File: 166-2-27602

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

SYLVIE GRIGNON

Grievor

and

TREASURY BOARD
(Veterans Affairs Canada)

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Grievor: Lucie Baillairgé, Counsel, Professional Institute of the Public Service of Canada

For the Employer: Raymond Piché, Counsel

Heard at Montreal, Quebec,
June 11, 1997.

Sylvie Grignon filed a grievance with respect to the employer's decision not to grant her leave with pay on May 17, 1996 when she was required to appear before the Commission d'appel en matière de lésions professionnelles (C.A.L.P.). Ms. Grignon requested a day of leave with pay under clause 17.14 of the master agreement between the Treasury Board and the Professional Institute of the Public Service of Canada. The employer refused to grant her leave with pay but did grant her leave without pay under clause 17.15 of the same master agreement. Ms. Grignon was not satisfied with the employer's decision and duly sent her grievance to adjudication. It was heard on June 11, 1997.

The Facts

The parties agreed on the facts and filed three supporting documents, together with five related documents. The statement of facts established the following (Exhibit 3):

> (Translation)
>
> *The representatives for the parties agreed to proceed by an admission of the following facts:*
>
> 1. *The grievor, Sylvie Grignon, has worked for the past 7 years as an assistant head nurse, NU-3, with the Department of Veterans Affairs at the Hôpital Ste-Anne, Ste-Anne-de-Bellevue.*
>
> 2. *On February 10, 1992, Ms. Grignon suffered a work-related accident/relapse performing her duties as an NU-3.*
>
> 3. *On March 24, 1992, the employer decided to contest Ms. Grignon's injury-on-duty injury claim before the Commission de la santé et de la sécurité du travail du Québec (C.S.S.T.).*
>
> 4. *On March 25, 1992, the employer decided not to allow Ms. Grignon to return to work because of her functional limitations. Ms. Grignon returned to work on October 6, 1992.*
>
> 5. *The C.S.S.T. ruled that Ms. Grignon had suffered a relapse of an occupational injury but that there were no functional limitations. That part of the decision was*

appealed by Ms. Grignon to the <u>Commission d'appel en matière de lésions professionnelles</u> (C.A.L.P.).

6. *C.A.L.P. called the parties to a hearing of the case on May 17, 1996. The hearing took place on that date.*

7. *Ms. Grignon made a verbal request for leave which was granted by her supervisor. Later she made a written request for 5 hours of leave with pay corresponding to the hours during which she was at the appeal hearing and her travel time (Montréal - Ste-Anne-de-Bellevue return). The employer, however, granted her leave without pay.*

8. *Ms. Grignon filed a grievance claiming that she should have been granted leave with pay for her absence in accordance with clause 17.14 of the collective agreement (master agreement) signed between the Treasury Board and the Professional Institute of the Public Service of Canada, as well as with Treasury Board directives. The parties followed the grievance procedure as set forth in the collective agreement.*

...

<u>Arguments</u>

Lucie Baillairgé presented the following argument. It was the employer who decided to contest the occupational injury suffered by Ms. Grignon. Therefore Ms. Grignon was obliged to defend herself against the employer's position. <u>The Commission de la santé et de la sécurité du travail du Québec (</u>C.S.S.T.) then decided that she should return to work in March 1992 because she did not have any functional limitations. However, the employer refused to allow her to return to work based on the recommendation of Ms. Grignon's physician. This situation lasted six months. Consequently, Ms. Grignon had no choice but to seek recourse with C.A.L.P. to try to recover the wages lost during the six months that the employer did not wish her to return to work. The employer owed her this money. The hearing before C.A.L.P. lasted almost the entire day and she requested leave with pay under clause 17.14 of the master agreement. There were therefore circumstances which prevented Ms. Grignon from reporting to work and the employer was responsible for those circumstances.

In support of her argument, Ms. Baillairgé cited authors Brown and Beatty in *Canadian Labour Arbitration*, April 1997 edition, paragraphs 4:2100, 4:2300 and

4:2320. Ms. Baillairgé concluded that Ms. Grignon should not have to suffer a loss of income since she had already lost a great deal because of her employer's actions. The employer's decision not to grant her leave with pay was arbitrary and in bad faith.

Raymond Piché argued that the C.S.S.T. ruled that Ms. Grignon's injury was healed and that she should return to work. However, the employer prohibited her from returning to work and Ms. Grignon appealed the C.S.S.T. decision to C.A.L.P. after first appealing to the Bureau de révision paritaire. On October 6, 1992, the employer finally allowed Ms. Grignon to return; it then took four years for the C.A.L.P. to render its decision. The employer granted Ms. Grignon leave without pay under clause 17.15 of the master agreement. The employer did not, therefore, refuse her leave arbitrarily and in bad faith.

In support of his arguments Mr. Piché cited the following decisions: *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association et al.* 33 O.R. (2d) 476, 124 D.L.R. (3d) 684; *Black* (Board files 166-2-17248 and 17249); *Tremblay* (Board file 166-2-19634); *Killburn* (Board file 166-2-26434); *Roberts* (Board file 166-2-18241); and *Achakji* (Board file 166-2-25895).

Reasons

Ms. Grignon argues that she was obliged to appear before C.A.L.P. because her claim was contested by the employer and because the latter refused to allow her to return to work for a period of six months. It was the employer who decided to contest Ms. Grignon's claim to the C.S.S.T. Then, when the C.S.S.T. decided that Ms. Grignon's occupational injury had healed and there was no functional limitation as a result of the injury, the employer refused to allow her to return to her position because of "her functional limitations". In the meantime, Ms. Grignon appealed the C.S.S.T. decision to C.A.L.P. and received a hearing on May 17, 1996.

Clauses 17.14 and 17.15 read as follows:

> *17.14 Other Leave With Pay*
>
> *At its discretion, the Employer may grant leave with pay for purposes other than those specified in this Agreement, including military or civil defence training, emergencies affecting the community or place of work, and*

> *when circumstances not directly attributable to the employee prevent his reporting for duty.*
>
> *17.15 Other Leave Without Pay*
>
> *At its discretion, the Employer may grant leave without pay for purposes other than those specified in this Agreement, including enrollment in the Canadian Armed Forces and election to a full-time municipal office.*

Ms. Grignon alleged that her absence on May 17, 1996 was attributable to her employer and therefore she should have been entitled to leave with pay.

I reviewed the case law and doctrine cited by the parties. It arises therefrom that the adjudicator may not intervene in circumstances like those of the instant case unless the employer's decision is discriminatory, wilful, abusive or arbitrary. There is no evidence to show that that was the case in this instance.

The employer could perhaps have granted her leave with pay as a sign of good will and for the sake of maintaining harmonious relations with Ms. Grignon, given the circumstances leading to the request for leave with pay. However, there is no evidence to show that the employer contravened the provisions of the collective agreement and, in particular, that he refused a right provided for under clause 17.14 of the master agreement.

For these reasons, Ms. Grignon's grievance is denied.

Muriel Korngold Wexler
Deputy Chairperson

OTTAWA, July 14, 1997

Certified true translation

Serge Lareau