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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

BERNARD SALOIS

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer



Before: Jean-Pierre Tessier, Board Member

For the Grievor: Céline Lalande, UNION OF CANADIAN CORRECTIONAL OFFICERS
- SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA - CSN

For the Employer: Karl Chemsî, Counsel

Heard at Sherbrooke, Quebec,
July 3, 2001.



DECISION

[1] The grievor, Bernard Salois, challenged the fact that he was refused education leave because he had not proved that he had registered at a university for a university degree in social sciences or the equivalent.

[2] Mr. Salois alleged that he was never informed of the change in the date by which applicants were required by the employer to have registered at a university. Mr. Salois further maintained that an applicant was selected, and the employer did not consider that requirement.

Evidence

[3] Appearing as the first witness for himself, Mr. Salois, a C-II Correctional Officer, stated that in 1997 he was informed that there was a possibility being granted leave to take a university course. The leave was granted under clause 32.01 of the collective agreement, *Terms and Conditions of Employment and their Duration for Employees in the Correctional Services Groups* (Codes 601/99 and 651/99).

ARTICLE 32

EDUCATION LEAVE WITHOUT PAY AND CAREER DEVELOPMENT LEAVE

Education Leave Without Pay

32.01 ... Upon written application by the employee and with the approval of the Employer, an employee may be granted education leave without pay for varying periods of up to one (1) year, which can be renewed by mutual agreement, to attend a recognized institution for studies in some field of education in which preparation is needed to fill the employee's present role more adequately or to undertake studies in some field in order to provide a service which the Employer requires or is planning to provide.

[4] The witness referred to the memorandum issued by the employer on October 3, 1997, (Exhibit F-2), and explained that the eligibility criteria provided that an applicant who wished to be granted education leave had to be registered at a university by May 1, 1998.

[5] Mr. Salois submitted an application for education leave in the spring of 1998. He had still not yet registered at a university. He said that he had contacted a representative of the employer to find out whether his application had been received and admitted discussing whether he should register at a university before learning of the employer's response to his application for leave.

[6] Mr. Salois claimed that he contacted Philippe Vignis; the employer, however, maintained that he spoke to Marcel Ethier. Nonetheless, Mr. Salois explained that, at that time (spring 1998), the employer told him that there was a change in the education leave program and the registration date would be postponed.

[7] Mr. Salois maintained that he was never informed of the changes to the education leave program nor of the new final date for registering at a university and for submitting an application for leave (Exhibit E-3).

[8] In December 1998, Lenda Beck, the employer's representative, contacted Mr. Salois to verify whether he was still interested in applying and if he had any other information to complete his file. Mr. Salois replied that he had nothing more to submit.

[9] Subsequently, Mr. Salois said that he did not receive any new information on education leave before April 6, 1999, the date on which the employer sent him a memorandum (Exhibit F-3), informing him that his application had not been selected for the following reason:

[Translation]

...

You did not show that you took personal steps to obtain a university degree in social sciences or the equivalent in as much as evidence of your admission to a recognized university was not received by January 15, 1999.

...

[10] According to Mr. Salois, the application of Lyne Lamoureux was selected although she had also not provided evidence of her registration to a university.

[11] This statement was confirmed by the witness, Pierre Sansoucy. He has worked at Cowansville for 27 years and has been a supervisor for 12 years.

[12] As Mr. Salois's supervisor in 1997, Mr. Sansoucy was aware of his application for education leave. Following the events in 1999 when Mr. Salois filed a grievance, Mr. Sansoucy had to gather all the information needed to respond to the grievance.

[13] At that time, Mr. Sansoucy was officially the employer's representative at the first level of the grievance process. According to him, neither Mr. Salois nor any other applicant working at Cowansville received a memorandum dated December 3, 1998,

(Exhibit E-3), indicating that applicants had to update their applications for the new final date of January 15, 1999.

[14] Furthermore, according to Mr. Sansoucy, among the applicants who were selected, Lyne Lamoureux had not registered at a university before January 15, 1999. These aspects of Mr. Sansoucy's testimony confirm what he had written in September 2000 (Exhibit F-5) in reply to a letter from the grievor (Exhibit F-4).

[15] The employer called only one witness to testify, Mr. Ethier. He is a Regional Manager in policy and development in Human Resources.

[16] Mr. Ethier commented on the requirements set out in the document (Exhibit F-2) for obtaining education leave. According to him, Mr. Salois could not possibly have qualified because his qualifications did not correspond to those of the group in question for the following reasons: contrary to what appeared on page 2 of the memorandum of October 3, 1997, Mr. Salois was not a CMO; his name did not appear on the eligibility list for the WP-3 competition and he had not undertaken university studies in social sciences or the equivalent.

[17] In addition, Mr. Ethier stressed that Mr. Salois did not meet eligibility requirements because he had not registered at a university by January 15, 1999.

[18] According to Mr. Ethier, 68 people applied for education leave. Only 12 applications were selected and three applicants were granted education leave (Exhibit E-5). Of the applications that were not selected, it may be noted that some 13 had not provided evidence of their registration at a university (Exhibit E-6), while the others had not been selected for other reasons.

Arguments

[19] According to the grievor's evidence, he was misled about the final date for registering at a university.

[20] Furthermore, according to the grievor, the employer did not comply with his own requirements, and the reason given for not granting Mr. Salois's application, namely, his failure to register at a university, was fallacious since another applicant was chosen without having provided evidence of her registration at a university.

[21] The employer rejected those arguments. He said that Mr. Salois had never demonstrated his intention to register in a university course, he was not registered on

May 1, 1998, and he took no steps to complete his application when Ms. Beck contacted him in December 1998.

[22] In addition, according to the employer, clause 32.01 of the collective agreement leaves full discretion to the employer. The wording of this clause provides:

...Upon written application by the employee and with the approval of the Employer, an employee may be granted education leave ...

[23] This wording differs from that used in paragraph 30.20(a) (personal leave), which states that such leave shall not be unreasonably withheld by the employer:

ARTICLE 30

Leave With or Without Pay for Other Reasons

30.20 ...

(a) *... Such leave shall not be unreasonably withheld;*

...

Reasons for Decision

[24] Before analyzing the facts, I will first deal with the legal issue raised by the employer. While it is true that clause 32.01 of the collective agreement leaves full discretion to the employer, the employer must not exercise this discretion in an arbitrary or discriminatory fashion or in bad faith.

[25] In this case, I note that the employer made a number of mistakes and that the procedure regarding education leave is inconsistent.

[26] According to the uncontradicted testimony of the grievor and Mr. Sansoucy, a number of applicants never received the memorandum of December 3, 1998, extending the application period to January 15, 1999.

[27] In the employer's defence, I note that, in December 1998, one month before the January 15, 1999, final date, Ms. Beck, the employer's representative, had telephoned Mr. Salois to ask him whether his file (application for leave) was up to date and to send any additional documents, if necessary. That telephone call was thus confirmation for Mr. Salois that the process was taking its course and that a decision would soon be made.

[28] Having said this, I consider that Mr. Salois has attacked two things. The first is the fact that he was not warned about the final date of January 15 and was not able to update his application by registering at a university. The second is that registration at a university was not an essential requirement, according to him, given the fact that the employer granted Lyne Lamoureux's application even though she had not provided evidence of registration at a university.

[29] With regard to the grievor's first point, I cannot accept his interpretation for the following reasons. The date for registration at a university was May 1, 1998, according to the employer's first memorandum. This date was extended to January 15, 1999, in view of the extension of the education leave program. The change in the requirements benefited the applicants because it gave them more time to register at the university. Furthermore, during his telephone conversation with Ms. Beck in December 1998, Mr. Salois stated that he had nothing more to add to his application. He made no effort to find out about the requirement to register at a university.

[30] Accordingly, I believe that Mr. Salois did not suffer any real prejudice because he did not receive the December 3, 1998 memorandum (Exhibit E-3). Mr. Salois challenged the fact that he had to register at a university before knowing the outcome of the competition. He never tried to update his application by registering at a university. Therefore, he cannot rely on his own failure to act to support his contentions.

[31] The second point argued by Mr. Salois is that the rules of the game were changed and the obligation to register at a university did not constitute a real requirement. On this point, Mr. Salois raised an interesting argument; we still have to see whether he suffered any prejudice. According to the evidence submitted, in particular, Exhibits E-5 (education leave - Applicants Pre-Selection Table) and E-6 (Education Leave - Unselected Applicants Pre-Selection Table), the employer apparently added new requirements. First, it eliminated applicants who had not provided evidence of their registration at a university (Exhibit E-6). However, it subsequently relaxed this rule for one class of applicants, those who had already completed several university credits, their registration at a university and the possibility that they would be accepted in the course being a mere formality.

[32] I find that abandoning the requirement of admission to a university for applicants who had completed several university courses does not constitute prejudice

with respect to Mr. Salois. In fact, this procedure gave an additional opportunity to some applicants whose applications had been rejected because of this requirement. The fact that an additional opportunity was given to other applicants who had already completed part of their university education is not evidence that the employer acted in bad faith, arbitrarily or in a discriminatory fashion towards Mr. Salois.

[33] It is true that the change made by the employer added other applicants to those finally selected; however, Mr. Salois had already been turned down for the final selection because he had not met the requirement for registration at a university.

[34] In view of the reasons stated above, I cannot allow the grievance.

[35] I would add that the employer raised another point at the hearing of the grievance. Mr. Ethier, Regional Manager in policy and development, alleged in his testimony that Mr. Salois's application could not be granted because he did not belong to the group covered by the program (memorandum of October 3, 1997, page 3). In view of the reasons for the disposition of the grievance and the fact that the reasons given by Mr. Ethier were never dealt with in the employer's response to the grievance, I did not analyze this point. I find, however, that, if such was the case, an employee was allowed to hope that he would be granted education leave between October 1997 and January 1999 while, according to a representative of the employer, that employee had no chance of qualifying.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, August 31, 2001

Certified true translation

Maryse Bernier