

95-559

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE MINISTER OF PERSONNEL FOR THE GOVERNMENT OF
THE NORTHWEST TERRITORIES

AND:

THE UNION OF NORTHERN WORKERS

ED
FEB 13 1996
FILE IN U.N.W.

(YELLOWKNIFE CORRECTIONAL CENTRE -
SHIFT SUPERVISORS LEAVE - POLICY GRIEVANCE)

EXPEDITED
'DISMISSED'

A W A R D

DAVE T

MERVIN I. CHERTKOW
— Arbitrator and Mediator —
#300 - 180 Seymour Street
Kamloops, B.C. V2C 2E3

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**THE MINISTER OF PERSONNEL FOR THE GOVERNMENT OF
THE NORTHWEST TERRITORIES**

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

**(YELLOWKNIFE CORRECTIONAL CENTRE -
SHIFT SUPERVISORS LEAVE - POLICY GRIEVANCE)**

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

COUNSEL

Guy Bisson - for the employer
Chris Dann - for the union

DATE AND PLACE OF HEARINGS

January 24th, 1996 at Yellowknife, N.W.T.

DATE OF AWARD

January 30th, 1996

A W A R D

I

This dispute was heard under the expedited arbitration procedure as set out in article 37.27 of the collective agreement between the parties.

The parties filed an Agreed Statement of Facts. The Department of Justice employs six COII (Shift Supervisors) at the Yellowknife Correctional Centre. A policy was implemented there regarding shift scheduling on New Year's Eve and New Year's Day. That policy provided;

There will be a COII (Shift Supervisor) on night shift December 31st and a COII on day and afternoon shifts on the 1st of January. If you are scheduled to work one of these shifts and you want leave then it is your responsibility to arrange for a COII to work in your place. For the purpose of this policy COIIs must be indeterminate.

Historically, New Year's Eve is a time of increased disturbances at the Yellowknife Correctional Centre. In 1990, a riot occurred on New Year's Eve at the Yellowknife Correctional Centre. Article 18.02 of the collective agreement governs the granting of vacation leave.

II

It is the position of the union that operational requirements is not a factor to be taken into account with respect to the granting of vacation leave under article 18.02. Therefore, the employer has no right to deny leave, notwithstanding the circumstances at the Yellowknife Correctional Centre, and its policy is in contravention of that article.

The employer takes the opposite view. It says article 18.02 provides no guarantees to employees that leave requested will, in fact, be granted. In this case, it considered an operational requirement based on historical precedent that the most likely time for an inmate disturbance at the Correctional Centre is New Year's Eve and that extra precautions must be taken. Accordingly, it denied the grievance.

III

After considering the representations of the advocates on this dispute, I have concluded the grievance is not well-founded and must be denied.

The opening statement in article 18.02 (1) says that;


In granting vacation leave with pay to an employee, the employer "shall make every reasonable effort" ... to grant the employee his/her vacation leave ... at a time specified by him/her.

In my judgment, operational requirements of the employer must, by necessary implication, be imputed into the language of article 18.02. By the use of the words "the employer shall make every reasonable effort", I am persuaded the parties must have intended that operational requirements would form part of the factual matrix in answer to any question of whether, in an individual case, the employer has made "every reasonable effort" to schedule vacations at the time requested by the employee. To hold otherwise, in my view, would defeat the legitimate expectations of the parties as to the application of that provision.

Having come to the above conclusion, the evidence satisfies me the policy regarding operational requirements for staffing at the Yellowknife Correctional Centre on New Year's Eve, given the history of previous disturbances on that occasion, did not

contravene or in any way violate the employer's obligations under article 18.02 of the collective agreement. Accordingly, the grievance is denied and it is so awarded.

DATED at Kamloops, British Columbia, this 30th day of January, A.D.,
1996.



MERVIN I. CHERTKOW
Arbitrator

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**THE MINISTER OF PERSONNEL for the GOVERNMENT OF THE
NORTHWEST TERRITORIES**

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

(PAUL JONES GRIEVANCE NO. 95-568)

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

ADVOCATES

Guy Bisson - for the employer

Chris Dann - for the union

DATE AND PLACE OF HEARINGS

July 31st, 1996 at Hay River, N.W.T.

DATE OF AWARD

August 13th, 1996

A W A R D

I

This dispute was heard under the expedited arbitration procedure as set out in article 37.27 of the collective agreement between the parties.

By way of an Agreed Statement of Facts the parties agree the grievor is a Correctional Officer who works at the Yellowknife Correctional Centre. He was accused of sexual harassment by a co-worker in early 1995. An investigation was conducted which lasted one month. When the investigation report was issued in May of 1995 he was found not guilty of sexual harassment. During the period of time when the investigation was proceeding, the grievor used eight days of his sick leave.

II

The union says the grievor suffered stress as a result of being wrongfully accused of sexual harassment and was forced to take the eight days of sick leave. Having been found innocent of the charges, the grievor's sick leave ought to be restored to him.

The employer says that the sick leave provisions of the collective agreement are a benefit to employees for the very purpose for which the grievor took his leave in the instant case.

III

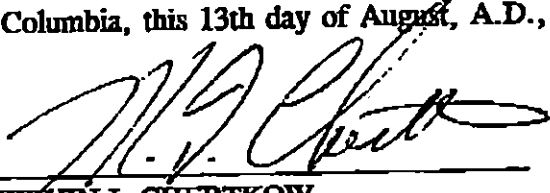
In my judgment, the grievance of Mr. Jones is not well-founded. The purpose of sick leave is to enable an employee to take time off from work due to illness, including stress. He receives payment of his wages. It matters not, in my view, what

* Page 2 *

causes an employee to become ill. If his illness is genuine and he is unable to work, as is the case here, his sick leave benefits are triggered. Stress, like any other illness, in these circumstances, is compensated by the sick leave benefits set out in the collective agreement.

I can find nothing in the language of the collective agreement which would entitle the grievor to reimbursement of his sick leave credits in the circumstances of this case. Accordingly, his grievance is denied and it is so awarded.

DATED at Kamloops, British Columbia, this 13th day of August, A.D.,
1996.



MERVIN I. CHERTKOW
Arbitrator