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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

LESLIE SMITH

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as

Smith v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Christopher Schulz, Public Service Alliance of Canada

For the Employer: Karyne Desjardins

Heard at Ottawa, Ontario,
July 25, 2018.

EXPEDITED ADJUDICATION DECISION

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court of Appeal.

Introduction

[1] On February 18, 2015, Leslie Smith (“the grievor”) referred to adjudication a grievance he had filed against a decision of the Canada Revenue Agency (CRA or “the employer”) to deny his request for leave with pay for “other reasons” under clause 54.01(a) of the collective agreement between the CRA and the Public Service Alliance of Canada (PSAC) for the Program Delivery and Administrative Services group, which expired on October 31, 2012 (“the collective agreement”).

[2] The grievor alleges that the employer’s decision violated clause 54.01(a).

[3] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the *Federal Public Sector Labour Relations and Employment Board Act* (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

Summary of the evidence

[4] The following is a summary of the evidence presented at the hearing, which includes the parties’ agreed statement of facts and joint book of documents.

[5] When the grievance was filed, the grievor worked at the CRA’s Tax Services Office (TSO) in Charlottetown, Prince Edward Island, in an SP-05 position. He resided in Summerside, approximately one hours’ drive from his workplace, and his normal working hours were from 8 a.m. to 5 p.m.

[6] On December 4, 2013, the grievor did not report to work because of inclement weather conditions. A snowstorm hit P.E.I. that day. The grievor contacted the CRA’s emergency response line at 7 a.m. and confirmed that the Charlottetown TSO would open on time. He left home at 7:04 a.m. After 20 to 25 minutes of driving on unplowed roads, he decided to return home after he saw a 4-wheel drive truck in a ditch.

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[7] Once home, he telephoned his team leader to inform him of his situation and the road conditions. This phone call is not mentioned in the narrative section of the agreed statement of facts but forms part of the record of the hearing. The agreed statement of facts has 11 appendices; one is the grievor's account of events that was shared with the employer at the final-level consultation between the PSAC and the employer.

[8] In the morning of December 4, 2013, the grievor also contacted a friend who worked at the Charlottetown Service Canada office and was advised that the opening of that office was further delayed, until 12:30 p.m. It ended up being closed all day.

[9] At 10:26 a.m., a snowplow cleared the grievor's street. He then spent 30 to 45 minutes clearing his driveway. At approximately 11:30 a.m., he drove around Summerside to determine if he could continue to Charlottetown. After that, he decided that road conditions remained unsafe. At 12:30 p.m., he called his team leader to advise him that he believed that it was unsafe for him to drive to Charlottetown.

[10] On December 4, 2013, the Charlottetown TSO closed at 1 p.m. due to inclement weather conditions. The Summerside Tax Centre did not close on that day. However, a number of other businesses and government offices closed that day because of the snowstorm. The list of closed offices forms part of the record of the hearing.

[11] The daily newspaper in P.E.I., *The Guardian*, published the following on December 4, 2013:

...

The rain was only supposed to turn to snow later in the day Wednesday, but West Prince [the area that includes the grievor's residence in Summerside] residents awoke Wednesday morning to a blanket of snow and slush which suddenly pressed heavy machinery operators to work at moving it out of the way.

...

[12] The Guardian also reported that Victoria Park, which is 5 km from the Charlottetown TSO, "... was quiet during the storm on Wednesday. With high winds and visibility poor, few people ventured outside."

[13] As a result of the Charlottetown TSO being closed on December 4, 2013, the grievor was granted five hours of leave with pay for these reasons: four hours for the time the office was closed, and one hour for his efforts to get to work.

[14] The grievor requested paid leave for the remainder of the day (3.5 hours) for “other reasons” pursuant to clause 54.01, which reads as follows:

LEAVE WITH OR WITHOUT PAY FOR OTHER REASONS

54.01 At its discretion, the Employer may grant:

(a) leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty; such leave shall not be unreasonably withheld;

(b) leave with or without pay for purposes other than those specified in this Agreement.

[15] The employer denied the grievor’s leave request under clause 54.01(a). On December 24, 2013, he grieved that denial.

[16] When the events that led to the grievance occurred, the employer’s *Charlottetown Storm Policy* of November 2013 was in effect, which stated as follows:

...

7. If an employee calls in the morning when a storm is occurring and has determined that he/she cannot get to work due to the conditions and the office is still open at that time, the employee will be required to take vacation or other leave...

...

[17] In January 2014, the grievor submitted a request for sick leave with pay for 3.5 hours for December 4, 2013, which was granted.

[18] On January 25, 2014, the grievor forwarded to the PSAC a list of the offices that were closed on December 4, 2013, in P.E.I. Later, the PSAC forwarded this list to the employer.

[19] The grievance was denied at the first level of the grievance process on February 12, 2014, and at the third level on April 24, 2014. It was denied at the final level on December 22, 2014, for the following reasons:

Upon review, even though inclement weather occurred, I am satisfied that the weather did not prevent you from reporting to work on said dates. Furthermore, according to the Charlottetown Storm Policy, "If an employee calls in the morning when a storm is occurring and has determined that he/she cannot get to work due to the conditions and the office is still open at that time, the employee will be required to take vacation or other leave. If the office subsequently closes on that day, the employee will be granted the authorized time off for the time that the office is officially closed."

I understand on December 4, 2013, the office closed at 1pm and you were granted five hours Leave with Pay for Other Reasons for the time the office was closed and one hour for your efforts to come to work...For the remainder of the work day on December 4, 2013 (3.5 hours)...management was correct in denying your request for Leave with Pay for Other Reasons as the office was open.

Analysis

[20] The grievance concerns the interpretation and application of clause 54.01(a).

[21] Leave under clause 54 is discretionary, but the employer's exercise of that discretion is limited by the requirement that it not unreasonably withhold leave requested under the clause. The grievor bore the onus of establishing first that circumstances not directly attributable to him prevented him from reporting for duty and second that his leave request was unreasonably denied.

[22] For the reasons that follow, I conclude that the grievor met his onus.

[23] To support his position, the grievor relied on *Cloutier v. Treasury Board (Agriculture Canada)*, [1992] C.P.S.S.R.B. No. 104 (QL), PSSRB File Nos. 166-02-21839 and 21840 (19920721), *Colp v. Treasury Board (Employment and Immigration Canada)*, [1993] C.P.S.S.R.B. No. 138 (QL), PSSRB File Nos. 166-02-23215 and 23216 (19930803), and *Coppin v. Canada Revenue Agency*, 2009 PSLRB 81.

[24] In *Coppin*, the adjudicator held as follows at paragraph 33:

[33] In exercising its discretion, the employer must examine each request and its series of facts individually, and the employer's decision must be based on the merits of each request. There is nothing wrong with the employer developing a policy to manage leave requests after a winter storm, but that policy must be applied with some flexibility in assessing the facts of each request, considering that the

key factor is whether the employee was prevented from reporting to work for reasons not directly attributable to him or her.

[25] The grievor's representative claims that the grievor made every reasonable effort to get to work on December 4, 2013, and that he should not have been expected to risk his safety. He also claims that by concluding that "management was correct in denying your request for Leave with Pay for Other Reasons as the office was open", the employer did not consider his particular situation and did not exercise its discretion under clause 54.01 reasonably.

[26] The employer's representative submits that the grievor did not make a sufficient effort to get to work on December 4, 2013.

[27] Based on the evidence on the record, I find that road conditions were poor and unsafe in Summerside and Charlottetown on December 4, 2013. The local newspaper reported that a snowstorm had hit the area. In addition, a list of businesses and government offices closed on that day in Summerside and Charlottetown was provided to the Board. It shows that many offices opened late and that some remained closed all day.

[28] On December 4, 2013, as he was traveling by car and the road conditions were poor, the grievor decided to retrace his steps to his Summerside home rather than continue to Charlottetown. He then informed his team leader that he would wait and see before deciding whether he could make it to Charlottetown. He would see if conditions remained bad, improved, or worsened. Finally, at around 12:30 p.m., after clearing his driveway and car of snow and driving in Summerside, he advised his team leader that the conditions had not improved and that he was better off staying at home.

[29] This was a prudent decision by the grievor. It would not have been wise for him to endanger his life or physical health by driving in very difficult road conditions from his home to his workplace, which was an hour away. Everyone agrees that this is not the problem.

[30] The only question is whether the grievor is entitled to a leave of absence under clause 54.01.

[31] In this respect, I note that the employer was willing to support the grievor, to a certain extent. It exercised its discretion under clause 54.01 to grant him one hour of leave for his efforts to come to work. It also granted him sick leave with pay for the balance of the day the office remained open, namely, 3.5 hours.

[32] However, in my opinion, given the storm in P.E.I. that day and its effects on the grievor's ability to report to work, it would have been reasonable to grant him leave under clause 54.01(a) for the entire day.

[33] I understand that employees may be absent due to a snowstorm and that the employer may not want to take every employee's word for it that he or she was unable to report to duty because of the storm. However, as stated in *Coppin*, in exercising its discretion the employer must examine each request and its series of facts individually, and the employer's decision must be based on the merits of each request.

[34] Based on the evidence, I am satisfied that the grievor made reasonable efforts to get to work and that the snowstorm prevented him from traveling to his workplace.

[35] Aside from strictly applying its storm policy, it is unclear on what basis the employer believes that the grievor did not make a sufficient effort to get to work. The employer pointed out that the grievor did not call the Summerside Tax Centre to see if he could work there that day. Nor did he telework. On the other hand, the employer's representative did not know if those options were considered or even possible at the relevant time.

[36] As such, I conclude that the grievor made reasonable efforts to get to work on December 4, 2013, but that a snowstorm prevented him from reporting for duty. The employer's decision to partially deny him leave under clause 54.01 and to grant sick leave with pay instead for the remaining hours of the day was unreasonable in the circumstances.

[37] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[38] This grievance is allowed.

[39] The employer shall credit the grievor's sick-leave balance by 3.5 hours and grant him leave for those hours under clause 54.01(a) of the collective agreement.

August 17, 2018.

**Nathalie Daigle,
a panel of the Federal Public Sector
Labour Relations and Employment Board**