

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

MONIQUE LAURIN

Grievor

and

TREASURY BOARD OF CANADA
(Revenue Canada)

Employer

Before: Yvon Tarte, Chairperson

For the Grievor: Edith Bramwell

For the Employer: Michel LeFrançois, counsel

Heard at Ottawa,
29 and 30 June, 2 July 1998

DECISION

The grievor was dismissed for misconduct from her position as a CR-5 with the Employer Services Division of the Ottawa Tax Centre on 20 June 1997. The relevant portions of the letter of termination (Exhibit E-10) which was signed by Pierre Middlestead, the Director of the Ottawa Tax Centre, reads as follows:

The investigation into your actions pertaining to overtime payments has been completed. The investigation revealed that you conspired to defraud Her Majesty through false overtime payments. The investigation also revealed that you willfully made false overtime entries, and that you provided Mr. Donald Régimbal, your Assistant Director with secret commissions.

These actions of accepting fraudulent overtime to which you were not entitled, conspiring and colluding to defraud Her Majesty, willfully making false overtime entries, contravening the FAA, and providing secret commissions to your supervisor constitute repeated instances of willful and premeditated misconduct, and are very serious violations of the Departmental Standards of Conduct. In so doing, you have severed the bond of trust essential between an Employer and its employees. In light of this, your continued involvement in the day to day operations of the Department cannot be considered.

Accordingly, I have found it necessary to terminate your employment for cause, effective June 20, 1997. This action is taken under the authority of Section 12(3) of the Financial Administration Act and pursuant to Section 11(2)(f) of the same Act.

You will be expected to reimburse the Crown for any monies to which you were not entitled. You will be informed at a later date concerning the administrative details of this action.

Ms. Laurin has been with Revenue Canada since 1985 when she first started working. Over the years she held various CR positions. She has on occasion acted in AS and PM positions. In at least one of those acting positions, the grievor had supervisory duties.

In April 1997, Doug Melanson, who worked at the Ottawa Tax Centre and had been involved in the improper claiming of overtime, decided to come clean and expose the fraudulent practices of Don Régimbal, an Assistant Director at the Ottawa Tax Centre.

When Mr. Melanson came forward to reveal Régimbal's illegal practices, he indicated that Monique Laurin would also cooperate and confirm the events. On 30 April 1997, Pierre Middlestead prepared a Security Incident Report (Exhibit E-1) and asked that the matter be investigated.

An investigation was conducted by Jim Wardhough, Senior Investigator, Internal Affairs. Mr. Wardhough stated in his report (Exhibit E-2) and repeated during his testimony that "without the statements of Melanson and Laurin this case would not have come to the attention of management". He also indicated that the grievor's cooperation in the investigation was extremely helpful in determining the exact nature and extent of the fraud committed. Mr. Wardough expressed the view that Ms. Laurin and Mr. Melanson came forth as a team to expose this fraud.

Investigator Wardough described Don Régimbal as a "complete jerk" who was unpredictable, often intoxicated, abusive and extremely controlling. It was Mr. Wardough's opinion that Don Régimbald had duped his subordinates, including the grievor, into participating in his fraudulent activities. Mr. Régimbald's employment was terminated, he was charged with criminal offences and convicted of breach of trust and receiving secret commissions under sections 122 and 426 of the Criminal Code.

Mr. Wardough interviewed Ms. Laurin on 1 May 1997 (in person) and on 9 May 1997 (by telephone). The notes of these interviews (Exhibit E-3) read as follows:

Monique Laurin

May 1, 1997

In November 1992, I began working with Régimbal as Administrative Assistant (AS-01) acting. In about January 1994, Don began losing temper. My substantive job is a CR-05. In February or March of 1994, Régimbal asked me to put in overtime for myself for a job well done to thank me. I considered it as my acting pay for the year. Wasn't aware if this was the policy. This overtime was about \$2,000.00 net and I was paid this amount. I paid bills with this money. I didn't work this overtime, I always work from 06.30 -. Yes, I feel bad, shouldn't have taken money but I did put this time in during course of the year. Don also asked me to input overtime hours for other people whom I was aware did not work those hours because I work with them in the same office. Don wanted to come as close as possible to overtime allotment. Don asked me to put in overtime for Tasso Vasilas in 1994. Can't recall others in that year.

In 1995 February/March, the Division was in the black and he was in position to give out "bonuses" to staff.

Daniel Grégoire, clerk, entered his own overtime in 1995. This is Don's nephew. I was aware he did not work all overtime he submitted. Daniel is now working for Christine Harenclak.

Tasso Vasilas also entered overtime into the AMS Automated Management System. No RC 505's were produced to substantiate this overtime.

Marcel Guérin received some overtime. I input some and Tasso input some. This overtime was not worked. Marcel is A/CR-05 Employer Services and he still gets overtime.

Christine Larocque, I input overtime for Christine. Don wrote the amounts and dates and I entered. Sue Wall also received overtime she didn't work in 1995. I input this at Don's request.

In 1995, we had permanent competition. Tasso and Guylaine Brunet were board members. Process very stressful as Don wanted to know everything. He wanted to make sure that Daniel Grégoire, Marcel Guérin, Danielle Beaudoin and Helen (don't know last name but is sister-in-law), the foregoing are Don's relatives and he wanted them to be on list. Most made it honestly and 1 or 2 may not have except for Don. Was very frustrating experience. 63 permanent people were appointed from this list by Don.

The foregoing occurred at 875 Heron Rd. In 1996 July, we moved to 2713 Lancaster. Prior to moving, Tasso, Christine Larocque and I ran A/CR-04 board and everyone on list received acting pay. In February-March 1996, Doug Melanson, I, Tasso, Marcel Guérin received overtime that was not entitled to. Christine Larocque may also have received overtime as well as Mark Norman.

In 1996, Don has had 486 laptop at home and printer. Don told me brother-in-law is using this for hockey scores.

In about April 1996, Louise Spratt came in to do As-01 Administrative Assistant work. Don posted program monitor job and Don gave this As-02 to me. Louise has never received overtime but she will testify to Don's yelling, screaming and swearing. Bev Murray is acting As-02, has not received overtime, knows about Don's swearing and yelling.

In November 1996, I fell for someone in office, I told Don. Don told me he felt same way about me.

Christine Harenclak asked about having me work for her, Don wouldn't allow it. Felt Don was very possessive.

In January 1997, Don asked have you ever done anything stupid, said yes at times then we went into boardroom. Don grabbed both sides of my face held me and kissed me on lips. I resisted and then he let go, said sorry I just felt like doing that.

In February 1997, Don asked me to put in overtime worth \$600 net. He said put in overtime, I said no. He said I want you to put it in. I want you to put it in and I want to see it on my desk tomorrow and you'll give me half.

Don asked me to put in overtime again 2 weeks after in February towards end of February. This was for another \$600 net. I paid Don 1/2 of first cheque and 1/2 of second cheque. This was paid to him in cash, in his office with door closed. Don asked me to put in another \$600-700 worth of overtime which I split with Don.

Subsequently, Don asked to put in additional overtime in February and in March 1997, before he left on holidays. I didn't put this overtime in. When he returned from holidays, 2nd week March, he told me to overtime which I did. This was \$1,500. He has asked me for the money, I haven't paid it to him. No RC 505's for foregoing.

In second week March and last week March, Don asked to input overtime for myself, Doug M., Tasso, Christine Larocque, Marcel Guérin and Danielle Beaudoin, which I did. Don worked out what he wanted me to input. It was not until mid-February that Doug and I spoke. I was very upset over what was going on - that Don getting a cheque of overtime.

Don told me in March, its only you and Doug I can get to share with me because the others Marcel and Tasso are too money hungry to ask.

I took the money out of fear of Don and what he would do. I am no good at confrontations - I was intimidated. Don was very insistent.

I didn't go to P. Middlestead, I felt dirty. Once I took first bonus, was too afraid to do it myself. I know now I should have. I am ready to pay the price for my actions.

When Louise Spratt went to Tax Centre, Stephanie Bernier came to do CR-03 job January 1997 and she is getting paid as CR-04. She works now Tuesday and Friday at office. The DC558's hours worked forms show 5 days. On April 25, 1997, Stephanie told me she was being paid 10 days every 2

weeks and she paid Don for 4 days. Stephanie is Don's neighbor. She said Don called her at home telling her, do we have communication problem, I want 4 days in cash and in envelope.

The second cheque Stephanie got, Don brought home, called Stephanie and told her he had her cheque. She said she would get it tomorrow.

The third cheque Stephanie got, they were in Don's office. Don came out for Kleenex, Stephanie came out, had been crying and was very upset. Stephanie told me she told Don she had enough with cheques and wanted to be paid only what she worked. Don said this is thanks I get, etc. Don said fine, you will work your Program and then you're out. Don then told me to complete DC558's for 3 days and I signed these. I asked if she had been harassed, told me Don asked her if she was interested in going to hotel with him and he would pay her \$1,000. She told him no. He told Stephanie, when you walk out the door, forget about it - its no big deal. On April 30, 1997, Don told me Stephanie's last day is Friday. She is not to be told about the bank of employees he is setting up for future work.

Don frequently takes long lunches - has told me to tell Director I'm at meetings. He has often returned from lunch intoxicated. In many cases, he leaves at 11:00 and he doesn't come back.

During hockey, Don is general manager for son's hockey and he had me do stats and other paperwork for hockey.

Don has also ordered 15-20 binders plastic protectors, colored paper, 15 frames picture. This all for son's hockey teams. We also ordered 2 first aid kits.

On April 30, 1997, Christine Larocque came into office to discuss leaving Division with Don. Don said he would call people for her. 2 days after he was pallbearer at father's funeral, he said if he could get her a job she would have to pay him back somehow.

On April 30, 1997, Christine Larocque came to office. She said she was coming in to give him his cheque. She told me this was half of overtime I had keyed in.

Monique Laurin

May 9, 1997

I gave Don Régimbal \$300 even on 3 separate occasions. This began November of 1996. An XXXXX first cash I paid to Don was about November 1996. The next payment was

December of 1996 and last payment was January-February 1997. He asked me to share March 1997 overtime but I didn't bring it in.

Don said, put in an overtime to net \$600 and then you can give me half. This would have been about November of 1996. This first time I figured it was a one time thing. The second time he asked, I was getting impression he was doing this for himself. I didn't like it but I didn't have the fortitude to tell him no. Don has a bad temper and I was afraid to confront him.

Danielle Comeau, Manager of Compensation at the Ottawa Tax Centre, prepared a detailed report (Exhibit E-6) of the overtime hours improperly paid to Ms. Laurin from June 1994 to March 1997. The gross amount of fraudulent overtime paid to the grievor was \$21,849.94 gross or \$12,279.73 net. Ms. Comeau indicated that the full \$12,279.73 had been paid back by Ms. Laurin.

Pierre Middlestead, the Director of the Ottawa Tax Centre, has been with Revenue Canada for over 33 years. On 10 June 1997, he met with Ms. Laurin to suspend her pending completion of the investigation then being conducted by Mr. Wardough (Exhibit E-9). On 20 June 1997, as indicated earlier, Mr. Middlestead terminated the grievor's employment.

As an employee of the Department, Ms. Laurin received in March 1995, a copy of Revenue Canada's Standards of Conduct (Exhibit E-11). This document clearly enjoins an employee to report in writing to a supervisor any information about any fraud committed against Her Majesty. Failure to report such fraud is said to constitute an indictable offense, which upon conviction could result in a fine of not more than \$5,000.00 and to imprisonment for a term not exceeding five years.

Mr. Middlestead testified that even though cooperation with the departmental investigation was commendable, he believes the grievor should have exposed Mr. Régimbal's fraudulent practices much sooner. Although the Director now believes that Régimbal was an abusive and manipulative manager, he could not state with any degree of certainty whether he felt that way on 20 June 1997, when he terminated Ms. Laurin's employment.

Public perception is important for a department such as Revenue Canada whose mandate is to collect taxes. Mr. Middlestead indicated that, because of their role it is crucial that the employees of the department be honest and trustworthy.

Mr. Middlestead believes that the bond of trust between Revenue Canada and the grievor has been irreparably broken. He speculated that Ms. Laurin's reinstatement would be an embarrassment to the department and would likely offend some employees.

In cross-examination, Mr. Middlestead was asked about Rick Lalonde who between 17 February and 21 March 1996 had improperly claimed 97.5 hours of overtime (Exhibit E-4) but had nevertheless been allowed to continue working with the department. Mr. Middlestead believed the Lalonde situation was different since the employee had performed extra work for which he had not been remunerated. The Director of the Tax Centre also stated that Mr. Lalonde had an honest belief of entitlement.

Ms. Laurin testified that she started working for Don Régimbal in November 1992. Over time she became aware of Mr. Régimbal's bad temper and aggressive personality especially when he was confronted.

In 1994, Mr. Régimbal offered her a bonus for a job well done. At first she declined, saying it was not necessary but since he insisted she agreed. The grievor was then directed over the next 3 years on numerous occasions to input into the system, without the proper documentation, false overtime claims for herself and many other employees.

Ms. Laurin never inputted these inaccurate overtime claims without first being directed to do so by Mr. Régimbal. Many of the individuals for whom she was keying in false overtime data were supervisors, yet no one told her what she was doing was improper.

In November 1996 (and not February 1997, as was first recollected by the grievor in her statement to Mr. Wardough), Mr. Régimbal suggested for the first time that she share her "bonus" with him. Although she felt the request was strange, Ms. Laurin nevertheless went along with it. In December 1996 or January 1997, Mr.

Régimbal demanded a second kickback. This time the grievor realized something was wrong and that she was being used improperly but she was afraid of her supervisor.

In February 1997, Don Régimbal ordered Ms. Laurin to input false overtime hours and directed that he be given a 50% kickback. The grievor was trapped and didn't know what to do.

In March and April 1997, she started to talk to Doug Melanson and realized she was not alone in the predicament. For the first time she became aware that others were involved in the kickback scheme.

The grievor and Doug Melanson decided they would expose Mr. Régimbal's fraudulent activities together. It was agreed that Mr. Melanson would approach a friend at the Outaouais Tax Centre, who had previously been a police officer. It was not until she spoke to Jim Wardough that Ms. Laurin realized she was involved in fraud. She believed she would be suspended but not discharged.

Argument

For the employer

The grievor's employment was terminated for engaging in repeated instances of willful and premeditated misconduct. Ms. Laurin acted in concert with Don Régimbal knowing that their conduct was inappropriate.

Ms. Laurin is a young person who does not possess a long service record. She worked in a department where Canadians expect transparency and trustworthiness. Given the mandate of Revenue Canada and the nature of the frauds committed here, it is not surprising that the media were so interested in this case (Exhibit E-14).

The only thing that can be said in the grievor's favor is that she cooperated with the employer in its investigation. Ms. Laurin still refuses to acknowledge the impropriety of her conduct. Only the kickback scheme gave her concerns.

Ms. Laurin came forward and cooperated because she didn't want to share with Mr. Régimbal who was asking for kickbacks on a more regular basis and because the whole mess was getting out of hand with the ever increasing number of participants.

The grievor knew what the correct procedure for logging overtime was and she knew or should have known that what she was doing was wrong. Rather than show remorse, Ms. Laurin plays the hopeless victim allegedly coerced by an abusive supervisor. This is not a rehabilitated employee who can be returned to the workplace. Her cooperation in the investigation is not enough to counter the gravity of her misconduct. The grievor cannot be trusted and should not be reinstated. Furthermore a clear message has to be given to anyone who might consider committing such fraud.

The employer referred to the following jurisprudence to support its position: *Williams, Wiltshire and Beals* (Board files 166-2-5097, 166-2-5100, 166-2-5105 and 166-2-5106), *King* (Board file 166-2-25956), *Cole* (Board file 166-2-25466 and F.C.C. Trial Division #T-2671-94), *Vasilas* (Board file 166-2-28149), *Renouf* (Board files 166-2-27766 and 166-2-27865), *Canada v. Barrett and Clarke et al.* (F.C.A. 53 N.R. 60) and *Hauf* (Board File 166-2-27693).

For the grievor

The grievor's misconduct merits a penalty but certainly not discharge. In mitigation of penalty we must take into account the grievor's admission of wrongdoing, her cooperation and participation in exposing the fraud, her good work record and the fact that she was ordered to participate by an abusive, manipulative supervisor.

This case unfolds in two distinct periods. The first period goes from 1994 until Ms. Laurin was asked by Mr. Régimbal to provide a kickback. During this time the grievor did not realize anything was wrong with the payments she was receiving or with the false data she was inputting for others. Messrs. Lalonde, Vasilas and Melanson, all senior to the grievor and all involved in the scheme never once told her during this period that anything was wrong.

The grievor never asked for overtime payments but accepted them as recompense for a job well done. Mr. Régimbal always gave her reason to believe she was entitled to the overtime payments she was receiving. Nothing in the grievor's conduct was premeditated nor was she involved in a conspiracy with her boss. *Mens rea* (intent) is required to show fraud and none certainly existed prior to the fall of 1996.

The second period starts in the fall of 1996 with the first request for kickback by Mr. Régimbal. Even then the grievor, although concerned, is not certain something is wrong. It is only after the second request for kickback in January/February that Ms. Laurin realizes that something is wrong and that she is being used and duped by a dishonest man. Ms. Laurin is not good at confrontation but nevertheless talks to Mr. Melanson and together, eventually they come forth. In the circumstances, the time it took for the grievor and Doug Melanson to expose Don Régimbal's dishonest practices was not overly long. It can be very difficult to move out from a situation of abuse of power.

The representative of the grievor referred to the following jurisprudence in support of its position: *Sample* (Board file 166-2-27610), *Khamra* (Board file 166-2-17117), *Gourlie* (Board file 166-2-18705), *Gagné and St-Pierre* (Board files 166-2-16697 and 166-2-16817), *Dosanjh* (Board file 166-2-27262) and *Boyle* (Board file 166-2-10954).

Reply

In reply the employer contended that the grievor came forward only when the participants to the fraud had gotten so numerous that discovery was inevitable and also because she did not want to share her illicit gains with Mr. Régimbal whose requests for kickback were becoming unreasonable.

Decision

There can be no doubt that the grievor acted improperly in this case. She was involved with her then supervisor, Don Régimbal, in a fraudulent scheme to obtain overtime payments which she knew or should have known she was not entitled to.

Ms. Laurin should have refused to participate in Mr. Régimbal's improprieties from the very start. I believe that she was at least initially and for some time blind to the inappropriateness of her conduct because of the personal gain it provided. In the end however it was the grievor and Mr. Melanson who came forward to put a stop to the fraudulent practices. I can only echo the comments of investigator Wardough that

this matter would likely not have come to the employer's attention without Ms. Laurin's and Mr. Melanson's help.

Her participation in the fraud however was always at the request and insistence of Don Régimbal, an abusive and controlling man. It is unfortunate that the employer did not have in place at the relevant time, nor does it have today, a system of checks and balances that would quickly identify such egregious conduct.

Although fraud is always a very serious act of misconduct, I must take into account, in mitigation of penalty, the grievor's 12 years of service without prior discipline, her cooperation in exposing the misconduct, her willing participation in the department's investigation and the unfortunate relationship of abuse that she suffered at the hands of her supervisor Don Régimbal. None of this would have occurred without her supervisor's planning and insistence. To a great extent she was a pawn in Assistant Director Régimbal's game of deceit.

The employer has argued that I should not look at other similar cases in assessing the appropriate penalty to be imposed on Ms. Laurin. He cites the Barrett case (*supra*) in support of that proposition. I disagree that that decision operates to prevent an adjudicator from looking at other similar situations of misconduct to determine how they were handled by the employer. I believe that Mr. Justice Marceau's reasoning in the Barrett case is the most detailed and appropriate. He finds that there was not enough evidence before the adjudicator in that case to assess the relevance of the employer's conduct in similar cases. Justice Marceau stated at p. 67 of the Barrett decision:

*That, in penal and disciplinary law, similar cases should not be given dissimilar treatment for no reason ought, of course to be a preoccupation of any sentencing authority. However, many reasons could warrant dissimilar treatment, reasons that may be quite independent of a strict assessment of the relative degree of fault since, as it is well known, the various objectives assigned to sentencing and sought to be achieved by it present many aspects, not all related to punishing and sanctioning. Frank and Edna Elkouri, in their book **How Arbitration Works**, cite with approval a statement by an arbitrator in an American decision which seems particularly appropriate to the circumstances of this case (3rd Ed., p. 646):*

“It is my opinion that management is not under an obligation to apply equal punishment to all transgressors, if to do so would cause injury to the operations. Discrimination may be validly charged only when there is either

“(a) a demonstrated inconsistency of posture towards the violations and the violators (such as is present when management tolerates, condones or ignores a series of mis-acts by some and then punishes others for committing the same improprieties); or (b) when the Employer is responding to an improper ulterior motive or animus, using the alleged wrongdoing as a pretext or subterfuge.”

[26] *Furthermore, regardless of the many possible reasons that may explain and justify the assessing of different penalties to people guilty of different, even if similar, offences, it seems to me that, in this field, strict equality of treatment is an ideal to be sought for many reasons - among which, no doubt, the relative security to be derived from consistency, the obligation to take into account the normal expectations of the offenders and the necessity to avoid giving any impression of favouritism - but not primarily for the sake of strict justice toward each individual involved in each of the several cases. This is not a situation governed by the principles of distributive justice. To me, the justice of a penalty in a particular case should normally be judged according to the nature of the infraction and the circumstances of the case, not on the basis of what was done in other cases. It may be useful, and even oftentimes necessary, to have knowledge of the penalty assessed in other similar or comparable cases in order to determine whether a particular sentence in a given case “fits” the offence committed and is, in the minds of those concerned, adequate, the more so since, in most instances, no objective measure exists to verify such adequacy.*

An employer should not discriminate in the attribution of penalties to its employees. Evidence of discrimination in such cases should be complete, detailed and cogent. In this particular case, I do not need to look at the Lalonde and Vasilas situations since I have concluded that there exists sufficient mitigating factors (already enumerated) to justify substituting a lengthy suspension for the discharge and suspension previously imposed. The grievor will therefore be entitled to return to work on 10 September 1998 (a 15 month suspension). Furthermore the grievor's return to work is conditional on the repayment of all severance monies and overtime payments received. I will remain seized of this matter for a period of 3 months from

the date of this decision should the parties encounter any difficulty in its implementation. To the extent mentioned in this decision, the grievance of Ms. Laurin is allowed.

Yvon Tarte
Chairperson

OTTAWA, 6 August 1998