

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

DR. SLOBODAN PETROVIC

Grievor

and

**TREASURY BOARD
(Natural Resources Canada)**

Employer

Before: Joseph W. Potter, Deputy Chairperson

For the Grievor: Himself (written submissions only)

For the Employer: Ursula M. Tauscher, Counsel

Heard at Edmonton, Alberta,
July 16, 1998.

DECISION

This reference to adjudication concerns the termination of Dr. Slobodan Petrovic, a level 2 research scientist who was employed with Natural Resources Canada, CANMET, Western Research Centre (WRC), in Devon, Alberta. Dr. Petrovic was terminated by way of a letter dated May 27, 1997 from Mr. Michael Cleland, Assistant Deputy Minister, Natural Resources Canada. This letter of termination reads as follows:

In Mr. Bruce Stewart's letter dated March 25, 1997, he clearly advised you that he was not approving your request for a further period of leave without pay and that you were required to report to the Western Research Centre on April 28, 1997.

After you did not report to work as directed, Mr. Stewart again instructed you by letters dated April 28, 1997 and May 2, 1997 that you were required to report to the Western Research Centre even if you had submitted a grievance on the denial of your leave request. You were forewarned that your employment would be terminated if you did not report to work as directed.

In addition to the above-noted letters, Mr. Stewart also left several telephone and fax messages requesting that you contact him. Despite these repeated directions you did not contact Mr. Stewart and you have continued to be absent without authorization.

Your failure to follow direction and report to work constitutes serious misconduct. Consequently, by the authority delegated to me by the Deputy Minister and pursuant to Section 11(2)(f) of the Financial Administration Act, your employment is terminated for cause at the close of business on May 27, 1997.

In accordance with Section 91 of the Public Service Staff Relations Act, you have 25 days to grieve this decision.

Dr. Petrovic grieved this decision by way of a letter dated June 16, 1997 and referred the matter to the Public Service Staff Relations Board (PSSRB) on November 17, 1997.

The matter was tentatively scheduled to be heard on June 4 and 5, 1998 in Edmonton, but on February 11, 1998 Dr. Petrovic advised the PSSRB that these tentative dates were not acceptable to him "... due to travel arrangements at that time." Dr. Petrovic was residing in Scottsdale, Arizona. On February 12, 1998, the

PSSRB wrote to Dr. Petrovic requesting he select alternate dates in July or August for the hearing. Dr. Petrovic replied on March 8, 1998 saying "... any Thursday and Friday in July and first part of August will be acceptable to me..." Accordingly, the PSSRB scheduled the hearing for July 16 and 17, 1998. On March 24, 1998, Dr. Petrovic advised the PSSRB that these dates were acceptable to him. Then, on July 5, 1998, Dr. Petrovic advised the PSSRB he would not be able to attend the hearing due to financial reasons, but he expressed the hope that a fair decision would be made in his absence. In addition, he asked the PSSRB to "... look at the following facts when making a decision..." and he listed a number of concerns he had.

As the onus for this matter rested with the employer, the case proceeded in the absence of Dr. Petrovic. This absence meant that the employer's witness could not be cross-examined, but nevertheless the employer was put to the test to prove its case.

I heard from one witness and a total of 18 exhibits were introduced.

Facts

Mr. Bruce Stewart, Director, CANMET WRC, Natural Resources Canada, testified that he is in charge of the WRC which is, essentially, an energy research group. There are 120 employees in the organization, of which Dr. Petrovic was one. The witness testified that Dr. Petrovic commenced his employment with CANMET on April 1, 1992 as a level 2 research scientist (Exhibit E-1). Dr. Petrovic remained in that position and at the same location until November 8, 1995 whereupon he requested leave without pay (LWOP) for personal reasons pursuant to clause 17.07 of the then Master Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada. This leave was to commence January 5, 1996 (Exhibit E-2). Mr. Stewart testified there were no concerns with respect to the grievor's performance, and no specific reason was given by Dr. Petrovic for requesting this leave. The witness testified that other options were discussed, such as secondment, but this option was not pursued by the grievor because he did not have a receiving organization to go to.

In any event, the leave request was approved (Exhibit E-3) for one year and was to expire January 3, 1997. Dr. Petrovic telephoned Mr. Stewart before the LWOP expired, informed him he was calling from Phoenix, Arizona, and asked for an

extension of the leave for personal reasons. He did not expand further on the reasons. Dr. Petrovic put his request in writing on November 11, 1996, requesting a further three months in accordance with subclause 17.07(a) of his collective agreement (Exhibit E-4).

Mr. Stewart agreed to this request on November 29, 1996 (Exhibit E-5) and the LWOP, beginning after the grievor's usage of his accumulated annual leave credits, would expire on April 25, 1997.

No further communication took place between the witness and the grievor until March 10, 1997, at which time Mr. Stewart received a letter from Dr. Petrovic inquiring about a further extension of the leave (Exhibit E-6). Mr. Stewart testified that upon receipt of this letter he had some concerns that Dr. Petrovic was not eager to return and the organization needed him back. Consequently, Mr. Stewart replied to this letter on March 17, 1997 (Exhibit E-7). In this correspondence, Mr. Stewart explained that Dr. Petrovic had exhausted all the LWOP for personal needs provided for in his collective agreement and "... no further leave without pay can be approved for personal needs." However, as there may have been other types of leave that could apply to Dr. Petrovic's circumstances, a copy of the applicable portion of the collective agreement was appended to Exhibit E-7 and forwarded to the grievor in Phoenix by express mail. The next day, March 18, Dr. Petrovic replied (Exhibit E-8). In this letter to Mr. Stewart, the grievor requested a further period of LWOP of between two and one-half to eight and one-half months. The reason for this request was because the grievor's wife had to leave for Europe to attend to a serious family illness and Dr. Petrovic was "... also scheduled to go and spend at least several weeks there." Mr. Stewart testified this is the only reason the grievor provided for his LWOP request.

On March 25, 1997, Mr. Stewart replied to Dr. Petrovic denying the requested extension (Exhibit E-9). The reason for the denial was based on the fact the collective agreement provisions which had permitted the initial absence had now been exhausted. In addition, Mr. Stewart testified there was a need for the grievor to continue his work at CANMET. In his letter of March 25, 1997, Mr. Stewart wrote:

Therefore, I expect you return [sic] to your position at the CANMET Western Research Centre by April 28, 1997, or to resign from the Public Service of Canada effective that date.

Dr. Petrovic replied by fax dated March 27, 1997 saying he would grieve the denial of the LWOP extension and inquired as to who he should discuss this with (Exhibit E-10). On April 1, 1997, Mr. Stewart replied to the grievor, giving him the name of a human resources advisor (Exhibit E-11).

The next communication Mr. Stewart received from Dr. Petrovic was a fax letter dated April 22, 1997 grieving the denial of LWOP. The fax covering sheet had the following notation beside the Phoenix phone number "(till 26/04)" and the witness testified he assumed this meant the telephone number was good until April 26 only. Also, the fax number had been crossed out and a handwritten note on the letter itself instructed Mr. Stewart to send all future correspondence to an address in Pickering, Ontario. The witness stated he was unsure what this change of address meant, and he had some concerns because the grievor was due back to work on April 28.

Upon receipt of this letter, Mr. Stewart said he immediately tried to contact Dr. Petrovic by telephone at the Phoenix number, however he was only able to leave a message on the answering machine. This, he testified, he did three times but no return calls from Dr. Petrovic were received.

On April 28, 1997, Dr. Petrovic did not return to work as required, consequently Mr. Stewart sent the grievor a letter that same day (Exhibit E-13). It was sent via express mail to the Pickering address and stated to Dr. Petrovic: "You are instructed to report to work immediately. Failure to do so will result in your termination of employment."

Two days later, on April 30, 1997, the grievor faxed a letter to Mr. Stewart (Exhibit E-14). In his letter the grievor acknowledged receipt of the April 28th letter which instructed Dr. Petrovic to return to work. However, Dr. Petrovic wrote: "I do not consider my employment terminated until the grievance is settled."

Mr. Stewart replied on May 2, 1997 (Exhibit E-15). In his reply, Mr. Stewart addressed the LWOP issue and also stated: "... your grievance does not alleviate the requirement for you to report to work and I emphasize again that your continued unauthorized absence will result in the termination of your employment."

Mr. Stewart testified he heard nothing further from Dr. Petrovic, consequently a recommendation was made to the Assistant Deputy Minister (ADM) to terminate the employment of Dr. Petrovic for cause. Mr. Cleland, the ADM, wrote the termination letter dated May 27, 1997 and this was sent to Dr. Petrovic (Exhibit E-17).

Counsel for the employer then asked Mr. Stewart to address the issues raised by Dr. Petrovic in his letter to the PSSRB of July 5, 1998.

Dr. Petrovic said in the July 5 correspondence he required the LWOP to visit a sick parent, but Mr. Stewart testified Dr. Petrovic never mentioned this when requesting his leave. The only reason ever given for the leave was as contained in Exhibit E-8.

Mr. Stewart testified he did not, at any time, inform Dr. Petrovic that there was no job for him. In fact, Mr. Stewart testified the work location was quite busy and Dr. Petrovic's position had not been declared surplus.

Mr. Stewart stated the reason Dr. Petrovic was terminated was because he failed to follow an instruction to return to work as scheduled.

Argument for the Employer

Ms. Tauscher argued that the grievor had made submissions but these could not be regarded as evidence. The only evidence we have in this matter is from Mr. Stewart, and the evidence clearly shows Mr. Stewart instructed Dr. Petrovic to return to work on three different occasions. The first such instruction was issued on March 25, 1997 telling Dr. Petrovic he must return to work on April 28, 1997 (Exhibit E-9). We know Dr. Petrovic received this letter because he replied on March 27 acknowledging receipt (Exhibit E-10).

The scheduled return date of April 28, 1997 arrived, and Dr. Petrovic did not show up at work. Consequently, a second letter was sent to the grievor (Exhibit E-13). This letter instructed Dr. Petrovic to report to work immediately or termination would result. Again, we know that Dr. Petrovic received this because he replied on April 30 (Exhibit E-14). He acknowledged receipt of the April 28, 1997 letter from Mr. Stewart, but gave no indication he was returning to work.

Again, Mr. Stewart wrote to Dr. Petrovic (Exhibit E-15, dated May 2, 1997) and reiterated the fact that a continued unauthorized absence would result in termination. Nothing further was heard from Dr. Petrovic, consequently a letter of termination was issued by the ADM on May 27, 1997.

Ms. Tauscher stated that the initial request for leave without pay, and an extension, had been granted by Mr. Stewart. However, as Mr. Stewart testified, Dr. Petrovic's position had never been made surplus and there was work at CANMET which needed to be done. As a result, without having justifiable reasons for a further extension of the leave, Mr. Stewart instructed Dr. Petrovic to return to work. Mr. Stewart testified that he had not been given any reasons for the added extension to the leave-without-pay request beyond that found in Exhibit E-8, namely that Dr. Petrovic was scheduled to spend several weeks in Europe. Absent a more justifiable reason, Mr. Stewart was not able to agree to do without the services of Dr. Petrovic for a further period of time.

Ms. Tauscher stated the employer had dealt with the leave-without-pay requests initially and granted what was permitted in the collective agreement. At the expiry of the leave, the message was consistent from the person in authority, namely that Dr. Petrovic had to return to work. Dr. Petrovic chose to disregard this instruction and, essentially, he did so at his peril.

Counsel for the employer referred me to the following: *Canadian Labour Arbitration* (Third Edition), by Messrs. Brown and Beatty, s. 7:3610: *Refusal to follow instructions*; *Kwan* (Board file 166-2-27120); *Budgel* (Board file 166-2-25555); and *Latchford* (Board file 166-2-26212).

Argument for the Grievor

Although there was no one in attendance representing the grievor, Dr. Petrovic did submit a letter on July 5, 1998 asking that the points he raised in an earlier letter of November 17, 1997 as well as some additional points he raised, be taken into consideration in deciding the issue.

Dr. Petrovic claims in his November 17, 1997 letter that, although he was scheduled to return to work on April 28, 1997, he asked for a further extension of his leave without pay to attend to his sick mother who lived in Yugoslavia. He says he explained the situation to Mr. Stewart and requested the extension. The request was denied.

Dr. Petrovic states that he left for Yugoslavia anyway and returned on June 10, 1997 to see his letter of discharge.

Dr. Petrovic's letter of July 5, 1998 to the PSSRB raised a number of issues surrounding the initial leave without pay requests and the termination decision. Dr. Petrovic claims he was denied a secondment as well as an Early Departure Incentive package. Furthermore, Dr. Petrovic claims Mr. Stewart and Manager Hassan Hamza told him there was no job for him if he decided to return. The leave-without-pay extension was to care for a sick parent. The termination was based on the fact Dr. Petrovic did not return Mr. Stewart's telephone calls. Finally, Dr. Petrovic states that Mr. Stewart's sole motive for the termination was to "reduce the head count".

Decision

I am being asked to decide if the decision to terminate Dr. Petrovic was justified, given the facts in this case. The grievor did not attend the hearing, nor did he have a representative in his place. He had communicated with the PSSRB on July 5, 1998 saying he would not be attending. However, he stated that: "... I still hope that the Board can make a fair decision in my absence based on the evidence I presented in my letter ... on November 17, 1997."

In deciding this issue, I instructed Ms. Tauscher to ensure she covered the points Dr. Petrovic raised in his July 5, 1998 letter as well as those of his November 17, 1997 letter. Having heard the submissions, I am satisfied Ms. Tauscher dealt with all points relevant to the termination as raised by the grievor.

Dr. Petrovic was terminated for a "failure to follow direction and report to work." The evidence indicated that Dr. Petrovic commenced his employment with CANMET on April 1, 1992 and there were no performance problems with him while he

was at work. Dr. Petrovic requested, and received, a one-year leave of absence without pay for personal needs commencing January 5, 1996. Just prior to this leave expiring, Dr. Petrovic requested and received approval for a further three-month leave, for personal reasons. During this leave period, Dr. Petrovic resided in Phoenix, Arizona. This last leave period was scheduled to expire on April 28, 1997, at which time the evidence indicates Mr. Stewart expected Dr. Petrovic to return to work.

Shortly before the grievor was to return to work, Dr. Petrovic claims he contacted Mr. Stewart and asked for a further extension of the leave in order to attend to his mother who was ill and resided in Yugoslavia. Mr. Stewart testified he was not told about this reason for the leave request, and in fact was not given any reason beyond that found in Exhibit E-8.

The only evidence I have is the sworn testimony of Mr. Stewart, as well as the exhibits he identified. The written request by the grievor for the leave extension makes no mention of his ill mother, although it did mention that the grievor's wife had to go to Europe due to a serious family illness. Whether Dr. Petrovic mentioned the fact his mother was ill, or not, makes little difference, in my view, in light of the subsequent evidence.

On April 28, 1997, Mr. Stewart wrote to the grievor and instructed him to return to work, failing which the grievor would be terminated (Exhibit E-13). I find the instruction to the grievor to be clear and unambiguous. In this case, I find that the "obey now, grieve later" principle should have been followed by Dr. Petrovic. He should have obeyed the instruction to come to work, then he could have met with Mr. Stewart and fully explained the circumstances surrounding his request for additional leave. He did not. Instead, he chose to disregard the warning.

The evidence indicates Dr. Petrovic received the instruction to return to work, because he acknowledged such in his letter of April 30, 1997 to Mr. Stewart (Exhibit E-14). The evidence indicates the instruction was issued and received. There is no indication in the April 30 letter from Dr. Petrovic that he is about to return to work.

That was the last communication the employer had with Dr. Petrovic until receipt of the grievance letter of June 16, 1997 addressed to Mr. Cleland.

Dr. Petrovic knew his position was in jeopardy, yet he chose to ignore an instruction to return to work and instead he travelled to Yugoslavia.

Given the circumstances as presented to me in this matter, and given the evidence as submitted by the employer and the submissions of the grievor, I find the grievor knowingly refused direction to return to work, and he did so at his peril. No submission was presented to me as to why I should mitigate the discharge.

Accordingly, this grievance is dismissed.

**Joseph W. Potter,
Deputy Chairperson**

OTTAWA, July 29, 1998.