, please note that I am still single and that I share my life with a spouse.

For your information the latter has had some health problems and I have had to look after her as family-related responsibilities.

He gave this note to Gérald Francoeur the same day, after first refusing (Exhibit E-78) and making veiled threats to Gérald Francoeur (translation): "You may be the boss in prison but outside, that's something else, I have been disgusted with you for a long time". Gérald Francoeur was shaken by this comment and brought it to the attention of his superiors (Exhibit E-78).

On December 9, 1993, Louis Desrochers arrived 40 minutes late (Exhibit E-25(a)). On the insistence of Louis Desrochers, the employer ultimately treated this tardiness as though he had been only 25 minutes late.

In light of this tardiness (December 9, 1993), the threats to Gérald Francoeur (December 8, 1993), the earlier tardiness (November 29, 1993) and his unauthorized absences (November 23, 1993) for which he was refused family leave, Louis Desrochers was fined \$700 (Exhibit E-25). The employer tried unsuccessfully on three occasions (Exhibits E-109 to E-114) to meet with Louis Desrochers in order to tell him in person about this disciplinary measure. The first time (Exhibits E-109 and E-110), Louis Desrochers wrote to the Warden of the institution: (translation) ". . . I am unable to meet with you on the above-mentioned date because I have other obligations . . .". The second time (Exhibits E-111 and E-112), Louis Desrochers was not available to meet with the Warden and gave the following explanation:

[TRANSLATION]

On 05-01-94 at around 11:20 p.m., M.F. Rioux, EX-05 acting, in charge of the morning shift, gave me your above-mentioned letter which again asked me to remain after my shift without reasonable notice, and certainly without consulting with me in advance to see if I was available after my shift on 06-01-94.

Please note that I have a meeting that morning and am unable to meet with you.

Lastly, and for your information, it would be better for you to spend more time talking to your employees rather than imposing your arbitrary demands when you have no idea of the obligations that an employee may have after his shift

The third time (Exhibits E-113 and E-114), he indicated that he was available on certain dates, four of which were on a Saturday or Sunday. In light of this attitude, the Warden of the institution, Paul-André Beaudry, concluded that Louis Desrochers was not interested in meeting with him and he sent him notice of the disciplinary measure by mail (Exhibit E-25).

On December 17, 1993, Noël St-Amant informed Louis Desrochers (Exhibit E-104) that all of his requests for leave would be denied until he clarified his family situation to the employer's satisfaction. We should recall that Louis Desrochers had been asked to clarify his family situation on more than one occasion, most recently on November 9, 1993 (Exhibit E-77). During his testimony, the unit manager stated that Louis Desrochers's fellow workers had said that he was no longer living with his girlfriend. According to Noël St-Amant, Louis Desrochers never responded to these requests. As we will see later on, more than four months later on May 5, 1994, Noël St-Amant would try again during a disciplinary hearing (Exhibit E-27) to shed some light on this matter.

On December 21, 1993, approximately 34 inmates filed a complaint (Exhibit E-49) against Louis Desrochers and asked that he no longer work in their cell block. During his testimony, correctional supervisor Daniel Thérien stated that this was the first time in his 18 years of service that he had received a complaint from such a large number of inmates. He had received complaints in the past but from only two or three inmates. Louis Desrochers's superiors discussed this complaint (Exhibit E-49) with him (Exhibit E-79), as well as another complaint (Exhibit E-50) filed by a single inmate. His relations with the inmates were also discussed but, in the end, no disciplinary action was taken against him in connection with this matter.

On December 23, 1993, Louis Desrochers was late (Exhibit E-108). His explanation was not accepted and he was charged with being 25 minutes late. In January 10, 1994, a sanction in the form of a \$700 fine (Exhibit E-25) was imposed for this incident, as well as for those of November 23, 1993, November 29, 1993 and December 8, 1993, mentioned earlier.

On December 28, 1994 [sic] Louis Desrochers was late again (Exhibit E-26), this time by one hour and 45 minutes. On January 7, 1994, he was late by 40 minutes. For these two latest incidents he was fined \$1,500 on January 16, 1994.

Between the latter two dates, the institution's Warden, Paul-André Beaudry, tried to meet with him.

On January 4, 1994, Louis Desrochers wrote (Exhibit E-109) to the Warden telling him that he could not meet with him after his shift on January 5, 1994 because he had other obligations (Exhibits E-109 and E-110). The same thing happened on January 5 and 6, 1994 (Exhibits E-111 and E-112).

The same scenario occurred a third time on January 6 and 7, 1994 (Exhibits E-113 and E-114). The Warden gave up and on January 10, 1994 sent him by mail (Exhibit E-133) notice of a \$700 fine (Exhibit E-25), as mentioned earlier. During his testimony, Warden Paul-André Beaudry stated that when he received Louis Desrochers's last reply (Exhibit E-114) in which he listed dates on which he was available, including Saturdays and Sundays, the Warden concluded that Louis Desrochers was being arrogant and acting in bad faith, particularly since he knew that the Warden did not work on Saturdays and Sundays.

The incidents did not stop.

January 18, 1994 was the day the complaint (Exhibit E-50) was made by the individual inmate.

On January 27, 1994, Louis Desrochers was again called to a meeting (Exhibit E-115) with Warden Paul-André Beaudry. He refused on the grounds that he wanted to be accompanied by his union representative. The meeting was postponed (Exhibit E-116) to February 4, 1994. In the end, he was asked to meet (Exhibit E-117) on February 16, 1994 in the Warden's office. On that day he was given a \$1,500 fine (Exhibit E-26) for being late on December 28, 1993, and January 7, 1994; according to counsel for the parties, this fine represents the equivalent of 14 days pay.

On March 18, 1994, Gérald Francoeur tried to discuss Louis Desrochers's performance evaluation (Exhibit E-23) with him. The latter refused to sign it (Exhibits E-118 and E-119).

On April 11, 1994, Louis Desrochers called the employee assigned to central control and told him he would be absent from work because of an illness in his family. He was away on April 11 and 12, 1994. According to the instructions (Exhibits E-22 and E-19), he should have contacted the correctional supervisor on duty. The employer noted that right from the start of this fiscal year, Louis Desrochers had already taken family leave, ignoring the instructions (Exhibits E-22 and E-19); moreover, he still had not clarified his family situation despite repeated requests (Exhibits E-77 and E-104). In light of these facts, correctional supervisor Gérald Francoeur made a series of recommendations (Exhibit E-82, page 2), including imposing a disciplinary measure and extending the remedial measure (Exhibits E-22 and E-19) which required Louis Desrochers to provide three-hours' advance notice of any absence and the reason for it to the correctional supervisor on duty. We will see later on how it was decided instead to impose a \$2,000 fine on Louis Desrochers and why, ultimately, this action was not taken. We will also see why the next step was the termination of his employment.

Before we get to that point, there is one more incident to report.

On April 30, 1994, Louis Desrochers asked to be granted two days of leave for family-related responsibilities (Exhibit E-81) for the time he was absent beginning on April 11, 1994 (as mentioned above). Gérald Francoeur informed him that he had to comply with the remedial measures (Exhibits E-19 and E-22) and that the related requirements would still apply in future.

In his deposition, Noël St-Amant testified that he refused to approve the request for family leave (Exhibit E-81) because of the circumstances surrounding the absence that began on April 11, 1994. It will be shown later that on May 17, 1994 (Exhibit A-14), the institution's Warden approved the request for leave.

On May 4, 1994, following a disciplinary hearing with Louis Desrochers (Exhibit E-27) and because of his attendance problems and his disciplinary record, unit manager Noël St-Amant recommended (Exhibit E-27, page 3) Louis Desrochers's dismissal.

During the disciplinary hearing, Louis Desrochers argued that the employer's insistence that he clarify his family situation amounted to meddling in his private life.

During the same hearing, Noël St-Amant told Louis Desrochers that the remedial measures (Exhibits E-19, E-22 and E-73) still applied.

On May 17, 1994, Paul-André Beaudry reiterated in writing (Exhibit E-32) to Louis Desrochers that the remedial measures (Exhibits E-19 and E-22) were extended for one year. (Counsel for the parties stated jointly that the Warden, Paul-André Beaudry, followed the normal procedure in placing Exhibits E-32, A-13 and A-14 in Louis Desrochers's box.)

The Warden, Paul-André Beaudry, testified that these measures were in place between April 15, 1994 and May 17, 1994, since Louis [sic] Francoeur and Noël St-Amant had told Louis Desrochers this. His memorandum (Exhibit E-32) was simply confirmation of what they had told Louis Desrochers. [Richard Lamontagne testified along the same lines adding that an employee's box is personal and each employee has his or her own key to open it. Noël St-Amant stated that it was placed in Louis Desrochers's personal box.]

The same day Paul-André Beaudry wrote to a unit clerk (Exhibit A-14), France Beauchamps, indicating that the leave for family-related responsibilities on April 12 and 13, 1994 was approved. (This could also be considered to be the shifts of April 11 and 12, 1994 because the shift began before midnight and ran through the night.)

Before deciding to terminate Louis Desrochers's employment, Paul-André Beaudry initially considered imposing a fine of \$2,000. However, subsequent events convinced him to dismiss Louis Desrochers.

On May 30, 1994, the acting Warden, Richard Lamontagne, called Louis Desrochers to a meeting (Exhibit E-28) in the Warden's office at 8:15 a.m. on May 31, 1994. On May 31, 1994, Louis Desrochers replied (Exhibit E-29) as follows:

[TRANSLATION]

Subject: Meeting with 8 hours advance notice

I hereby acknowledge receipt of your above-mentioned letter of May 30, 1994 at 11:20 p.m.

In that letter you ask me to remain after my shift, that is, on May 31, 1994 after 7:30 am. Unfortunately, I have an

appointment after work. Therefore, I am unable to meet with you.

Further, I would like to take this opportunity to inform you that it would be better for obvious reasons for you to give me a few days advance notice when you wish to meet with me after my shifts so that I can plan my time accordingly ...

Please note that I have mentioned to P.A. Beaudry, Warden of Drummond Institution, on more than one occasion, that advance notice of only 8 hours is not enough for me to get out of my obligations in order to come to your meetings, but it appears that my comments and/or certain basic rules of "organizational behaviour" are ignored at Drummond Institution ...

On May 31, 1994, Richard Lamontagne called Louis Desrochers to a second meeting (Exhibit E-31) in the Warden's office, this time on June 3, 1994.

Louis Desrochers did not show up. Instead on June 2, 1994, he said he was ill (Exhibit E-33); he did not contact the correctional supervisor on duty, as he was required to do pursuant to the remedial measures (Exhibits E-19 and E-22), but simply told the shift employee.

On June 3, 1994, Richard Lamontagne called him to the Warden's office a third time (Exhibit E-34), this time on June 6, 1994. Louis Desrochers was supposed to work that day. He did not show up for the meeting.

On June 7, 1994, Richard Lamontagne called Louis Desrochers to a meeting in the Warden's office (Exhibit E-36) a fourth time, this time on June 10, 1994. The Purolator messenger service tried unsuccessfully three times to deliver the letter (Exhibit E-37) to Louis Desrochers on June 7, 1994.

Louis Desrochers was informed by messenger at 10:55 a.m. on June 13, 1994 of a fifth meeting (Exhibit E-38) scheduled for 9:30 a.m. on June 13, 1994. Louis Desrochers was still absent from work. In the letter of notification, the Warden, Paul-André Beaudry, explained to Louis Desrochers that, while he had originally considered imposing a \$2,000 fine on him for the events discussed during the disciplinary hearing of May 4, 1994, he was now considering dismissal. He pointed out that Louis Desrochers had not contacted the correctional supervisor on duty to inform

him of his absence since June 2, 1994, which was in contravention of the instructions given, and he had not given any reason for his absence.

The same day, that is, on June 13, 1994, a sixth letter (Exhibit E-39) was sent to Louis Desrochers. This time he was ordered to appear in the Warden's office on June 17, 1994. He did not appear.

On June 17, 1994, the day on which the meeting was scheduled, Louis Desrochers wrote (Exhibit E-40) to Warden Paul-André Beaudry telling him that he could not meet with him because he was unable to do so because of his health.

He wrote in the letter that he had submitted a form on April 14, 1994 for his absences on April 12 and 13, 1994. He explained that he did not contact the correctional supervisor regarding his absence (Exhibit E-40) because he thought that the remedial measure no longer applied. He explained that he was unable to attend the meeting on May 31, 1994 because he had a meeting that day and that he was unable to make the meeting on June 3, 1994 because he was ill.

The same day, June 17, 1994, Paul-André Beaudry terminated the employment of Louis Desrochers (Exhibit E-41). He explained to him that he had been absent from work without authorization since June 5, 1994 and that on June 2, 1994, he had told an employee of the institution that he was ill when he was supposed to contact the correctional supervisor on duty and provide reasons for his absence. Furthermore, he presented no medical certificate within the 72-hour period following the start of his absence. (The other reasons for the termination are given at the beginning of this decision.)

During his testimony, the Warden of Drummond Institution stated that, in the end, after reviewing Louis Desrochers's disciplinary record, his pattern of absences, his attitude and the unsuccessful efforts of various supervisors to help Louis Desrochers, he concluded that Louis Desrochers did not want to assume his responsibilities as an employee.

Noël St-Amant testified that he recommended the dismissal of Louis Desrochers because, in spite of numerous disciplinary measures imposed on him, Louis Desrochers did not change his ways. In addition, because of his arrogance

toward his superiors, other employees and inmates, he was no longer trusted. According to Noël St-Amant, the employer had tried unsuccessfully through the union representatives to make Louis Desrochers see reason.

Deputy Warden Richard Lamontagne testified that neither disciplinary action nor meetings with Louis Desrochers, nor reminders, restrictions, remedial measures, or offers of help, such as the employee assistance program, had had any impact.

For their part Louis Desrochers's supervisors, and Gérald Francoeur, Daniel Thérien, David Lévesque and Noël St-Amant in particular, said that they had spoken to Louis Desrochers on numerous occasions, had given him warnings and had even suggested he make use of the employee assistance program. Gérald Francoeur even asked the president of the union, Sylvain Lavigne, to try to make Louis Desrochers see reason. Noël St-Amant had made the same request of the union president, Sylvain Lavigne, and of the union representative, Luce St-Georges. Ultimately the supervisors lost trust in Louis Desrochers and gave up any hope that he would change his ways.

The president of the union local, Sylvain Lavigne, accompanied Louis Desrochers to more than ten disciplinary hearings. During his testimony he confirmed that David Lévesque had tried to improve the situation by starting fresh, that Noël St-Amant and Gérald Francoeur had asked him to try to make Louis Desrochers see reason, and that Richard Lamontagne had suggested that Louis Desrochers take advantage of the employee assistance program. Further, Sylvain Lavigne stated that Gérald Francoeur was a fair supervisor, somewhat strict, but that he applied the rules equally to everyone, both to himself and to his employees. According to Sylvain Lavigne, Gérald Francoeur treated everyone the same and he did not treat Louis Desrochers any differently.

The employer called a last witness, Dr. Carl Giasson, as part of its evidence.

According to his testimony, on June 15, 1993, at the request of the employer, Louis Desrochers went to the office of Dr. Giasson, who had been instructed to conduct a medical examination of Louis Desrochers. Louis Desrochers told the physician (Exhibit E-129) that he would not undergo any medical examination and that he would not answer any questions. Dr. Giasson explained the consequences of such a refusal to him several times. He reminded Louis Desrochers that the employer

had rights under the collective agreements and the law and that the employer could require an employee to undergo a medical examination under certain circumstances. He told him that he was opening himself up to disciplinary action. Louis Desrochers told him it was a matter of principle and that he was prepared to pay the price.

GRIEVOR'S EVIDENCE

Louis Desrochers's evidence consisted of his own testimony.

It is summarized as follows.

Louis Desrochers is 34 years old. He has not worked for 3 years.

He testified about all of the different types of leave [annual, for family-related responsibilities, sick (with and without certificate), statutory, days of rest, with and without pay] that he took during the time he was employed by Correctional Service Canada (he began on August 24, 1987). The data is compiled in tables (Exhibits E-43, C-11, C-2, E-42, E-44, E-51, E-75, E-76 and C-3) and was analysed at length by the parties during the hearing. I will not reproduce the data here given its length and Louis Desrochers's admissions at the end of his examination and the beginning of his cross-examination, which I will relate later on. In short, these tables show that Louis Desrochers took all of the leave to which he was entitled [for which the employer is not faulting him], but they also show a pattern of absences in which various combinations of rest days, leave for family-related responsibilities and sick leave (with and without certificates, sometimes approved and sometimes not approved) were taken one after the other or combined with statutory leave or days of rest.

These combinations of leave raised doubts in the employer's mind about the validity of the reasons given by Louis Desrochers for his absences. Accordingly, the employer adopted stringent and time-consuming measures to monitor the absences and leave claimed by Louis Desrochers .

During his testimony Louis Desrochers stated that some of the leave had been approved when he provided medical certificates. As for the leave for family-related responsibilities, he did not offer any explanation for his resistance and his slowness in responding to the employer's questions in this area.

He also described the employer's attitude toward him as harassment and persecution. That is how he perceived the employer's insistence on having him explain his absences and the leave he claimed. This is also how he perceived the various restrictions (Exhibits A-150, A-151 and others) the employer placed on him, such as not allowing him to change shifts with his fellow workers. He claimed that this harassment was so severe that on June 3, 1994, he went to his physician to get a referral to a psychiatrist. He did not identify the physician by name, did not provide a medical certificate to back up his claim and did not provide any details on the results of the consultation.

However, at the end of the examination, Louis Desrochers changed his tune and began making admissions. He stated that he recognized the mistakes he had made, that he was ready to admit them. As for his absenteeism, he admitted he had been wrong. He acknowledged the problem ["escalade"] this created at several levels. He said he understood and would be dedicated if he was reinstated to his duties. He added that he would also do his part with respect to the disciplinary measures.

At the beginning of the cross-examination (which took place when the hearing resumed a few months after the examination), Louis Desrochers repeated his admissions.

As for the negative attitude for which he was faulted by his employer (Exhibit E-41), he explained that he had a company at that time, but acknowledged that he could have made some effort to make the meetings. There were some things he had done which he would not do again and he had had a negative attitude about some things. He admitted his absenteeism pattern and his disciplinary record, as well as the employer's efforts to intervene to get him to change his behaviour.

In addition to these admissions, he provided the following clarifications on certain aspects of the employer's evidence.

He contradicted Gérald Francoeur, denying ever having asked him for leave to prepare for a trip. He also denied telling him that he was under a remedial measure.

He contradicted Dr. Jean-Guy Grenier who, it will be recalled, testified that he signed the medical certificates for Louis Desrochers out of kindness. According to

Louis Desrochers, the dates for his return to work were already filled in when psychologist Grenier signed the certificates (Exhibits A-6, E-122 and E-123). On the other hand, he admitted that he was the one who wrote the return dates on the form and he claimed that it was a mistake. He did the same thing with the certificate (Exhibit A-7) signed by a psychiatrist named Bélec. He stated that, should psychiatrist Bélec testify, he would say that the return date had been filled in when he signed the certificate (Exhibit A-7). (Psychiatrist Bélec did not testify.)

A little later when he was asked if the medical certificates he submitted were exactly as he had received them, he answered that some of them were not as he had received them.

He testified that he had not been the one to record the return date on the two certificates (Exhibits A-51 and A-53) signed by Patricia Goggin, but he had entered the date beside his own signature.

Louis Desrochers also denied receiving Exhibit E-32, which is a memorandum dated May 17, 1994, informing him that the restrictions placed on him on February 25 and October 13, 1993 (Exhibits E-19 and E-22) had been extended for a further one-year period. [Counsel for the parties agreed that the normal procedure of placing documents addressed to employees in their boxes had been followed.]

According to his testimony, he did not learn of this memorandum (Exhibit E-32) until after his termination and as a result of a request made under the Freedom of Information Act. [He added that he did not receive Exhibit E-36 while he was an employee and that it was also through the Freedom of Information Act that he learned of that memorandum.] He admitted, however, that Exhibits E-20, E-38, E-39 and E-41 were delivered to him by messenger. He also contradicted the testimony of Gérald Francoeur and Noël St-Amant, saying that they had never told him verbally that the instruction (Exhibit E-22), expiring on April 15, 1994, was extended beyond that date.

However, he confirmed having taken a pay cheque (Exhibit E-136) dated May 19, 1994 from his box and cashing it on May 24, 1994.

Louis Desrochers testified that his request for leave for family-related responsibilities on April 12 and 13, 1994 (Exhibit A-13) had been approved. However,

he could not say how he came in possession of the memorandum dated May 17, 1994 in which Warden Paul-André Beaudry approved the leave requested. He could not say whether he found the document in his box, was given it in person or obtained it through a request under the Freedom of Information Act.

As for his absenteeism, he stated that he took only two leaves for family-related responsibilities between the middle of 1993 and June 2, 1994.

It was his view that the employer had not provided him with all of the information requested through a request under the Freedom of Information Act and that this placed him at a disadvantage in preparing this case. Nevertheless he admitted that, even if he had had all of the documents (he did not specify what they were), it would not have changed the nature of his admissions during this adjudication. He admitted that he may have been carried away when he alleged in a letter to Solicitor General Andy Scott (Exhibit E-141) that documents as evidence before this tribunal had been falsified.

He admitted that he had a criminal record (Exhibits E-137, E-138, E-139 and E-140). Before he began working for Correctional Service Canada he pleaded guilty (Exhibit E-137) to a charge of assault against his ex-wife and paid a fine. It was also before his employment with the Department that he pleaded guilty (Exhibit E-139) to a charge of possession of a restricted weapon (Smith & Wesson 357 Mag revolver, model G-86) in a location other than where he was authorized to have it pursuant to the registration certificate issued for the weapon. In late 1987 or early 1988, Louis Desrochers provided the employer, at its request, with explanations for these two offences. The employer did not remove his security clearance. It was also before his employment with the Department that he pleaded guilty to a charge of impaired driving (Exhibit E-140).

Lastly, Louis Desrochers admitted pleading guilty (Exhibit E-38) in 1994 to two other counts, namely, operating a vehicle while his ability was impaired by alcohol or a drug (sections 253(a) and 255(1) of the Criminal Code) and of failing to comply, without reasonable excuse, with a demand made by a peace officer (section 254(3) of the Criminal Code)

According to Louis Desrochers, none of these offences affected the quality of his work.

Having said this, he claimed to assume full responsibility for the consequences of his derogatory behaviour, for which he paid dearly and which led to the loss of his job. After the termination of his employment, he declared bankruptcy and lost his home and his car. He is currently living on social welfare. If he were to be reinstated he said that things would change because he had done some soul-searching since his termination.

He stated that contrary to the testimony of Paul-André Beaudry and David Lévesque, he was granted leave for family-related responsibilities (Exhibits E-81, A-13 and A-14) for April 12 and 13, 1994, and certified sick leave (Exhibits E-88 and A-8 from October 28 to November 4, 1991).

This ends the summary of Louis Desrochers's testimony.

Counsel agreed that a fine of \$1,500 was the equivalent of 14 days net pay.

ARGUMENTS

Argument of counsel for the employer

The argument of counsel for the employer is summarized as follows.

There are two questions: Is the termination of employment justified? Is reinstatement of the employee possible?

The employer had to establish Louis Desrochers's negative attitude, his absenteeism, his extensive disciplinary record, the failure of the employer's interventions, and lastly, his absence without authorization since June 5, 1994.

Louis Desrochers admitted the first four elements. In light of these admissions, there is no need to go into the details again. However, a number of observations need to be made.

Beginning in 1989, the employer noticed that Louis Desrochers took sick leave in combination with other leave or weekends. This is documented through

administrative measures, letters from his superiors and performance evaluations. One of his objectives since 1989 has been to improve his attendance.

Despite several interventions by various individuals, Louis Desrochers did not change his ways and did not achieve his objective. Accordingly, administrative measures were tightened.

Prior to the culminating incident, a number of unit managers and correctional supervisors had worked with Louis Desrochers. Gérald Francoeur tried to give him a chance. Daniel Thérien cancelled an administrative measure and gave him a chance when he was late a number of times. David Lévesque also gave him a second chance while explaining his expectations to him. Louis Desrochers was late on several occasions when no punishment was applied (Exhibits E-60, E-52 and E-53).

David Lévesque tried using a gentle approach to put Louis Desrochers on the right track. He spoke to him about his tardiness (Exhibit E-61) on October 22 and the very next day, October 23, Louis Desrochers was late again, which shows his attitude. Louis Desrochers displayed an arrogant attitude on several occasions. He told one supervisor that he would not roll out the red carpet, threatened another and referred to another as a delivery boy ["valet de service"].

Gérald Francoeur, Noël St-Amant and Richard Lamontagne all suggested that Louis Desrochers make use of the employee assistance program.

Gérald Francoeur and David Lévesque also asked the union representatives to meet with Louis Desrochers to try to make him see reason.

When the employer asked Louis Desrochers to clarify his family situation, he complained of meddling. This is another indication of his attitude.

When the employer imposed an administrative measure on him (Exhibits E-63, E-64, E-66 and E-58), he resisted. He tried to sidestep the administrative measures prohibiting him from changing shifts by asking other officers if he could do so.

When the employer asked him to see a physician (Dr. Giasson), Louis Desrochers refused to undergo an examination on principle. He stated that he was prepared to pay the price even when Dr. Giasson explained the consequences to him.

He was called to meetings on several occasions to receive disciplinary measures (Exhibits E-71, E-25 and E-26).

When Jean-Roch Roussel suggested (Exhibit E-103) it might be better if he showed up, he told him he did not have to and that he had already won one adjudication decision. In short, he sent the managers about their business.

Louis Desrochers does not admit his responsibility. His fundamental attitude stems from his belief that people were out to get him, that they were harassing him, that he was periodically being picked on, and that he never did anything wrong.

When asked for explanations, he merely said he had nothing to say. He never displayed any remorse or regret. Even during his testimony, he tried to minimize his share of the responsibility (Exhibit E-141).

He contradicted psychologist Grenier. He also contradicted his supervisors, Gérald Francoeur and Noël St-Amant, when they said that they had extended certain administrative measures (Exhibits E-19, E-19(a) and E-22).

He denied telling Dr. Giasson that he was prepared to pay the price.

His admissions came only very late in the course of the evidence.

It is true that there were some errors in the testimony of some of the employer's witnesses (Exhibits A-13, A-14, A-8 and E-88). However, these were errors made in good faith because the individuals had nothing to gain.

It is worth noting that the vast majority of the medical certificates (Exhibits A-3, A-6, A-7, A-8, A-47, A-51, A-53, A-56, A-59, A-71, A-82, A-89, A-106, A-121, A-123, A-125, A-130, E-22 and E-23) were signed after the start of the absence, mostly the day before the return to work and in good faith (Exhibit E-87) based on information provided by Louis Desrochers, sometimes a month after the end of the absence (Exhibit A-7). Note that Louis Desrochers consulted several physicians in several towns, which is enough to question the validity of the certificates.

Louis Desrochers has a selective memory. He does not recall having received the memorandum (Exhibit E-32) extending the earlier restrictions on absences

(Exhibits E-19, E-22) because it is an embarrassing document. Is it not somewhat strange, however, that he found a cheque (Exhibit E-136) that was in his box but not Exhibit E-32?

It is clear that Louis Desrochers's supervisors no longer have trust in him.

As for the culminating incident, namely, the absence without authorization from June 5, 1994 onward, it was merely the last of several absences that began in May 1994, because several notices to attend meetings were ignored and thereby constituted incidents. The employer was patient but Louis Desrochers never replied.

Trust in Louis Desrochers has been broken. His remorse is late in coming and came only after overwhelming evidence. Although disciplinary action was sometimes taken on a haphazard basis, overall, after summer 1993, the measures were of increasing severity. It was Louis Desrochers who benefited from the sometimes haphazard approach to disciplinary measures; they gave him many chances to change his ways. Moreover, he had been warned since the employer told him that any further misconduct would result in termination.

Louis Desrochers's admissions, coming as they did after the testimony of 15 people, cannot be weighed in his favor. They represent a strategic retreat on the sound advice of his representative.

The following cases were considered: Augustino V. Crotty and Treasury Board (Board file 166-2-17573); Frank Pazucha and Treasury Board (Board files 166-2-22016 and 22017); Compagnie Ministre Québec-Cartier v. Métallurgistes Unis d'Amérique, Local 6869, 183 N.R. 314.

Argument of the grievor's representative

This argument is summarized as follows.

Louis Desrochers adamantly and without reserve admits the reasons given in the letter of termination (Exhibit E-41): negative attitude, absenteeism problem, extensive disciplinary record, failure of the employer's interventions.

The fact that these admissions were made during the adjudication hearing does not lessen their sincerity. Louis Desrochers did not try to qualify his admissions.

It is also worth noting that Louis Desrochers's absenteeism improved during the year preceding his termination.

Under the instruction (Exhibit E-22) issued on October 15, 1993, the situation improved further. It is true Louis Desrochers was absent on leave for family-related responsibilities on April 12 and 13, 1994, but this leave was approved. At the disciplinary hearing on May 4, 1994 (Exhibit E-27), the employer claimed that the instruction (Exhibit E-22) about absences had been extended to April 15, 1994, but Louis Desrochers's version is the one that must be accepted: he did not receive written confirmation of the extension of the instruction and neither Gérald Francoeur nor Noël St-Amant told him about it verbally.

In short, other than the authorized leave on April 12 and 13, 1994, Louis Desrochers had not been absent since September 1993.

Paul-André Beaudry's (and David Lévesque's) credibility is questionable since he stated that he did not approve the leave on April 12 and 13, 1994 (Exhibit E-88), when Louis Desrochers proved (Exhibit A-8) that it had been approved. Paul-André Beaudry and David Lévesque do have a reason to lie: they would go to all lengths to ensure that the grievance is denied.

The absence from June 3 to 17, 1994 must be viewed as authorized leave because Louis Desrochers was entitled to it under the collective agreement. As Louis Desrochers was unaware that the instruction (Exhibit E-22) had been extended, he did not know that he had to submit a medical certificate. He offered to provide a medical certificate when he returned to work.

Louis Desrochers is not being penalized (Exhibit E-41) because he did not submit a medical certificate; he is being penalized because he did not comply with the instruction (Exhibit E-32) and did not show up for the meetings.

In assessing the facts, it must be remembered that Louis Desrochers was a worker. What happened after April 15, 1994 is uncertain and should not have led to termination. Louis Desrochers should be reinstated.

The following cases were cited: David Lodka and Treasury Board (Board file 166-2-21819) and Michel Marette and Treasury Board (Board file 166-2-19893).

Reply of counsel for the employer

The leave on April 13 and 14, 1994 was ultimately approved but that does not change the fact that the employer faulted Louis Desrochers for not calling his superior to explain his absence, which is what led Gérald Francoeur and Noël St-Amant to extend the measure (Exhibit E-22) until April 15.

As for the haphazard measures, Richard Lamontagne imposed only a \$100 fine on Louis Desrochers for his absence in September 1993 because he had neglected to extend the existing measure (Exhibit E-19) after the end of August.

REASONS

This grievance is denied for the following reasons.

It is my view that the employer discharged the burden of proof and that it established on the weight of the evidence the facts alleged against Louis Desrochers.

It is my opinion that it proved the culminating incident, that is, Louis Desrochers's unauthorized absence from June 5 to 17, 1994. Louis Desrochers told an employee of the institution that he was ill on June 2, 1994, he failed to contact his supervisor and to give him the reasons for his absence as he was required to do pursuant to both written (Exhibits E-19, E-22, E-32) and oral instructions (given by Gérald Francoeur and Noël St-Amant). He also failed to provide a medical certificate within 72 hours of the start of his incapacity, again in contravention of the same above-mentioned instructions. In fact he never submitted a medical certificate attesting to his incapacity.

Between the questionable explanations given by Louis Desrochers and the testimony of his supervisors, I prefer the version of his supervisors.

Thus, even if Louis Desrochers did not receive the memorandum (Exhibit E-32) extending the restrictions on his absences (a fact of which I am not convinced since this memorandum was placed in his box and he collected a cheque (Exhibit E-136)

from it around the same time), the fact remains that his superiors (Gérald Francoeur and Noël St-Amant) verbally informed him of the extension of the restrictions described in the memoranda (Exhibits E-19, E-22) and accordingly, Louis Desrochers had been warned.

In addition, Louis Desrochers testified that because of stress, he consulted a physician at the start of his absence but he did not give any details as to the identity of the physician and at no time did he offer to provide a medical certificate from this physician. Even after his employment was terminated, he did not offer to provide his employer with a medical certificate to explain his absence which, one would have thought, would have been the natural thing to do since he claimed that he was incapacitated because of stress and had consulted a physician.

In short, his behaviour both before and after his termination is incompatible with his claims that he was ill beginning on June 2, 1994.

It is my opinion that he deliberately ignored the letters (Exhibits E-28, E-31, E-34, E-35, E-36, E-39) from the employer summoning him to the Warden's office, and I believe the employer was justified on June 17, 1994 in concluding that Louis Desrochers's actions since June 2, 1994 amounted to misconduct and warranted disciplinary action. In short, I do not accept the belated explanations (Exhibit E-40) that Louis Desrochers sent to his employer on June 17, 1994, the day of his termination.

History

Given Louis Desrochers's history, I believe that the employer had cause to conclude that the relationship between them was irreparably severed and that there was no possibility of reconciliation.

It is important to note that Louis Desrochers admitted the second paragraph of the letter of termination in its entirety. Accordingly, I accept as admitted his past conduct, that is, his negative attitude, his problem absenteeism, his extensive disciplinary record, and even the failure of numerous interventions by the employer on his behalf.

Even if Louis Desrochers had not admitted the truth of the faults alleged against him by the employer in the second paragraph of the letter of termination, I would have found that all of these claims were proven. The employer presented overwhelming evidence during a period of hearing which lasted 18 days. It was not until the last minute, after forcing the employer to go through this difficult exercise, that Louis Desrochers chose to make his admissions at the end of his examination and the beginning of the cross-examination. In such circumstances, his admissions are evidence against him, but they do not improve his chances of reinstatement.

If there is one factor that convinces me that Louis Desrochers had no intention of changing his ways at the time of his termination, it is the negative attitude he displayed throughout his brief career with his employer. One after another his superiors appeared in the witness box to describe the means used to encourage Louis Desrochers to change his conduct. The evidence showed that Louis Desrochers never displayed any understanding of the employer's concerns.

Throughout his employment, including during the period preceding his dismissal, he resisted authority to such an extent that he was unable to appreciate the legitimacy of the employer's expectations. For all practical purposes he was impervious to any form of intervention, whether positive or negative.

Neither the performance evaluations (Exhibits E-6, E-8, E-9, E-23) prepared by several of Louis Desrochers's supervisors, nor the disciplinary measures, nor the conciliatory attitude of some of his supervisors, nor the strict administrative measures had any positive impact on his unwillingness to see someone else's point of view. The tone of his written replies (for example, Exhibits E-2, E-72, E-74, E-77, E-96, E-103, E-112, E-113, E-114) to the employer's requests are eloquent testimony to his fundamental attitude. He also refused to undergo a medical examination that had been legitimately requested by his employer, and he submitted medical certificates (Exhibits A-6, E-122, E-123) signed out of kindness, that he himself had partially filled in. He turned up his nose at every one of his supervisors, including the Warden of the institution. He boasted of winning through the appeal process. He even went so far as to threaten a supervisor.

In contrast to his negative attitude is the attitude of the supervisors who, in good faith, increased their efforts to communicate with Louis Desrochers. I have no doubt about the credibility of their testimony. The fact that Paul-André Beaudry testified incorrectly that the leave of April 12 and 13 had not been approved is not, in my opinion, an attempt to mislead. It is an understandable mistake given the scope of the case, the number of leaves at issue and the fact that, as Warden, Paul-André Beaudry is not as familiar with the minute details of the case as a supervisor or staff relations officer would be.

As for the employer's other witnesses, I have no reason to question their credibility, particularly since the documentary evidence confirms it and in light of Louis Desrochers's admissions. I would also add that even the president of the union, Sylvain Lavigne, testified that Gérald Francoeur was fair and impartial.

On the other hand, the testimony of psychologist Jean-Guy Grenier tarnishes Louis Desrochers's credibility. Mr. Grenier established his own credibility by acknowledging that he had made a mistake and had signed the medical certificates out of kindness. His openness and acceptance of his wrongdoing leads me to believe him when he says that he signed certificates (Exhibits A-6, E-122, E-123) which did not have the return date filled in. It was Louis Desrochers who, at the hearing, filed Exhibit A-6 in order to establish that he had indeed been ill on the dates in question and so that I would draw conclusions favourable to him. Given that the probative value of the certificates was destroyed by Jean-Guy Grenier's testimony, I conclude from his actions that it was me that Louis Desrochers wanted to mislead in filing Exhibit A-6. Of course he later admitted that he himself had filled in the dates for his return to work but he did not do so until he was backed into a corner by Jean-Guy Grenier's testimony.

His credibility is so undermined as a result of this testimony that I attribute little weight to the qualified regrets and good intentions expressed at the end of his examination.

Throughout this case I was especially struck by the time and energy that Louis Desrochers's supervisors had had to expend. They had to use a whole string of administrative measures that could have been avoided had Louis Desrochers

gracefully acceded to their requests which, ultimately, amounted to inquiring into the nature of his absences, requesting medical certificates and asking him to meet with them so they could explain their expectations. All of these things seem eminently reasonable to me within the framework of an employer-employee relationship.

The last disciplinary measure (Exhibit E-26) in his file is a \$1,500 fine, the equivalent of approximately 14 days pay. I believe that some other disciplinary measure, harsher than the \$1,500 fine but less harsh than termination, would have been a pure waste of time. Given the state of affairs in June 1994, it was useless to temporize and termination was inevitable.

To summarize, the culminating incident alleged against Louis Desrochers is proven on the weight of the evidence. This incident was the last straw in an employment relationship marked by numerous disciplinary measures and unsuccessful interventions by the employer, combined with an absenteeism problem and a negative attitude, these facts having been admitted by Louis Desrochers. In contrast, the employee did not prove any extenuating circumstance that would justify substituting a lesser disciplinary measure for the termination.

In conclusion, it is unfortunate that Louis Desrochers adopted such a rigid attitude and did not appreciate the efforts by his supervisors to help him. Indeed, some of them were truly driven by good intentions toward him and he was unable to recognize this.

Accordingly, for all these reasons, the grievance is dismissed.

Marguerite-Marie Galipeau
Deputy Chairperson

OTTAWA, January 16, 1998.

Certified true translation

Serge Lareau