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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

LUC RIVARD

Grievor

and



TREASURY BOARD
(Solicitor General of Canada - Correctional Service)

Employer

Before: Jean-Pierre Tessier, Board Member

For the Grievor: Carmen Palardy, Counsel

For the Employer: Richard Turgeon, Counsel

Heard at Montréal, Quebec,
June 12 and 13, 2002.



DECISION

[1] Luc Rivard has been employed by Correctional Service Canada since 1988. When the events connected with this grievance took place, he was working at the Martineau Community Correctional Centre (Martineau CCC) in a CX-01 position.

[2] On April 13, 2000, the Grievor was suspended without pay because on that day, he had cheated on a selection interview for a CX-02 position. During Mr. Rivard's suspension, the Employer conducted an investigation of the circumstances surrounding the April 13, 2000 incident.

[3] Following the investigation, Mr. Rivard received a letter of termination on June 28, 2000, in which the employer wrote:

[Translation]

On April 13, 2000, while you were taking part in an internal competition for a correctional officer position, you were caught in flagrant offence, cheating on the last part of test B. Consequently, a disciplinary investigation was conducted in the following days.

It is quite evident from the investigation that your actions were premeditated. I am sure you understand that in an environment such as ours, where the main responsibility of employees is to try to correct individuals who have committed illegal acts, an important aspect of the role of correctional officers is to set the right example. Your cheating during the competition was totally unacceptable. By acting in this manner on April 13, you breached the trust that must exist between an employee and employer.

Consequently, pursuant to section 11, (2f), of the Financial Administration Act and the authorities delegated to me, you are dismissed effective this day, the 28th of June, 2000, as of close of business.

Should you wish to contest this decision, you may file a final level grievance under the grievance procedure.

[4] On July 10, 2000, Mr. Rivard filed two grievances to contest his temporary suspension and his dismissal. These grievances went to arbitration on February 21, 2001.

[5] The grievances were heard on October 1 and 2, 2001, and continued on March 12, 13 and 15, 2002, in order to provide an opportunity for health specialists to testify.

Finally, the hearing wrapped up on June 12 and 13 with the presentation of a final testimony and the parties' arguments.

The evidence

[6] Louis-Marie Perron has worked for Correctional Service Canada for 22 years. In April 2000, he served as an employment agent and chaired a selection committee comprising Christian Rioux, Lise Gougeon and himself.

[7] Mr. Perron explained that the selection in which Mr. Rivard took part consisted of two parts, these being test A, for knowledge, which was held in March 2000 and test B, for abilities and skills, which was held in April 2000 (Exhibit E-3).

[8] The witness explained that he read the candidate the instructions for test B (Exhibit E-4) at which time he indicated that no personal notes prepared before the test may be used during the current exercise. Mr. Perron also pointed out that a candidate had to have passed test A (in March) in order to take test B (in April).

[9] On April 13, 2000, Mr. Perron met Mr. Rivard in a small room where there was a table and four chairs to explain the procedure for the test. Then Mr. Rivard went to the interview room and later returned to the small room to answer questions in writing. When he returned to the small room, Mr. Perron noticed that Mr. Rivard did not sit in the same place where he had before. Mr. Perron noticed that Mr. Rivard sat with his back to the door to the room.

[10] Mr. Perron then left the room and closed the door, leaving Mr. Rivard to answer the questionnaire. However, before returning to the main test room, Mr. Perron glanced into the small room through a vertical window located near the door; that was when he saw Mr. Rivard take a piece of paper from one of the pockets of his cargo pants (slacks with pockets on the sides of the legs). Mr. Perron then hurried to find his colleagues in the main testing room and asked them to come and see what was happening in the small room where Mr. Rivard was sitting.

[11] The three members of the selection committee went to the small room, Mr. Perron opened the door and entered. At that moment, Mr. Rivard closed the briefcase lying in front of him; but Mr. Perron saw a piece of paper sticking out of it. He then asked Mr. Rivard to hand him that piece of paper (Exhibit E-5). Mr. Rivard said it was a memo. Mr. Perron prepared a report on the incident and filed it (Exhibit E-7).

[12] The members of the committee decided to return the candidate, Mr. Rivard, to the waiting room and looked over the paper found in the latter's possession. According to Mr. Perron, it was a response to the scenario presented in the test.

[13] Christian Rioux (a member of the committee) testified along the same lines as Mr. Perron. He explained that, afterwards, the committee met Mr. Rivard to ask him for explanations. Mr. Rioux prepared a report of the interview (Exhibit E-6). Mr. Rivard stated that he had prepared the document five days before, then corrected himself, indicating that he had prepared it the day before (April 12). Mr. Rivard claimed that he had prepared the document himself and had made several, but brought only this one because he was certain it would be the proposed scenario. Mr. Rivard indicated that he had not heard the instruction forbidding the use of personal notes; he said he was sorry about what had happened and asked what would happen next.

[14] Mr. Rioux explained that, in the afternoon, Josée Théoret (who was in charge of the Return to Work Program) warned the members of the committee that Mr. Rivard wanted to talk to them on the phone. The committee members phoned Mr. Rivard around 3 p.m. and Lise Gougeon prepared a report on the conversation (Exhibit E-9). Mr. Rivard appeared distressed and was crying as he apologized for the morning's incident, adding that it was part of his suicide plan and that he had intended to take his life after test B. In closing, Mr. Rioux pointed out that he had already heard rumours that Mr. Rivard had cheated on a test before or something to that effect.

[15] The employer's third witness was Gilles Thibault, who is now retired after 34 years of service. In 2000, he was the Director of the Montréal district for Correctional Service Canada. Mr. Thibault said he knew Mr. Rivard since he had talked to him about a secondment to the Martineau CCC for a three-month period, from December 1999 to March 31, 2000. This secondment enabled Mr. Rivard to return to work after his sick leave (Exhibit E-10).

[16] Shortly after the April 13, 2000 incident, Mr. Thibault was informed that Mr. Rivard had cheated. After Mr. Rivard received his temporary suspension from the Martineau CCC's management, Mr. Thibault asked a committee composed of Benoît Boulerice and Joyce Malone to undertake an investigation. The latter took place in May 2000 and the report was presented to Mr. Thibault (Exhibit E-8).

[17] Mr. Thibault said he based himself on the contents of the investigation report. In it, he noted that Mr. Rivard had mentioned health problems and talked about a suicide plan. Mr. Thibault was aware that Mr. Rivard's secondment ended on May 1, because the agreement had been extended (by one month) and there was a possibility that Mr. Rivard would have to be transferred somewhere else. Mr. Thibault explained that he had no direct connection with Mr. Rivard's transfer. He had played an administrative role when signing a secondment for a period of a few months. However, notwithstanding Mr. Rivard's personal problems, it nonetheless remained that he had cheated on the April 13 test, which, according to Mr. Thibault, represented a breach of trust.

[18] The fact that the report concerned a more or less similar incident involving Mr. Rivard in 1991 was of no consequence to Mr. Thibault. He indicated that he agreed with the investigators and did not believe that Mr. Rivard had a suicide plan. Mr. Thibault had tried to meet with Mr. Rivard but the latter refused. However, he did speak to him twice by phone, in May and June 2000. Mr. Rivard appeared disappointed but fine. Mr. Rivard did not talk to him about his personal problems and did not indicate that he had been distressed during his test in April 2000.

[19] Afterwards, Ms. Théoret explained that, as the regional co-ordinator for the Return to Work Program, she had been looking after Mr. Rivard's file. Since she was aware that he would be taking part in a competition at head office in Ville Laval, Ms. Théoret had arranged a meeting on that same day with Mr. Rivard.

[20] When she had run into Mr. Rivard in the waiting room in the morning, Ms. Théoret had told him that she would see him after his test (scheduled for 10 a.m.). However, at around 10:30 a.m., she noticed that Mr. Rivard was sitting at the door. Mr. Rivard told her that he had not finished the test and would have to meet again with the selection committee.

[21] At around 10:50 a.m., the operator told Ms. Théoret that Mr. Rivard was in the waiting room. Ms. Théoret met him in a small adjacent room. Mr. Rivard told her that he had brought personal notes to the test and did not know what was going to happen to him. Ms. Théoret ended the meeting and told Mr. Rivard that she would speak to him later.

[22] However, at around 12:30 p.m., Mr. Rivard, who had returned home, phoned Ms. Théoret. He was crying and talking about suicide. He said he was at the end of his rope and that nobody wanted to help him. He indicated that a friend would be coming over to his place. Ms. Théoret reassured him and stayed on the phone with Mr. Rivard until his friend arrived. Ms. Théoret spoke to Mr. Rivard's friend and asked him to look after him.

[23] Ms. Théoret then notified the Employee Assistance Program and informed the members of the selection committee that Mr. Rivard wanted to talk to them.

[24] On May 12, Mr. Rivard called Ms. Théoret to ask her what management was doing with his disciplinary file and whether she could represent him. She asked him to wait until the investigation was completed.

[25] In cross-examination, Ms. Théoret explained that she had access to Mr. Rivard's medical file but that it only contained a summary. Mr. Rivard had already told her that he did not enjoy working at the Leclerc Institution. Ms. Théoret was not aware that Mr. Rivard had had a conflict with his supervisor at the Leclerc Institution.

[26] Ms. Théoret pointed out that she had already notified Mr. Rivard that he would not have to return to the Leclerc Institution in the near future. In terms of Mr. Rivard's frame of mind on April 13, Ms. Théoret confirmed that at 11 a.m. Mr. Rivard was normal but seemed preoccupied by the outcome of the competition.

[27] Benoît Boulerice was in charge of the parole offices at Ville-Marie and had studied criminology. He had already done several investigations for Correctional Service Canada.

[28] Referring to the investigation report he had prepared in May 2000 (Exhibit E-8), Mr. Boulerice confirmed that Mr. Rivard had stated during the investigation that the cheating incident on April 13, 2000, was part of a suicide plan. By getting himself caught at the test, Mr. Rivard explained, he would get stressed out and take pills to commit suicide. Mr. Rivard knew that he could not use personal notes during the test.

[29] Mr. Boulerice recalled from the testimony that was given at the investigation by Mr. Lussier (Director of the Martineau CCC) that the latter believed that Mr. Rivard was interested in getting a position at the Martineau CCC. This position was classified at the CX-02 level and, at the time, Mr. Rivard did not have the qualifications.

Mr. Boulerice also indicated that Lionel Guy had worked with Mr. Rivard the day before the test and that, according to Mr. Guy, Mr. Rivard was completely normal.

[30] In cross-examination, Mr. Boulerice admitted that he was not familiar with Mr. Rivard's entire medical file. He had learned about the January 10, 2000 medical note about Mr. Rivard's employment limitations (Exhibit E-16).

[31] Mr. Boulerice admitted that he was not aware of Mr. Rivard's previous suicide attempts. He had been taking into account Mr. Rivard's more recent state of mind based on the information collected by his investigation colleague, Joyce Malone, from Dr. Francine Morin (Psychiatrist), Mr. Rivard's doctor.

[32] The other investigator, Joyce Malone, was a counsellor in the Correctional Service Canada security division. She indicated that she had noticed several factual contradictions, in particular about:

- a) the time when Mr. Rivard prepared his scenario (personal paper);
- b) the reasons why he prepared and brought the document;
- c) the type of medication he said he had brought; and
- d) the fact that preparations for the cheating incident required lucid and conscious organization.

[33] Ms. Malone did not believe that Mr. Rivard was in a "dissociative" state at the time. His actions throughout the day and his statements over the phone in the afternoon confirmed that, in her opinion, he was still in touch with reality.

[34] According to Ms. Malone, the actions indicated by Mr. Rivard were not those of offenders in a state of crisis and dissociation as she has observed previously in her work.

[35] Ms. Malone checked Mr. Rivard's file. She noted the medical certificates. She had access to the summary but did not see the details of the medical opinions.

[36] She noted that Mr. Rivard did not show any sense of guilt. He offered his excuses, which is not the same as expressing regret. Mr. Rivard was using his illness as

a way to avoid being accountable for his actions. Mr. Rivard seemed upset during the investigation but lucid and appropriate.

[37] Finally, Solange Marion closed off on the employer's evidence by explaining that the human resources unit did not have the medical report files. These files were held by Health Canada and only the medical notes, the expert summary and comments were transmitted to the human resources unit.

[38] For his part, Mr. Rivard indicated that he had been employed by Correctional Service Canada from 1978 to 1982. He then resumed his studies and returned to Correctional Service Canada in 1988 on a part-time basis, and then full-time from 1989 until 2000. He held positions classified at the CX-01 level, even though, on several occasions, he acted in CX-02 positions.

[39] From 1992 to 1996, Mr. Rivard served as a case officer. However, in 1996, he ran into personal problems following his break-up with his partner. His mood suffered at work. He said he had been bugged by the comments made by his supervisor, Denis Lévesque, about the fact that he had just broken up with a partner. At the time, Mr. Rivard felt hurt by the comments made about homosexuals and the criticisms about his work. In 1996, he was away for three weeks on sick leave.

[40] Afterwards, Mr. Rivard took another position through the "Echo" program, after which, in 1997, he returned to his former job. He felt unwelcome and left on sick leave (burnout) in March 1997.

[41] In May 1997, he was hospitalized for three days following a suicide attempt. From that time on, he was under the care of Dr. Francine Morin, Psychiatrist. In September 1997, his health deteriorated. This bothered him so he found another doctor to treat his health problems and, at the same time, increased his sessions with his psychiatrist, Dr. Morin (meeting twice a week).

[42] Following talks with his employer and after meeting with the employer's doctor, Mr. Rivard was able to gradually re-integrate into the workplace through a special program and returned to work at Carcan. The work involved file classification, making furniture, laundry. He worked there for a few months until his employment terminated in September 1999.

[43] Afterwards, he held a position as a freight handler, but left after three days when a foreman shouted at him because of an error he had committed.

[44] Mr. Rivard also explained that in 1997 and 1998, he filed a harassment charge (Exhibit F-1) and then another one with the CSST (Exhibit F-2) but that, after the employer had promised to find him a suitable position, he dropped the charges in 1999. He filed them once again in 2000 (Exhibit F-13).

[45] Finally, in December 1999, Mr. Rivard was hired as a parole officer at the Martineau CCC. This was a secondment for approximately three months (Exhibit E-10).

[46] At the personal level, his morale improved. He liked this job but, at the same time, was suffering from health problems. His doctor suggested he take other medications, which had side-effects and made him feel poorly.

[47] Moreover, Mr. Rivard was worried about his situation at work. He learned that the position he was in was to be classified at the CX-02 level. Although his secondment to the Martineau CCC was extended to the end of April 2000, Mr. Rivard worried that he might have to return to the Leclerc Institution afterwards.

[48] In light of this situation, in April 2000, Mr. Rivard said he became depressed. He said he read the book *Final Exit*. He indicated that he was sick of everything.

[49] On April 13, 2000, Mr. Rivard said he brought pills with him. These were Dilatil, which he would have obtained on the "black market".

[50] He felt nervous during the test. He said he barely remembered what happened, that he was taken out of the room. He said he did not remember the person who took away the "paper". Afterwards, he saw Ms. Théoret. He did not remember what he said. He left, sat in his car and then walked around the parking lot. He tried to reach Dr. Morin and went home.

[51] Mr. Rivard then described what happened in the afternoon of April 13 along the same lines as the previous testimonies (phone call to Ms. Théoret, phone call to the selection committee, his friend's arrival, etc.).

[52] In cross-examination, Mr. Rivard explained that he occasionally gets panic attacks, has ups and downs, loses his concentration, gets blurred vision, wanders around or stays still.

[53] He remembered that, in the small room, he was told he could not bring personal notes to the test.

[54] With regard to the personal paper that was seized by the committee members on April 13, Mr. Rivard explained that he had prepared it the day before, in the evening of the 12th. He was able to prepare the document because of a conversation he had overheard at the Martineau CCC. Mr. Rivard explained that Lionel Guy was talking to Sylvain Lambert on the phone in the afternoon of April 12 and that they were talking about the test.

[55] With regard to the paper he had tried to hide under his notebook, Mr. Rivard explained that he hid it because he wanted to explain what he was planning to do.

[56] Asked about the incidents that occurred in 1991, Mr. Rivard explained that in the days leading up to a competition, he had met with colleagues who had a recording of the test questions. Someone reported them. During the ensuing investigation, Mr. Rivard collaborated with the employer and admitted the facts. The employer (Correctional Service Canada) agreed to change the dismissal into a suspension and keep the agreement confidential. The employer's main objective was to dismiss the employee who had obtained the recording of the test. Mr. Rivard pointed out that he did not want to go through the same thing as in 1991, so he did not denounce his colleagues.

[57] Dr. Francine Morin has been a psychiatrist at the Hôpital St. Luc mental health centre for six years. Dr. Morin had a diploma in psychology, and later completed her studies in psychiatry. She met Mr. Rivard for the first time in 1997 when he was referred by the crisis intervention team.

[58] In 1997, Mr. Rivard suffered a major depression. He was having panic attacks. He said his supervisor made him nervous. Dr. Morin, in her treatment, detected personality problems in Mr. Rivard. From July to October, Mr. Rivard was on leave and everything seemed to go quite well.

[59] However, in October 1997, Mr. Rivard learned that he had other health problems and the medication he was taking was causing him problems until October 1998. In notes dated May 1998 (Exhibit F-4) and January 1999 (Exhibit F-5), Dr. Morin confirmed Mr. Rivard's depression and indicated that he needed to be followed on a weekly basis. Mr. Rivard looked for a psychologist and often mentioned the conflict with his supervisor as a source of psychological distress.

[60] In March 1999, Dr. Morin authorized Mr. Rivard to return to work (Exhibit F-6). However, she recommended a stress-free place, somewhere other than the Leclerc Institution (Exhibit F-7).

[61] In the summer of 1999, Dr. Morin saw Mr. Rivard once every two weeks. However, starting in October, they met once a week. Mr. Rivard was more stressed, afraid of returning to work at the Leclerc Institution. Following his secondment to the Martineau CCC, Mr. Rivard was more stable, and sessions returned to every two weeks. However, after March 14, Mr. Rivard became worried about leaving the Martineau CCC and the sessions resumed on a weekly basis.

[62] On March 30, 2000, Mr. Rivard was feeling better, indicating that he would not be going to the Leclerc Institution. The next session was set for April 11 but was cancelled by Mr. Rivard.

[63] With regard to the April 13, 2000 incident, Dr. Morin indicated that she had talked to Mr. Rivard by phone in the late afternoon of April 13. Mr. Rivard had told her that he had run into problems that day. Dr. Morin offered to see Mr. Rivard but he said he could stay home because his friend was there.

[64] At the April 14, 2000 session, Mr. Rivard confided to Dr. Morin that he was "fed up", and that, on April 13 he had been confused, had a suicide plan and was preoccupied by his difficulties related to work travel. On April 14, he said he was tired, but Dr. Morin saw no indication of dissociation at that time. Mr. Rivard told her he no longer had suicidal thoughts.

[65] When Dr. Morin met Mr. Rivard, specifically on April 17 and 20, 2000, he was suffering from anxiety. On May 3, Mr. Rivard called Dr. Morin and asked her to talk to the investigator, Ms. Malone. Afterwards, Dr. Morin contacted Ms. Malone and told her that Mr. Rivard was in a dissociative state on April 13, during the test.

[66] Dr. Morin believes that Mr. Rivard could have been suicidal on April 13. She believes that Mr. Rivard is sincere. In her opinion, Mr. Rivard often suffers from panic attacks. These attacks vary in intensity and can last for three to five days. Dr. Morin reiterated the observations she had made in a letter dated October 13, 2000 (Exhibit F-8).

[67] Mr. Rivard suffers from a Borderline Personality Disorder. According to Dr. Morin, symptoms of dissociation are not always connected to panic situations. Mr. Rivard has difficulty handling stress.

[68] Paul-Eric Robichaud was a friend of Mr. Rivard's. While he did not live with him, he spent a great deal of time with Mr. Rivard. Mr. Robichaud confirmed that, following his 1998 leave from work (burnout), Mr. Rivard was worried about returning to the Leclerc Institution. However, in 1999 and early in 2000, when Mr. Rivard was working at the Martineau CCC, his frame of mind improved and he was happy when he got home after work. However, in March 2000, Mr. Robichaud noticed that Mr. Rivard was concerned about the re-organization at the Martineau CCC. Mr. Rivard had to pass the test in order to qualify.

[69] On April 13, 2000, after Mr. Rivard called him, Mr. Robichaud rushed over to his home. Mr. Rivard then told him that something had happened during the test, but that he did not know what he had done and that he did not feel like talking about it. Afterwards, Mr. Rivard told Mr. Robichaud that he had done something he should not have done. Mr. Robichaud stayed with Mr. Rivard for two hours; at that point, he had to leave to close up the shop where he worked and returned to Mr. Rivard's home for supper.

[70] During the next few days, Mr. Robichaud noticed that his friend, Mr. Rivard, was depressed and slept a great deal. In the ensuing weeks and months, Mr. Rivard became increasingly sad; he recovered somewhat but was not in a very good mood. After four months, Mr. Robichaud stopped seeing Mr. Rivard; since things were not going well, they ended their relationship, which had been going on for three years.

[71] Afterwards, Jean-Yves Blais, Deputy Director at the Leclerc Institution until January 2001, explained the circumstances that led to his asking the Correctional Service officials to make a decision about the position left vacant by Mr. Rivard

following his departure on sick leave. Mr. Rivard was not necessarily expected to return to that position.

[72] The employer filed a rebuttal through the testimony of Dr. Marc Gu erin. Dr. Gu erin is a specialist in psychiatry. He practiced from 1977 to 1988 at the Royal Victoria Hospital and privately. In his practice, Dr. Gu erin has often provided expert testimony and has testified before judges and arbitrators as an expert witness.

[73] Dr. Gu erin had conducted a psychiatric assessment on Mr. Rivard in December 1999, before the latter's return to work. Dr. Gu erin commented on the expert report he had sent Health Canada on December 15, 1999. (This report was filed by the official as F-10.)

[74] In this report, Dr. Gu erin established that Mr. Rivard apparently developed a reactive depression in 1997 as a result of his difficulties with his supervisor at the Leclerc Institution. These difficulties would have aggravated a narcissistic condition from which he already suffered. He noted that Mr. Rivard recovered from this state of anxious depression but he retained a certain narcissistic tendency. In this connection, Dr. Gu erin confirmed that a return to the Leclerc Institution might be stressful for Mr. Rivard. According to Dr. Gu erin, Mr. Rivard could resume work in another institution in 2000, subject to a re-evaluation of the situation at the end of 2000.

[75] In terms of Mr. Rivard's situation after April 13, 2000, Dr. Gu erin indicated that he had reviewed the medical reports provided by Dr. Morin, Mr. Rivard's psychiatrist. The parties agreed that Dr. Gu erin could look at Mr. Rivard's medical file and the interview notes taken by Dr. Morin. Some extracts were filed (Exhibits E-24 and E-30).

[76] Dr. Gu erin believes that Mr. Rivard may have difficulty handling stress and interpersonal relationships. He disagreed with the diagnosis of dissociation made by Dr. Morin, Mr. Rivard's psychiatrist. The description provided by various witnesses, Mr. Rivard's actions on April 13 and the notes on Mr. Rivard's interview with Dr. Morin on April 14 do not suggest any dissociation on the part of Mr. Rivard on April 13, 2000.

[77] Dr. Gu erin filed medical documents (Exhibits E-21, E-22 and E-23). He referred to a study entitled "Psychiatrie Clinique une approche bio-psycho-sociale Tome I" [*clinical psychiatry and bio-psycho-social approach, volume 1*] in which Chapter 16 (Exhibit E-21)

addresses dissociative conditions. According to Dr. Guérin, when Mr. Rivard has panic attacks, he might suffer depersonalization. However, it should be noted that the documentation (Exhibit E-21, page 423) describes this phenomenon as leaving the subject [...] “[translation] fully aware of the process that is occurring. [...], understanding of reality remains generally intact in this case [...]”.

[78] The employer closed his evidence with the testimony of Denis Vincent, a social worker. Mr. Vincent met Mr. Rivard on several occasions in 1988 and 1989. At that time, Mr. Vincent worked with Dr. Jilman at St. Luc hospital.

[79] Mr. Rivard was there because he was having difficulty handling his aggression and having suicidal thoughts. With Mr. Rivard's permission, Mr. Vincent filed an assessment (Exhibit E-29). Mr. Vincent noted that, due to problems going back to his childhood, as a young adult, Mr. Rivard displayed anti-social behaviour. Even when he worked as a security officer in a correctional institution, he continued to display delinquent behaviour for a period of time.

[80] The employer also called Carole Lacasse, Lucie Lévesque, Sylvain Lambert and Lionel Guy to testify. These witnesses filed copies of invoices for telephone calls and extracts from the Martineau CCC guard log to show that the telephone conversation between Lionel Guy and Sylvain Lambert, which took several minutes, could not have taken place on April 12, 2000. They denied having talked about the test at any time.

Arguments

[81] The employer maintains that Mr. Rivard deliberately cheated during the April 13 test in order to win a CX-02 position that was coming up at the Martineau CCC. According to the employer, Mr. Rivard prepared a paper ahead of time to cheat on the test. Nothing in his behaviour suggested that he was in a dissociative state. His action was all the more serious because it was premeditated. The trust was breached and the employer could no longer have Mr. Rivard working for Correctional Service Canada.

[82] According to the employer, Mr. Rivard's temporary suspension during the investigation was fully justified and there were no grounds for the grievance since it was filed late and past the deadline.

[83] The Grievor maintained that he was not in a normal frame of mind on April 13, 2000, and that he was acting in the context of a suicide plan. Mr. Rivard stated that the news of the Martineau CCC reorganization had perturbed him and that, at the time, he was fed up with everything.

Reasons for Decision

[84] The evidence presented in this case is quite detailed. While some elements may have been applicable in terms of explaining the context, they were not extensively reviewed for the purposes of this case.

[85] The evidence shows that Mr. Rivard was in possession of a document containing the answer to the April 13, 2000 written test. Mr. Rivard admitted that he learned about the scenario that would be presented in the April 13 test ahead of time. I cannot determine whether Mr. Rivard found out about the April 13 test questions from the telephone conversation that was supposed to have occurred on April 12, the day before the April 13 test, given the contradictory statements about the conversation in question. However, one fact remains: Mr. Rivard knew the scenario that was going to be presented and he prepared the sheet with the responses ahead of time (Exhibit E-5).

[86] The events prior to 1997 shed some light on Mr. Rivard's personality, but cannot be used as factors in this case. In his testimony, Mr. Thibault, Director General, himself admitted that he had not taken into account the fact that Mr. Rivard had been involved in a case of fraud during the 1991 test. In terms of Mr. Rivard's medical record, it should be noted that in 1998 he went to St. Luc hospital. Given the emotional deprivation he suffered as a child, he had difficulty controlling his aggression.

[87] The reason for Mr. Rivard's temporary suspension and dismissal was the loss of trust resulting from the cheating incident at the April 13, 2000 test. Mr. Rivard replied that at the time, he had been stressed and had acted in that manner as part of a suicide plan, and that, on the morning of April 13, he was in a state of "dissociation".

[88] I would like to focus on the following elements drawn from the psychiatrists' testimonies:

- they agree that Mr. Rivard experiences stress and panic from time to time in connection with his work, especially since 1997;

- Mr. Rivard is afraid of returning to the Leclerc Institution and being confronted by certain individuals;
- in 1999, Dr. Guérin and Dr. Morin agreed that Mr. Rivard should return to work but on a regular schedule and elsewhere than at the Leclerc Institution;
- around February and March 2000, Mr. Rivard was stressed at the thought of having to leave the Martineau CCC.

[89] Moreover, Dr. Guérin did not believe that Mr. Rivard was suffering from dissociation on April 13. According to him, Mr. Rivard's medical profile might reflect moments of depersonalization, but at such moments the subject remains conscious of reality and his/her actions.

[90] Dr. Morin explained the phenomenon of dissociation.

[91] Dr. Morin stated in her letter of July 20, 2000, (Exhibit F-9) that Mr. Rivard often suffered from depersonalization during times of panic. However, no evidence of this was presented at the hearing. Neither Mr. Rivard, Dr. Morin nor any other witness were able to give an instance of a precise incident, circumstance or event during which Mr. Rivard showed symptoms of depersonalization.

[92] Further on in her letter of July 20, 2000, (Exhibit F-9) Dr. Morin pointed out the fact that several people had also witnessed Mr. Rivard's state of confused anxiety in this connection.

[93] There is nothing in the evidence presented that would enable me to conclude that on April 13 Mr. Rivard was in a state of depersonalization or dissociation or in a state of confused anxiety.

[94] It is plausible that Mr. Rivard was stressed during the April 13 test. Ms. Malone noticed some nervousness on the part of Mr. Rivard during the role-playing games that preceded the written test. This test was important for Mr. Rivard. The testimony by Mr. Robichaud (Mr. Rivard's friend) revealed that Mr. Rivard liked his job at the Martineau CCC but that in February and March 2000, he was afraid of losing it because of the reclassification of the position to the CX-02 level.

[95] Despite this state of nervousness, Mr. Rivard's behaviour seemed normal on April 13. Mr. Perron's testimony clearly showed that Mr. Rivard took the personal note sheet out of his pant pocket (Exhibit E-5) as soon as Mr. Perron closed the door to the small room. Mr. Rivard admitted that he had prepared this sheet ahead of time. When he was caught by Mr. Perron a few minutes later, Mr. Rivard closed his briefcase and tried to hide the personal note sheet.

[96] Afterwards, when he was in the waiting room, he replied to Ms. Théoret, who was surprised to see him there, that the test was not over and that he had to meet with the members of the committee.

[97] It seems that Mr. Rivard drove himself home and called his friend to ask him over.

[98] He then said he had done something he should not have done.

[99] Still in the afternoon, Mr. Rivard asked to speak to the members of the selection committee to apologize.

[100] All of the previously reported factors and the evidence indicate that Mr. Rivard was aware of his actions on April 13, 2000.

[101] The suicide scenario theory mentioned by Mr. Rivard remains to be examined. Mr. Rivard indicated that he wanted to get caught cheating on the test; yet, when he was caught by the examiner, he hid his personal note sheet. At that moment, he replied that he did not know he was not allowed to have personal notes. He mentioned several sheets and then only one.

[102] Mr. Rivard said he had brought pills to the test to commit suicide. When he was caught, he did not mention his suicide plan and did not show anyone the pills he said he had brought.

[103] Dr. Morin reported on Mr. Rivard's suicidal inclinations. It is quite possible that, in the weeks before the test, Mr. Rivard, was stressed and panicked. It is quite possible that he contemplated suicide in case he failed the April 13, 2000 test.

[104] Mr. Rivard liked his job at the Martineau CCC; he had every interest in passing the April 13, 2000 test and winning the CX-02 position at the Martineau CCC.

Mr. Rivard had already passed the first stage of the test in March 2000. He was hopeful.

[105] Mr. Rivard's medical records indicate that he mentioned his intention to commit suicide following stressful situations and in moments of panic. Moreover, he even tried to commit suicide on a few occasions. It is altogether plausible that, in the afternoon of April 13, after finding out that the test was over for him, he could have come up with the suicide idea. However, there is nothing in the evidence that leads me believe that the cheating incident on April 13 was part of a suicide plan.

[106] Mr. Rivard cheated during the April 13 test and had earlier prepared personal notes. Moreover, Mr. Rivard changed his version of the facts on several occasions thereafter. He misled everyone by inventing a suicide plan. In so doing, he breached the trust with his employer.

[107] Mr. Rivard received a notice of temporary suspension on April 13, 2000, and he did not file a grievance until June 30, 2000, which is after the deadline set under the agreement (25 days). Moreover, given that there was no doubt about the cheating that occurred on April 13, the employer was justified in imposing a temporary suspension on Mr. Rivard for the duration of the investigation into the circumstances surrounding this cheating incident.

[108] The grievance of Mr. Rivard's temporary suspension and the grievance of his dismissal are hereby denied.

Jean-Pierre Tessier,
Board Member

OTTAWA, August 16, 2002.

PSSRB Translation

