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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

PAUL COPPIN AND PATRICIA GILL-CONLON

Grievors

and

CANADA REVENUE AGENCY

Employer

Indexed as

Coppin and Gill-Conlon v. Canada Revenue Agency

In the matter of grievances referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievors: Douglas Hill, Public Service Alliance of Canada

For the Employer: Debra L. Prupas, counsel

Heard at Toronto, Ontario,
June 11, 2009.

I. Grievances referred to adjudication

[1] On December 23, 2004, there were severe winter weather conditions in the southern region of Ontario. Because of those weather conditions, Paul Coppin and Patricia Gill-Conlon ("the grievors") claim that they were prevented from reporting to work. The grievors are Tax Collection Officers at the Toronto West Tax Services Office (TWTSO) of the Canada Revenue Agency ("the employer").

[2] The grievors asked the employer to grant them leave with pay according to clause 54.01(a) of their collective agreement. The employer refused their request, and, instead, it granted them annual leave. The grievors allege that the employer's decision violates clause 54.01(a) of the collective agreement signed on December 10, 2004, between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada ("the collective agreement"). Clause 54.01(a) reads as follows:

...

54.01 At its discretion, the Employer may grant:

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

...

[3] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, these references to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

II. Summary of the evidence

[4] The parties produced 16 documents as evidence, including weather reports, the TWTSO's extreme weather policy and several documents related to the grieved situations. Mr. Coppin and Ms. Gill-Conlon testified. The employer called Lynda Hayter and Patrick Mendes as witnesses. In December 2004, Ms. Hayter was the manager of one of the revenue collection sections of the TWTSO. Ms. Gill-Conlon worked in that section. Mr. Mendes was a team leader at the TWTSO, and Mr. Coppin reported to him.

[5] Mr. Coppin's residence is located in Dundas (part of Hamilton), Ontario, 52 kilometres from the TWTSO, which is located on Hurontario Street in Mississauga, Ontario. It takes Mr. Coppin an hour to an hour 10 minutes to drive to work. He normally leaves home at 07:45 and arrives at work before 09:00.

[6] On December 22, 2004, Mr. Coppin heard on the news that a major winter storm was coming into the area during the overnight period. It turned out that there were snow showers, blowing snow, ice pellets and freezing rain in the Hamilton area from midnight to 14:00 on December 23, 2004, creating a combined accumulation of 25 centimetres of snow and 7 millimetres of rain. That same day, Mississauga received 15 centimetres of snow and 4.2 millimetres of rain. Basically, the weather conditions were bad at both ends of Mr. Coppin's commute.

[7] On December 23, 2004, Mr. Coppin went outside at 07:00. Approximately 20 centimetres of snow had fallen, and it was changing to freezing rain. He attempted to move his vehicle (a pickup truck) which was parked on the street, and he got stuck. Mr. Coppin went back inside and called the emergency service line at his office. He learned from the recorded message that the office was not closed for the day. Around 07:45, according to Mr. Coppin, but at 08:37, according to Mr. Mendes, Mr. Coppin left a message with Mr. Mendes, informing him that he would be late for work or that he might not be able to make it to the office because of the weather conditions.

[8] At approximately the same time, Mr. Coppin heard on the news that the municipality had issued an emergency situation report in reaction to the severe weather conditions. This meant that Mr. Coppin had to move his vehicle off the street. For the next two hours, he shovelled enough snow to allow him to park his vehicle in his neighbour's driveway.

[9] Between 10:15 and 10:30, Mr. Coppin called Mr. Mendes. They discussed the weather conditions. Mr. Coppin testified that he informed Mr. Mendes that the weather conditions were still bad in Dundas and that Mr. Mendes said that the conditions were also bad in Mississauga. According to Mr. Coppin, Mr. Mendes told him that it did not make sense to continue trying to get to the office considering the weather and that Mr. Mendes did not expect him at work that day. According to Mr. Mendes, the conversation was limited to Mr. Coppin informing him of the weather situation in Dundas and that he would not be coming in. There was no discussion on the type of

leave that the employer would grant Mr. Coppin for his absence on December 23, 2004. After that telephone conversation, Mr. Coppin made no further efforts to get to work.

[10] Mr. Coppin testified that the street on which he lives was only plowed at 14:30. He expected it to be plowed earlier. He also testified that public transportation was not an option for him because the nearest bus stop is approximately 750 meters from his house, and it was too far to walk. Furthermore, even on a normal day, Mr. Coppin testified that it takes a lot of time to get to the office using public transportation. According to Mr. Coppin, it would, on a normal day, take 45 minutes to go to downtown Hamilton, 20 minutes from Hamilton to Oakville, 30 to 40 minutes from Oakville to Square I in Mississauga and another 30 minutes from Square I to the office. The waiting time at each transfer needs to be added to those times.

[11] Ms. Gill-Conlon lives in Barrie, Ontario, which is 100 kilometres from the TWTSO. She drives to work every day with her spouse, who also works at the TWTSO. She never uses public transportation to commute from Barrie to Mississauga. She believes that there is no public transportation from Barrie direct to Mississauga and that a person would have to go to Toronto and then come back to Mississauga.

[12] On a normal day, it takes about 1 hour for Ms. Gill-Conlon to drive from her home to the TWTSO, including approximately 40 minutes on Highway 400, which is 5 minutes from her home. She normally leaves home at around 07:00 and starts work between 08:15 and 08:30.

[13] On December 23, 2004, Ms. Gill-Conlon left home at 06:30 in the family car. The roads were not plowed; heavy and wet snow was falling and it was beginning to rain. The roads were extremely slippery. It took Ms. Gill-Conlon a long time just to get to highway 400. It took her one hour and 15 minutes to drive to the second exit on highway 400, which normally takes 10 to 15 minutes. The traffic was crawling and many cars were off the road. Ms. Gill-Conlon testified that they were the worst conditions that she had seen in her three years of commuting from Barrie to Mississauga. She felt that it was unsafe and too risky to continue, and she returned home. On arriving home, she called the office to inform her supervisor that she would not be coming to work because of the weather.

[14] In cross-examination, Ms. Gill-Conlon testified that she and her spouse own a pickup truck. She said that they never use the truck for commuting. However, in her

testimony, Ms. Hayter testified that she saw Ms. Gill-Conlon and her spouse coming to work 2 or 3 times a week in the truck. For Ms. Gill-Conlon, driving the truck on the morning of December 23, 2004 would have made no difference because the roads were slippery and dangerous.

[15] Mr. Coppin's testimony on the weather situation in Dundas on December 23, 2004, was supported by weather reports adduced in evidence. Ms. Gill-Conlon's testimony was largely confirmed by an email sent by the director of the Barrie Tax Office, who wrote the following to Ms. Hayter on January 4, 2005:

Lynda- the office was not closed on the 23rd. The snow conditions in and around the Barrie area were quite bad. A number of our staff were unable to make it to work based on their home location. These were all dealt with on a reasonable effort basis.

I personally took a day's vacation as I made the decision early in the am to not attempt to go to work. It took me 2 hours to shovel the driveway out around 9am and then I had to repeat this about 1pm.

...

[Sic throughout]

[16] When Mr. Coppin and Ms. Gill-Conlon went to work on December 24, 2004, they both applied for leave with pay for other reasons. The employer denied both requests because it felt that the grievors did not make a reasonable effort to get to work. Instead, the employer decided to grant annual leave to the grievors even if they did not request it.

[17] The TWTSO has a formal written policy on extreme weather conditions. According to the policy, employees are expected to make a reasonable effort to reach their place of work. The policy states that the criterion generally used to establish that an employee should be able to get to work is when public transportation is operating. In the case of employees who live in outlying areas where public transportation is non-existent or infrequent, the reasonableness of the employee's efforts to get to work will be the determining factor when granting leave. The place of residence will also be considered.

[18] On December 23, 2004, a number of employees did not go to work at the TWTSO because of the weather. All of those employees, except Mr. Coppin and

Ms. Gill-Conlon, asked for annual leave for the time lost. Ms. Gill-Conlon admitted that her spouse also asked for annual leave. On December 23, 2004, the TWTSO remained open the whole day, and it did not close early. Furthermore, the public transportation system was operating.

III. Summary of the arguments

A. For the grievors

[19] The grievors argued that the employer should have granted them leave with pay according to clause 54.01(a) of the collective agreement for their absences on December 23, 2004. The evidence adduced demonstrated that the weather conditions were severe that day. Both grievors made reasonable efforts to get to work, but they were prevented from getting there by the storm. The decision to refuse the grievors' request for leave with pay was unreasonable.

[20] For snowstorms, the employer must look at the employee's individual situation and determine if the employee has made reasonable efforts to get to work. That is not how the employer proceeded. Rather, it decided to refuse the requests because the public transportation system was operating.

[21] It is not contested that the weather was bad on December 23, 2004. Under those bad conditions, both employees made efforts to go to work. Mr. Coppin could not get out of his street because it was plowed only at 14:30. Ms. Gill-Conlon drove for more than one hour and decided to turn back because the roads were too dangerous. Both employees called the office when they realized that they would not be able to make it to work.

[22] The grievors referred to the following case law: *Cloutier et al. v. Treasury Board (Agriculture Canada)*, PSSRB File Nos. 166-02-21838 to 21840 (19920721); and *Colp and Bunch v. Treasury Board (Employment and Immigration Canada)*, PSSRB File Nos. 166-02-23215 and 23216 (19930803).

B. For the employer

[23] The employer argued that it acted reasonably when it refused to grant the grievors leave with pay for their absences on December 23, 2004. The evidence demonstrated that the grievors did not make a reasonable effort to get to work that

day. In examining the facts and the efforts made by the grievors, the employer decided to refuse the requested leaves and instead to approve annual leave.

[24] On the morning of December 23, 2004, Mr. Coppin did not try to leave home earlier than usual even though he knew that the weather forecast was not good that day. Also, he left his car parked on the street overnight.

[25] Mr. Coppin made absolutely no effort to take public transportation. He did not produce any evidence that public transportation was not operating. He did not seek any other alternatives to get to work that day.

[26] Even though Mr. Coppin spoke with his supervisor on the morning of December 23, 2004, there was no discussion of the type of leave that he would be granted. His supervisor only acknowledged the information supplied by Mr. Coppin that he would not be coming to work.

[27] Ms. Gill-Conlon made an effort to get to work early in the morning which is why the employer changed its decision to refuse her request and decided to grant her two-and-a-half hours of leave with pay according to clause 54.01(a) of the collective agreement. But after she got back home at around 09:00, she made no effort to get to work. She did not verify if public transportation was operating.

[28] Ms. Gill-Conlon had access that morning to a four-wheel-drive pickup truck, but she decided to take her car. Had she taken the truck, it would have been easier for her to reach the office. Furthermore, Ms. Gill-Conlon's spouse, who was travelling with her that morning, applied for annual leave and did not request leave with pay for other reasons.

[29] The employer referred to the following case law: *Strickland v. Treasury Board (National Capital Commission)*, PSSRB File No. 166-02-14697 (19850215).

IV. Reasons

[30] In these cases, the grievors have to prove that the employer was not reasonable in exercising its discretion, specifically in refusing their leave requests.

[31] On December 23, 2004, there was a winter storm in Dundas and Barrie, and the weather was also not very good in Mississauga. That day some employees went to work and others called the office to advise that they would be staying home because of the

weather. All those employees, except the grievors, asked for annual leave to cover their absences. Also, the TWTSO remained open the whole day. There was no evidence adduced that public transportation was not operating.

[32] The fact that public transportation was operating, that the office remained open and that all employees except the grievors asked for annual leave that day is not enough to conclude that the employer was reasonable in exercising its discretion. It is possible that it was impractical or impossible for the grievors to take public transportation that day. It is also possible that the weather was not bad enough to close the office in Mississauga but that it was bad enough to prevent someone from driving from Dundas or Barrie. For the other employees who requested annual leave that day, that was their choice, and the grievors should not be penalized because they made a different choice. Furthermore, the grievors' rights should not be restricted by other employees' interpretation of the collective agreement. The fact that other employees did not apply for leave with pay for other reasons cannot, in and of itself, be used to deny the grievors' rights.

[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.

[34] Around 07:00 on December 23, 2004, Mr. Coppin tried to drive his vehicle on his street. He testified that the vehicle could not move because there was too much snow and because it was very slippery. It does not matter if the vehicle was parked on the street and not in his driveway; the street was not plowed, and it remained that way until 14:30. Mr. Coppin could have tried again every half hour, hour or two hours to move the vehicle, but the result would have been the same, considering that the precipitation continued after 07:00 that day, and the street was only plowed at 14:30.

[35] From the evidence adduced, I cannot establish if public transportation was operating from Dundas to Mississauga on that day. Even if it was, Mr. Coppin would have had to walk 750 metres in 20 centimetres of snow to get to the closest bus stop. Considering the great physical effort involved in such a walk during a winter storm,

and considering that the street could have been plowed at anytime, I do not find it unreasonable that Mr. Coppin did not walk to the public transportation stop that morning. At 14:30, after his street was plowed, Mr. Coppin could have checked if public transportation was operating. However, if it was, I conclude that he would not have made it to the office before the end of his working hours if I add up the time for the walk to reach the closest public transportation stop, the travelling time and the waiting time between transfers. After 14:30, Mr. Coppin could have driven his vehicle down his street, and he might have been able to get to the office by 16:00. I do not believe that it was unreasonable for him not to drive to Mississauga for one hour of work considering that there was freezing rain that afternoon in Mississauga.

[36] I find that Mr. Coppin made reasonable efforts to get to work on December 23, 2004, and that he was prevented from getting there because of the severe weather conditions. The employer was unreasonable in refusing to grant him leave with pay for his absence according to clause 54.01(a) of the collective agreement.

[37] Ms. Gill-Conlon commutes from Barrie to Mississauga every day for a return trip of 200 kilometres. She left home earlier than usual on December 23, 2004. That day, she drove for more than one hour, and she returned home. The road was extremely slippery, and many cars were off the road.

[38] In an email sent to Ms. Hayter, the director of the Barrie Tax Office confirmed that the weather conditions were bad in Barrie on December 23, 2004. A number of employees could not make it to the office. The director himself did not go to work. It took him two hours to shovel the snow in the morning, and he had to repeat the task at around 13:00. That is an indication that the snow continued after Ms. Gill-Conlon made an attempt to drive in the morning.

[39] Ms. Gill-Conlon convinced me that she could not safely drive from Barrie to Mississauga on December 23, 2004. Her short trip on highway 400 that morning took her more than one hour. She made a reasonable effort to get to work and was prevented from getting there by the bad weather conditions. She testified that it would not have made a difference had she taken her truck that morning. I believe that this is what she thought, and I have no reason to conclude otherwise. Why would she put her safety at risk that morning in using her car rather than her truck if it was safer to use the truck? A slippery road is a slippery road, no matter what you drive.

[40] Ms. Gill-Conlon never used public transportation to commute from Barrie to Mississauga. She believes that the service does not exist. No evidence was presented at the hearing that would make me conclude that she is mistaken. Obviously, if she believed that there was no public transportation, it was normal that she did not try to use it on December 23, 2004.

[41] The employer adduced evidence that other employees of the TWTSO did not go to work because of the weather conditions on December 23, 2004 and that they asked for annual leave. That is irrelevant because each case needs to be examined on its merits. Maybe other employees did not know that they could be granted leave with pay for other reasons when they were prevented from getting to work. And, probably, most employees live closer to the office than Mr. Coppin or Ms. Gill-Conlon. As far as Ms. Gill-Conlon's spouse is concerned, I do not know why he did not ask for leave with pay for other reasons and applied for annual leave instead. Considering that no evidence was adduced to explain his choice, it becomes irrelevant to my decision.

[42] Ms. Gill-Conlon made all reasonable efforts to get to work on December 23, 2004, and she was prevented from getting there because of the severe weather conditions. The employer was unreasonable in refusing to grant her leave with pay for her absence according to clause 54.01(a) of the collective agreement.

[43] These cases differ from *Strickland*, to which the employer referred in support of its arguments. In *Strickland*, the adjudicator was presented with contrasting testimony as to the effect of a winter storm and its severity. The adjudicator chose to believe an official from the Ministry of Transportation, who testified that roads were passable even if wet with slushy sections. The adjudicator also questioned the validity of other elements of the grievor's testimony about what had happened on the morning that he did not go to work. In these cases, the employer did not produce any evidence to contradict the grievor's description of the weather and of the road conditions on December 23, 2004. Furthermore, I believe the grievors' testimonies about the efforts that they made and the situation that they faced when they tried to get to work on December 23, 2004.

[44] For all of the above reasons, I make the following order:

(The Order appears on the next page)

V. Order

[45] Mr. Coppin's grievance is allowed and the employer must credit his annual leave balance by the number of hours of annual leave that it deducted for his absence of December 23, 2004.

[46] Ms. Gill-Conlon's grievance is allowed and the employer must credit her annual leave balance by the number of hours of annual leave that it deducted for her absence of December 23, 2004.

June 30, 2009.

**Renaud Paquet,
adjudicator**