

IN THE MATTER OF ARBITRATION

BETWEEN:

GOVERNMENT OF THE NORTHWEST TERRITORIES
as represented by the Minister responsible
for the *Public Services Act*

Employer

- and -

THE UNION OF NORTHERN WORKERS

Union

Grievance re: David Barnet (06-068)

AWARD

BEFORE:	Thomas Jolliffe, Q.C.
FOR THE EMPLOYER:	Brian Asmundson
FOR THE UNION:	Debra Seaboyer
HEARING LOCATION:	Yellowknife, NWT
HEARING DATE AND ORAL DECISION:	June 25,26, 27, 2007
DATE AWARD ISSUED:	
October 29, 2007	

The grievor in this matter, Dave Barnet, a relatively long service employee overall, had been assigned to work in a pay officer position at Financial Management Board Secretariat (F.M.B.S.), in Yellowknife. His career had extended through some interruptions in the employment relationship, with his most recent stint as a civil servant lasting from October 2001 through April 25, 2006. On that date his Deputy Minister, Lynn Elkin, advised him in writing that she was accepting the recommendation of his manager that he be declared to have abandoned his current position by reference to section 26 of the *Public Service Act*. His employment was terminated on that basis. The statutory provision on which the Employer relies reads as follows:

An employee who is absent from duty without leave for a period of one week may, by an appropriate instrument in writing, be declared by the Minister to have abandoned his or her position, in which case the position becomes vacant and the employee ceases to be an employee.

The Union has taken the position throughout that the Employer failed to accommodate the grievor and that he was terminated without just cause. It has continued to assert that at the time of the supposed abandonment, circumstances were such that the grievor should have been considered as being on medical leave. It relies on his having provided the Employer with medical documentation supporting his absence as stated in the grievance, and contends that the Employer was compelled to recognize the symptoms of the grievor's condition. These symptoms were said to have rendered him unfit to perform the duties of his position. The Union says that the Employer should be directed to withdraw the termination, which is to say it should be considered as without substance, also that the grievor be allowed to access short term disability benefits until deemed fit enough to return to work, and further that he be compensated in every appropriate fashion and made whole. The Employer has responded to the grievance filing with a lengthy written description of the facts as understood by management, indicating that the grievor did not report for duty when directed to do so following the denial of his leave application which realistically eventually led to the

declaration of abandonment. As will become apparent, during the outline of the pertinent facts which follows, the entire circumstances of this matter as taken from the testimony and documentary materials placed in evidence, are both convoluted and complicated as they played out to conclusion.

Facts in Evidence: In October 2001, following a time away from government service, the grievor commenced his re-employment as a pay and benefits officer. By June 2005 he was working as a senior benefits officer at F.M.B.S. having taken a transfer to the higher paying position during a period of internal restructuring. By the grievor's description, given in testimony, due to some health issues including stress related symptomology, at some point he found that he "couldn't do it anymore". He took approximately a one month period of sick leave during which time, by his recollection, his health continued to deteriorate even to the point of suffering "a mini-stroke", although undocumented on his personal file.. Upon his return to work, and not feeling up to the rigors of continuing with the senior benefits officer's duties, on August 2, 2005 he accepted a transfer into the lower rated pay officer category, at a lesser salary, following which he was assigned to work with the Yellowknife Health and Social Services Authority (Y.H.S.S.A.) which placement was expected to last through January 2006. During the six months in the assignment, the grievor did not report any health problems, nor were there any indications presented in his evidence of encountering any work related difficulties. By his description, in about early January while being aware that the job placement was expected to be "winding down" by month's end, he reasoned that it was the appropriate time to take annual leave, having accumulated to that point six weeks' credits. He was thinking, he testified, that he could go back to work and be ready to take up his assigned payroll officer duties at F.M.B.S. by the beginning of March. At the same time, through his discussions with the Director of Client Services, Sharilyn Alexander, also in early January, he became aware that a problem had developed in finding him a pay officer position at the F.M.B.S. main office in Yellowknife and accordingly a temporary placement was worked out with him to report to one of the satellite offices

following his return from vacation. Ms. Alexander in her testimony acknowledged being at least aware that the grievor would have preferred to work in the benefits administration area where he had ample past experience which they discussed in their January meeting, as opposed to his taking a pay officer assignment in the central payroll office at some point. However there were no benefits administrators' positions available at that time with the area being fully staffed. By the grievor's description, the fact of his possibly having to take additional software training and working with a system where he was not already fully familiar left him "scared and nervous", while admittedly disappointed that he was not being immediately allowed to return to an area of his past experience, namely benefits administration. Nevertheless, he had most recently worked quite successfully as a pay officer. His intention on taking six weeks annual leave, he said, was to return and try to get out of the pay officer position when another placement developed, possibly in benefits. Ms. Alexander confirmed his upcoming assignment in her correspondence to the grievor dated January 11, 2006. It was clear in evidence that at no time during her discussions with the grievor leading up to his accepting the proposed assignment did he ever indicate to her that he was concerned over the placement from a personal health perspective, including not mentioning any reluctance due to any stress and anxiety issues. There had been no health issues raised over the previous five months working in his pay officer duties, no sick time to speak of. However, she recalled in her testimony that the grievor did raise the issue of his preferring to have been returned to a higher previous salary level, and had said that any probationary period which might attach should be waived. He had also indicated to Ms. Alexander during their discussion that his elderly mother who resided back in New Brunswick, was ill, and that he wanted to take his six weeks annual leave prior to commencing his next placement with F.M.B.S. in order to be with her. Ms. Alexander had no difficulty in honoring that request.

As matters developed, and as indicated in later e-mail correspondence to his Deputy Minister, Lynn Elkin, the grievor's mother was admitted to hospital the next week where she

remained through to the time of his commencing his annual leave and his then arriving in Fredericton on January 25 where she resided. By the grievor's description, his mother went through a period of being gravely ill and was not released from hospital to return home until February 20. As reported by the grievor to Ms. Elkin in his February 23 e-mail to her, after almost dying, his mother had been released from hospital three days previously and was "in the recovery and strength building stages". He also advised therein that his mother had no family in the Fredericton area, with both his siblings also residing in Yellowknife who could not commit to care for her and, accordingly, "I would like to offer assistance and be her caregiver for the next year". The grievor went on to state in his e-mail that the one year leave would be enough for him to prepare arrangements for the care of his mother, and if at the end of the year she had not recovered sufficiently to care for herself, he would resign his employment. He also stated that, "if something happens during the upcoming year, I could look at other alternatives, including returning to work earlier or remain on leave until the period of leave expired". He went on to request her response "if possible", by the next day and added that "the reason for this urgent request is that I need to give 2 weeks notice if my plan is to resign, but I am hoping that my request will be approved and I will not have to resign". He added therein that after working the number of years he had "I just need this time to assist my aging mother". Notably perhaps, in this February 23 e-mail, he raised no health issues of his own which might affect his return from annual leave, not a hint, only that his efforts at that point were focused on caring for his mother in Fredericton. Ms. Elkin responded by e-mail later the same day, February 23. She indicated therein that while she sympathized with his situation, and for the need to care for his mother, she was unable to provide him with the leave without pay as requested. She stated "we are not in a position operationally to have the position in a state of flux for the year and potentially beyond if the situation is such that you need to remain south with your mom". Thereafter, there was no immediate response from the grievor. In light of Ms. Elkin's denial of the one year's leave of absence request, the grievor was expected to return to work as scheduled on Monday,

March 13, 2006.

By the grievor's description given in testimony, at the point of sending the February 23 e-mail to Ms. Elkin, and knowing that his mother was still recovering from being gravely ill, he was "not in good mental shape" as he put it, adding that while he knew that if he was to resign he should give two weeks notice, he had no intention of going through with his resignation at that point, despite having alluded to that possibility in his e-mail. He testified that on receiving Ms. Elkin's reply e-mail advising that his leave request was denied, he was "totally disappointed and bewildered". Interestingly, as he pointed out, his wife, also an N.W.T. government employee (Justice Department), had just been approved for a one year leave of absence, giving him cause to wonder why he could not have gotten one too. He said that he contacted his union representative to discuss the issue, but did not file any grievance at that point. As matters developed, the grievor returned from Fredericton to Yellowknife on March 6, 2006, knowing that his annual vacation was about to end and that he was expected to return to work in his new pay officer assignment on March 13, in that nothing to the contrary had yet been indicated. However, by the grievor's description, "not feeling good" about returning to work at that point, or about himself, he decided instead to visit his family physician in Yellowknife, Dr. Harith Alward, that day. By his description, he had had some suicidal thoughts while still in Fredericton and wanted to talk to him to "figure out what to do". He also testified that even prior to leaving Fredericton, some days or weeks earlier, he had telephoned Dr. Alward "to ask for help" indicating to him that he was suffering from anxiety and was having suicidal thoughts "because of (his) mother and (his) situation". He said that Dr. Alward had prescribed anti-anxiety medication at that point, apparently over the telephone. In his evidence, the grievor denied wanting to use his sick leave benefits as a vehicle to look after his ailing mother. He also outright denied asking his doctor to put him on sick leave in order that he could do so. However he recalled telling him at least that his mother was sick, which was causing him stress, and that he had been denied the leave as requested to care for her. At the same time, he said, he remained

“nervous” over the prospect of performing pay officer duties in a centralized system with which he did not feel he was familiar enough. By the grievor’s description, the job he had been doing as a pay officer at the Y.H.S.S.A. was unlike the pay officer position he was expected to fulfill at the F.M.B.S central office, although he knew that for a time he was going to be posted to a satellite office. Admittedly, he had not worked a day in that assignment.

On the morning of March 13, 2006 when the grievor, who was known to be back in Yellowknife by then, did not report for work as scheduled, his manager instructed his supervisor to telephone him and advise that he was considered absent without approved leave at that point, and that he needed to either submit a written resignation or report to work. Further, she was to advise him that his failure to report by the end of the week would result in the Employer deeming him to have abandoned his position. . The next day the grievor applied for certified sick leave to extend for a month until April 14, done on the basis of his physician’s presumed supporting medical report to follow. The grievor was , at that point at least, still in Yellowknife. In his report, dictated on March 15, 2006, but interestingly not received by the Employer until eight days later, Dr. Alward reviewed the grievor’s medical history. It included episodes of past high blood pressure which was being controlled by medication, also some previous depressed mood difficulties He stated his opinion therein that the grievor was currently under stress due to his job assignment change which was causing “detrimental consequences on the progression of his health problems”, which has been “compounded by family issues with his mother”. He also reported his understanding that the grievor was the only one of his family members who was available to take care of her and that she was unable to take care of herself, which had required his traveling to New Brunswick to be with her and to take care of her. His report went on to advise:

I have advised this patient to be off work because of the stress he is experiencing, including stress at work and stress regarding his mother’s health. I have taken the liberty of giving Dave a stress leave from March 13 to April 15, 2006. During this time he will be with his mother, who is

now in the hospital for health problems. This period of leave could possibly be extended for an extra one-month period, depending on how his mother is doing.

I have advised Dave to follow-up with me after finishing this one-month period of stress leave on April 15. At that time I will re-evaluate the situation.

In short, by outward appearances to the grievor's superiors,, his family physician, Dr. Alward, had been enlisted to give the grievor a one month stress leave, while advising that during that time he would be back in New Brunswick attending to his ailing mother. Dr. Alward had raised the possibility of the supposed leave being extended "depending on how his mother is doing".

On her review of the situation presented, Ms. Alexander from her past dealings with the grievor, was aware that he would have preferred to work in the benefits administration area where he had ample past experience, and which they had discussed in January 2006, as opposed to his having to take another pay officer assignment for some period of time. She understood that the position offered had left him "disappointed". However, as she had explained to him before he went off on vacation, there were no benefits administrators' positions available at that time inasmuch as the area was fully staffed. By the grievor's description, the fact was he anticipated on taking up the F.M.B.S. assignment that he would have to arrange for some computer software training and that working with a software system concerning which he was not already fully familiar left him "scared and nervous". Nevertheless, he said his initial intention had been that after taking six weeks annual leave he would be returning to work, and would focus on getting out of the pay officer assignment when another placement developed, possibly going into benefits administration when a position opened. However, by the time he returned to Yellowknife in early March, by the grievor's description, he knew he could not go into the pay officer position at all and needed to explain to Dr. Alward the difficulties he had been experiencing, including his mother's illness, his having been denied one year's leave, and what he recollected as some

suicidal feelings he had experienced while in New Brunswick.

Certainly, the payroll office supervisor, Christine Hoiland, had been expecting the grievor to return from his six weeks annual leave on March 13 to his assigned pay officer position. She, admittedly, was concerned when he did not show up at work as she was expecting to be able to slot him into working on some 500 to 600 active files covering final pay backlogs for exiting employees needing to be researched and resolved. She had been previously made aware by Ms. Alexander that the grievor's one year leave request had not been granted. Instead she was presented with the grievor's certified sick leave request dated March 13, as delivered by the grievor's wife, and eventually also the supporting medical report from Dr. Alward dated March 15 and received on March 23. The medical report when received, caused the same concerns for supervisor Hoiland as it had for Ms. Alexander and also Ms. Elkin, namely that it seemed to focus on the grievor's perceived need to care for his mother in New Brunswick, which he had previously asked to do on the basis of a one year leave which was denied. Her doubts were not lessened by the fact that she had received an e-mail on March 20, from the grievor's wife, Nancy Barnet, informing her that the doctor's report, dated March 15 and not yet delivered at that point, was waiting to be typed. Ms. Barnet also advised therein that the grievor had returned to New Brunswick that morning to be with his mother who was by then back in hospital. In short, the grievor had already left town without allowing his superiors any time to investigate the medical leave request within the context and background of the grievor's known personal circumstances.

On Deputy Minister Elkin's review of Dr. Alward's initial March 15, 2006 letter, she too was concerned over the emphasis placed on the grievor being available to care for his mother in Fredericton while there was no indication as how the doctor had concluded that the grievor was unable to do any job related duties in Yellowknife. By her reckoning, the situation presented raised the possibility of accommodation being applied in some way if his health was sufficiently sound to be able to be his mother's care giver in Fredericton. At that point she knew, it was not a matter of the grievor immediately having to work in the

F.M.B.S. central office. She was aware that he was expected for a time at least following his return to be working at a satellite F.M.B.S. office. She was also aware that prior to his taking his annual vacation, the grievor had been performing pay officer duties at Y.H.S.S.A. where he had not been sick at all, and had missed no time. She did not see how any significant change was expected, being the same kind of work with his returning to a pay office function. At the same time she was concerned over the requested leave being open ended with the doctor mentioning the possibility of an extra one month period, "depending on how his mother is doing". At that point, she wanted to see a detailed prognosis from the physician. It was a matter of management, she said, wanting to sit down and discuss what the grievor might be able to do, or not do, within the parameters of the employment relationship, as opposed to not questioning his taking an extended period of time off work while he was out of the Northwest Territories caring for his mother.

In response to the grievor's sick leave application, with the concern noted over Dr. Alward's report, and on instructions, Ms. Hoiland corresponded with the grievor after receiving a copy of Dr. Alward's medical report on March 23. The grievor, being back in Fredericton at that point, did not receive it until April 6. Ms. Hoiland indicated therein that a more detailed prognosis was required in order for the requested sick leave to be approved or the possibility of accommodated duties to be investigated. She attached a pay officer job description for his physician's reference requesting that the grievor have Dr. Alward address his capabilities and limitations he might currently have in the context of his duties, and having regard to the circumstances surrounding his application for sick leave. She stated therein... "the prognosis will be most helpful if your physician is able to address in a specific and practical way, the impact your condition will have on your ability to perform all of the duties of your position". She went on to advise that the Employer accepted the responsibility to accommodate an employee in every reasonable way. In order to assist his physician in addressing that issue she provided therein for his doctor's consideration, an historical breakdown of events, including his previous period of sick leave from June 24 until

July 29, 2005, the accommodation which had been put in place at that time to assist his return to the workplace, his six month placement which he had successfully worked without experiencing any health problems or ever indicating being unable to report for work and perform his assigned duties. She mentioned therein that his request for a one year leave of absence to care for his mother had been denied, and his having taken his annual vacation leave before being expected to start his new assignment. Up until March 13, 2006, she pointed out in her letter, there had been no indication of any expectation of health difficulties upon his return from vacation. His advice had been that if the one year leave of absence were not granted he would give two weeks notice if he were going to resign, and most lately returning to Eastern Canada to take care of his mother. Ms. Hoiland requested in her correspondence that the grievor provide a copy of the letter to his physician in order that the medical prognosis could be completed keeping in mind the continuing absence circumstances of the matter. She pointed out that the Employer was willing to accommodate him, do whatever it could, to enable him to return to work. She also pointed out that currently, given that his absence was contemporaneous with the denial of unpaid leave and his apparent ability to travel and care for his sick mother, the requested sick leave was not currently approved. She indicated in her closing paragraph that he was currently considered to be absent without approved leave and that it was imperative he either provide a detailed medical prognosis or return to work on Monday, April 10, failing which the recommendation would be made that he be declared to have abandoned his position.

The grievor responded to Ms. Hoiland in correspondence dated April 7, 2006, still being in Fredericton at that point, that he had received her letter the previous day which had left him "somewhat shocked, disappointed and puzzled at the contents", and regretting that his employer had been unable to approve his sick leave. However he also indicated that he had provided Ms. Hoiland's letter to his physician who was described as being "fully aware" of all the circumstances surrounding his current situation. He would request his assistance to provide a more detailed prognosis. He went to state that he was currently being treated

for hypertension, anxiety and stress. His treatment, he advised, "included medications, diet and exercise". The grievor also stated in his letter that he would make every attempt to ensure that the Employer was advised as quickly as possible as to his medical prognosis and that his physician should be providing further details soon. As it was, he pointed out, the Employer had a copy of this physician's letter taking him away from work until April 14.

Thereafter, with no further medical documentation yet received and with the grievor not having returned to work on the morning of April 10, Ms. Hoiland had a telephone conversation with Dr. Alward that afternoon. In her testimony, and as indicated in her follow-up memorandum placed on file, Dr. Alward took issue with their expecting the grievor to be returning to work, indicating that he viewed the grievor as being in no condition to be at work at that point. She advised in her discussion with him that she had wanted to ensure he had all the same information the Employer did. It included the grievor having requested a year's unpaid leave which was denied, and which the Employer took to be suspicious inasmuch as he was claiming he was too ill to return to work while having taken up residence in his mother's house in Fredericton to care for her. By Ms. Hoiland's recollection, Dr. Alward said that he knew the grievor had gone back to Eastern Canada to take care of his mother. Ms. Hoiland found it to be worthy of note that when she pointed out that the requested unpaid leave of absence had earlier been denied as the grievor was needed in the office, Dr. Alward had responded "then who would take care of his mother". The response she said led her to suggest that the issue of his mother's ongoing home care in New Brunswick was not up to the Employer to address. By her description, she went on to advise Dr. Alward that she would need another letter from him to address the points she had raised, concerning which he had indicated he would do so. He dated his second report the following day, April 11, but it was only received by the Employer on April 21. The grievor, by then, had not returned from Fredericton, had not contacted the Employer himself and as turned out was leaving it up to his family physician to deal with the Employer. To that point, his illness application was still not approved. Needless to say, being in Fredericton, he had not visited

Dr. Alward within that time frame either. Dr. Alward advised in his April 11 report to Ms. Hoiland that he was extending the grievor's stress leave another month. His report, copied to the grievor was relatively brief. It does not address his having had further contact, if any, with the grievor, or provide any prognosis, or consider any possible accommodations to allow his return into some level of work performance. The report concludes with the rather disconcerting remark, for the Employer at least, "...there is still no other family member to take care of his mother". It reads as follows in its entirety:

As per our phone conversation yesterday regarding Mr. Barnet and as a follow-up to a letter I sent to you on March 15, 2006, I mentioned that this patient qualifies for stress leave.

Mr. Barnet had been seen by me with signs and symptoms of stress, and that is the reason why I provided this letter for him - it was my medical judgment that Mr. Barnet qualified for stress leave. Per the letter you sent to me regarding the responsibility for Mr. Barnet with regards to work in the new department, you said he didn't start this work, however he had stress because of it.

Mr. Barnet's symptoms and signs have been typically within the criteria of stress, and that is the reason why I provided him with the stress leave.

This patient is still having the same symptoms of stress, and according to the patient's condition, I have extended the period of stress leave to May 15, 2006. In addition to him suffering the same symptoms of stress, which is the reason why I provided him with this leave of absence and the reason why I extended it, there is still no other family member available to care for his mother.

By the time she received Dr. Alward's report on April 21, Ms. Hoiland had already corresponded with the grievor on April 12, to advise that she had discussed the situation with his physician on April 10, and had summarized a number of facts and events leading up to his seeking sick leave, including that he had requested one year's leave of absence to care for his mother, failing which he was intending on resigning and apparently had already returned to Eastern Canada. One might observe that he had done so, without so much as

discussing that eventuality with his supervisor or manager prior to leaving. She also pointed out that she had requested a medical prognosis that took all of the events into consideration in the physician making his determination as to whether the grievor would be able to perform some or all of the duties of his position, as any reasonable accommodation was a possibility.

She also advised that Dr. Alward had indicated that he had seen him on March 13, considered that he was unfit to report to work at that point, while also stating his view that the grievor was required to care for his ailing mother, and that he was not aware of there being anyone else available to do so. She admitted in testimony, that circumstance had prompted her to point out in her letter to the grievor that parent care was not considered to be an appropriate use of sick leave benefits. She went on to advise that his requested period of sick leave was ending April 14, 2006, and that was expected to report to work at least by April 18, following which, again, he would be considered absent without a leave and that if it continued until April 24, she would be recommending to the Deputy Minister that he be declared to have abandoned his position.

Ms. Alexander in her testimony, acknowledged that once Dr. Alward had taken the grievor off work for the first month, albeit his apparently holding to the view also that the grievor should be back in Fredericton caring for his mother, and mentioning the possibility that additional time off work was going to be required, the Employer by reason of its illness leave policy was looking at that point to investigate the possibility of a work place accommodation if any were realistically required. With more information being sought from Dr. Alward, his written response, dated April 11, was to take the grievor off work for another month on the basis of requiring even more stress leave. She found it disconcerting that he also remarked in his report, "there is still no other family member available to take care of his mother". Further, Dr. Alward made no mention of the recent request he had received in writing from Ms. Hoiland regarding the job description and the possibility of the grievor being accommodated at work. As with Ms. Hoiland, Ms. Alexander was concerned that this "continuing thread" of his mother's ill health seemed to permeate the physician's

considerations, and he was not prepared to comment on what he could do or could not do at work, and what might be done to accommodate his return. At the same time, she was aware that the grievor was still back in Fredericton with his mother. There was no indication of his coming back to Yellowknife for an updated assessment by his physician who was apparently prepared to extend his leave for another month.

Certainly, Deputy Minister Elkin's concerns were not alleviated by the updated April 11 correspondence from Dr. Alward received on April 21 where he indicated he was extending the grievor's period of stress leave another month, while pointing out that there was still no other family member available to care for his mother. She did not see that the validity of the sick leave application had ever been accepted. Ms. Elkin too, did not see any explanation from Dr. Alward speaking to the job description material he had been provided, relative to the possibility of suitable work being made available for the grievor on an accommodation basis, if even required as opposed to his intending to remain in Fredericton with for his mother. Certainly she was opposed to the current situation continuing, and was aware that Ms. Hoiland, on instructions, had corresponded with the grievor, pointing out that disputed sick leave had been set to end on April 14 in any event. He was expected to return to work and that if he failed to do so, a recommendation for position abandonment would follow.

With the grievor remaining in Fredericton, Ms. Elkin eventually determined that the position abandonment alternative should be pursued. She saw nothing inappropriate about the Employer needing a better and fuller explanation from the grievor over his supposedly needing even more time off work as matters were unfolding. According to Ms. Elkin, there were "too many inconsistencies and coincidences", such as the grievor's good work and suitable attendance record in his pay officer duties during the six months prior to going on annual leave; his applying for a year's leave of absence to extend his stay in Fredericton to care for his ailing mother, without there yet being any mention of a job stress related issue; and upon the unpaid leave not being approved, his applying for a substantial period of illness

leave coverage on the day he was scheduled to come back to work. He even set the stage for possibly more time off work as indicated by Dr. Alward in initially reporting that his return to work apparently depended on how his mother was doing. He had then headed back to Fredericton to continue to care for his mother without any indication of any real ongoing contact or treatment by his own physician whose reports had apparently materialized on the basis of one meeting in their office, and no apparent consideration yet given to the possibility of accommodation. She said that she had concluded that the grievor wanted to be in Fredericton and was not willing to embark on any meaningful discussion with his physician or the Employer regarding the possibility of any accommodation plan to allow him to continue working in Yellowknife. She understood that the grievor had left town for Fredericton, and was apparently even joined by his wife in May with her one year leave of absence approved. He did not return to Yellowknife or apparently make any plans to return prior to the abandonment recommendation by Ms. Hoiland, nor provide any suitable response to it. Ms. Elkin accepted the recommendation and issued the abandonment declaration on April 25 with the grievor not having returned to Yellowknife, not having contacted his manager or any other superior.

In his evidence, the grievor asserted that all things considered, he simply found it too stressful a prospect for him to take on the pay office assignment with F.M.B.S. at conclusion of his annual vacation leave. It was however, difficult to glean from his testimony why he thought it would have been so different or difficult for him given his previous pay officer experience, albeit he explained being concerned over the expectation of having to take some additional computer software training.. By the grievor's testimony, from March 13, it was simply a matter of relying on his family physician's advice to take a month off work for stress related reasons until April 15, which allowed him as he understood it to travel back to Fredericton the next week, and then on the doctor's advice, take another month off work until May 15 while remaining in Fredericton. Interestingly, there was no confirmation in the grievor's testimony that he was back in touch with Dr. Alward after his March 13 visit to

the time of the abandonment declaration six weeks later, although it was presented as a possibility. The grievor was aware, having read his supervisor, Christine Hoiland's, correspondence to him dated April 12, 2006, that she had had a telephone conversation with Dr. Alward, where she had set out the factual background of his having claimed sick leave benefits including his wanting to care for his ailing mother. He was also aware from reading that letter that his supervisor was expecting that he would reporting to work at least by April 18, 2006, four days after his initial period of requested leave sick leave was over, and, that if he did not return within another week, she would be recommending that he be declared to have abandoned his position. The grievor's response was to telephone his union representative in Yellowknife, Dave Mathisen, who e-mailed supervisor Hoiland on April 18, the same day by Ms. Hoiland latest advice to the grievor, he was expected to be back at work. Therein Mr. Mathisen queried whether there was "some accommodation the employer can make that would allow the member to return to the workplace or when his expected return might be..." He advised therein that the grievor had no intention of abandoning his position, but neither did he feel capable of performing his duties at that time, which he mentioned would be supported by the medical prognosis which the Employer had been seeking. He also stated his concern over Ms. Hoiland having discussed the matter with the grievor's personal physician which "interference" was "inappropriate", but that it should at least allow the doctor to respond with the appropriate prognosis as originally requested. He went on to state that the grievor would not be attending work that day and was awaiting the outcome of a prognosis from his physician which would be available that day or the next. Presumably he would have been aware that Dr. Alward was already preparing his second report. It would not be received by Ms. Hoiland until April 21, three days subsequent to her stated deadline for the grievor's return to work.

When the grievor testified that he had no intent to fraudulently claim sick benefits and asserted that he was not able to work during the next sick period claimed, being until May 15, he remarked that he was still thinking about the transfer assignment and did

“did not know how he would be able to work as a pay officer... just couldn’t go in there (F.M.B.S. central office)...” Interestingly, the grievor indicated in cross-examination that had he been assured of going back to Y.H.S.S.A. as a pay officer he “would have gladly come back” as he was familiar software system in use at that location and it would not have caused him any stress to work there. There was no confirmation given in his testimony that he had any further telephone discussion with Dr. Alward at about the same time he was expected back to work in mid April, or whether they had discussed the possibility of a workplace accommodation, having been earlier raised by Ms. Hoiland. At that point, certainly, he was still back in Fredericton. The grievor acknowledged in his testimony that he had tried to convince his mother to move to Yellowknife, but that possibility was upsetting to her inasmuch as she had lived in the same house for fifty years. He mentioned that his wife had received her one year unpaid leave on about the same day that he applied, unsuccessfully as it turned out. However, she did not arrive in Fredericton until mid May. The grievor also acknowledged in testimony that he had met with Ms. Alexander in early January to discuss his return at the end of his annual leave to the F.M.B.S. central office, or at least to a satellite office for the time being with the expectation being he would continue to work in a pay officer’s position. He agreed that he did not raise any health problems at that meeting. He knew at that point that his mother was ailing, although he did not raise the possibility of wanting to stay any longer in Fredericton than his annual leave permitted.

Dr. Harith Alward is a general practitioner who received his medical training in Iraq and since coming to the Northwest Territories in August 2003 has practiced in Inuvik and most recently in Yellowknife. He has been the grievor’s personal physician since about May 2004 He was served with a notice to attend in a nature of a *subpoena duces tecum*, which is to say he was required to bring any relevant materials with him to the hearing. He was called to testify on the second day of hearing, but unfortunately he did not bring his office treatment notes with him, stating his refusal to make them available. Accordingly, in some respects, he was able to testify only in generalities. Although Dr. Alward could not say with

specificity when it would have been, he recalled the grievor telephoning him at some point from Fredericton regarding suicidal ideas. It had caused him, he thought, to increase his medication, whatever he was taking at that time and whenever the telephone call occurred. He also recollected having seen the grievor in his office "on one recent occasion" prior to dictating his initial report which he dated March 15, 2006, although he was not sure on exactly what day the visit would have occurred. He said that as a general practitioner, his office visits last from five to 45 minutes. Not having his office notes, he did not say how long his appointment with the grievor lasted on what the grievor had recollected in his testimony to be on March 13, 2006. He said that at some time previously he had treated the grievor "regularly" and "many times", but he was unsure of exactly when these appointments would have been. It being put to Dr. Alward that his initial reporting letter had indicated that he would be doing a follow-up after the first month of recommended stress leave ended on April 15, he responded that he could not recall whether he saw the grievor again around that time, and added, that while not being able to say when he saw the grievor again, it would have been his normal follow-up procedure to have seen the grievor at least every three months or so to review his symptoms. He then said that he thought the only follow-up with the grievor might have been a telephone call at some point although he was not sure when that would have occurred, perhaps even thinking of the one before the March 13 office visit. What was apparent from Dr. Alward's description was that between early January, 2006, when Ms. Alexander had her meeting with the grievor indicating he would be returning to F.M.B.S. central office as a payroll officer, through to his returning to Yellowknife from his annual leave in early March, through to the time of the grievor's declared job abandonment in correspondence directed to him dated April 25, his only face-to-face meeting with Dr. Alward occurred on March 13, being the date he was initially expected to return to work from his annual leave.

On being asked to recall and discuss the grievor's attendance in his office on March 13, Dr. Alward was unable to do so with any clarity. He indicated that without his notes he

was not sure when he saw the grievor in his office, could not currently recall whether he was there on March 13, or some other day. Nevertheless, apparently he had felt it appropriate to have been dispensing medication for three months at a time and to take him off work for one month, then another. He acknowledged that at some time the grievor must have indicated to him that he was going back to Fredericton, whether during his office visit, or by telephone, as his reporting letter of March 15 (received March 23) makes it clear enough that he understood the grievor considered himself to be the only family member able to take care of his mother. He even alerted the Employer to the possibility of the time needing to be extended "depending on how his mother is doing", the point being that he was recognizing that someone needed to be there. He rather curiously added in testimony that he would do the same thing for his own mother if he were in the same position, and concerning which he indicated that he thought it was an obvious enough remark. At the same time, he also admitted to having some concerns over the grievor having gone back to Fredericton, being outside the reach of his treating physician in Yellowknife. Accordingly, by his recollection, he advised him to see a local physician, concerning which there was no indication from Dr. Alward that he had any information that the grievor ever did so. He was never contacted by anyone, nor does he have any recollection of any Fredericton documentation being generated.

Dr. Alward, in presenting his testimony, stated his medical opinion that the grievor had developed a depression disorder, although not having his notes at hand he was not clear as to when it may have first materialized. However, he was confident in declaring that "because of what was happening at work, he was incapable of doing his regular duties". He recalled providing an opinion letter dictated March 15, placing the grievor on a month's stress leave, and then extending it for another month in a letter dictated April 11 which was received by Ms. Hoiland on April 21. Without his treatment notes at hearing, and given that he had examined the grievor only once over the previous three months, being in his office on March 13, it is difficult to know with what certainty, and on the basis of what observations he had made his diagnosis, prognosis, recommendations, at that point. On being

asked directly by counsel as to what part did he think the grievor's mother played in his ongoing difficulties, he responded that in his view her ill-health would have at least made the depression disorder worse, worsened still had he not gone to Fredericton to be with her, concerning which he suggested that the grievor see a family physician there, and about which he knew nothing. However, he felt comfortable in providing his opinion that for the grievor to have gone off to Fredericton would have taken away some of the stress he was suffering. He also recalled that following his April 10 telephone discussion with Ms. Hoiland, he was of the view that the grievor "in his shape, was not able to do regular duties or any work functions", albeit not having seen the grievor in his office since March 13, and not able to give any firm evidence him that he had ever spoken to him since. Certainly he was not able to provide any details of any follow-up conversation, if one had occurred. Dr. Alward also remarked that in assessing symptoms in the area of stress/anxiety, it is difficult to make any definite diagnosis "or know exactly what is going on", he went on to say that while in such a case he "starts out relying" on his patient's description, thereafter it is important to observe whether the symptoms "stay consistent", which he took to be the grievor's situation here. Given his lack of continuing contact with his patient, he had some difficulty in explaining the empirical basis of the supposed continuing consistency. While having observed certain symptoms in his office from the grievor's description, he acknowledged thereafter it would be difficult to treat a person suffering from depression "over the phone". He went on to say that in some circumstances it is necessary to remove the employee from the workforce for a time in such a situation, recognizing the debilitating effects of a diagnosed depression condition. He also said that it depends on the patient as to whether he or she can continue handling the workplace, as opposed to not being able to do their regular duties and requiring sick leave for a time. Interestingly on being asked why in considering whether the grievor might need an extended period of time off work he would not have referred him for psychiatric assessment, Dr. Alward responded to the effect that he did not feel it to have been necessary. Despite recollecting earlier that at some point, he was unsure when, the

grievor in a telephone call had once indicated he was having suicidal thoughts, there was no specific referral elsewhere. He said he had recognized the "obvious symptoms" himself, and had the grievor under treatment albeit only seeing him once during the four months prior to the grievor's termination.

On being pressed on cross-examination, with Dr. Alward having already acknowledged that he had not met with the grievor after writing the March 15 report, he indicated he was unsure whether he had had any telephone contact with the grievor at about mid April, when he extended the illness leave another month. Nevertheless, he indicated that he still stood by his judgment that the grievor was unable to work for whatever period or periods of time he had indicated in his opinion letters. In looking back, he was also of the view that the grievor's mother's illness situation "came later", and that he was already in a depressive state when her health began deteriorating. In his view, it may even been therapeutic for him to be with his mother, helping him through his illness. He also testified that in his view it was the grievor's changing job duties that made it worse for him and left him unable to work, and that his move to a new job "was giving him problems" making it necessary to get him away from his work for a period of time. At the same time, in remarking about the new position which the grievor had been assigned to commence on March 13, he initially said that he "thinks" the grievor had actually started working at his new assigned duties and could not do them, and that he was just at the beginning of working at the newly assigned duties. He then said that "maybe" it was a situation where he had been asked to do the job duties and felt he could not do them. In any event, in his view, there was a need to remove the grievor from the workplace for a time due to his symptoms. In addition to placing the grievor on medication, his treatment efforts between January and May 2006 without any certainty, appear to have consisted of at least one telephone discussion, possibly another, and one visit in his clinic office in mid March concerning which he had no specific recollection as to the clinical details of his examination.

In dealing with the issue of the grievor caring for his mother in Fredericton, and

understanding that his patient wanted to be there, Dr. Alward expressed his opinion that it was legitimate for the grievor to have gone there, firstly because he did not see his condition worsening for him to be there, and secondly, the depression symptoms did not interfere with his providing some care for his mother. He apparently did see the grievor's condition interfering with his performing his usual pay officer functions, although not indicating having any familiarity with what they were, or whether the grievor had already started the new assignment. He said that during their telephone conversation, which one it was and whenever it was held was not made clear, he did advise the grievor that, when necessary, he could follow up with emergency medical contact in Fredericton there being no understanding on his part that any visit ever occurred. Dr. Alward also acknowledged in his testimony that he did not outright advise the grievor to go to Fredericton, for any medical related reason, but thereafter came to agree with what the grievor had done, as might be said to be evident from this two reports. He said that it seemed to him that the depression would be worse had he not gone to Fredericton to care for his mother, to be at her side to help which in turn would help him. He could not say exactly what the grievor was doing for his mother, but agreed it was a "priority" for him to be there. He was also pointedly asked whether the grievor's depression situation was the kind subject to change, answering, "sometimes yes, sometimes no"; and as to whether he could possibly work at his old job, answering "possibly yes, possibly no", but apparently not in any work function being offered at the time.

On April 26, 2006, the day following the grievor receiving the letter from his Deputy Minister Lynn Elkin, declaring that he had abandoned his position and was being terminated effective that date, Dr. Alward dictated another letter to Ms. Hoiland to respond to her previous request for a prognosis and whether he was able to go back to work. Without his having seen the grievor in his office over the previous six weeks, with the grievor not yet having returned from Fredericton and not being able to recollect with any certainty whether they had talked recently over the telephone, Dr. Alward reported in his letter that the grievor's depression was a mental disease requiring collaborative treatment, with symptoms

coming from the stress he had been experiencing at work as well as in his social life. In his view, the "signs and symptoms of depression" prevented the grievor from doing his regular duties which is why he put the grievor on sick leave as mentioned in his previous letter. Dr. Alward concluded his update letter "as such, I feel this patient is eligible to have sick leave with the medical condition that he suffers from", which is to say, indicating that he could stay on sick leave at that point, still in Fredericton .. Dr. Alward testified that he could not recall whether he was already aware that the grievor had been terminated at the time he wrote the letter. Interestingly, while it was dated April 26, 2006, Ms. Hoiland did not receive the letter until May 8, some two weeks later, several days after the grievance had been filed.

In cross examination it was put to the grievor that realistically he had no intention of coming back to work until his mother had returned to good health, and it having been noted that his wife with her one year's leave had joined him in Fredericton at some point. In disagreeing, he responded that his intention was to return to work when his doctor advised that it was "ok to do so" and that his "primary reason" for being away from work was his doctor's advice. However, he also acknowledged that he did not see Dr. Alward after March 13, for any updated examination, or discuss the possibility of accommodation allowing his return to the workplace, but that he knew his health continued to be "in bad shape". While indicating, with no expressed certainty, that he may have had another telephone conversation at some point, he repeated that he was not about to put his health at risk by returning to a stressful assignment at F.M.B.S. In writing to his manager, Ms. Hoiland, on April 7, 2006, the grievor advised that he would not be able to return to work on April 10, and that a medical prognosis would be provided. He went on to say that he would make every attempt to ensure he would advise as quickly as possible as to his "medical prognosis" and that they could expect that his physician would be providing an updated medical report. That being said, there was no plain evidence that the grievor re-attended on his physician, any physician, or was even in touch with Dr. Alward about that time, although in his testimony he said that he "thinks" he may have telephoned at some point, or at least sent him a copy of Ms.

Hoiland's earlier correspondence regarding his job description and her request for a fuller report.

At the same time, the grievor knew his wife to have received her one year's unpaid leave, he thinks on about the same day he applied unsuccessfully for his. In dealing with the possibility of his wife staying in Fredericton for a year to care for his mother while he was back in Yellowknife, possibly receiving treatment of some kind, or working, he responded that he could "suppose that anything is possible" but that it would be difficult for a daughter in-law to take on the responsibility of looking after his mother. However, he also indicated that in his view there was "not much to caring for his mother" which involved helping her from her bed to her chair, and lifting her feet onto a stool, and preparing her meals. He also explained that in talking to Dr. Alward about the job duties he would be performing had he returned to an F.M.B.S. position, he described the "chaos" presented by the software system he was expected to work with and which would require him taking some further training. In looking back at the situation, he said again that he knew the system better at the Y.H. S.S.A. and would have "gladly come back" into its pay office had that assignment been offered. In his two months of sick leave, during which time he did not come back to consult with his physician, he also did not raise that placement with anyone as a possible accommodation. It was put to the grievor that it was a matter of needing time away from work to deal with his family responsibilities to which he responded that the characterization was not accurate in that he was in "bad shape". His stress was relieved by being back in Fredericton where he was able to care for his mother.

Interestingly, despite the grievor testifying that on February 23, 2006 when he requested and was refused a one year unpaid leave of absence he had no intention of resigning, Ms. Alexander, five days later, received an e-mail from the grievor's wife under the subject heading "retirement paperwork". In the e-mail, albeit having an hearsay quality to it relevant in terms of the weight to be applied, she complained that the grievor was expecting that his pension would be in order but upon her calling the superannuation area she

was told that they had not yet received any paperwork which she understood was already there from a previous occasion when he had retired for a period of time. While this document cannot be taken as speaking to the truth of the contents, Ms. Alexander took it at least as contributing to her understanding that the grievor was preferring to stay in Fredericton at that point, as opposed to coming back to his job. Thereafter as matters progressed, certainly, she became aware that the grievor had gained support from Dr. Alward for taking the sick leave approach, and apparently had changed his mind over retiring. However, Ms. Alexander and Ms. Elkin were plain enough in their testimony that the Employer had reached the decision that the information provided on behalf of the grievor was insufficient to support two months of claimed sick leave. The grievor was repeatedly advised in writing concerning the Employer's doubts, which did not persuade him to return to Yellowknife for any further investigations or any discussions with his superiors, even after being summoned back to work. Ms. Alexander said she viewed his request for continuing sick leave over a second month as a matter of looking at all of the circumstances. She was aware of his previous performance in a similar position, his wanting to take time off to care for his ill mother in Fredericton and establishing himself there for that purpose, his not attending on his physician after March 13, and as we now know apparently having had little telephone contact with him, and that neither he nor his physician were willing to consider the possibility of accommodated duties being made available. Ms. Alexander took him to be, apparently, quite content to remain in Fredericton and ignore his employment obligations back in Yellowknife. Certainly, Ms. Elkin was concerned from the time of the grievor's request for one year's unpaid leave was denied, heightened by the fact of his then claiming a substantial period of sick leave after one attendance on his family physician. She admitted being doubtful from outset that were the grievor to be so ill that he required at least two months off work, without any prospect of accommodation, he could still care for his mother in Fredericton. For Ms. Elkin too, the circumstances did not add up to a legitimate claim. By her understanding, the grievor had not mentioned any stress build-up prior to going on

annual leave in January 2006, had presumably been working in a similar pay officer position for the previous six months without incident, then claimed he was too ill to take the next payroll officer assignment due to work induced stress without yet even having worked a day in the new assignment. Ms. Alexander testified that it was not an easy decision for her to agree that the grievor had abandoned his job by April 25. It was her sincere hope, she said, that he would have come back to work, whether or not that event would have required some accommodation. She understood that his manager was agreeable to placing him in a satellite office for a time but neither the grievor nor his physician, apparently, were willing to discuss the prospect of accommodation. He was content to remain in Fredericton without any further attendances on his physician, or reporting to his workplace to discuss an accommodated placement if that were necessary. In their views, the grievor had chosen to walk away from his employment obligations.

Both Ms. Elkin and Ms. Alexander are aware that the collective agreement contains specific sick leave language in art. 20, including earning credits under art. 20.01 regarding absences taken being charged against an employee's accumulated sick leave credits, and under art. 20.03 providing that unless otherwise informed the employee must sign a statement that he is unable to perform his or her duties. Under art. 20.04, the employer can require a variation beyond that basic requirement, a form of medical certificate, only where there is a "demonstrated and reasonable basis for doing so". Neither witness was prepared, however, to resile from her conclusion reached under all the circumstances that the grievor's situation required more investigation and information speaking to the principal issue of his choosing to spend the time with his mother in Fredericton as opposed to returning to Yellowknife and stay in touch with his physician for ongoing assessment purposes, or any other physicians, and ignoring the issue of possible accommodation while remaining outside the jurisdiction. At some point given all the circumstances, both superiors were of the view that the Employer had to conclude that no continuing sick leave was substantiated and proceeded on that basis, given that the grievor was not about to indicate that he was going to return to Yellowknife

for further investigation and the abandonment declaration followed on April 26.

Argument: With the Employer continuing from outset to assert job abandonment by valid declaration under the *Public Service Act*, Ms. Seaboyer on behalf of the Union submitted that the evidence disclosed the grievor to have been suffering from an illness in the nature of stress/anxiety which was covered by the sick leave benefits provided under the collective agreement. Hence, he should be taken at all material times to have acted in compliance with the collective agreement, having made a reasonable claim, and then followed his physician's directions, being unable to perform his assigned duties. It should not be considered as a matter of his having been absent without leave, or having given rise to any conclusion that he should be taken to have abandoned his job, or provided the Deputy Minister with any cause to invoke the *Public Service Act*. She said that the reports from Dr. Alward, his family physician, dated March 13 and April 11, supporting his two months off work, and the next report dictated the day following his termination all showed the grievor to be experiencing diagnosed signs and symptoms of depression which prevented his attending at work. The doctor testified to explain the recommendation that he had made. Unfortunately the Employer was all along, and continues to be, "fixated" on the grievor having initially applied for unpaid leave to care for his mother, which to it, meant he was merely intent on circumventing the contractual sick leave provisions. At the same time, the grievor was clear in his testimony that he was not capable of working given his medical condition. Having complied with the article 20.03 requirement to sign a statement that he was unable to perform the duties of his position during the requested time of absence, and further having complied with art. 20.04 when his personal physician, Dr. Alward, provided a form of medical certificate for the first month and then another report concerning the second month off work, he should be taken as having sufficiently substantiated the need for his being away from his assigned position for the time sought. The grievor was in compliance with the collectively bargained requirements with respect to substantiating the need for a period of time off work by reason of his being unable to perform his assigned

duties. The Employer, she said was obligated to follow the collectively bargained process and provide illness leave coverage for the period of time specified by the attending physician in light of there being no contradicted opinion. In submissions, counsel pointed out that the Employer witnesses did not have any medical qualifications. It was not a situation of “dueling doctors”. There was no other medical evidence contradicting Dr. Alward that the grievor required at least two months off work due to his stress/anxiety diagnosed illness. It was his doctor’s opinion that he should not be at work due to his illness, and the grievor complied. With no evidence to the contrary, she said, the grievor should be viewed as being in no condition to be at work for any period of time the Employer witnesses surmise he might have been. Certainly, she said, it was not a situation where the grievor and his doctor were non-compliant with respect to providing information, in that Dr. Alward had provided consistent medical reports. One notes that his last letter received by Ms. Hoiland on May 8, two weeks after the grievor was declared to have abandoned his position, Dr. Alward was still reporting that the grievor was unable to work. On review, Ms. Seaboyer asserted, there should be no doubt that stress/anxiety and depression have long been considered in the nature of a compensable illness affecting one’s ability to attend work, as discussed in Brown and Beatty, Canadian Labour Arbitration (loose leaf 4th ed.). The learned authors point out that the nature of proof that properly can be required by an employer is usually described in the collective agreement, with medical certificates of some kind being the most usual proof. As a general rule, arbitrators have said that an employer can only demand medical verification of an illness, an incapacity of any kind, in a form and at a time that is consistent with the terms of the agreement, and where there is a reasonable basis for such requirements. To put it bluntly, the Union considers it to have been irrelevant for purposes of claiming and substantiating the grievor’s right to illness leave under the collective agreement whether he spent his recovery time in Yellowknife, or at his mother’s home in Fredericton where he was at least being useful to a degree. The point was, she said, that the grievor needed at least a relatively short time away from his duties on being diagnosed with a stress/anxiety condition,

which is what occurred.

The Union also cited adjudicator Norman's award in Max Mehlis and Government of Yukon (YPSSRB file 266-46, 267-32, 267-37, August 8, 1990) as presenting a closely similar factual situation. In that case a Government of Yukon employee was declared by his deputy minister to have abandoned his position following the decision taken to cut him off his sick leave and the employee's failing to then have returned to work by a certain date set by his manager, of which date, he was beforehand notified. As is so often the case, one observes, it is the particular facts of the case which were crucial to the outcome. Briefly, the circumstances disclosed an employee who was suffering from a stress and anxiety induced depression for which he had been seen by his physician in Whitehorse twice, before journeying to his boyhood home in Bolivia for his annual vacation from which he did not return on the expected date. A psychiatrist in Bolivia provided a medical report indicating that the employee was suffering from a dysthymic disorder (reactive depression) for which he was currently under treatment in La Pas, that he could not deal with his job responsibilities at that point, and that traveling was not advisable. The employee declined his manager's direction that he return to Whitehorse to be examined by a doctor of the employer's choice, leading to the employer eventually arranging for an independent medical assessment in La Pas to focus on the employee's ability to at least travel back to Whitehorse. The resulting report when reviewed by the adjudicator was taken to have borne out the employee's own physician's initial diagnosis and prognosis, including that he was still undergoing psychiatric treatment in La Pas, requiring more time. At some point he took a side trip to Argentina with his doctor's concurrence. Ultimately when the employee was notified that a job abandonment declaration was set for the following week, he immediately went about making suitable arrangements to return, whatever his health situation at that point. Due to difficulties regarding travel connections, he had to advise his manager that he would be a day late, one day past the supposed deadline. He had obtained another physician's report to present to his manager in his upcoming anticipated meeting. The report indicated that he was still suffering

