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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MARTIN CYR

Grievor

and

PARKS CANADA AGENCY

Employer



Before: Jean-Pierre Tessier, Board Member

For the Grievor: Daniel Jouis, Counsel

For the Employer: Stéphane Hould, Counsel

Heard at Sept-Îles, Quebec,
October 5 to 7, 2004.

DECISION

[1] Martin Cyr has been employed by Parks Canada since 1983. In the summer of 2003, he received three disciplinary sanctions.

[2] This case concerns a sanction imposed in July 2003 because, according to the employer, the grievor had been caught sleeping during working hours. After meeting with Mr. Cyr, the employer suspended him without pay for a period of three working days (30 hours).

[3] On July 22, 2003, Mr. Cyr filed a grievance challenging the suspension. The case was referred to adjudication on February 27, 2004, and the hearing took place in October 2004. The evidence adduced at the hearing also related to two other cases, each of which will be the subject of a separate decision.

The facts

[4] Mr. Cyr works at Havre-Saint-Pierre where Parks Canada operates the Mingan Islands tourist site. Parks Canada boats are used to transport employees to the islands to provide animation services and act as tour guides.

[5] The trip takes approximately 15 to 20 minutes. On board the boat, the captain sits in the pilothouse, and Mr. Cyr acts as the maintenance and security clerk. His job is to see to the maintenance and cleanliness of the docks and washrooms and to security on the boat (casting off and stowing materials transported by the guides).

[6] At the hearing, Guy Landry, a Technical Services employee, testified that on the morning of July 14, 2003, he wanted to get some information contained in the logbook for a Parks Canada boat, the *Rorqual Bleu*, that was tied up at the Havre-Saint-Pierre marina at the time.

[7] He tried to get in touch by radio-telephone but got no answer. He decided to go there. Once inside the boat, he consulted the logbook. It was then that he heard a noise in the forward cabin of the boat. He noted that Martin Cyr was stretched out on the bench. He said that Mr. Cyr turned over and immediately fell asleep again. After a few minutes, Mr. Landry left the boat and returned to the office.

[8] Back in the office, Mr. Landry observed that his foreman, Jean Vigneault, had also tried to contact the *Rorqual Bleu* by radio-telephone, but without success. Mr.

Landry then told his foreman that he might have some difficulty in getting a response, because Mr. Cyr was sleeping on the boat.

[9] The foreman, Jean Vigneault, went to the dock and, through the porthole, he saw that Mr. Cyr was lying on the bench and had covered himself with his coat.

[10] Mr. Vigneault telephoned his superior, Mr. Kavanagh, Chief, Technical Services, to inform him of the situation. Ten minutes later, Mr. Kavanagh arrived at the dock and took one of two photographs of Mr. Cyr asleep in the cabin (Exhibits E-5 and E-6).

[11] After that, Mr. Kavanagh made some noise to wake Mr. Cyr up. When he stood up, Mr. Cyr explained that he had not been asleep but was resting. Mr. Kavanagh asked Mr. Cyr to go back to work. Mr. Cyr replied that his work was finished. Mr. Kavanagh thought that there was still work to be done, for example, picking up trash and cleaning the dock.

[12] Mr. Cyr was told to report for a meeting on July 16, 2003 (Exhibit E-7).

[13] The Director of Mingan Park, Stéphane Marchand, took part in the July 16, 2003 meeting. He testified that, at the interview, Mr. Cyr claimed that he had fallen asleep while sitting down in the cabin in order to relax for a few moments.

[14] After that, Mr. Cyr apparently said that he had had a headache on that day, a Monday, because he had been very busy at a festival on the weekend.

[15] During the interview, Mr. Cyr contended that his fatigue could be due to his medication and that he had been told in his other winter job as a truck driver that it would be better if he stopped for a few minutes to take a nap in the truck when he felt tired. Mr. Cyr claimed that other employees sometimes rested in the boats. To that effect, he filed a photograph of another employee lying on the bench of a boat. The Director was not satisfied with Mr. Cyr's explanations. The incidents occurred between 9:00 a.m. and 10:00 a.m. He imposed a suspension on Mr. Cyr equivalent to three working days (30 hours).

The parties' arguments

[16] The employer contended that he had proved that Mr. Cyr decided to rest and had lain down in the cabin of the boat. He criticized the employee for denying the facts and not realizing the import of his actions.

[17] In his defence at the hearing, Mr. Cyr explained that he had taken part in a festival on the weekend and had asked for a day off on July 14, but was refused because there was no one to take his place. He repeated that he had fallen asleep while sitting down to rest. He maintained that he had done his work and taken out the trash. He thought that the sanction was too severe.

Reasons for decision

[18] After hearing the testimony and examining the photographs filed in evidence, I am satisfied that Mr. Cyr deliberately lay down in the cabin of the boat in order to rest and sleep a little.

[19] It is admitted that Mr. Cyr took part in a festival during the weekend. He felt so tired that he asked to have July 14 off.

[20] The incident occurred between 9:00 a.m. and 10:00 a.m. After Mr. Landry went to the boat, Mr. Cyr did not leave the cabin but went back to sleep. Several minutes went by after that, since Mr. Vigneault came to the dock and Mr. Kavanagh followed him ten minutes later.

[21] Mr. Cyr finds that the punishment is too severe. In other cases, that might be true; however, in this case, Mr. Cyr did nothing to persuade his superiors that he understood the consequences of his actions and would improve his conduct in future.

[22] Mr. Cyr filed a photograph of another employee sleeping on the bench of a boat. The circumstances in which this photograph was taken were not established, and it shows an employee dozing while stretched out on the bench. The situation could be a noontime siesta instead of a person in a sleeping position, lying on his side and covered with a coat as in Mr. Cyr's case.

[23] To excuse his actions, Mr. Cyr alluded to problems with medication, he talked about sleep problems and the tolerance shown by his other employer in the winter when he drove a truck.

[24] Either Mr. Cyr fell asleep by accident while sitting down to relax or else he felt tired following his weekend festivities and decided to rest; his testimony as a whole confirms that he decided to rest. In this latter case, he should have admitted his actions and alleged in his defence that it was an isolated incident in special circumstances when he was extremely tired.

[25] The employee's attitude at the meetings with his employer and in the explanations he provided in his testimony weigh against a reduction of the sanction.

[26] Consequently, I uphold the employer's decision, and I dismiss the grievance.

Jean-Pierre Tessier
Board Member

Ottawa, February 10, 2005

P.S.S.R.B. Translation