

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

GERALD PARISIEN

Grievor

and

TREASURY BOARD
(Public Works and Government Services Canada)

Employer

Before: [Rosemary Vondette Simpson, Board Member](#)

For the Grievor: [David Landry, Public Service Alliance of Canada](#)

For the Employer: [Jock Climie, Counsel, and Asha Kurrin, Student-at-Law](#)

Heard at Ottawa, Ontario,
March 29 to April 1 and April 21, 1999.

DECISION

Gerald Parisien, an employee of Public Works and Government Services Canada, at the MAM-10 classification level, grieved his 20-day suspension without pay for his alleged submission of false mileage claims. The letter of discipline dated October 14, 1997 (Exhibit E-1) reads as follows:

This is further to the investigation conducted by the Fraud Awareness and Investigations Directorate and my subsequent administrative review of this situation into allegations of fraudulent travel claims in January and February 1993.

The investigation revealed that you submitted fraudulent travel expenses claims for use of a private vehicle for instances where you had the use of a departmental vehicle. I have taken into consideration the result of the Ontario Court judicial proceedings regarding these events and I have reviewed the information provided by you and your counsel, Ms. Terri H. Semanik. At the request of your counsel, the department did not take action until the disposition of the charges against you.

I have concluded that you deliberately submitted fraudulent travel claims on several occasions, amounting to several hundred dollars.

You actions constitute a very serious misconduct demonstrating a lack of integrity which is required in a position of responsibility such as yours. However, considering the time that has elapsed since these events were discovered and your lengthy service with our department, I have decided to limit disciplinary action to a suspension.

Therefore, by virtue of Section 50 of the Public Service Terms and Conditions of Employment Regulations and with the authority delegated to me by the Deputy Minister, you are suspended from your duties without pay for a period of 20 working days. Your supervisor will determine the specific days. During the period of your suspension, you are prohibited from entering the Department's property, in particular your normal place of work. If necessary, you may contact your supervisor, Mr. Len Bozzi at 991-5801 on any matter arising during the period of your suspension.

Please be advised that any repetition of such action in the future may be subject to more severe disciplinary action which could include termination of employment from the Public Service.

A copy of this letter will be placed on your personal file.

Summary of Evidence

The mileage claims concern six dates: January 11, 1993, January 19, 1993, January 25, 1993, January 29, 1993, February 1, 1993 and February 2, 1993. For these dates, the grievor claims that he used his private motor vehicle for travel to all the locations south of Ottawa where his time sheets indicate that he worked during the day. There is no dispute by the grievor that he used a government vehicle, either a white van or a Cavalier car, to travel to and from work in these locations. The grievor's position is that he had to use his own car to travel to all these locations as well on the same day. He told no one in management before or at the time that he was making these extra trips. It was on March 1, 1993 that he spoke to his supervisor, Mr. Kaufman, about it.

In his evidence, Mr. Parisien offered an explanation as to why he had to use his own car to drive back to the locations where he was working on the dates in question.

(1) On January 11, 1993, Mr. Parisien was working in Johnstown and in Brockville at the federal building and rode to and from work in a government vehicle driven by Tom East, a member of his crew. When he returned to the office late, maybe around 8:30 p.m., he realized his tools were missing.

He decided to use his own car to return for them. He stated that he became aware that evening that he had had a "trouble call" from Johnstown. There was a heating problem in the federal premises. He is not sure exactly how this "trouble call" came to his attention. It was either a note in his pigeonhole or on his voice-mail. It did not come from the central registry, the "trouble call" desk. The reason there is no record of it is that it came to him personally. Mr. Parisien stated that not all such calls came through the desk. He did not know what time of the day the "trouble call" came in from Johnstown. It could have been hours before. When he walked in to fix it in Johnstown, people indicated that they were cold.

Mr. Parisien stated that he drove to Johnstown, solved the problem by flipping the breaker switch and drove on to Brockville to pick up his tools. When asked why he would go to a trouble call without his tools, instead of picking them up first, he indicated that he felt that the problem was probably something simple like a breaker. He did not explain in cross-examination why he had not simply called someone in

Johnstown to suggest that he try flipping the breakers instead of driving all the way there himself in his own car. Mr. Parisien admitted in his cross-examination that, as there was a list of local contractors at each facility who could be called and used in case of emergency, it was only as a result of a preference for his personal service that he would be called in from Ottawa.

(2) In relation to the disputed mileage claim for January 19, 1993, Mr. Parisien had dispatched a Mr. Hudon on January 18, 1993, who was a service man, to deal with a problem in Johnstown. On the following day, Mr. Parisien stated that another call was received indicating the smell of oil. All other service people had been dispatched. Based on his past experience, Mr. Parisien collected some absorbent material, some oil deodorizer and a box of materials that was to be delivered there and set out for Johnstown in the government car, the Cavalier, at about 8:00 a.m.

The box and materials he was transporting would fit easily in a car as he described them. However, since he was transporting materials, he felt justified in using the government car, the Cavalier. He purchased gas in Portland (Exhibit E-12). He was not long in Portland, less than half an hour, and he drove back to Ottawa in the morning. While in Ottawa, he stated that he dropped off the government Cavalier and switched to his own car because he now considered that, according to Mr. Kaufman's instructions, he was not entitled to drive it as he was not carrying supplies and did not consider himself "personnel". According to the grievor, Mr. Kaufman had told him that government vehicles were to be used for the transportation of supplies and personnel. That was the reason he drove back to Ottawa to switch cars.

In cross-examination, it was put to the grievor that the mileage on the log of the Cavalier that day was more consistent with the grievor's having driven around in it all day instead of using his own car at all. The grievor indicated that he could not account for the mileage exactly. He might have had some running around to do in the Cavalier, nothing major, just short trips. He insisted that he came back to Ottawa to switch to his own car. The Cavalier was running well and available to him.

(3) On January 25, 1993, the third incident, Mr. Parisien had driven in the government Cavalier with an electrician on his crew, Archie Watson. He and Mr. Watson and a third person drove to a number of sites in order to do estimates for

a bid. Some of the locations were closed and someone had to be summoned to bring a key to open the gates for them. Mr. Parisien stated that he and Archie Watson had worked until 8:00 p.m. that day. He stated that, when they went back to the shop in Ottawa, he and Mr. Watson started working separately on the estimate. It was then Mr. Parisien noticed that he was missing some information about the grounding of the systems in the locations and decided to drive back by himself in his own car to all three locations to check if the electrical systems were properly grounded in these locations. In his evidence, Mr. Watson indicated that he did not go into the shop that evening, but drove straight home from the job.

In cross-examination, when asked why he had told no one of this, Mr. Parisien stated that he had told Archie Watson at the shop that night. When cross-examined on this point, he could not account for Mr. Watson's denial of all knowledge of Mr. Parisien's trip back in his own car to check the sites. Also when asked why he had never mentioned before in the investigation or even at Criminal Court that he had told Mr. Watson, he admitted "that's right I never mentioned it before". He was not sure when he returned from this trip. It could have been 10:00, 10:30 or 11:00 p.m.

Mr. Parisien agreed that he had not claimed overtime for this trip.

The grievor submitted pictures taken after the fact to show that, at two of the locations that were closed in the winter, the grounding cables were outside and visible to him. The third location, Cornwall, was open 24 hours per day. He also testified that he transferred the Cavalier to a Mr. Larocque who drove it to Pembroke the next day. When he and Mr. Larocque parted it was at least midnight. Mr. Parisien submitted no overtime claim for this evening trip back to Cornwall, Brockville and Gananoque.

(4) On January 29, 1993, the fourth incident in question, Mr. Parisien worked in Cornwall for eight hours and claimed eight hours of overtime. On that day, Mr. Parisien traveled in a white government van to his job in Cornwall. He did not like the way the van was running. The engine was "missing" and he needed a boost to get it started. There appeared to be a problem with the battery.

The grievor stated that he previously told Mr. Kaufman that he would not drive the van at night. This, Mr. Kaufman in his evidence denied, claiming that this was never an issue as he had ordered the van returned to Budget and thought it had been returned.

Mr. Parisien stated that in order to avoid driving the van after dark, he took the van to work with a load of materials for the job in Cornwall in the morning. Then, sometime during the day, he drove back to Ottawa to pick up his own car and drove it back to Cornwall so that he could drive it home after dark from Cornwall instead of having to drive the white van.

(5) The fifth and sixth days in question were February 1 and 2, 1993. On those days, Mr. Parisien, following the same pattern as he had on January 29, stated that he returned the white van to Ottawa sometime during the day and returned to the work site in Brockville in his own car. Mr. Parisien admitted that it would take him at least two hours of winter driving to do this. Mr. Parisien stated that he was unable to obtain the mileage record of the white van because it had been returned to the rental agency.

He did not explore the alternative possibilities of ordering Mr. Watson to drive in tandem with him to lend him support in case he had trouble with the van. In spite of his fears of driving the van at night, it had never in fact stalled when he was driving it. On the days that he was working with Archie Watson, it was Mr. Watson's evidence that he had no recollection of Mr. Parisien's leaving him alone at the work site on those occasions when Mr. Parisien claimed to have returned to Ottawa.

When asked in cross-examination about a gas receipt for the white van, for one of the days he worked at Brockville, at 4:19 p.m. at an Island Park Drive gas station, Mr. Parisien stated that he drove to Island Park Drive for gas, miles beyond his shop at Confederation Heights, and past many other garages because that garage did not charge for labour on the installation of a tail light which needed repair.

In cross-examination, Mr. Parisien was asked if he lived in Aylmer. He replied that he did and admitted that a common route to Aylmer was across the Champlain Bridge which can be reached via Island Park Drive. Mr. Parisien denied the suggestion that it was a more likely scenario that, when he gassed up at 4:19 p.m. on Island Park Drive, he was on his way home from work instead of planning to go back to the

Confederation Heights shop on the opposite side of Ottawa to pick up his own car and drive back to Brockville. He claimed four hours of overtime in addition to his regular eight hours of work.

Mr. Parisien did not claim overtime for any of these trips that he took in his own vehicle. Mr. Parisien stated that he considered himself to be an honest man. He admitted that he had a criminal record consisting of three convictions. He also admitted that he was driving while under license suspension in January and February 1993.

To corroborate his evidence, Mr. Parisien called as a witness Anna Bing. Ms. Bing is a 24-year employee of Canada Post. She was working at Brockville in 1993. She recalls a Public Works employee who had been working during the day on the premises calling before the end of her shift that day to indicate he would like to retrieve his tool box. She recalled that this person arrived at the building before the end of the shift with little time to spare. Although an affidavit she submitted claimed that the man who called was phoning from Ottawa, in her testimony she stated that her impression was that he was somewhere between Brockville and Ottawa when he called. She did not know the time her shift ended that day. She did not recognize the grievor.

Witnesses called by the employer were Archie Watson, Scott Campbell, Jean Quevillon and Hank van der Linde. Greg Kaufman was called in reply.

Mr. Watson, after a 20-year career at Public Works, is now an employee of Brookfield Lepage. In January and February 1993, Mr. Watson worked as an electrician at the EIM-10 level for the Department of Public Works; he was part of the rural crew which Mr. Parisien supervised.

On January 25, 1993, he claimed overtime in accordance with the time sheet he submitted. He was told what overtime hours to claim by Mr. Parisien. After the regular hours they were on overtime until they arrived back at the shop. Mr. Watson stated that, if they got the job done early, they still put in for overtime. Although he was working with Mr. Parisien, Mr. Parisien never mentioned to him having to go back for tools on the night in question. Mr. Watson stated that he was a qualified electrician and Mr. Parisien was not. There was no need for anyone to make a second trip to

Brockville, Cornwall and Gananoque to check the ground cables. Mr. Parisien, the customs officer who was unlocking and showing them the sites and Mr. Watson, all three came back to Ottawa together in the same car, the Cavalier. At that time, everything that they had to verify in the “specs” for the estimate was done. Everything that needed to be done was in the “specs”.

Checking the ground cables would be work assigned to him as the electrician. If Mr. Parisien went back around to all the sites that night in his own car to check the ground cables he said nothing to him about it.

On January 29, 1993, Mr. Parisien did not express any worries to him about the white van or about driving it at night. When asked if Mr. Parisien had left for a couple of hours during which he might have gone back to Ottawa to get his own car, Mr. Watson stated that to his knowledge Mr. Parisien did not leave the work site. Since they were working in the same room he would have noticed it.

Similarly, on February 1, he and Mr. Parisien were working in the same room in the location in Brockville. Two people were needed to do the work as pulling of wires was involved. Nothing was said to him by Mr. Parisien about not wanting to drive the van at night. Nor did he recall Mr. Parisien disappearing for several hours in order to drive back to Ottawa to get his own car. Mr. Watson stated quite emphatically that he would have noticed this. He and Mr. Parisien left the work site together and when they did so the work for the day was done. It would make no sense for Mr. Parisien to try to work alone without him. Mr. Watson went straight home in his assigned government truck. He assumed Mr. Parisien was driving the van he came in. In cross-examination, he stated that he could not remember for sure if Mr. Parisien was driving the white van.

Similarly, on February 2, Mr. Watson does not recall Mr. Parisien expressing any worries to him about the van, nor does he recall his being absent for several hours during the day. He does recall that he and Mr. Parisien finished the job and left the site at the same time.

Scott Campbell, who is a District Chief, testified. He referred to Mr. Parisien’s time sheets and expense claims in evidence; Mr. Parisien submitted a claim for use of his private car as follows:

January 11, 1993 - 298 kilometers

January 19, 1993 - 248 kilometers

January 25, 1993 - 468 kilometers

January 29, 1993 - 288 kilometers

February 1, 1993 - 261 kilometers

February 2, 1993 - 316 kilometers

Mr. Kaufman, Mr. Parisien's supervisor, brought to Mr. Campbell's attention the fact that, although Mr. Parisien had claimed use of his private vehicle, some gas receipts had turned up which indicated that he had used a government vehicle in the same locations. Mr. Campbell then told Mr. Kaufman to take the matter to Internal Affairs for investigation.

Jean Quevillon, Senior Staff Relations Officer, has worked for the Department of Public Works since 1993. The draft report of the investigation into Mr. Parisien's conduct was shown to Mr. Parisien's lawyer in the fall of 1995. Mr. Parisien and his lawyer provided comments.

Mr. Quevillon reviewed three gas receipts in evidence: (1) a receipt signed by Mr. Parisien in Gananoque on January 25. It was issued for the government Cavalier; (2) a receipt indicating Mr. Parisien had used the Cavalier in Portland on January 19; (3) a receipt from Island Park Esso issued at 4.19 in the afternoon on February 1 for gas and a light.

Hank van der Linde, Director General of Property and Facilities Management since October 1996, gave evidence. Using a map he set out the relevant distances between towns referred to in Mr. Parisien's travel claims as follows:

Ottawa to Johnstown - 75 (K)

Johnstown to Brockville - 25 (K)

Brockville to Gananoque - 50 (K)

Ottawa to Cornwall - 100 or 105 (K)

Cornwall to Brockville - 96 (K)

Cornwall to Johnstown - 71 (K)

Ottawa to Portland - 93 (K)

Johnstown to Portland - 84 (K)

Gananoque to Ottawa - 140 or 150 (K)

Although it is not part of the disciplinary action taken against Mr. Parisien, there were large and unaccounted for discrepancies in the claims submitted by Mr. Parisien and the accepted distances to the places he travelled.

In examining the records regarding Mr. Parisien's claim that he received a trouble call from Johnstown, Mr. van der Linde found no record of this in the trouble call log (Exhibit E-13).

Mr. van der Linde also noted that Mr. Parisien never claimed overtime for any of the extra travel and time involved in making these duplicate trips in his private vehicle. In cross-examination, Mr. van der Linde was asked why it took 29 months before the grievor was informed of the investigation. This delay in informing Mr. Parisien was at the insistence of the RCMP, said Mr. van der Linde, in order to avoid prejudicing the criminal investigation. After that the grievor and his lawyer asked that the employer delay proceeding until the criminal trial was over. Had it not been for these delays, Mr. van der Linde would have considered discharge to be the appropriate penalty for Mr. Parisien's misconduct.

The transcripts of Mr. Parisien's criminal trial proceeding were put in evidence by consent. After investigation by the RCMP, criminal charges were laid against Mr. Parisien. He was tried and convicted in Criminal Court. Later his conviction was quashed on the ground that the charge had not been laid within the prescribed time limits.

Mr. Kaufman, Mr. Parisien's supervisor, now retired, testified that while Mr. Parisien was not to use government vehicles for personal use, the witness always actively encouraged the use of government vehicles whenever possible for work-related travel. This was part of his standing orders. He would never put obstacles in the way of an employee's proper use of a government vehicle.

Employer's Argument

Counsel for the employer put forward the position that, despite the fact that Mr. Parisien's criminal conviction had been quashed, I should have regard for the fact that a judge had found him guilty beyond a reasonable doubt for the same incidents of fraud for which the employer had disciplined him. The employer should therefore not have to reprove the facts of the case. Nevertheless, the employer has proven the six incidents of fraud in question.

In all six cases, the grievor's pattern was to travel to various locations in the Ottawa area for work assignments in a government vehicle. Later, he submitted travel claims for mileage for the alleged use of his private vehicle to travel to the same locations where he had gone to work in a government vehicle.

He urged me to make an adverse finding on the grievor's credibility. He cited a number of examples in the grievor's evidence in support of this request. The appropriateness of the penalty was argued and I was urged to dismiss the grievance.

Grievor's Argument

Mr. Landry reviewed the travel on the six days in question and reiterated Mr. Parisien's evidence. It was because of Mr. Kaufman's unreasonable orders to Mr. Parisien that the van was not fixed as well as his orders to Mr. Parisien that the Cavalier was not to be used unless it was transporting materials or personnel which resulted in a situation which forced Mr. Parisien to use his private vehicle on the dates in question.

The grievor's representative also argued the prejudice to Mr. Parisien because of the long delay in informing him that he was being investigated as well as the delay in disciplining Mr. Parisien. Records, such as those of the white van, might have been

obtainable if he had learned earlier that he was in trouble. He urged upon me the credibility of the grievor.

Reasons for Decision

The grievor submitted travel claims for mileage for his personal vehicle which he says he used for various reasons to return to the same locations he had earlier travelled to and returned from in a government vehicle on the same day.

Were his expense claims fraudulent? They were fraudulent if he did not take those trips in his car. On the face of the documents and evidence presented, it would appear that the employer has made out a *prima facie* case of fraud. On the face of the documents, it appears that Mr. Parisien has claimed the use of his personal vehicle to travel to and from various locations that he was known to have driven to in a government vehicle in the morning and was known to have driven back from sometime during the day in the government vehicle. On the face of it, since it became known that Mr. Parisien used a government vehicle to travel to and from work at these locations, his claim that he used his car appears to be false.

When confronted with mileage claims which would indicate that he used his own private car to report to those same locations and gas receipts which showed that on three occasions he used a government vehicle, Mr. Parisien attempted to explain this away by saying that he had to drive back to the same locations in his private vehicle either during the day or at night. There were one of two government vehicles involved on those six days in question – a white van and a Cavalier car. On the days when he was using the white van, he stated that he had to use his own car even though the van was available to him because he was having problems with the van and refused to drive it after dark. The Cavalier he refused to drive even when available to him because he claimed his supervisor, Mr. Kaufman, had told him that the Cavalier should only be used for the transportation of personnel or materials. Mr. Parisien chose to ignore the obvious meaning of this order which was that the car was not to be used for personal use. Proper use of it would have included the transportation of material and personnel and, if Mr. Parisien was driving in work-related matters, he was “personnel” and had a right and obligation to use the government vehicle. Mr. Kaufman flatly denied ever telling Mr. Parisien he was not to use the Cavalier when he would be

driving alone in it. Mr. Kaufman was quite outraged that Mr. Parisien would say this when it was contrary to his standing orders which were that government vehicles were to be used whenever possible.

I accept the evidence of Mr. Kaufman over that of Mr. Parisien with regard to the policy that government vehicles were to be used whenever possible and that the use of an employee's private motor vehicle was to be avoided whenever it was possible to do so. I am satisfied that Mr. Parisien was aware of this policy. Comparing the evidence of Mr. Kaufman and Mr. Parisien, I prefer the evidence of Mr. Kaufman on any point where there is a difference in their evidence. Mr. Kaufman came across as a forthright witness who was irate at being accused by Mr. Parisien of putting obstacles in the way of his using a government vehicle for job-related duties, thus forcing Mr. Parisien to use his private car.

Mr. Parisien's claim that he used his private vehicle because he had been forbidden by Mr. Kaufman to use a government vehicle for his work except when he was transporting material in it or transporting other workers is totally incredible and firmly denied by Mr. Kaufman. In addition to Mr. Kaufman's credibility and Mr. Parisien's lack of it in giving evidence on this point, it makes no sense at all when it was the Department's policy to encourage the use of its vehicles for work and discourage the use of private vehicles to avoid expense.

Here, as set out in the evidence of Mr. Parisien, Mr. Parisien used a government vehicle on certain dates to go to work and come back. He claimed that he had to use his private motor vehicle to return often in the dead of night for the flimsiest of reasons. Mr. Parisien's story is incredible and I find it a total fabrication.

When Mr. Parisien decided to submit these mileage claims he saw an opportunity for making extra cash. He did not foresee that some receipts for gas would show up which established that he used a government vehicle on those days and which would spark this whole investigation.

The evidence of Anna Bing was not particularly helpful. She did not know times or dates and was unable to recognize the grievor. She was also confused on where the person who called was calling from. Nothing hinges on the fact that the mileage

claims were approved by management. It was not known at the time that they were fraudulent.

I also must address the long delays in this case. Unquestionably, the delay in informing Mr. Parisien and in imposing discipline is unfair to him; however, since the employer was required by the RCMP not to alert Mr. Parisien in order not to jeopardize their own criminal investigation, the employer had no choice at the time. Their only choice was whether or not to proceed with discipline when they did. I do not believe it affected Mr. Parisien as far as proof of his case is concerned when the employer chose to proceed with discipline as soon as it could. They were right to do so considering the seriousness of Mr. Parisien's misconduct. It would be a grave miscarriage of justice for Mr. Parisien to escape without a penalty. Over the next several years after discipline was imposed, it was Mr. Parisien's own lawyers who requested delays so that the criminal trial could proceed unimpeded. Since it was admitted by the employer that Mr. Parisien used the white van on the days in question, obtaining records to show that Mr. Parisien used the van to drive to the work locations would prove nothing.

I find that Mr. Parisien submitted fraudulent mileage claims for which the employer was justified in imposing some discipline. In fact, the employer imposed a lesser disciplinary penalty than it would otherwise have done because of the special circumstances of the case. Having considered all the evidence adduced, as well as the submissions of the parties, I believe that the penalty of a 20-day suspension is appropriate under the circumstances.

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

**Rosemary Vondette Simpson,
Board Member**

OTTAWA, August 20, 1999.