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**File:** 166-2-29494

**Citation:** 2000 PSSRB 51



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**PIERRE LADOUCEUR**

Grievor

and

**TREASURY BOARD  
(National Defence)**

Employer

***Before:*** Joseph W. Potter, Deputy Chairperson

***For the Grievor:*** Lyette Babin, Professional Institute of the Public  
Service of Canada

***For the Employer:*** Martine Benoit, Student-at-Law

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Heard at Ottawa, Ontario,  
May 8, 2000.

## DECISION

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### Introduction

[1] On July 21, 1999, Pierre Ladouceur, a level 4 defence scientist (DS-04), filed a grievance concerning management's decision to schedule some of his annual leave. His bargaining agent, the Professional Institute of the Public Service of Canada (PIPSC), argued that this action violates Article 15 of the Research Group collective agreement (Codes: 212, 216, 225 and 229) (Exhibit G-1).

[2] In his grievance, Mr. Ladouceur requested that the total annual leave entitlement which he was required to take should be credited to him, but the PIPSC amended this at adjudication and requested that only 10 days annual leave credits be restored to Mr. Ladouceur instead.

[3] A request was made, by the grievor's representative, for the exclusion of witnesses. This request was granted. Dr. Abe Jesion, a defence scientist and union steward, remained in the room as Mr. Ladouceur testified. Dr. Jesion was then called to testify and Ms. Benoit objected, on the basis that he was present throughout Mr. Ladouceur's testimony. I indicated I would determine the weight that should be accorded Dr. Jesion's testimony, but the fact he was present in the room should not bar him from testifying.

### Background

[4] The facts of the case can be stated fairly succinctly. Mr. Ladouceur has been employed with the Department of National Defence (DND) since 1969 and at the time he filed his grievance, he was entitled to six weeks of annual leave per year. He worked in the War Games area (Exhibit E-2), providing contract services to clients.

[5] Prior to 1999, the departmental practice was to allow employees to take their annual leave at times that suited their present situation, as long as it did not interfere with operational requirements. They were allowed to carry over unused annual leave credits from year to year.

[6] In 1995, Mr. Ladouceur had 296.5 hours of unused vacation leave carried over from previous years (Exhibit E-1(E)). In 1996, he had 346 hours carried over (Exhibit E-1(D)); in 1997, he had 399 hours carried over (Exhibit E-1(C)); in 1998, he had 475 hours carried over (Exhibit E-1(B)) and in 1999, he had 572.5 hours carried over (Exhibit E-1(A)).

[7] In 1997, all DND staff, both military and civilian, received a memorandum which indicated that carry-over of annual leave should be restricted (Exhibit G-2).

[8] Mr. Ladouceur testified that, after receiving the 1997 memorandum, he continued to request annual leave on short notice, if the weather was nice, and he carried over unused annual leave credits.

[9] All employees received a memorandum dated March 31, 1999, saying they were expected to submit leave plans to their director by the end of April. Additionally, employees with significant accumulated unused annual leave credits were expected to work out a strategy on reducing this accumulation (Exhibit G-3).

[10] On April 1, 1999, Mr. Ladouceur received a memorandum from his supervisor, Mr. G. Lafond, requesting they meet and discuss how his 1999-2000 annual leave entitlement would be scheduled and how his accumulated leave credits could be reduced (Exhibit G-4). Mr. Lafond testified he sent a similar memorandum to two other employees, both of whom had large amounts of leave credits carried over from previous years.

[11] Mr. Lafond and the grievor met more than once over the course of the next two months to discuss Mr. Ladouceur's leave plans. Mr. Ladouceur told Mr. Lafond that he intended to take a week in the summer, time off at Christmas, and days here and there depending on the weather.

[12] Mr. Lafond responded that he needed more details and requested a plan that added up to 30 days of annual leave, which was Mr. Ladouceur's annual entitlement.

[13] On June 2, 1999, Mr. Lafond sent Mr. Ladouceur another memorandum saying a leave plan had not been submitted by Mr. Ladouceur and management would schedule annual leave for him (Exhibit G-5).

[14] Mr. Ladouceur sought the advice of Dr. Jesion concerning the ability of management to schedule leave. Dr. Jesion assisted in negotiating the collective agreement and, in his opinion, management could not schedule leave except for operational requirements. When management denies leave, it must show there is an operational need for the employee to attend at work.

[15] Mr. Ladouceur responded on June 15, saying he would take, "...without prejudice...", one to two weeks in July, one to two weeks in August, Christmas leave, Spring Break, and the odd day for personal reasons (Exhibit G-5, hand-written portion).

[16] Mr. Lafond met with Mr. Ladouceur after receiving this reply and again indicated that the plan prepared by Mr. Ladouceur was not sufficiently detailed. Mr. Ladouceur replied it was his best guess as to what his plans were.

[17] On or about July 5, 1999, Mr. Ladouceur received a memorandum from Mr. Lafond stating that his annual leave was being scheduled from July 19 to August 13 as well as December 22 to 31, and dates to be determined for Spring Break. The memorandum from Mr. Lafond closed by stating: "Should you require further information on the above schedule please see me" (Exhibit G-6).

[18] Mr. Ladouceur was not able to discuss the memorandum with Mr. Lafond as Mr. Lafond went on annual leave for the month of July.

[19] Mr. Ladouceur was away on business from July 10 to 17, 1999. When he returned from his business trip, he filed the present grievance and then proceeded on his scheduled annual leave.

[20] Mr. Lafond stated he scheduled the annual leave for Mr. Ladouceur because there was no indication a vacation plan with specific dates attached would be forthcoming from him.

[21] As the summer period was fast approaching, Mr. Lafond felt he had to schedule specific days for Mr. Ladouceur to take off. Given the fact Mr. Ladouceur indicated he would take one to two weeks off in both July and August, coupled with the fact Mr. Ladouceur was away from the office on business until July 17, Mr. Lafond scheduled 19 days of leave for Mr. Ladouceur starting July 19.

[22] Mr. Lafond stated that another factor he considered in scheduling this time period was the fact that the military personnel Mr. Ladouceur worked with were all on block leave in August. It therefore made operational sense to have Mr. Ladouceur on annual leave at the same time.

[23] Mr. Lafond testified that, while he was away on annual leave, another individual replaced him. However, another director, Mr. Moscrip, had responsibility for resolving employee annual leave problems. Mr. Ladouceur could have spoken to Mr. Moscrip upon receipt of Exhibit G-6 to discuss the specific dates that were scheduled as leave.

[24] In cross-examination, Mr. Lafond stated that he never mentioned to Mr. Ladouceur that Mr. Moscrip had carriage of the annual leave situation.

### Arguments

#### For the Grievor

[25] Prior to 1999-2000, annual leave had never been scheduled for the employees. This was so in spite of a 1997 memorandum saying carry-over of annual leave would only be permitted in exceptional cases (Exhibit G-2).

[26] Then, in 1999, Mr. Ladouceur was told he had to submit an annual leave plan by the end of April. The collective agreement does not set a deadline for making the employee's intentions known to the employer.

[27] Mr. Lafond could have waited for a leave form to come in from Mr. Ladouceur, but instead he made the grievor take leave.

[28] Clause 15.05 of the collective agreement says that, before you can schedule annual leave, you have to base the decision on operational reasons. Stated another way, the employer can schedule annual leave only if it needs to do so to maintain operational requirements. There must be an operational requirement which exists and which thereby forces the employer to schedule leave.

[29] Mr. Lafond sent Mr. Ladouceur a memorandum scheduling the leave and immediately went on annual leave himself. He did not afford Mr. Ladouceur an opportunity to discuss the specific dates with him, and therefore Mr. Ladouceur was not given a true opportunity to decide when he wanted to take his leave.

[30] The driving force behind the forced liquidation of annual leave credits was the fact Mr. Ladouceur had a large amount of accumulated leave credits. The employer's objective was to reduce this amount.

[31] Mr. Ladouceur had no way of knowing he could have discussed the scheduling of leave with Mr. Moscrip.

[32] The decision in *Tremblay* (Board file 166-2-17538) reinforces the fact that operational requirements refer to the nature of the work required to be done and not the nature of the bookkeeping and expense analysis.

[33] In the instant case, the real reason the leave was scheduled was to avoid an ongoing carry-over, which costs money. Prior to the employer being able to schedule annual leave in this case, it must establish that operational requirements exist. Operational requirements cannot include financial considerations.

[34] As Mr. Ladouceur had, in the past, taken one week of leave at a time, the scheduling of one of the two weeks in July was acceptable, as was the scheduling of one of the two weeks in August. Therefore, only one week in July and one week in August remain in dispute. The other dates of leave in December and Spring Break were resolved to the satisfaction of the parties and are not in dispute.

#### For the Employer

[35] There are three issues that need to be reviewed: namely, management's rights, operational requirements and the reasonableness of the employer.

[36] Article 5 of the collective agreement deals with management's rights and it gives the employer all powers and authorities which are not modified by the agreement. The right to schedule leave is not modified by the agreement; therefore Article 5 is the operative provision.

[37] Clause 15.05 exists in order to allow the possibility that leave, once requested can be denied for operational reasons. As that was not the situation here, clause 15.05 does not apply.

[38] In *Low and Duggan* (Board file 168-2-56), the Board found there was no limitation placed on the employer's right to schedule annual leave.

[39] In the alternative, if the decision is that clause 15.05 applies, then the employer has to schedule annual leave in accordance with operational requirements.

[40] Mr. Lafond had to have a leave plan from Mr. Ladouceur and all other employees in order to ensure that they would be present to meet the needs of the clients. Operational requirements have to respect the nature of the work done.

[41] Mr. Lafond had to manage and run a division which provided services to clients on a contractual basis and the work was support service oriented.

[42] Mr. Lafond has an obligation to improve the management of leave of his employees (as per the memorandum of March 1999, Exhibit G-3).

[43] There was an operational requirement to plan leave for 1999-2000 in that Mr. Lafond needed to know as best as possible who would be present and who would not throughout the year and at what times. That is what he attempted to do by requesting a specific leave plan.

[44] In *Colbert* (Board files 166-2-21446 and 166-2-21447), the adjudicator found that operational requirements must be determined on a case by case basis.

[45] In *Sumanik* (Board file 166-2-395), the adjudicator, at page 15, found that the term operational requirements "...refers to the nature of the work required to be done...".

[46] Lastly, the employer had been reasonable in its approach to the scheduling of leave. Efforts had been made to have Mr. Ladouceur produce a leave plan with specific dates, all to no avail. It was only with the approach of the summer months that Mr. Lafond had to act and schedule time off for Mr. Ladouceur.

[47] Because Mr. Ladouceur indicated he would be taking one to two weeks off in July, and because Mr. Ladouceur was away on business until July 17, the only two weeks in July that Mr. Ladouceur could be away on annual leave were those beginning July 19. Consequently, the last two weeks of July were scheduled off for Mr. Ladouceur.

[48] Given the fact Mr. Ladouceur indicated he wanted one to two weeks off in August, Mr. Lafond scheduled the first two weeks in August as leave, thereby allowing Mr. Ladouceur to have four weeks off in a row. Also, this time off coincided with the block leave given to the military personnel with whom Mr. Ladouceur worked.

[49] The scheduling of leave was in accordance with the raw plan Mr. Ladouceur provided as seen in Exhibit G-5.

[50] In *Lawson* (Board file 166-2-5883), the grievor had four days of annual leave scheduled off by the employer. At page 17 of the decision, the adjudicator notes that, in exercising its managerial right, the employer must adhere to the language of the agreement. As the employer did not consider the preference of the grievor, the agreement was breached. However, in the instant case, the wishes of the grievor were taken into consideration.

[51] In *Stoykewich* (Board file 166-2-14983), the situation is almost the same as the instant case. The employer tried to ascertain the grievor's leave intention and, when no specific time was stated, the scheduling of leave resulted. The relevant provisions in the collective agreement were similar to those found in the Research Group collective agreement. The grievance of Mr. Stoykewich was dismissed.

#### Grievor's Reply

[52] The collective agreement language in the case law cited by the employer is at variance with the language found in the Research Group collective agreement. Also, in *Stoykewich (supra)*, the grievor refused to specify any leave. In the instant case, Mr. Ladouceur indicated some time periods that tried to satisfy Mr. Lafond's needs.

#### Reasons for Decision

[53] The following are the relevant provisions of the collective agreement:

[54] Article 5 reads as follows:

#### *ARTICLE 5*

#### *MANAGEMENT RIGHTS*

*5.01 All the functions, rights, powers and authority which the Employer has not specifically abridged, delegated or modified by this Agreement are recognized by the Institute as being retained by the Employer.*

[55] Paragraph 15.05(a) provides:

*15.05 Provision for Vacation Leave*



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*In order to maintain operational requirements, the Employer reserves the right to schedule an employee's vacation leave but shall make every reasonable effort:*

- (a) *to provide an employee's vacation leave in an amount and at such time as the employee may request;*

...

[56] I will deal firstly with the employer's argument that clause 15.05 does not apply in this instance as Article 5 covers the situation.

[57] Article 5 is a general provision allowing the employer to retain all functions, rights, powers and authority unless these were specifically "abridged, delegated or modified" by the agreement.

[58] To determine whether the right of the employer to schedule vacation leave has been abridged, delegated or modified, one has to turn to the vacation leave article, which is Article 15, and specifically clause 15.05.

[59] Clause 15.05 recognizes that the employer can schedule vacation leave in order to maintain operational requirements but the agreement does impose a limitation on this right. The employer is required to make every reasonable effort to provide leave in an amount and at such time as the employee may request.

[60] I therefore find that the unfettered right of the employer to schedule annual leave has, in fact, been modified by the provision of clause 15.05 and it is this provision that must be looked at to see if the employer has violated the collective agreement.

[61] The facts of this case indicate that the employer told all employees, on March 31, 1999, that a leave plan had to be submitted to their director (Exhibit G-3).

[62] On April 1, 1999, Mr. Ladouceur was instructed to meet with Mr. Lafond and arrive at a plan for utilizing annual leave credits.

[63] The evidence indicated that, as Mr. Ladouceur had carried over increasing amounts of leave credits in the past, Mr. Lafond wanted to ensure that a similar situation would not recur (see Exhibits E-1(A) through (E)).

[64] As the various meetings between the two individuals did not produce specific dates for Mr. Ladouceur to take annual leave, ultimately, leave was scheduled by the employer for Mr. Ladouceur.

[65] The scheduling of leave was done in consideration of the time period Mr. Ladouceur stated he would be prepared to take leave, albeit “without prejudice”.

[66] I find the language of the collective agreement allows the employer the right to schedule annual leave but the employer must make every reasonable effort to provide the leave to the employee in an amount and at a time which the employee may request.

[67] Given the fact that the grievor did request one to two weeks in July, and the only time this could be scheduled was the last two weeks of July, I find the employer did not violate the collective agreement in scheduling this leave.

[68] In light of the fact that the grievor had asked for one to two weeks of leave in August, and the fact that the grievor was already on leave the last two weeks of July, it was not unreasonable for the employer to schedule the grievor for leave for the first two weeks of August.

[69] If Mr. Ladouceur did not want to take the first two weeks of August off, he could have raised the issue with the individual who was acting for Mr. Lafond during the latter’s absence. Since Mr. Ladouceur did not raise the issue, we do not know what the employer would have done.

[70] I also note that the employer tried for three months (April to June) to obtain a specific leave plan from the grievor and none was forthcoming. In light of all the circumstances, I find it was not unreasonable for the employer to schedule the leave at that point as it did.

[71] I find leave was scheduled according to the general time frame indicated by the grievor and in light of the fact that operationally the military individuals he worked with were on block leave. It was, therefore, a convenient time to allow the grievor to use up his leave from an operational perspective and it coincided with the time frame the grievor stated he would be using leave credits. This action was, I believe, in keeping with the provision found at clause 15.05 of the Research Group collective agreement.

[72] For all these reasons, the grievance is denied.

**Joseph W. Potter,  
Deputy Chairperson**

OTTAWA, May 29, 2000.