

Concerning an arbitration

Between:

Jeanne Sauvé Family Services
and
Ontario Public Service Employees Union

Grievance of Laurianne Bouvier, Dismissal

Arbitrator: Joseph W. Samuels

For the Parties

Union

Will Presley, OPSEU Representative
Maurice Drolet, Local Steward
Laurianne Bouvier, Grievor

Employer

Guy Wainwright, Counsel
Mac Hiltz, Executive Director
Yves Barbeau, Assistant Executive Director

Hearings in North Bay on April 29, and then in Kapuskasing on July 24,
September 17 and 18, December 22 and 23, 2003

On January 23, 2003, Laurianne Bouvier was dismissed from her employment as a Casual Residential Worker at Jeanne Sauvé Family Services. She was still in her probation period. She grieved her dismissal.

Article 5.02 of the collective agreement provides that "An employee who has not completed his probationary period may be discharged without just cause and at the sole discretion of the Employer".

The parties agree that Article 5.02 governs this grievance and that the Employer is not obligated to show just cause for the dismissal. However, it is also agreed that, in exercising its sole discretion, the Employer must not act arbitrarily, or in a discriminatory manner, or in bad faith.

In this case, the Union alleges that the Employer did act arbitrarily or in bad faith, because there was no valid reason to dismiss the grievor. From its opening statement to the end of the hearing, the Union has argued that the Employer acted arbitrarily and in bad faith by giving different reasons for the dismissal from time to time and because there was no factual basis for the reasons which were given.

The Employer says that the grievor was unsuitable for the position and this is why it decided to terminate the grievor's employment during her probation period.

Jeanne Sauvé Family Services operates a number of programs and facilities to assist families in need of assistance. One of the facilities is a residential unit for young people, called the "Pavillon". This is where Laurianne Bouvier worked as a Casual Residential Worker.

Ms. Bouvier was hired on a call-in basis on October 28, 2002. At the time, she resided in North Bay and she moved to Kapuskasing to take up her position. She expected to get enough work for full-time hours or close to full-time hours. Within three weeks of coming to Kapuskasing, she applied successfully for a contract position as a Casual Full-time worker. She would be replacing Linda Desbiens, who had recently been appointed as an Acting Supervisor.

The decision to dismiss Ms. Bouvier was made by Mac Hiltz, the Executive Director of Jeanne Sauvé Family Services. The Union agreed that he based his decision on information and recommendations from managers (Yves Barbeau, the Assistant Executive Director, and Jean Raymond, the Supervisor of Residential Programs), who said that the grievor could not do her job and would not progress. Given this admission, I made a preliminary decision that Mr. Hiltz did not act arbitrarily or in bad faith. There remains the issue of whether the information and recommendations given to Mr. Hiltz were arbitrary and in bad faith.

Jean Raymond, the Supervisor of Residential Programs, has been with Jeanne Sauvé Family Services for 15 years, as a Child Protection Worker, then a Child Protections Supervisor and, for three years, in his current position. He told us about the structure of the organization, and the part played by the Pavillon, where the grievor worked. He explained the routine that is prescribed for the clients, and the need for the Residential Workers to ensure consistency within the program. He spoke about the principles and practices in dealing with the clients. He was involved in hiring the grievor. He recommended her to Mr. Hiltz. He had little personal contact with the grievor after her hire, relying on information he received from the supervisors on shift, Linda Desbiens and Sylvie Boudreault.

He told us that, as time went on, he heard that there were repeated concerns about the grievor's performance—she was having power struggles with the children, she was giving inappropriate supervision, her interventions were inappropriate, and she came to the facility once off-shift and once on shift smelling of alcohol. He testified that he advised the supervisors on how to deal with the grievor's performance—they should set goals, go over interventions and explain to the grievor how to deal with a situation more effectively.

Ms. Bouvier told us that she spoke to Jean Raymond on January 20 about a complaint by a client concerning something Ms. Bouvier had done. I was not told in the testimony precisely what this discussion was about. Whatever it was about, Ms. Bouvier testified that she told Mr. Raymond that none of it was true and he said that he would talk to the client, to find out how the client felt about Ms. Bouvier. They discussed how Ms. Bouvier should deal with the issue and with the client. It had to be dealt with. You couldn't just let it go. Ms. Bouvier said Mr. Raymond was very helpful. He had always been very helpful. She told Mr. Raymond that she would follow his instructions.

Three days later, Mr. Raymond handed her the dismissal letter and, when she asked "why?", he replied that there was no need for him to explain because she was on probation. I have no difficulty whatsoever understanding the grievor's shock at this decision, coming so soon and with no warning after her discussion with Mr. Raymond on January 20.

Mr. Raymond told us that, on January 21 or 22, he decided that the grievor should be terminated and reported this to Mr. Hiltz. On January 23, he filled out an Employee Performance Appraisal form for Ms. Bouvier. Under "Limitations", he wrote:

- Does not take constructive criticism well
- Very confrontational with clients and co-workers
- Poor/limited intervention skills.

On cross-examination, Mr. Raymond was asked his reasons for recommending Ms. Bouvier's dismissal and he gave the three points mentioned in the form on January 23, and he added that there had been two incidents involving alcohol on her breath—one in January involving Linda Desbiens (which I will review in detail when I look at the evidence of Ms. Desbiens), and an earlier incident in December, between Christmas and New Years Day, when a co-worker reported that the grievor had come to work "seemingly intoxicated" for a 7AM shift start. The co-worker had not

reported this until several weeks later and Mr. Raymond was upset about this late report. He never raised the incident with the grievor.

Linda Desbiens had been an Acting Supervisor at the Pavillon since October 16, 2002, which is just before the grievor came to the place. Linda Desbiens had been a Residential Worker there since March 1995. As Acting Supervisor, Ms. Desbiens remained in the bargaining unit. Ms. Desbiens supervised the grievor for the grievor's whole time with the Employer.

Ms. Desbiens told us that the grievor did very well at the start. The grievor was told the policies and procedures and was put on a shift with an experienced worker. Ms. Desbiens said, once the grievor became full-time, there were concerns. The grievor did not follow some of the routines; she did not follow through with some "consequences" (which are issued to residents when they do something wrong); there were complaints that the grievor screamed at residents; the grievor got into "power struggles" with residents ("Do it", "No", "Do it", "No"), rather than saying what needed to be said and walking away. However, Ms. Desbiens did not appear to have any first-hand knowledge of these concerns and there may have been no factual basis for them. Indeed, Ms. Desbiens said in examination-in-chief and in cross-examination that, from her own observation, the grievor was fine in potential power struggles.

Ms. Desbiens told us about the evening of January 7, 2003, when the Grievor and a co-worker, Renée Seguin, came in while off-shift. Ms. Seguin had something to do concerning a health and safety inspection (Ms. Seguin was the health and safety officer for the Pavillon). Ms. Desbiens testified that she smelled a strong odor of alcohol when she entered the room and found the grievor and Ms. Seguin. Ms. Desbiens asked the women if they had been drinking. She said that the grievor's eyes were red; that Ms. Seguin told her that she herself had wine with supper; and that the grievor said she had consumed a Mike's Hard Lemonade. Ms. Desbiens was concerned about the image that all of this would leave with the impressionable residents.

At the time of this incident, the grievor was living with Ms. Seguin. Ms. Seguin testified that she had one glass of wine with supper and that she did tell this to Ms. Desbiens. She told us that she did not think the grievor had been drinking that evening. Ms. Seguin had dinner with her three children at her ex-husband's place and had then returned home to find Ms. Bouvier napping on a couch. Ms. Seguin needed to get her health and safety inspection and talk to Ms. Desbiens about it and Ms. Bouvier drove her to the Pavillon.

The grievor testified concerning this evening. She insisted that she had consumed no alcoholic beverage and she said that she did not tell Ms. Desbiens that she had drunk a Mike's Hard Lemonade.

I accept the evidence of Ms. Seguin and Ms. Bouvier. I find that Ms. Bouvier had not consumed alcohol on the night of January 7.

Ms. Desbiens told us about a conversation she had with Ms. Bouvier on January 8 concerning the way in which Ms. Bouvier had dealt with a child who used vulgar language, and Ms. Bouvier's responsibility for this child who was from outside Jeanne Sauvé Family Services. With respect to the vulgar language, the grievor replied that she did not give "consequences" because, on an earlier occasion, she had done so and other staff had told her she was giving too many consequences. With respect to her responsibility for the outside child, the grievor said that other staff had told her that he wasn't the responsibility of Jeanne Sauvé staff. Ms. Desbiens was not happy with either of these responses. In Ms. Desbiens' view, the grievor ought to have given consequences, and Ms. Desbiens had instructed staff at a meeting that they were responsible for this child (though she was not sure that the grievor had been at the meeting). She told us that she had the distinct impression that Ms. Bouvier could not take constructive criticism and had a "rationalization" for everything. In my view, Ms. Bouvier's uncontradicted explanations were the truth and were a good reply to Ms. Desbiens. If experienced staff had instructed Ms. Bouvier that she was giving too many consequences, then Ms. Desbiens cannot criticize her for following this advice. Ms. Desbiens

corrected the advice and it appears that the grievor was quite willing to follow Ms. Desbiens' instructions. And I find that the grievor had been told by other staff that this boy was not the responsibility of Jeanne Sauvé staff. Even Ms. Desbiens acknowledged that there had been an issue about the responsibility of Jeanne Sauvé staff for this person and that is why she had clarified it at a meeting, but the grievor wasn't at the meeting and can't be faulted for having acted on the basis of the advice she had from experienced staff on this point. After Ms. Desbiens corrected her, the grievor was perfectly willing to follow Ms. Desbiens' advice.

On January 11, Ms. Desbiens met with the grievor to discuss her performance and the *Notes de Supervision* that Ms. Desbiens had prepared concerning the grievor. Ms. Desbiens wanted the grievor to set out her personal goal and her means of achieving it, but the grievor was not ready to do this and never responded to this request before her dismissal. As well, the grievor appeared unwilling to say a number of things which were on her mind, particularly with respect to the changes in staff scheduling which were proposed and which would have a significant impact on the grievor's opportunity to visit her daughter in North Bay. Ms. Bouvier later added written comments on the *Notes de Supervision*, saying that she needed one or two months to come to grips with the changed schedule and her feelings about it.

The Union's cross-examination about these *Notes de Supervision* and this meeting between Ms. Desbiens and Ms. Bouvier highlighted why this matter went to arbitration. Ms. Desbiens acknowledged that, by January 11, she had concluded that the grievor did not take constructive criticism well, that she had a confrontational attitude with clients, and that she had poor intervention skills. *But none of this was mentioned in the Notes, nor was it discussed with the grievor!* When asked "why not?", she replied that she did not intend to re-hash issues, just to address new matters. Ms. Desbiens felt that the grievor already knew that management had these concerns. And Ms. Desbiens had no real answer to the next question "Couldn't Ms. Bouvier

assume that there was no longer a problem in these areas—that she had taken advice and had improved?” We know from Ms. Bouvier’s testimony that, in fact, that is precisely what was in her mind. In my view, that would be in the mind of any employee after this meeting with Ms. Desbiens.

Curiously, Ms. Desbiens testified in examination-in-chief that she was not satisfied with how the grievor dealt with residents—she screamed at them, she did not follow through on consequences, she did not give consequences, she engaged in power struggles. Yet, in cross-examination, she testified that, in the meeting on January 11, she did the opposite of telling the grievor she was too confrontational with clients. “I told her she wasn’t tough enough”.

I have no difficulty understanding why the grievor was confused about what were and were not Ms. Desbiens’ concerns.

Later on January 11, Ms. Desbiens received a complaint from a client who said that Ms. Bouvier had screamed at her and had slammed her bedroom door, and described a power struggle over a whole evening. She said that Ms. Bouvier had “freaked out” and was in a bad mood that night and had screamed at another resident. Ms. Bouvier had doubts about the client’s story and scheduled a meeting with Ms. Bouvier for January 23. But, before this meeting, another worker came in to tell Ms. Desbiens about that evening and confirmed the client’s story. Furthermore, this worker told Ms. Desbiens that she was concerned about Ms. Bouvier’s professionalism and her interventions and was very frustrated and wanted a supervisor to deal with this. Ms. Desbiens says that she had no reason to doubt this worker’s story. Ms. Bouvier was dismissed before Ms. Desbiens had a chance to talk with her about these allegations.

On January 20, Ms. Desbiens asked Ms. Bouvier for a form concerning clients. Ms. Bouvier took it out of her bag—the one she used to carry things to and from home. Ms. Desbiens told the grievor that she was not to take confidential information home. Ms. Bouvier said that she hadn’t known this and accepted the advice.

But the next day, when Ms. Desbiens asked for the “diagnostic conference report” she had lent to the grievor as a model for one the grievor was doing, Ms. Bouvier took the document out of her bag. Ms. Desbiens was bothered. The day before, she had instructed Ms. Bouvier not to take such material home and Ms. Bouvier had done it again a day later. The grievor was asked about this in her cross-examination and she was adamant that it never happened. Indeed, on re-examination, the grievor said she had no idea what a “diagnostic conference report” was. Both witnesses on this point were very credible. I am left with finding that there was some serious misunderstanding in this situation and I make no finding of wrongdoing on the part of either witness.

By the end of Ms. Desbiens’ testimony, it seemed clear to me that her most serious concerns arose from information she received from clients and other staff. But these people were not called as witnesses and I have no way of determining whether there was any factual basis for these problems that were reported to Ms. Desbiens. In particular, Ms. Desbiens heard from others that the grievor did not handle power struggles well, but Ms. Desbiens’ own observation was to the contrary. More importantly, Ms. Desbiens was still in the middle of her investigation of the complaint by a client in January when the grievor was dismissed. Even in Ms. Desbiens’ opinion, it was necessary for her to complete the investigation before coming to a final conclusion about the legitimacy of the complaint.

Sylvie Boudreault started working at Jeanne Sauvé Family Services in 1993 as a Residential Worker. She became a Shift Supervisor at the Pavillon three years ago. She was on leave for most of November 2002, so she did not work much with Ms. Bouvier until about a month after the grievor started work.

Ms. Boudreault testified that, on December 12, she observed Ms. Bouvier in a power struggle with a client. She suggested quietly to Ms. Bouvier that she give the client choices and walk away. Ms. Bouvier

accepted this and it worked. Ms. Boudreault was not concerned because Ms. Bouvier was a new employee. But a few hours later, Ms. Boudreault observed Ms. Bouvier in another power struggle with the same client. This time the client was outside at recess and was threatening to run away and Ms. Boudreault went out to tell Ms. Bouvier that it was best to do some “planned ignoring”—just leave the client and walk away and he will follow into the house. The women did this and the client returned as Ms. Boudreault predicted. Now Ms. Boudreault was concerned about Ms. Bouvier’s performance, because in the morning she had counselled Ms. Bouvier on how to handle a power struggle with this particular client and Ms. Bouvier let it happen again several hours later. The grievor testified in re-examination that she had no recollection of the first incident about which Ms. Boudreault testified, and, with respect to the second incident, Ms. Bouvier recalls dealing with a client who did not want to return to the house, but she says that there was a co-worker there but there was no supervisor, and she wasn’t engaged in a power struggle with the client. I accept Ms. Boudreault’s recollection of these events.

On December 18, Ms. Boudreault heard from Nathalie Rochon, the Family Consultant, that the grievor had not handled a situation well when Ms. Bouvier gave a client privileges in a situation where the client should have been subjected to greater structure. We will look in a moment at Ms. Rochon’s testimony. Ms. Boudreault spoke to the grievor to ensure that the grievor understood the need for consistency in the routines. At the same time, Ms. Boudreault spoke to Ms. Bouvier about filling in the logs properly. Ms. Bouvier said that she didn’t know she had done wrong and Ms. Boudreault accepted that. But Ms. Boudreault was troubled by the way the grievor always had an answer—“Ya, I was going to do it”—and Ms. Boudreault “wondered”.

Ms. Boudreault said that over the next month, the problems did not go away. Ms. Bouvier was still struggling to get the clients to follow her directions. Ms. Boudreault said that she wondered if this was Ms. Bouvier’s

