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File: 166-2-9687

PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

S. LAVIOLETTE,

from to JB

Grievor,

AND:

TREASURY BOARD
(Department of Transport),

Employer.

Cata grievance

DECISION

Before: David H. Kates, Deputy Chairman.

For the Grievor: J.C. Butt, Canadian Air Traffic Control Association.

For the Employer: Pierre Hamel, Counsel.

ART 137

*CODE
402779*

JB

Jan 26/82

Heard in Montreal, November 17, 1981

Grievor received a one day suspension for leaving work ~~immede~~ on sick leave without advising his supervisor. Grievance dismissed.

DECISION

1. This is a reference to adjudication filed under paragraph 91(1)(b) of the Public Service Staff Relations Act. The grievor has challenged the propriety of a one-day suspension imposed upon him for his alleged failure to notify his superiors of his absence from work on the afternoon of June 24, 1980.

2. Mr. Laviolette is employed as a data systems coordinator (AI-4) at the Montreal Air Traffic Control Centre (ATC). On June 24, 1980 the ATC was not yet operational. On that day Mr. Laviolette along with a number of his colleagues was asked to report to work in order to help expedite the preparation of the data base and perform other checks of the automated systems necessary to make the ATC operational. Since June 24 is the St. Jean Baptiste holiday in the Province of Quebec, Mr. Laviolette was entitled to premium pay allowed under the collective agreement for having reported for work.

3. Mr. Hubert Gervais is employed as a data systems supervisor responsible amongst other things for supervising the data systems coordinators placed under his authority. He testified that he left the work place before noon for lunch at the Brasserie des Sources, a local tavern near the ATC. He was seated at the same table as Mr. Laviolette, Mr. Prévost and a third data systems coordinator (Mr. Vanier). The three were drinking beer and were in a festive mood. They offered to buy Mr. Gervais a drink. Mr. Gervais stated he left the tavern at approximately 12:45 p.m. and returned to the work place. He indicated that he left Mr. Laviolette and his two colleagues at the tavern. Mr. Gervais testified that neither Mr. Laviolette nor his colleagues returned to work for the balance of the day.

4. Mr. Laviolette testified that he suffers from a weak stomach. On the morning of June 24, 1980 he claimed he felt ill. At that time he was not sufficiently incapacitated to make any complaint to Mr. Gervais. He

admits that, notwithstanding his condition, he imbibed a couple of beers at lunch. Again, at that time he did not mention his condition to Mr. Gervais. He testified that he left the tavern along with Mr. Prévost and his other colleague to return to work. He claims Mr. Gervais was still at the tavern when he left. Shortly after his arrival at the ATC he became seriously ill and decided that he should go home. Since Mr. Gervais was not at the work place and since no one else could be found (including Mr. Gervais' secretary) to leave a message, Mr. Laviolette asked Mr. Prévost to advise Mr. Gervais of his departure and the reasons therefor. Unfortunately, Mr. Prévost decided to leave the work place as well. No reason was given as to why Mr. Prévost felt it necessary to absent himself. Incidentally, Mr. Prévost was not called as a witness to adduce evidence in these proceedings. Accordingly, Mr. Gervais when he returned from his lunch period discovered that his staff complement was going to be substantially diminished for the balance of the day.

5. Two or three days later the grievor was summoned by Mr. Gervais to his office. Mr. Gervais asked him for an explanation for his absence. The grievor, according to Mr. Gervais, indicated that he did not feel it necessary to report for work. Mr. Gervais accordingly recommended that the grievor (owing to a past incident of the same nature) be disciplined by the imposition of a one-day suspension for being absent from work without having notified any superior. It is this one-day suspension that is being challenged in this case.

6. Mr. Laviolette denied the accuracy of Mr. Gervais' version of the interview. He testified that he had told Mr. Gervais that he was sick and advised him that Mr. Prévost was to have communicated the reason for his hasty departure. He insisted that he had visited his doctor, Dr. Clément, that afternoon and was advised to monitor his diet more carefully. He claimed that at about 2:30 p.m. he had telephoned the

doctor for an appointment. Dr. Clément was prepared to examine him immediately. It did not occur to Mr. Laviolette to telephone Mr. Gervais at that moment because he felt confident that Mr. Prévost would have communicated his message. He refuted Mr. Gervais' version of the interview on the basis that it would have been unprofessional for him to have absented himself without cause.

7. Mr. Gervais initially refused the grievor sick leave for his absence from work on the afternoon of June 24, 1980 because of his failure to produce a medical certificate. Later during the course of the grievance procedure with respect to his challenge of the employer's refusal to grant him sick leave, he submitted a doctor's certificate signed by Dr. Phaneuf. It was not until Mr. Hamel's cross-examination of Mr. Laviolette that the grievor appreciated that he had mistaken his visit to Dr. Phaneuf as being to Dr. Clément. Notwithstanding the employer's initial reluctance to grant the grievor his sick leave premium the employer relented in the light of the medical certificate signed by Dr. Phaneuf. The employer still maintains, however, that the one-day suspension was warranted in the face of the grievor's shortcoming in failing to take reasonable steps to notify the employer of his reason for leaving the work place.

8. Counsel for the employer premised his submissions on my acceptance of the grievor's version of the events. In light of the medical certificate signed by Dr. Phaneuf and the employer's granting Mr. Laviolette sick leave for the afternoon of June 24, 1980, I am constrained to find that the grievor indeed took sick on that afternoon. Accordingly, the sole question put before me is whether the grievor acted reasonably in his taking steps to notify Mr. Gervais of his illness prior to absenting himself.

9. Mr. Gervais testified that he left the tavern prior to Mr. Laviolette and accordingly insisted that he was at the work place at the time Mr. Laviolette claims he took ill. Mr. Hamel quite generously indicated that he viewed the divergency between Mr. Gervais' story and Mr. Laviolette's as to who left the tavern first as merely a technical difficulty. In other words, the employer was prepared to rest its case on the premise that Mr. Laviolette left the tavern before Mr. Gervais. Assuming this to be the case, Mr. Hamel argued that the grievor had ample opportunity to advise Mr. Gervais of his difficulty during the morning when he felt his oncoming illness, at the tavern where he lunched with Mr. Gervais, at the work place upon his return from lunch when he could have left a written message and after his departure when he could have telephoned Mr. Gervais from his home. In reply to Mr. Hamel's position, Mr. Butt simply suggested that Mr. Laviolette acted reasonably at all material times in that he left a message with his colleague, Mr. Prévost, to communicate to Mr. Gervais. Inferentially it was suggested that the grievor ought not to have been held responsible for Mr. Prévost's shortcoming in leaving the work place prior to Mr. Gervais' return.

10. Notwithstanding Mr. Hamel's attempts to spare me the necessity of having to make a ruling on credibility, I am compelled by the facts to do so. Clearly the grievor's case is founded upon his excuse or alibi that he left a message with Mr. Prévost to communicate to Mr. Gervais. Mr. Gervais testified that neither Mr. Laviolette nor Mr. Prévost returned to work at all that afternoon. What causes me to prefer Mr. Gervais' version of the incident to Mr. Laviolette's is simply the grievor's failure to call Mr. Prévost as a witness. If Mr. Laviolette intended to rely on his effort to secure the help of Mr. Prévost to establish the reasonableness of his actions, then the onus rested upon him to make Mr. Prévost available to the adjudicator for purposes of determining

the authenticity of the defence. In failing to do so, I am left with very grave concerns about the credibility of the grievor's story. In other words, the grievor's confusion as to the identity of the doctor he visited to attend to his illness, his failure to inform Mr. Gervais of his illness given the many opportunities he had for doing so, and the general inconsistency of his story compel me to disbelieve that any message was left with Mr. Prévost at all. Moreover, I am satisfied, even assuming the grievor was actually sick, that neither Mr. Laviolette nor Mr. Prévost returned to work at all that afternoon. Accordingly, I reject the grievor's story that he left a message at any time for the purpose of informing Mr. Gervais of the reason for his absence.

11. For all the foregoing reasons, I am satisfied, having regard to the grievor's past record, that the employer's decision to impose a one-day suspension ought not to be disturbed. Accordingly, this reference to adjudication is dismissed.

For the Board,

David H. Kates,
Deputy Chairman.

OTTAWA, November 24, 1981.