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File: 149-18-228

Citation: 2002 PSSRB 18



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

HARRY GUITTARD

Applicant

and

STAFF OF THE NON-PUBLIC FUNDS, CANADIAN FORCES

Employer

Before: [Joseph W. Potter, Vice-Chairperson](#)

For the Applicant: Janice Payne, [Counsel](#)

For the Employer: [Brenda A. Dagenais, Counsel](#)

Decided without an oral hearing.
(Written submissions filed November 30, 2001 and January 14 and 18, 2002.)

PRELIMINARY DECISION

[1] This is a preliminary decision with respect to a request on October 29, 2001 from Harry Guittard to the Public Service Staff Relations Board (P.S.S.R.B.), pursuant to section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993*. More specifically, this request is for an extension of time for Mr. Guittard to file a grievance in relation to his May 25, 2001 termination of employment with the Staff of the Non-Public Funds, Canadian Forces.

[2] In the October 29 letter, counsel for Mr. Guittard requested that the matter be dealt with via written submissions. The employer replied to the request on November 8, 2001 agreeing to provide written submissions on the issue of whether or not the P.S.S.R.B. should exercise its authority pursuant to section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993*.

[3] On November 30, 2001, counsel for Mr. Guittard filed her written submissions with the P.S.S.R.B. I do not intend to reproduce them in their entirety, but the complete text is on file with the P.S.S.R.B.

[4] On January 14, 2002, counsel for the employer filed her written submissions in reply. Again, I do not intend to reproduce them in their entirety, but the complete text is on file with the P.S.S.R.B.

[5] Counsel for the applicant submitted her rebuttal to the employer's submission on January 18, 2002, and the complete text is on file with the P.S.S.R.B.

[6] The applicant's position is that he was dismissed on May 25, 2001 and was told by his counsel he would have to commence a legal court proceeding for wrongful dismissal if he wished to challenge the decision. At that time, he was being represented a different legal counsel from the one making representations before the P.S.S.R.B. with respect to the instant issue.

[7] Just prior to commencing the court action, Mr. Guittard contacted the law firm *Nelligan, O'Brien, Payne* and was advised that he was entitled to grieve the termination pursuant to the provisions of the *Public Service Staff Relations Act (PSSRA)*. Within two weeks of contacting said law firm, the October 29 letter was written.

[8] Counsel for the applicant suggests that Mr. Guittard would suffer grave prejudice if he were not able to grieve his dismissal, as dismissal is the most serious event that can take place during an employment relationship.

[9] On the other hand, very little prejudice would accrue to the employer in proceeding with the grievance. There is not a significant passage of time between the May 25th dismissal and the October 29th request for an extension of time.

[10] Finally, it was quite clear that Mr. Guittard had formed the intent to contest the employer's decision to terminate his employment. This is evident by the fact he immediately sought legal advice and was about to pursue what he thought was the appropriate course of action, namely a legal court action.

[11] Counsel for the employer states it would be prejudiced by having the P.S.S.R.B. grant the requested extension in that some individuals directly connected with the background to the case are now working elsewhere in Canada. In addition, two other individuals that may provide evidence are no longer employed with the Staff of the Non-Public Funds and their current addresses are not known.

[12] Furthermore, two other individuals connected with the matter are not at work, one being on long-term disability and the other being on maternity leave.

[13] Mr. Guittard's substantive position has been filled by an individual and costs associated with paying this individual out, should Mr. Guittard be successful at adjudication, would prejudice the employer.

[14] The workforce is now recovering from the abuse of authority caused by Mr. Guittard and morale would be detrimentally affected should he be allowed to grieve, writes counsel for the employer.

[15] The last point made with respect to prejudice is that the employer was lured into a false sense of security by not having a grievance filed, and to allow one now would be unfair and inequitable.

[16] On a final submission point from the employer, a request was made for an alternative position that should the extension be granted the applicant should have no claim for compensation for the period May 25 to November 30, 2001.

[17] The applicant's rebuttal included the argument that witnesses in other parts of the country can still get to the hearing if required. Furthermore, they may well have been in other parts of the country had the grievance proceeded within normal timeframes.

[18] With respect to the two individuals who are no longer with the employer, one left before the full investigation started and the other is thought to be still in the area. The two individuals on disability and maternity leave can still testify if need be.

[19] The fact someone is now in Mr. Guittard's position does not outweigh the prejudice Mr. Guittard would suffer if his request for an extension of time is not granted.

Reasons for Decision

[20] After considering the full written submissions of the parties, I find this is a situation where the P.S.S.R.B. should exercise the authority vested in it pursuant to section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993*. This section states:

63. Notwithstanding anything in this Part, the times prescribed by this Part or provided for in a grievance procedure contained in a collective agreement or in an arbitral award for the doing of any act, the presentation of a grievance at any level or the providing or filing of any notice, reply or document may be extended, either before or after the expiration of those times

(a) by agreement between the parties; or

(b) by the Board, on the application of an employer, an employee or a bargaining agent, on such terms and conditions as the Board considers advisable.

[21] I accept the applicant's position that it was his intention at the outset to contest his termination. This is demonstrated by the fact he was about to take legal action, pursuant to the advice he received at the time from his legal counsel. In my view, there can be no dispute concerning the applicant's intentions at that time, therefore his intent was clear but the forum he selected was incorrect.

[22] There appears to be a difference of opinion as to what was stated to Mr. Guittard at the outset concerning the appropriate arena in which he could contest his termination. The applicant states he was told by the employer that he could only pursue the matter by filing a grievance with the Canadian Human Rights Commission. The employer states this is incorrect. However, I was not made aware of any evidence

which suggests the employer told Mr. Guittard about his right to file a grievance pursuant to the provisions of the *PSSRA*. He should have been so advised.

[23] In any event, I do not find the prejudice noted by the employer to be so severe as to outweigh the obvious prejudice to the applicant should his application not succeed.

[24] The employer states that two individuals who may have to testify are in Western and Northern Canada and are unavailable as witnesses. Given the ability of the Department of National Defence to move individuals to the far corners of the world if need be, I do not believe it would be impossible to have these two individuals testify at a hearing should that be necessary.

[25] The two individuals who are absent on some type of leave should also be available to testify if necessary, as could other individuals who have resigned or left for one reason or another.

[26] The fact that someone else is now in the applicant's substantive position should also not be a bar to granting the extension of time. That situation could occur whether the applicant grieved or not, and I do not see evidence that any prejudice here would outweigh the prejudice the applicant would incur in not granting the extension.

[27] Insofar as morale is concerned, this is an issue which is best left for an adjudicator to determine and then decide on relevance should the grievor be reinstated. It should not be a bar to granting an extension of time.

[28] Finally, with respect to the issue of the passage of time, in this case the time period is relatively short. Mr. Guittard was terminated May 25, 2001. He had 25 days to submit a grievance, according to the employer's submission. This would bring the time to sometime towards the end of June 2001. A request for extension of time was dated October 29, 2001, therefore it is approximately four months later, which I find in the circumstances is not unduly excessive.

[29] An alternative argument was advanced by the employer in the event the extension were to be granted which is that the applicant be barred for claiming compensation for the period May 25 to November 30, 2001. I decline to make a ruling on this issue as I feel it would be more appropriate to allow the adjudicator hearing the full submissions to decide this matter. It may be moot if the grievance is

dismissed or some other remedy is awarded. In any event, I feel it best to leave this issue up to the presiding adjudicator to rule on.

[30] In summary, the applicant's application for an extension of time in which to file his grievance, pursuant to his May 25, 2001 letter of termination, is hereby granted. The presentation to the employer of the applicant's grievance relating to the termination of his employment will be considered timely if filed with the employer within 15 working days from the date of this decision.

**Joseph W. Potter,
Vice-Chairperson**

OTTAWA, February 8, 2002.