

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**ALBERT BOUCHARD**

Grievor

and

**THE TREASURY BOARD  
(Veterans Affairs Canada)**

Employer

***Before:*** Evelyne Henry, Deputy Chairperson

***For the Grievor:*** Pierrette Gosselin, Counsel  
Professional Institute of the Public Service of Canada

***For the Employer:*** Stéphane Arcelin, Counsel

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Heard at Montreal, Quebec,  
on March 8 and 9, 1999

Albert Bouchard filed a grievance alleging that the employer refused him paid leave for January 9, 19, 20, 21, 22 and 23, 1998, in violation of clause 17.14 (Other Leave With Pay) of the Master Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada ("the Institute").

Evidence for the grievor

Albert Bouchard is a senior nursing assistant at Sainte-Anne de Bellevue Hospital, where he has been employed for 12-and-a-half years. He has almost always worked there on the night shift.

Mr. Bouchard submitted an application for leave in late January 1998 in connection with the ice storm. Mr. Bouchard explained that he lives in Rivière Beaudette, where the ice storm had very serious effects: power outages, icy roads and evacuation ordered by the mayor of the village. To Mr. Bouchard's knowledge, the municipality was completely evacuated. On January 7, 1998, the civil defence unit advised Mr. Bouchard that he had to evacuate his home because of the power failure, because it was too dangerous to stay in a house without heat and also because of the risk of cesspools backing up. There was also a danger of trees falling on the house, because there are many trees in Rivière Beaudette.

Mr. Bouchard put together some things and went to stay with his daughter and her husband. His daughter lives in Les Coteaux, formerly known as Coteau-Station, which is 25 or 30 kilometres from his home. The roads were very icy and were obstructed by poles, wires, and telephone and hydro trucks. It took him a half-hour to get to his daughter's house. His daughter lives with her husband and their two-year-old daughter. Mr. Bouchard's son-in-law was sick. The day before, Mr. Bouchard had spent the day at the Lakeshore Hospital with his daughter, because his son-in-law needed to have some tests, which revealed he had encephalitis. He was prescribed some fairly strong migraine medication and antibiotics. Mr. Bouchard's daughter was depressed and did not know where to turn, because her daughter was also sick and was on antibiotics for an ear infection. Mr. Bouchard had to take charge of the household, because they also were without electricity and it was necessary to heat with the slow-burning stove in the kitchen and take care of the lights. It was important to make sure that those who were sick did not get cold.

Mr. Bouchard said that at his house there was a gas fireplace on the first floor but that the lower level was not heated. He had to heat the pipes with a propane heater. He had to go to his house twice a day, morning and evening, to heat the pipes, check things out and make sure there had not been any vandalism and that the trees from the neighbouring golf course had not fallen on his house. It took two hours twice a day, including travel time, for this chore.

Mr. Bouchard was absent from work from January 7 to 26, 1998. The electricity was not restored at his home until the morning of January 23, 1998. Power was restored at his daughter's house intermittently on January 21 and 22 and permanently on January 24 or 25.

Mr. Bouchard contacted his supervisor, Ahmad Kader, to tell him about everything that was going on. According to Mr. Bouchard, Mr. Kader told him to take his time, that there were five days, that he had the authority to grant five days of leave, and to take care of his family.

On a number of occasions, Mr. Bouchard responded to the mayor's appeal to the citizens, announced on the radio, to help unload trucks of firewood.

Mr. Bouchard is the co-owner with his son-in-law of a sheep farming operation with 132 sheep. There was no electricity in the sheep barn and they did not have a generator. He had to purchase some barrels to transport water from a neighbour's house in order to give the sheep water. He had to feed the animals in the daytime because there were no lights, and this chore took him three to four hours. Mr. Bouchard had a number of chores: taking care of two houses, stocking up with firewood and food, heating the houses, feeding the animals. He slept a maximum of four to five hours a day.

Mr. Bouchard had cut out an article on the ice storm crisis from the Saturday, January 17, 1998 issue of 1<sup>ère</sup> Édition, a local newspaper. The article describes the situation at that time and indicates that the hydro line between the Carillon dam and the Saint-Polycarpe station was down for several kilometres and that the entire area served by the Saint-Polycarpe station, that is, the triangle formed by Coteau-du-Lac, Rivière Beaudette and Saint-Polycarpe, had been completely without electricity for

several weeks. The newspaper also indicates that only 16% of residents had had their power restored as of 2:59 p.m. on January 16.

Mr. Bouchard testified that, under section 55.9.2. of the *Animal Health Protection Act*, S.Q. 1993, c. 18, s. 6, he had an obligation to ensure the safety and well-being of his sheep and that one of the provisions of this section was that:

*55.9.2 [...] The safety and welfare of an animal is jeopardized where*

*(1) the animal does not have access to drinking water or food in quantities and of a quality in keeping with the biological requirements of its species;*

[...]

Mr. Bouchard filed copies of his initial leave request, dated January 28, 1998, to which he had attached notes explaining his situation, and his second application, dated March 23, 1998, with other explanatory notes, as well as the response from Lynn Landry, Assistant Director of Nursing at the Sainte-Anne de Bellevue Hospital, and his grievance dated April 1, 1998.

In Mr. Bouchard's initial application for leave (Exhibit S4a), he applied for sick leave (code 210) for January 7, other leave (code 699) for January 8 and 9, annual leave (code 110) for January 12, 13 and 14, compensatory time (code 810) for January 15 and 16 and other leave (code 699) for the period from January 19 to 26. This copy indicates that the other leave for the period from January 19 to 26, 1998 was denied. On the copy of the same application (Exhibit S4b), the special leave for January 8 and 26, 1998 was authorized but was denied for January 9, 19, 20, 21, 22 and 23, 1998. Code 999, which indicates other leave without pay, is entered on both copies for January 9 and for the period from January 19 to 23. Mr. Bouchard explained that the leave for the week of January 12 to 16, 1998 had been planned and authorized in advance. The explanatory notes (Exhibits S4c and S4e) are reproduced as submitted:

[TRANSLATION]

[Exhibit S4c]

*[January] 28, 1998*

[...]

[...]

*I was in fact given an application form for special leave, but the situation warranted a more complete description of the facts. I thus decided to give you a detailed description and to include it with my application for special leave.*

*We lost electricity at around 6:00 - 6:15 a.m. on the morning of January 6. On January 6, I spent the day in the emergency ward at 120 Lakeshore with my son-in-law, who was on an I.V. for part of the day. I returned home at 10:30 p.m. The next day, on January 7, we were evacuated from the house because we had no electricity. We had no water or heat and went to stay with my daughter in Côteaux. She lost her electricity that evening.*

*On those same dates, since I raise sheep (I have a herd of 132), I had to take care of things on my own because my son-in-law could not work on doctor's orders. On Thursday, January 8, I had no electricity either at home or in the sheep barn and had not had any since the morning of January 6. The sheep had already gone without water for 36 hours. I had to take care of things; my son-in-law came to help me out despite the doctor's orders not to work. We rented a trailer and bought a few garbage cans in order to transport water to the animals.*

*We went to see a farmer who has a generator and filled the garbage cans full of water so we could transport them to the sheep farm. This took a lot of time. We then distributed the water to the sheep. There are two 10-gallon buckets in each pen.*

*We had to do this morning and evening because the water would freeze in the garbage cans. If there was any water left in the buckets we would have to break the ice because it would be frozen, empty them out and fill them morning and evening. We did this every day the good Lord brought us while we had no electricity.*

*In addition, we had to turn off the plumbing so the pipes would not freeze and there was no water while we were waiting for the electricity to come back on.*

*The work usually took a half-hour to three-quarters of an hour morning and evening but it took three-and-a-half to four hours morning and evening.*

*Also, since we were staying with my daughter and they have a wood stove, we had to fetch the wood that was given to us, but 20 logs at a time, so each day we had to go to get wood. We also had to stop by the house and heat it at least twice a day in order to stop the pipes from freezing and make sure water did not get into the basement.*

*So our days were very busy, from 8:30 a.m. to 7:30 p.m. During this time we also went to some information sessions given by the mayor of the municipality.*

*This lasted until the evening of January 22, when we were told we would have power the next day.*

*We returned home on Friday, January 23 but then we had to start putting things back in order, cleaning the house, the fridge, and throwing out things.*

*Cleaning outside, shovelling, removing ice, etc.*

*We were told to thaw only the gutters and put down some salt. Saturday and Sunday was spent breaking the ice in the gutters, putting down salt and taking care of the animals in between. I finished removing the ice on Sunday afternoon. I decided to take a small rest on Monday and went back to work on Monday evening.*

*Here, I would like to give you a chronology of my days.*

*Wake up at 7:30 a.m. I can't go to the sheep barn before 8:30 a.m. because it is dark.*

*8.30 a.m. At the sheep barn, feed the animals, break the ice in the buckets, fill the water twice.  
Transport water - (25 sheep per pen)*

*11:30 - 12:00 noon Return to my daughter's house to eat.*

*1:00 p.m. Go home, heat the place up a bit (especially the lower level), check for breakage, theft and vandalism.*

*2:00 - 2:30 p.m. Go to get wood, split the wood, run errands (bread, milk).*

*3:30 p.m. Back to the sheep barn to take care of things and transport water.*

*7:00 - 7:30 p.m. Back home to heat the place  
Also attend information session at the shelter.*

8:00 - 9:30 p.m.            *Back home to eat and go to bed, usually exhausted.*

*We also had to think about washing, running errands (milk, bread) and make sure there was light and heat at the house we were staying at because my daughter and son-in-law have a 1½-year-old child who was staying at home and whom Claudette was looking after because the babysitter had no heat and the child could not go there. There was a high risk of illness and she was already on antibiotics for an ear infection.*

*As for them: the company my daughter works for had no electricity but was still operating. She took two days during the time we were getting organized and she did not even know if she would be paid.*

*My son-in-law works at a dairy farm and starting on Monday, January 12 he went back to working from 6:00 to 11:00 in the morning and 5:00 to 8:00 in the evening.*

*This meant that Claudette and I had to run emergency operations at both houses.*

*I hope this meets with your satisfaction and thank you in advance for your understanding.*

[...]

[Exhibit S4e]

March 23, 1998

[...]

*Further to my recent request of February 28, 1999, in which I am granted two days on 699 and am cut six days, I would like to explain to you again the situation I experienced during the ice storm.*

*As I told you earlier, we were evacuated from our home. I nonetheless had to monitor the premises to some extent. We had to heat the basement to stop the pipes from freezing and to make sure water did not get into the basement, since there was no pump to evacuate the water.*

*This meant that the house had to be visited twice a day in the day and evening. Since there was no one around, vandalism was also possible. Fortunately, this did not happen.*

*With regard to the farm, adjusting to the situation was very difficult. We had to search high and low for a generator. As you know, they were rare, and those who had them were selling them for ridiculous prices which I could not afford. I even called my brother in Calgary to have him send me one and it was impossible. I also asked my son, who is in the army, but with the same result. There were none.*

*We therefore had to transport water with my car and a trailer and six plastic barrels we had purchased.*

*We went to fill them at the home of a farmer who had a generator and transported them to the sheep farm twice a day.*

*Also, the low temperatures we were experiencing during this period did not help us because the water was freezing in the sheep barn. This meant we had to break the ice in the buckets every time, empty them and put in water twice a day in order to make sure the animals had something to drink. As I said earlier, this took us six to eight hours a day just to give the sheep water and take care of them.*

*I would like to repeat once again the chronology of a typical day, which lasted for over two weeks.*

*Wake up at 7:30 a.m. I can't go to the sheep barn before 8:30 a.m. because it is dark.*

*8.30 a.m. At the sheep barn, feed the animals, break the ice in the buckets, fill the water twice.  
Transport water - (25 sheep per pen)*

*11:30 - 12:00 noon Return to my daughter's house to eat.*

*1:00 p.m. Go home, heat the place up a bit (especially the lower level), check for breakage, theft and vandalism.*

*2:00 - 2:30 p.m. Go to get wood, split the wood, run errands (bread, milk).*

*3:30 p.m. Back to the sheep barn to take care of things and transport water.*

*7:00 - 7:30 p.m. Back home to heat the place  
Also attend information session at the shelter.*



8:00 - 9:30 p.m.      *Back home to eat and go to bed, usually exhausted.*

*I do not think I could have performed well at work with this heavy schedule. I was already exhausted after my day.*

*I would have had to sleep only two to three hours a day. That would have been impossible.*

*Try as I might to find someone to do the work, the funny thing was that everyone was busy, no one was available.*

*With no generator, and no one to replace me, what was I supposed to do? Let the animals die?*

*Clause 17.14 says that:*

*"At its discretion, the Employer may grant leave with pay for...*

*emergencies affecting the community or place of work, and when circumstances not directly attributable to the employee prevent his reporting for duty."*

*I think I did everything I could to take care of my farm in the circumstances.*

*I looked for a generator, I looked for someone to replace me in taking care of the animals and looking after my house, but nothing was possible.*

*I am thus asking you to reconsider your decision, because with the schedule I had, which I have given you again, do you think it was possible for me to do both at the same time without affecting my health?*

[...]

Mr. Bouchard underlined the passages in the original.

On March 31, 1998, the employer gave the following response to Mr. Bouchard's application for leave (Exhibit S4f) :

[...]

*We have reviewed your application for special leave (699). The decision to give you two days, on January 8 and 26, to*

*enable you to get organized, and then to get reorganized [sic], remains the same. In light of the criteria established for the granting of this special leave, and the explanations you provided us, it seems obvious that you could not go to work because of your second occupation at the sheep farm, and that an additional day could not have enabled you to get yourself organized to return to work. As you indicate, you had to be there for as long as the power was out.*

*As you indicate, clause 17.14 stipulates "At its discretion, the Employer may grant leave with pay... when circumstances not directly attributable to the employee prevent his reporting for duty." In your situation, being the owner of a sheep farming operation is directly attributable to you. You did in fact do everything to take care of the farm in the circumstances but not to come back to work. If it had not been for this particular reality, your situation could have been very similar to that of other employees.*

*Thus, as was no doubt indicated to you by your head nurse, for the days for which you were not granted special leave, you may take vacation credits (110) or leave for family-related needs (420). And in your situation, which was described as excessive fatigue, sick leave credit (210) would be accepted.*

[...]

Mr. Bouchard expressed his disagreement with the employer's response.

In cross-examination, Mr. Bouchard said that his farm is not close to his home. His farm is 25 to 30 minutes from his work, while his home is 45 minutes from the Sainte-Anne de Bellevue Hospital. Mr. Bouchard indicated that the road conditions during the week of January 7 were poor but that Highway 20 was then good; however, the secondary roads took some time to be cleared. Mr. Bouchard could not count on his son-in-law to take care of the sheep because he was sick and was prohibited from working from January 6 to 12, 1998. His son-in-law had to go back to work after January 12, because he would have lost his job if he had not done so. Mr. Bouchard's spouse also works at the Sainte-Anne de Bellevue Hospital. She took some leave during this period because she was taking care of their granddaughter, who could not go to the babysitter, since she had no electricity and was [TRANSLATION] "staying warm with a candle". Mr. Bouchard said they had started out using candles for light but then used a halogen spotlight connected to the car battery. Mr. Bouchard did not take any notes of his conversation with Mr. Kader but he was certain he had been told that he

would be granted five days of leave. Mr. Bouchard reaffirmed that he had not gone to work on the days for which leave was being contested because he had been busy fetching and splitting firewood, running errands, watching over two houses and taking care of the animals, because [TRANSLATION] "he would have been charged" if he had not gone to the farm. Mr. Bouchard said that the three or four hours taking care of the animals included his travel time. The sheep farm is rented at a farm whose well is at the house, where there was no electricity, and where it would have been necessary to rent a 4,000-volt generator to pump water. Mr. Bouchard said that generators were rare and were selling for \$6,000 or \$7,000. Mr. Bouchard confirmed that Exhibit S4e gives a good explanation of how he used his time. Mr. Bouchard indicated he was a union representative and knew that employees had three days of special leave for the ice storm. Mr. Bouchard received the January 19, 1998 communiqué sent to employees concerning absences due to the ice storm (Exhibit E1) when he went back to work on the night of January 26 to 27, 1998.

Mr. Bouchard said that, following the day he had spent at the hospital with his son-in-law, January 7, 1998, he did not feel able to work. He had spent from 8:00 a.m. to 10:00 p.m. monitoring the worrisome condition of his son-in-law, who had been put on intravenous because meningitis was suspected until encephalitis was diagnosed. Mr. Bouchard knew from his work experience that the situation was serious, that [TRANSLATION] "meningitis can be fatal, whereas encephalitis can be cured with medication".

Mr. Bouchard admitted he had not tried to go to the Sainte-Anne de Bellevue Hospital during the period covered by his application for leave because of the ice storm.

Ahmad Kader testified on behalf of the grievor. He had been head nurse for 20 years. Mr. Kader became Mr. Bouchard's supervisor approximately 10 months before the ice storm. Mr. Kader remembered a conversation with Mr. Bouchard during the ice storm but could not remember the exact date. Mr. Bouchard had spoken to him about the problems with the electricity and water in the basement. Mr. Kader had received many calls about the ice storm. He said he had told Mr. Bouchard that his absence, as in each case, would be evaluated on an individual basis. Mr. Kader could not remember the exact words but believed he had said something like: "Everyone in

Quebec has the same problem; your situation is understandable, each case is different, you have to take care of your family." Mr. Kader had understood that Mr. Bouchard had had to evacuate his house, that in Rivière Beaudette there was a danger of overflow which had to be evaluated by the police and firefighters. With regard to the number of days in question, Mr. Kader did not believe he had mentioned five days, because each absence had to be evaluated according to the reasons and the application for leave. Mr. Kader thought he had told Mr. Bouchard that it was understood he would return to work after the situation had settled down.

Mr. Kader stated he did not have the authority to approve special leave. He recommended that the leave be approved by placing his initials on the leave application form. He was authorized to approve sick leave, vacation and compensatory leave and did so. Mr. Kader indicated that he had never had the right to approve special paid leave (code 699) and that, at that point, it was Claire Babin, Assistant Director at the Sainte-Anne de Bellevue Hospital, who had the authority to approve that type of leave.

In cross-examination, Mr. Kader stated that there had been many requests during the ice storm and that all cases of special leave (code 699) had had to be reviewed and approved by the management contact person.

Mr. Kader stated he had the authority to approve leave for family-related needs up to five days a year but said that Mr. Bouchard had not spoken to him about his son-in-law's and granddaughter's illnesses.

Guylaine Breault has been working at the Sainte-Anne de Bellevue Hospital for 19 years. Ms. Breault works as a bedside nurse/team leader in Unit 7A. She applied for special paid leave (code 699) for the ice storm, which the employer approved. Ms. Breault applied for and obtained three days of leave for January 7, 8 and 9, because she could not return to work until the week of January 17 and 18, 1999. Ms. Breault was on annual leave from January 12 to 16, 1998. Ms. Breault lives in Sainte-Marthe and had no electricity from January 6 to 18, 1999, but did not leave her house.

In cross-examination, Ms. Breault said that she has three children, including a young child she was breastfeeding. Her father-in-law stayed with her during the ice

storm. Ms. Breault's husband also works at the Sainte-Anne de Bellevue Hospital. He had two days of special leave (code 699). Ms. Breault's home is 35 to 40 kilometres west of the Hospital, between Valleyfield and Rigaud. It normally takes her between 20 and 25 minutes to get to work. Ms. Breault said that the duration of special paid leave (code 699) was generally five days for a couple when both were working at the Hospital. Ms. Breault did not know what the situation was like at the Hospital; she made herself available during her week of annual leave but said [TRANSLATION] "they were good about it", they did not ask her to work.

Sylvie Poupart was the last witness cited on behalf of the grievor. She has been working at the Sainte-Anne de Bellevue Hospital for 20 years. She is a nurse/team leader in Unit 14B. Ms. Poupart performs union duties; she is a senior grievance officer and Chair of the Council of Nurses (CN). Ms. Poupart intervened in Mr. Bouchard's case. She considers the employer's decision to grant him only two days of special leave unjust. She lives in Sainte-Marthe, which is 20 minutes from Rivière Beaudette, and considers that Mr. Bouchard's situation was worse than her own, because she was not evacuated and was without power for only 12 days, whereas he was without power for 17 days and did not have much firewood. She obtained four days of special paid leave (code 699).

Ms. Poupart was familiar with the case of Guylaine Breault, one of her neighbours. Ms. Breault was not evacuated and had a generator that worked with a tractor. According to Ms. Poupart, some employees were without electricity for five days, others for 10 or 15 days. Albert Bouchard was without power the longest. Ms. Poupart considered that management did not take into account the health and age (in his fifties) of Mr. Bouchard, who is diabetic, as well as the fact he works nights.

Ms. Poupart was off work during the first week of the ice storm, but worked on January 12, 13 and 16, 1998. She was not certain when she had first seen Exhibit E-2, a document that was already at the union local when she came back to work.

Ms. Poupart stated that during the ice storm there were power outages, the roads were not good and there was damage at some houses. Mr. Bouchard had to evacuate his home, watch over his house and heat with wood. Ms. Poupart knew how difficult this situation could be because she herself had found it difficult to heat the stove until midnight and get up at 5:00 a.m. to relight it.

Ms. Poupart made a distinction between the first and third weeks of the ice storm because the weather was not the same and there was the fatigue factor that came into play. During the second week of the crisis, she did not go to work on the Wednesday when the temperature plunged to -20°C. During the third week of the crisis, it was cold and more heating was necessary and Mr. Bouchard had to break the ice in his sheep barn because he did not have a generator.

Ms. Poupart had read Exhibit E-3 at the same time as Exhibit E-2, both of which arrived at the union local at the same time. Ms. Poupart commented on the employer's directive and said that, in her view, Mr. Bouchard would have been entitled to eight days of leave according to these directives.

In cross-examination, Ms. Poupart said that the farthest she had travelled during this period was to Saint-Polycarpe, which is right next to Rivière Beaudette, five or 10 minutes away. Ms. Poupart said that she had submitted two applications for leave, for the three days of the first week of the ice storm and for January 14, 1998. She was granted January 14 on her second request. Ms. Poupart said she had a gas generator which could not operate 24 hours a day because of the fire danger. Her generator was in operation early in the morning and during the evening to supply power to the electrical appliances. She would connect the water pump to fill the pots, toilets and kettles and would then plug the freezers and refrigerator into the generator. She had acquired a generator after a power outage that had lasted five days in Sainte-Marthe.

Ms. Poupart had not seen all the leave applications in connection with the ice storm. She had not seen the written directive which indicated that the employees would be treated differently if their spouse also worked at the Hospital. Ms. Poupart has two children, a 10-year-old and a 12-year-old, whom she took care of. Her husband, who lives with her, does not work at the Sainte-Anne de Bellevue Hospital.

#### Employer's evidence

Lynn Landry has been Assistant Director at Sainte-Anne de Bellevue Hospital since 1990. She has been working there since 1980: first as a bedside nurse, then as head nurse and as a teaching nurse. As Assistant Director, she is responsible for hiring, staffing, staff relations and special projects and for replacing the Nursing

Director. She has been Acting Director of Nursing since November 1998 and held that position in January and February 1998 for four weeks. When the ice storm started, Ms. Landry was Assistant Director responsible for restructuring and reorganizing Nursing, because the Hospital accommodated people from the community and employees. In late January, she replaced the Director.

Ms. Landry said that the Hospital was one of the lucky few to have electricity and thus took in elderly people who lived in residences or at home and who had no electricity. In partnership with the Lac Saint-Louis Local Community Service Centre, Sainte-Anne de Bellevue Hospital also took in patients from the Lakeshore Hospital (175 in all). The Sainte-Anne de Bellevue Hospital accommodated employees and their families, which meant almost 140 additional persons. It was necessary to reopen units that had been closed and obtain supplies from the Red Cross and the Regional Board, if only to obtain hospital beds. In some units, veterans' wives were given accommodation when there were empty beds. From January 6 to 18, 1998, Ms. Landry was very busy reorganizing the units and making arrangements to accommodate up to 139 employees, spouses and children. There were plenty of day care activities, activities for the children, massage sessions for the employees and activities connected with a community life at the Hospital.

Ms. Landry stayed at the Hospital during the first week of the ice storm. Her home is located 57 kilometres from the Hospital, in Montérégie, in Saint-Louis de Gonzague. She had no electricity at home. Ms. Landry lives on a dairy farm, which her husband operates with his father. Her in-laws had a "generator" with the tractor, which enabled them to milk the animals, but there was no electricity in the house.

As manager, Ms. Landry was concerned about the power supply and about the availability of employees to see to the needs of the residents and the persons who were staying there. Around the second week of the ice storm, employees started asking for leave; some of them did not know about special leave. The communiqué on absences during the ice storm, Exhibit E-1, was sent to all employees on January 19, 1998. Exhibits E-2 and E-3 are documents that were given to section chiefs to assist them in deciding whether to recommend or grant special leave. The Nursing unit decided to centralize the granting of leave, given the large number and diversity of applications. Under the established procedure, head nurses were to initial the

applications and, if they wished, recommend that leave be granted or denied. The applications were then forwarded to a subcommittee comprised of two assistant directors, Claire Babin and Monique Jetté, and two head nurses, Nicole Benoît and Lorraine LaFrance. The reason for this procedure was that the Nursing unit had a more global vision of the situation and took into account applications from employee spouses and applications for family-related leave. After the committee had made its recommendations, all of the applications were forwarded to the Executive Management Committee (EMC), which reviewed the reasons for approving or denying applications, keeping in mind fairness towards employees who reported for work and those who did not. Senior management included all directors: Professional Services, Personnel, Administrative Services, Nursing. Members of senior management met to review the reasons for approving or denying applications and how each division had made its decisions. Following this exercise, if any special cases remained, each director would meet with the Personnel Director, Denis Wilson, and the Hospital Administrator, Rachel Corneille-Gravelle, and each case was re-evaluated.

Ms. Landry wrote the letter to Mr. Bouchard (Exhibit S4f). Mr. Bouchard's application was examined in conjunction with that of his spouse. Ms. Landry stated that, if the reasons given in support of the applications of employee spouses were the same, management made sure of the facts that justified special leave and granted days of leave on an alternating basis between the spouses. According to Ms. Landry, Ms. Bouchard had indicated she had to take care of her daughter and granddaughter and had received three days of leave. Ms. Landry saw Mr. Bouchard's application for leave (Exhibits S4a and S4b) with a note signed by Ms. Landry; this application was forwarded to the section chief to be returned to the grievor. Exhibit S4a represents the revision made by the subcommittee, which was forwarded to the management committee. At this committee, applications that had been authorized were denied and others that had been denied were authorized; dates were changed to meet the criteria set by the management committee. When an application was denied, the employee was invited to submit another application for leave if he or she so wished and was able to do so. Exhibit S4f was in response to other information submitted by Mr. Bouchard. The main reason that some of the days of leave applied for by Mr. Bouchard had been denied was the fact that his absence was directly related to his sheep farming operation. The reasons for his absence could be attributed to him:



without the sheep farm, he would have been in the same situation as the other employees who had gone through the ice storm.

In granting special leave, management examined whether the employees had made an effort to report to work and to minimize the duration of their absence. In some cases, such efforts meant that the employee was able to report for work on the second or third day of the ice storm. Mr. Bouchard obtained leave for January 8 in order to organize his affairs and organize the operation of the sheep farm, taking into account his statutory liability towards his sheep. On January 9, he did not make any other efforts to organize himself. Mr. Bouchard's spouse was granted leave for January 8 and 9, but not for the same reasons. Ms. Landry stated that there was no policy of limiting the number of days of special leave to be shared between employee spouses to five days, or to three days for the others; each case was evaluated on an individual basis. Some employees had two days of special leave, others three. Ms. Landry indicated there were special cases in which more than five days of special leave were granted to employee spouses, that is, three days each, or two days to one and four days to the other, but she thought that no employee had more than five days.

Ms. Landry stated that there had been a directive whereby, when an employee called in sick, there was no question of changing this application to special leave, because the Hospital did not intend to contest such a statement. A medical certificate was not necessary, but the type of leave could not change.

Ms. Landry stated that, in view of Mr. Bouchard's fatigue and his state of health, she had indicated in the letter in which she had informed him that special leave would not be granted that sick leave would be granted if he so requested. Mr. Bouchard did not submit an application for sick leave.

Ms. Landry had seen the leave application of Claudette Giard, Mr. Bouchard's spouse, and the reasons invoked in support of it. Ms. Giard obtained sick leave for the night of January 6 to 7 and special leave (code 699) for January 8, 9 and 26, 1998. She was granted January 26 to return home after the power had come back on.

Ms. Landry herself was absent for only one day during the ice storm.

In cross-examination, Ms. Landry indicated that she lived in a house on the family farm of her in-laws, who lived in another house on the farm, and that her in-laws owned a generator. Ms. Landry stated that neither she nor her children lived with her in-laws. Her children spent the first day of the ice storm with their father but then went to stay with Ms. Landry's parents in Nitro, near Saint-Thimotée. The next week, her children came to the Hospital with her and spent the weekend with her parents. The following week, they went back to stay with her parents. Ms. Landry slept at her in-laws' house on only two occasions, to see her husband. Power was restored at her house on January 21 and she took leave on January 22 to return home. Ms. Landry could not say what Mr. Bouchard should have done and did not do or suggest what kind of efforts he should have made; she said that the circumstances that prevented him from reporting for work were attributable to him, because they were associated with his decision to take care of the sheep farm himself. The employer authorized Mr. Bouchard's absence but it could not obtain special paid leave to take care of his sheep farm.

Ms. Landry confirmed that Exhibits E-2 and E-3 had been prepared for the section chiefs to assist them in making their decisions concerning the applications for special leave. She stated that the Nursing unit made recommendations but that the section chiefs could authorize leave and that their authorization was submitted to the EMC. According to Ms. Landry, the head nurse was normally entitled to authorize special leave but this authority was centralized during the ice storm. When there was a storm during which several employees were absent, the delegation of authority to grant special leave was withdrawn; the Nursing Director decided to centralize at that level and this decision was supported by the EMC. The decision to centralize authority to approve leave in connection with the ice storm was taken around January 16, 1998. Exhibit E-2 was prepared in light of the number of leave applications connected with the ice storm; it was not signed but was prepared by the head of staff relations and approved by the EMC.

When Claire Babin, Assistant Director of the Hospital, authorized Mr. Bouchard to take special leave on January 9, Ms. Landry was replacing Ms. Préfontaine as Nursing Director. This authorization had to be approved by the Director, as indicated in Exhibits E-2 and E-3. Some 15 or 20 cases from the Nursing unit were referred to the EMC, including that of Mr. Bouchard. Ms. Landry took into consideration the fact

that Ms. Bouchard worked nights and had been without electricity for 17 days. Other employees, including Ms. Landry, had been without electricity for 17 days. Mr. Bouchard had a day of leave to reorganize his farm, and a day of leave had been given to his spouse to reorganize the house. Ms. Landry maintained there was no set rule on the maximum number of days of leave granted to employee spouses or the number of days of leave that could be given to each of them; Ms. Landry was focusing on fairness and not uniformity. Ms. Landry had not seen any statistical reports on the leave granted during the ice storm; she was certain that there was no such report at the Nursing unit.

Ms. Landry was Acting Director of Nursing from January 21 to February 19, 1998. This position was subsequently held by Ms. Jetté, from January 20 to March 10, 1998. When Ms. Préfontaine returned on March 23, 1998, Ms. Landry remained responsible for absences due to the ice storm.

Ms. Landry identified Exhibit E6 as being a copy of extracts from the minutes of EMC meetings. These extracts pertained to absences and leave associated with the ice storm. Ms. Landry explained that the [TRANSLATION] "pathetic cases" would be submitted to the Hospital Administrator, saying they were the most complex cases and were different from the others, such as Mr. Bouchard's.

Jean Lajeunesse was the employer's second witness. He has been employed by the Public Service since 1976 and has worked in staff relations since 1981. He has worked at Sainte-Anne de Bellevue Hospital since 1990 or 1991. He is the head of staff relations and compensation at Sainte-Anne de Bellevue Hospital. His role consists in advising management on staff relations and reviewing second-level grievances.

Mr. Lajeunesse wrote the communiqué concerning absences during the ice storm which was distributed to employees (Exhibit E-1). At the EMC's request, Mr. Lajeunesse also wrote Exhibit E-2, which was intended to serve as an analytical document for assistance in managing the situation. This document and Exhibit E3 were submitted to the EMC on around January 15 or 16, 1998. The documents were approved in their current form by the EMC, which may have changed one or two words on the recommendation made by Mr. Lajeunesse.

According to Mr. Lajeunesse, section chiefs had not been formally delegated authority to grant special leave; however, the ministerial delegation instrument contains a specific clause which indicates they can be delegated such authority. During the EMC meeting of January 15 or 16, 1998, it was decided that section chiefs would be responsible for thoroughly reviewing each of the applications that would be submitted to them and, since management was aware of a problem with relativity, their decisions had to be approved by the directors.

Mr. Lajeunesse was mandated to meet with the section chiefs. He met with them in several groups and also met with representatives of the Public Service Alliance of Canada ("the Alliance") and the Institute to explain the management philosophy pertaining to applications for leave. Exhibit E-3 was used during the meeting with the section chiefs, to whom Mr. Lajeunesse submitted Exhibits E-2 and E-3, telling them that a communiqué would be released shortly for all employees.

Mr. Lajeunesse did not live in an affected area and had not been absent from work because of the ice storm.

In cross-examination, Mr. Lajeunesse stated that, to his knowledge, Mr. Kader had attended one of the meetings of section chiefs between January 16 and 19, 1998. Mr. Lajeunesse believed that the assistant directors had the authority to grant special leave.

#### Grievor's argument

Ms. Gosselin argued that Ms. Landry had erred in establishing a direct cause and effect relationship between Mr. Bouchard's leave applications and the fact he owned a sheep farm and had to devote a great deal of time to his sheep. Ms. Gosselin based his argument on the decision in *House* (Board file no. 166-2-10320), which, she told us, dealt with a clause identical to that which was at issue here. In *House (supra)*, a snow storm was involved, and the grievor worked at an outside job in his free time; he was a pilot and had been caught in a snow storm and had been unable to report for work. Ms. Gosselin referred us to the fifth paragraph of the third page:

*The request for special leave was denied by Mr. Stannix, the airport Manager, because Mr. House "had another vocation or occupation that created a risk that he could not perform the duties for which he was employed". He stated that despite the fact of his being stormbound it was the grievor who created the circumstances whereby he could not return to work. In addition, this was not the first time that a request for special leave that been made by him in similar circumstances. In fact, in June 1978 he was reprimanded that he has been "storm bound" twice before and he was told that he should not let it happen again.*

Ms. Gosselin noted that, in Exhibit S4f, Mr. Bouchard had been reproached for exactly the same thing, the fact of having a parallel occupation. Ms. Gosselin then asked that the third paragraph of page 5 in *House (supra)* be read:

*Counsel suggested that there are numerous cases which would indicate that Mr. House has not created the risk in the instant case. The cases also suggested that the employer must conduct an investigation and exercise discretion in coming to a decision in cases such as these.*

She also referred to the first paragraph of the seventh page to get to the crux of the matter:

*Counsel submitted that the "causa causans" in this case was not the storm, but rather the grievor's choice of a second "occupation" which exposed him to higher risks to be stormbound. It did not matter that the weather was clear when he left Goose Bay. His involvement in his second job put himself at risk with a potential for not being able to return. His previous experience of being stormbound should have taught him that the situation could recur. [...]*

Ms. Gosselin referred me to the conclusion and reasons for the decision in *House (supra)*, to the second and third paragraphs of the ninth page and the first paragraph of the eleventh and twelfth pages, which she considered fundamental, and noted that this grievance was allowed. Ms. Gosselin indicated that the wording of clause 17.14 of the collective agreement had to be read in conjunction with the text that appears on page 2 of the employer's policy (Exhibit E-1), which indicates that such leave is granted at the employer's discretion but shall not be unreasonably withheld. Ms. Gosselin stated that this was the link established by the employer in interpreting the clause.

Ms. Gosselin indicated that Mr. Bouchard's request was legitimate, that it stemmed from exceptional circumstances and had to be examined to determine whether he had committed an abuse. There was nothing in the evidence to indicate he was an abuser, and management had described his situation as [TRANSLATION] "pathetic".

This cause and effect distinction established by the adjudicator in *House (supra)* is fundamental. Mr. Bouchard's absence could not be attributed to negligence, to a personal failing or any other reason; the reason was the ice storm. Had it not been for the ice storm, the fact that Mr. Bouchard owns a sheep farm would never have affected his work.

Ms. Gosselin stated that this initial argument is the most important one, because the case rests on a basic misunderstanding, which she said should not be succumbed to. Ms. Gosselin alleged that Mr. Bouchard had had nothing to do with the storm, which had lasted three weeks, that there was no distinction between the first and third week of the ice storm and that the reasons for his absence had nothing to do with the sheep farm but with the power failure.

Ms. Gosselin then referred me to the decision in *Critch* (Board file no. 166-2-13526) and maintained that the employer had not taken into account all the circumstances behind the absence and that the application for special leave had been unreasonably withheld. The employer was obliged to examine and take into account all the reasons provided by the employee and all the circumstances that justified his absence. Ms. Gosselin referred to Exhibit S4f, in which, to justify the refusal, the employer invoked only one reason and made no reference to the fact that Mr. Bouchard had had to evacuate his home, take care of his daughter's family, and continue maintaining and monitoring his home, a situation which had lasted until January 23, 1998. Ms. Gosselin considered that the investigation in Mr. Bouchard's case had been rushed and settled hastily. She added that the reason the application had been denied, in the absence of a complete investigation, could only be considered unreasonable.

The decision in *House (supra)* deals with a case in which an employer misunderstood the cause for the absence, that is, the poor weather conditions. The decision in *Critch (supra)* recognized the employer's obligation to take into account all

the circumstances surrounding an application for leave. In Mr. Bouchard's case, Ms. Landry was absolutely incapable of saying what he could have done differently and had been tongue-tied when asked what she would have wanted him to do. It was not possible for Mr. Bouchard to return to work and no one could be asked to do the impossible.

Ms. Gosselin referred to paragraphs 4 and 6 of *Critch (supra)* and to Mr. Kader's testimony, [TRANSLATION] "as confused as it was", in which he reassured Mr. Bouchard by telling him to take care of his family, that that was the important thing. Mr. Bouchard claimed that Mr. Kader had told him that up to five days would be granted, whereas the latter could not recall having said that. Between one party who affirms and one who cannot remember, Ms. Gosselin argued that the right of evidence is in favour of the one who affirms. In any event, the five-day rule is found on page 2 of Exhibit E-3.

Mr. Bouchard had not invented the five days. There is a very strong probability that Mr. Kader had mentioned that up to five days would be granted. This question is very important, because Mr. Bouchard had relied on that statement; he had been misled. Why should he have to pay the price for this? Ms. Gosselin affirmed that up to five days would be no problem, was a minimum, in referring to pages 7 and 8, paragraphs 11 and 12 of the decision in *Critch (supra)*. Paragraph 12 dealt with the matter of the investigation. The circumstances surrounding Mr. Bouchard's application were never investigated. There was no investigation report. The only document adduced in evidence was the letter of March 31, 1998, which unjustly reduced the reasons for the absence to a single reason. If there was an investigation, it was a biased, incomplete, unjust investigation and the decision that came out of it was unjustified. Ms. Gosselin referred to the following sentence, in the fourteenth paragraph of the decision in *Critch (supra)* [TRANSLATION]: "It is agreed that snowstorms are beyond the control of employees". She also referred to paragraph 25:

[...] *the employer, once having addressed itself to all the prevailing factors, must act reasonably in resolving the legitimacy of the employee's request for special leave.* [...]

Ms. Gosselin also referred to the last page of Exhibit E5, which was an e-mail message from Ms. Babin. The decision not to accept a recommendation had to be supported by written reasons. The employer had thrown together the investigation,

had rubber-stamped the whole thing, and appropriate attention could not have been paid to each application with this type of procedure. Ms. Gosselin mentioned paragraph 28 of the decision in *Critch (supra)*, which stipulated that the manner in which the decision had been taken, as well as the reasons for the decision, could suffice to establish that special leave had been unreasonably withheld.

Ms. Gosselin then referred to the decision in *Bailey* (Board file no. 166-2-13150), which involved a case of illness in the family, and which reads as follows in paragraph 5:

*[...] She discussed this leave application with inspector Jackson, her supervisor. Inspector Jackson indicated to the witness that she would get the requested leave (5 days). However only one day of leave (special) was granted.*

and in paragraph 10:

*[...] Granting one day was tokenism. Mr. Dagger indicated that the grievor's request met all the elements of the principles set out by adjudicator David M. Beatty in H.D. Andrews (Board file: 166-2-1786). These principles state that the grievor: [...]:*

According to Ms. Gosselin, the granting of two days of special leave to Mr. Bouchard was tokenism. Ms. Gosselin cited paragraph 18 of the decision in *Bailey (supra)* [TRANSLATION]: "Special leave is to cover matters that arise suddenly, not for predictable events", and pointed out that the ice storm and its consequences were not predictable. Ms. Gosselin relied on paragraph 28 of the decision in *Bailey (supra)* to support the conclusion that Mr. Bouchard's grievance should be allowed.

Ms. Gosselin then referred to the decision in *Roberge* (Board file no. 166-2-15444), specifically the second-to-last paragraph:

*Under the circumstances of this case, the employer was being obstinate in not accepting Dr. Veillette's certificate and the other documents produced by Mr. Roberge in support of his leave application. I find this obstinacy arbitrary and unfair. [...]*

According to Ms. Gosselin, the employer persisted in refusing to see the fact that Mr. Bouchard was taking care of his sheep. This decision was thus arbitrary and abusive.



Lastly, Ms. Gosselin referred to the second-to-last page of the decision in *Deschamps* (Board file no. 466-H-170):

[...]

*I have concluded that Mr. Deschamps was led to believe by his supervisor, Mr. Kusters, that he would be given the whole day as leave with pay. Mr. Deschamps testified to this effect and his testimony remains unchallenged as Mr. Kusters did not testify. In view of Mr. Kusters' affirmation I find no fault with Mr. Deschamps' decision to rely on his supervisor's indication that he would be granted the day's leave.*

[...]

and the last page:

[...]

*[...] The question ought to have been considered on its merits rather than on the basis that in the past years Mr. Deschamps had been granted leave on similar occasions. Clearly the amount of leave required is directly related to the circumstances in which the grievor finds himself. A failure to weigh the request against the circumstances of the particular incident is a failure to properly exercise the discretion to grant leave.*

*I am of the view that the factors invoked by the employer to withhold the leave with pay are not reasonable in the circumstances.*

[...]

Ms. Gosselin maintained, first, that Mr. Bouchard was automatically entitled to two days of special leave and, second, that he had been led to believe he would be entitled to five additional days almost automatically. He had thus been misled. Third, the employer had recognized that, although Mr. Bouchard's case was pathetic, moving and impressive, it had not warranted the granting of special leave: [TRANSLATION] "If a degree of justice still exists, the grievance must be allowed."

#### Employer's argument

Mr. Arcelin argued there was no evidence on file that would indicate the employer had exercised its discretion inappropriately. The wording of clause 17.14 of

the collective agreement had to be adhered to. The employer could grant paid leave at its discretion, but two key elements came into play: first, the leave had to be applied for purposes other than those specified in the collective agreement and, second, circumstances not directly attributable to the employee had to prevent him from reporting for duty.

Mr. Arcelin maintained there was a distinction between the circumstances of Mr. Bouchard's case and those of the cases cited by Ms. Gosselin. First, there was the employer's discretion, which had been exercised appropriately, and the circumstances that had prevented Mr. Bouchard from reporting for work, which could be attributed to him. It was sufficient to read Exhibit S4e to see that Mr. Bouchard had a long way to travel between his home, his daughter's home and his sheep farm. Mr. Arcelin maintained that Mr. Bouchard could have reported for work since it had been demonstrated that his home was 45 minutes from his work, 25 minutes from his daughter's house and between 20 and 30 minutes from his farm. Mr. Bouchard worked the night shift, and Exhibits S4c and S4e clearly described the reasons submitted to obtain the special leave in question. It was shown that Mr. Bouchard had made no effort to report for work and his testimony leaves no doubt about this.

Mr. Bouchard could have complied with his statutory liability to take care of the animals in many ways and, if he had been more farsighted, like Mr. and Ms. Landry, the Breaults and the Pouparts, he would have bought a generator.

With regard to the fact that Ahmad Kader had misled Mr. Bouchard, Mr. Arcelin indicated that Mr. Kader's testimony contradicted that of Mr. Bouchard with regard to the fact that he had told the latter he would have five days of leave with no problem. The grievor's submissions do not stand up, because they contradict the oral evidence. Mr. Bouchard may well have believed he was entitled to five days of special leave because of Exhibit E-1, since it had been proven he had consulted this document before submitting his application for leave to the employer. It is plausible that the information had been found in these documents. In addition, as a union representative, Mr. Bouchard was aware of the rules that applied to the granting of special leave.

Mr. Arcelin raised as a crucial point concerning Exhibit S4a the fact that it had not been adduced in evidence that the fact Ms. Babin had granted the special leave applied for by Mr. Bouchard for January 9 had been communicated to him. It had been clearly established during Mr. Bouchard's questioning that the leave had been denied and that he had subsequently submitted a second application (Exhibit S4d) to cover January 9, 1998; this was the only evidence that dealt with whether or not this leave had been accepted or denied. There was no doubt that the leave had been denied.

Mr. Arcelin then commented in order on the evidence raised by the grievor. First, in terms of the causal relationship, the decision in *House (supra)* is very different from the instant case; the activity of the pilot who had been caught because of weather conditions was different from Mr. Bouchard's situation. In *House (supra)*, the decision indicates on page 11 that an employee must exercise "foresight" and "care". Mr. Bouchard exercised neither foresight nor care in the circumstances. Page 12 refers to abuse. Mr. Arcelin argued that the issue was whether or not there had been abuse in Mr. Bouchard's case.

Concerning the argument that the collective agreement is indissociable from Exhibit E-1, consideration must be paid to the fact that Exhibit E-1 was intended for employees in general and that the Department of Veterans Affairs deals with two different bargaining agents and two different collective agreements. In the instant case, it is the wording of the Institute's collective agreement that must be looked at.

In response to Ms. Gosselin's argument that the employer had been mistaken about the cause of Mr. Bouchard's absence, Mr. Arcelin pointed out that there was no evidence of this. The employer explained, to the best of its knowledge, the procedure for granting and denying special leave. It must not be forgotten that the Sainte-Anne de Bellevue Hospital was in an emergency situation during this period. In analyzing all these circumstances, the employer was diligent; it demonstrated flexibility and fairness in relation to the circumstances that applied in each case.

Mr. Arcelin referred to paragraph 25 of page 16 of the decision in *Critch (supra)*, which refers to the primary factors to be considered when special leave is applied for. The employer has no obligation to take into account all the circumstances surrounding an application for leave, but only the main circumstances. With regard to

Exhibit S4f, Ms. Landry explained the reasons for her decision, the main one being Mr. Bouchard's farming operation.

In general, the case law submitted by Ms. Gosselin refers to collective agreements of the Alliance, which are different from those of the Institute. Concerning the argument that the granting of two days of special leave was simply tokenism, Mr. Arcelin maintained that the evidence did not show this: Ms. Landry's testimony was very conclusive.

Mr. Arcelin agreed with the principle set out on page 11 of the decision in *Roberge (supra)*, whereby "each application for leave must be considered on its own merits."

Mr. Arcelin noted that Mr. Bouchard was co-owner of a business and asked whether the employer had to assume the cost of Mr. Bouchard's decisions and those of his stepson in order to avoid disciplinary measures for the latter. Mr. Arcelin said that the answer was no. Mr. Arcelin recalled that Mr. Bouchard's spouse had obtained three days of special leave after everything had been analyzed in conjunction with Mr. Bouchard's application for leave, and that their daughter had decided to report for work in order to avoid being dismissed. Should the employer or the taxpayers have to assume the costs associated with these decisions?

Mr. Arcelin filed five examples of case law. The first was *Tessier* (Board file no. 166-2-14199), to which he said the same collective agreement applied. He referred to the bottom of page 15 and to page 16. He then referred to page 11 of the decision in *Gale* (Board file no. 166-2-14631). Mr. Arcelin stated that the evidence showed that Mr. Bouchard had made no effort to report for work. Mr. Arcelin submitted the decision in *Cantin* (Board file no. 166-2-10291) and maintained that the principles set out on page 9 genuinely applied to Mr. Bouchard's case. According to Mr. Arcelin, an adjudicator does not have the right to intervene in the exercise of the employer's discretion if there is no evidence that the decision was totally unreasonable. Mr. Arcelin also referred to page 9 of the decision in *Martin and Hamel* (Board file nos. 166-2-14835 and 166-2-14836). Lastly, he referred to page 18 of the decision in *Chutter* (Board file no. 166-2-15160), in which the decision not to use his mother-in-law's services was directly attributable to the grievor. Mr. Arcelin alleged that

Mr. Bouchard's family choices were directly attributable to him and that, for this reason, the grievance must be dismissed.

Reasons for the decision

Clause 17.14 of the collective agreement, entitled "*Other Leave with Pay*", reads as follows:

*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.*

The first condition for this clause to apply is that the leave be for "purposes other than those specified in this Agreement". If the grievor's absence could be subject to an application under another article, such as article 16 on sick leave, clause 17.14 could not apply.

The second condition, since this was not a case of military or civil defence training, is the existence of an emergency affecting the community or place of work. The third condition is that "circumstances not directly attributable to the employee prevent his reporting for duty."

The evidence showed that Mr. Bouchard was facing an emergency when he had to evacuate his house on January 7, 1998 and when his daughter's house, where he had taken refuge, lost power that same evening. On January 8, 1998, Mr. Bouchard had to organize things at his house, his daughter's house and his sheep farm, because the power outage caused by the ice storm had affected these three places. Mr. Bouchard described how he spent his time starting on January 9, 1998 from 7:30 a.m. to 9:30 p.m., which involved monitoring his house, heating his daughter's house and taking care of his sheep. Taking care of his sheep took seven to eight hours of his time every day. Mr. Bouchard admitted to the employer that, had it not been for the time required to take care of his sheep, he could have had enough rest to permit him to work his night shift.

The question then becomes whether or not taking care of the sheep was a circumstance directly attributable to Mr. Bouchard within the meaning of clause 17.14

of the collective agreement. The burden of proof was on the grievor: he had to prove he had no choice but to spend seven to eight hours a day taking care of his sheep. He did not discharge the burden of proof. Mr. Bouchard filed article 55.9.2 of the *Animal Health Protection Act (supra)* but did not file any evidence on the biological requirements of sheep. Could the sheep have lived by drinking only once a day, or less? Mr. Bouchard did not provide any evidence on this subject, other than to say that the sheep had spent 36 hours without drinking at the beginning of the power failure. Mr. Bouchard gave no indication that these 36 hours without drinking had had an adverse effect on the sheep, or that he would have exposed himself to prosecution under the *Animal Health Protection Act*. Rather, Mr. Bouchard suggested that he normally took care of his sheep twice a day and that this operation took a half hour to three-quarters of an hour each time. It therefore appears that Mr. Bouchard wanted to continue his normal operations, but without proving to us these were necessary to respond to the biological requirements of the sheep, rather than to meet the optimal conditions for obtaining the best performance from his livestock. In addition, the evidence showed that Mr. Bouchard's son-in-law was co-owner of the sheep, that he worked from 6:00 a.m. to 11:00 a.m. and from 5:00 p.m. to 8:00 p.m. and that the prohibition from working for health reasons had ended on January 12, 1998. Mr. Bouchard and his family knew definitely on January 17, 1998 that the power failure would last for some weeks still, since they had been informed of this in the January 17, 1998 issue of the *1<sup>ère</sup> Édition* newspaper, which had reported on this in an article filed as Exhibit S2. Mr. Bouchard testified that the cost of a generator was exorbitant but did not describe any efforts he could have made to obtain other forms of lighting for the farm, which would have enabled him to share with his son-in-law the job of feeding the sheep and giving them water earlier, so that Mr. Bouchard could have taken care of them on the way to or from his job, while his son-in-law could have done so before starting his afternoon shift, if it was truly essential that the sheep drink twice a day. Mr. Bouchard said he had not found anyone to do this work but did not present any evidence of efforts made to hire staff to take care of his business in his place or in his son-in-law's place. The decision to do the work himself is attributable to Mr. Bouchard in the absence of evidence that neither his son-in-law nor anyone else could have done so.

The emergency that affected Mr. Bouchard's work place and residence was not the direct cause of his absence. Mr. Bouchard's absence was due to his state of

excessive fatigue further to the work he was doing during the day because of the power failure which had affected his home and his sheep farm. The employer recognized in Exhibit S4f that an application for sick leave would be accepted if Mr. Bouchard so requested. The evidence showed that Mr. Bouchard could not work a night shift after a long and stressful day of hard labour. I thus conclude that it was not the ice storm that prevented Mr. Bouchard from reporting for work but his inability to do so after the days he described.

Article 16 of the collective agreement deals with sick leave when an employee is incapable of performing his duties because of illness or injury. Clause 17.14 clearly stipulates that it pertains to "purposes other than those specified in this Agreement". However, sick leave is covered in the collective agreement. Special leave or "other leave with pay" thus does not apply to Mr. Bouchard's situation.

I have carefully read the decisions submitted by the representatives of the parties and do not find them relevant to this case, since they all pertain to collective agreements whose wording differs from the one before me.

Concerning the argument that Mr. Bouchard had acted in accordance with what he had been told by his supervisor, who had told him to take care of his family and said that he would be entitled to five days of special leave, I find the evidence inconclusive. Rather, it reveals that the employer had demonstrated understanding and generosity towards Mr. Bouchard and the employees affected by the consequences of the ice storm by allowing them to be absent from work without fear of losing their jobs and by accepting as justified the actions which they had been taking outside their hours of work and which had affected their physical ability to report for work. Ahmad Kader categorically denied having had the authority to approve special leave and did not remember having told Mr. Bouchard he would be entitled to five days of paid leave. I consider that the evidence filed by Mr. Bouchard to that effect is inconclusive. I conclude that Mr. Bouchard probably misunderstood his supervisor's words. These words were probably intended to reassure Mr. Bouchard that his job was not in jeopardy and that the employer would not demand that he choose between his duty towards his family and his duty as head nursing assistant; they probably did not constitute a promise that he would have paid leave for the entire period of the power failure or for a minimum of five days.

Concerning the investigation carried out by the employer, I do not need to comment on this subject, because Mr. Bouchard had the burden of proving that clause 17.14 of the collective agreement applied to the situation for which he had applied for leave and he did not discharge that burden. The grievance is thus dismissed.

**Evelyne Henry,  
Deputy Chairperson.**

OTTAWA, May 20, 1999.

Certified true translation

Serge Lareau