COURT MARTIAL

Citation: *R. v. LeBlanc*, 2010 CM 4006

Date: 20100205
Docket: 200956

Standing Court Martial

Canadian Forces Base Bagotville
Bagotville, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal A.E. LeBlanc, Offender

Presiding: Lieutenant-Colonel J.-G. Perron, M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR SENTENCE

(Rendered orally)

[1] Corporal LeBlanc, the Court has found you guilty of negligently performing a military duty and must now determine the appropriate sentence for this offence and the offender. Counsel for the prosecution suggest that a sentence composed of a reprimand and a fine of at least $700 but no more than $1 500 is the minimum sentence to ensure the protection of the public and the maintenance of discipline in the circumstances. He indicates that general and specific deterrence, denunciation and proportionality are the most important factors to consider when determining the sentence. Your counsel suggests that a fine between $200 and $400 would be the appropriate minimum sentence.

[2] To determine what constitutes the appropriate sentence in this case, I took into account the circumstances surrounding the commission of the offence. You have been found guilty of failing to guard CF-18 aircraft as it was your duty to do. You were

responsible for guarding the CF-18s parked on the tarmac at CFB Bagotville and allowing only authorized personnel to go near the aircraft. You were meant to be alert and vigilant at all times, especially when you were alone at your station. While performing this military duty, you were armed with a C-7 rifle equipped with a 30-round magazine. While you were alone in your truck, you stopped guarding the CF-18s by closing your eyes for at least 10 seconds, during which time you were not vigilant.

[3] I also considered the evidence that was filed, the case law and the submissions by counsel. I analyzed these various factors in light of the objectives and principles applicable in sentencing. As indicated in paragraph (2) of article 112.48 of the *Queen's Regulations and Orders for the Canadian Forces*, I also took into consideration any indirect consequence of the finding or of the sentence and the need to impose a sentence commensurate with the seriousness of the offence and the offender's record.

[4] Therefore, in determining what sentence would be appropriate, I took into consideration the aggravating and mitigating factors that follow. I consider the following to be aggravating factors.

> The nature of the offence and the punishment provided for by Parliament. You are guilty of negligently performing a military duty. The maximum sentence is dismissal with disgrace from Her Majesty's service. Objectively, it is a serious offence.
>
> The operational context in which this offence was committed is important. You were responsible for the security of seven to ten CF-18s. You were aware of your obligations while performing guard duties. You were trained in the use of force and had weapons and magazines in your truck at the time of the offence.

[5] As for the attenuating factors, I note the following.

> You have no conduct sheet. The personnel evaluation report (Exhibit 10), the personnel development review (Exhibit 11), the letter of appreciation (Exhibit 12), and your supervisor's testimony suggest that you perform well in your job as a refrigeration and mechanical technician. You therefore have strong potential for a career in the Canadian Forces.
>
> Your negligence did not have any harmful consequences for the CF-18s for which you were responsible. It was a moment of negligence that lasted a short time.
>
> I consider time to be a mitigating factor in this case. Even though no evidence was adduced on that subject, the Court does not understand why the charge was brought only on May 25, 2009, some seven months after the offence was committed, given that this is a factual situation that seems relatively simple. Despite the arguments of counsel for the prosecution on *Carreau-Lapointe*, it is the Court's view that if the proper authorities consider this type of offence to be

> serious, they must launch the investigative process and prefer charges so that the objectives of discipline can be met. A 15-month period between the date of the offence and the date of trial helps neither the accused nor the military community, nor discipline within that community.

[6] I reviewed *Lebouthillier*, Disciplinary Court Martial, 1991, *Carreau-Lapointe*, Standing Court Martial, 2008, and *McDougall*, Standing Court Martial, 2009. I find *Carreau-Lapointe* and *McDougall* to be more useful for this comparison, since they are more recent. Moreover, even though no actuarial evidence was introduced before this Court, it is well-known that service pay is quite different from what it was in 1991. The accused admitted their guilt in *Carreau-Lapointe* and *McDougall*. This is not a mitigating factor here. In *Carreau-Lapointe*, where the accused had committed three offences under section 124, there was a joint submission of a reprimand and a fine of $1 000. In *McDougall*, the prosecution suggested a reprimand and a fine of $500, and counsel for the defence a fine of $200. The Court sentenced the offender to a $300 fine.

[7] The Court would have imposed a stricter sentence if it had not been for the delay in this case, which I consider to be a mitigating factor in light of the facts I am aware of. The Court sentences you to a fine of $500, payable on February 15, 2010.

Counsel

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