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Date: 20011017

File: 166-32-30487

Citation: 2001 PSSRB 104



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

Mirjana Savic

Grievor

and

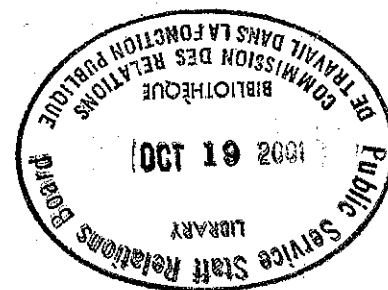
Canadian Food Inspection Agency

Employer

Before: J.W. Potter, Vice-chairperson

For the Grievor: Steve Eadie, Labour Relations Officer

For the Employer: Renée Roy, Counsel



Heard at Hamilton, Ontario
October 1 - 3, 2001

DECISION

[1] On July 20, 2000 Dr. Mirjana Savic filed a grievance, grieving "...management's unreasonable failure to extend my term appointment..." as a veterinarian with the Canadian Food Inspection Agency (C.F.I.A.). She requested "immediate extension of my current term appointment..."

[2] By way of a letter dated August 31, 2001 the employer objected to the reference of Dr. Savic's grievance to adjudication, stating, in part:

"...The non-renewal of appointment for a person appointed for a specific period of time does not constitute discharge within the meaning of the P.S.S.R.A. Accordingly, an adjudicator would have no jurisdiction to hear the subject matter of this grievance under Section 92 of the P.S.S.R.A."

[3] The grievor claimed the non-renewal of her term contract was, in fact, disguised discipline and therefore the matter could be heard at adjudication.

[4] At the hearing, I indicated I would reserve my decision on this jurisdictional objection pending receipt of the evidence.

Background:

[5] Dr. Savic began her employment with C.F.I.A. as a Veterinary Officer Level 1 (VM 01) at a meat processing plant in Breslau, Ontario. She was employed on a one-year term, from May 12, 1999 to May 11, 2000 (Exhibit G-2).

[6] Dr. Savic's term was extended from May 12, 2000 to June 9, 2000 (Exhibit G-3). Another extension to the term took place from June 12, 2000 to July 7, 2000 (Exhibit G-4). A further extension took place from July 10, 2000 to July 21, 2000 (Exhibit G-5).

[7] By way of a letter dated June 29, 2000 (Exhibit G-1), Dr. Charlene Harradine, the A/Inspection Manager for the South West Ontario Region, wrote to Dr. Savic, saying, in part:

"Please accept this letter as written confirmation that July 21, 2000, is the date upon which your present appointment as a Veterinary Officer with the Canadian Food Inspection Agency will be completed."

[8] Dr. Savic testified that when she began working as a veterinarian at the meat processing plant in Breslau, she was replacing the incumbent of the position, Dr. Hayward. Her duties were to ensure the plant managers were in compliance with the

Meat Inspection Act and to decide on the suitability of the carcasses for human consumption.

[9] Dr. Savic had no direct supervision at the plant and testified she rarely saw the individuals who supervised her.

[10] In July 1997, C.F.I.A. received authorization to hire veterinarians on an indeterminate basis. Management of the South West Ontario Region decided to convert the term positions into indeterminate ones. The term employees who occupied positions not incumbered by another indeterminate employee were offered permanent status in their own positions. This could not be done for Dr. Savic, as the position she occupied was actually incumbered by Dr. Hayward.

[11] Unbeknownst to the grievor, a work assessment was done on her on April 7, 2000 (Exhibit G-6). It was completed by Dr. Hayward, with input from Dr. Branov. Both of these individuals supervised Dr. Savic to some extent, although it was not contested that Dr. Savic had little contact with any supervisor.

[12] This work assessment made a number of negative comments with respect to the interpersonal skills of Dr. Savic. Needless to say, Dr. Savic did not agree with these comments once she found out about the assessment, and said she felt she got along well with the meat inspectors with whom she worked at the plant. This was supported by the evidence of Brian McCann, a meat inspector at Breslau, who said all the meat inspectors at the plant got along well with Dr. Savic.

[13] Sheila Dempsey is the Human Resources Advisor in the South West Ontario Region of C.F.I.A. She stated that the assessment was a staffing tool to be used in the above referenced staffing process only. Upon reading the assessment of Dr. Savic, Ms. Dempsey stated she was a bit concerned because she had never heard of any problems concerning Dr. Savic. Ms. Dempsey contacted Steve Michon, the Regional Director for South West Ontario and raised her concern about the content of the assessment with him.

[14] Mr. Michon agreed that the assessment was suspect, and he decided to declare Dr. Savic qualified for a veterinarian position and Dr. Savic applied for one of the indeterminate positions. However, Dr. Savic was unhappy with the way the positions

were being staffed, as she felt term employees should be allowed to compete for the indeterminate positions they desired.

[15] In June 2000, Dr. Savic commenced a staffing recourse action with respect to the process C.F.I.A. was following for the staffing of these positions. Ultimately she requested a review by an Internal Staffing Tribunal.

[16] Mr. Michon testified that on June 5, 2000, he offered Dr. Savic a list of six vacant indeterminate positions and asked her to select her preference by June 9 (Exhibit E-6). [Ultimately, she was offered seven (7) indeterminate positions but she declined all of them (see Exhibit E-1 and E-6)].

[17] Dr. Savic responded on June 8 requesting an extension to make a selection until July 5 due to the impact such a decision would have on her family (Exhibit E-6).

[18] Mr. Michon replied on June 13 agreeing to an extension, but only until June 16 (Exhibit E-6).

[19] Dr. Savic replied on June 15 indicating she was not in a position to make such a choice and would only do so pending the final outcome of the Staffing Recourse Action. This review was completed on May 18, 2001 and a majority report issued (Exhibit E-2). The majority report found no violation committed by C.F.I.A. with respect to the method of staffing the positions. (NOTE: The bargaining agent stated an appeal with respect to the decision of the staffing tribunal has been filed with the Court).

[20] On June 27, 2000 Dr. Savic met Mr. Michon to discuss the staffing complaint Dr. Savic had filed. Dr. Savic's point with respect to the staffing process was that people should be able to compete for available positions. Mr. Michon stated that it made better business sense to convert the term employees into indeterminate employees and have them retain their positions, provided they were qualified.

[21] Mr. Michon testified that following the meeting he had with Dr. Savic on June 27, he received a telephone call from Dr. Harradine stating that another veterinarian in the Region, Dr. Orr who was an indeterminate employee, had to be accommodated because the work Dr. Orr was doing had dried up. Dr. Harradine told Mr. Michon that the only possibility of placement of Dr. Orr was at Breslau, the position currently occupied by Dr. Savic.

[22] Mr. Michon testified he queried Dr. Harradine as to whether or not there were other options for placement for Dr. Orr, but he was assured that the position at Breslau was the only option given certain restrictions Dr. Orr had.

[23] Mr. Michon told Dr. Harradine to proceed with placing Dr. Orr at Breslau.

[24] Accordingly, on June 29, 2000, Dr. Harradine wrote to Dr. Savic telling her that her appointment as a Veterinary Officer would be completed on July 21 (see Exhibit G-1).

[25] Dr. Savic completed her term on July 21, 2000.

Grievor's Argument

[26] The issue to be decided is whether or not the non-renewal of Dr. Savic's term is disguised discipline.

[27] The assessment done on Dr. Savic, without knowledge or input, indicates the employer felt her attitude would not stand her in good stead. The assessment was negative, although Mr. Michon found Dr. Savic to be qualified.

[28] The assessment prejudiced Dr. Savic by damaging her reputation and the employer never offered to change it.

[29] Dr. Savic simply wants to be treated fairly and equitably; something the employer has failed to do. The evidence indicates the employer felt Dr. Savic was becoming a liability, so in spite of the fact Dr. Savic was never actually disciplined, there is an underlying current in this case that indicates Dr. Savic was marked as different.

Employer's Argument:

[30] The grievor bears the onus to demonstrate this was disguised discipline and this onus has not been discharged. There is no jurisdiction for the Board to render a decision in this matter.

[31] The case law supporting the fact the Board is without jurisdiction is clear. In particular the following cases support this: *HANNA* (166-2-26983); *KERR* (166-2-23131); *MARTA* (166-2-29643); *BEAULIEU* (166-2-27313); and *LECOMPTE* (166-2-28452).

[32] There is no evidence of bad faith here. The employer deemed Dr. Savic qualified and ultimately offered her seven (7) indeterminate positions to choose from. She declined all seven. There is simply no evidence to suggest these offers were made in bad faith and the only thing the employer has done in this case is to allow a term to come to an end.

Decision:

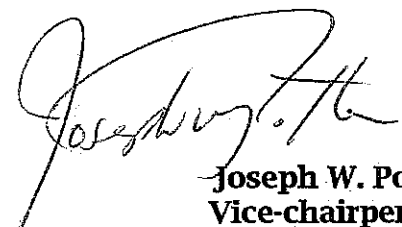
[33] The employer has raised the issue of my jurisdiction in this matter. Section 92(1) of the *Public Service Staff Relations Act (PSSRA)* provides the adjudicator with jurisdiction to hear certain matters. As was stated in HANNA (*ibid*) at paragraph 10:

"The jurisdiction is limited to the interpretation or application of a collective agreement on the one hand, and termination of employment and disciplinary action on the other."

[34] There was no evidence in this case that the employer disciplined the grievor at any time in her employment history with the C.F.I.A. Indeed, Dr. Savic did nothing that I was made aware of that would attract discipline.

[35] Dr. Savic's employment relationship with the C.F.I.A. came to an end pursuant to the provisions of the terms of her contract of employment. On June 29, 2000 Dr. Savic received what turned out to be the last extension to her term contract (see Exhibit G-5). The document indicated the extended term would have an end date of July 21, 2000. Also on June 29, 2000 Dr. Savic was informed that on July 21, 2000 her appointment would be completed (see Exhibit G-1). I am satisfied that the circumstances of the grievor's case do not constitute "termination" or "disciplinary action" within the meaning of Section 92 of the P.S.S.R.A.

[36] In light of the above the grievance must be dismissed for want of jurisdiction,


Joseph W. Potter
Vice-chairperson

OTTAWA, October 17, 2001