

Date: 20050617

File: 166-02-34833

Citation: 2005 PSLRB 59



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

NELSON TREMBLAY

Grievor

and

**TREASURY BOARD
(Department of National Defence)**

Employer

Indexed as
Tremblay v. Treasury Board (Department of National Defence)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Yvon Tarte, adjudicator

For the Grievor:

Francine Cabana, Public Service Alliance of
Canada

For the Employer:

John Jaworski, Counsel

Heard at Ottawa, Ontario,
May 9, 2005.

REASONS FOR DECISION

Grievance referred to adjudication

[1] The grievor, Mr. Nelson Tremblay, submitted his reference to adjudication to the Public Service Staff Relations Board (the former Board) on November 10, 2004, grieving management's decision to terminate his employment for cause. As corrective action, Mr. Tremblay requested re-instatement of full status with pay. The reference was scheduled for hearing from May 9 to 11, 2005, in Ottawa.

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force and the Public Service Labour Relations Board (the Board) was created. Pursuant to section 61 of the *Public Service Modernization Act*, I continue to be seized with this reference to adjudication, which must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the former *Act*).

Summary of the evidence

[3] At the beginning of the hearing, I was informed by the grievor's representative, Ms. Francine Cabana of the Public Service Alliance of Canada, that the grievor was not present and that she had been unable to reach Mr. Tremblay. Ms. Cabana advised that the bargaining agent was withdrawing its support from the grievor in this file and asked that the file be withdrawn. This was followed by a written statement to this effect, which was filed at the Board on May 9, 2005, describing the efforts Ms. Cabana had made to locate the grievor over the past several weeks.

[4] Despite sending the grievor copies of correspondence and attempting telephone calls to all known telephone numbers, Ms. Cabana was unable to contact the grievor. Indeed, the correspondence was returned as undelivered and the telephone numbers attempted were no longer in service. When these efforts failed, Ms. Cabana contacted the Board and attempted to have the hearing date postponed. This occurred on May 6, 2005. Her request having been refused by the Board, Ms. Cabana appeared before me, along with counsel for the employer, to speak to the case.

[5] The employer was present and ready to proceed.

[6] The former Board wrote to Mr. Tremblay on March 24, 2005, advising him that the hearing of his case was scheduled from May 9 to 11, 2005, in Ottawa. This was done by way of an official Notice of Hearing issued by the former Board to

Mr. Tremblay, his representative and the employer on March 24, 2005, specifying the time, location and date of the hearing. The Notice of Hearing also contained a paragraph consisting of the following:

AND FURTHER TAKE NOTICE that if you fail to attend the hearing or any continuation thereof, the presiding member of the Board may dispose of the matter on the evidence and representations placed at the hearing without further notice to you.

[7] The Notice of Hearing dated March 24, 2005, was sent by registered mail to Mr. Tremblay at the address specified by the grievor on his reference to adjudication which was:

2805 Cedarwood Drive, Apt.# 413

Ottawa, Ontario

K1V 0G7

[8] The Notice of Hearing was not returned as undeliverable.

[9] At the hearing on May 9, 2005, after having consulted with counsel for the employer, I granted the request for a postponement. I indicated that the Board would make one final attempt to contact Mr. Tremblay before the file was closed.

[10] The Director, Registry Operations and Policy, was then directed to write to the grievor and advise him that failure to respond to our letters by June 1, 2005, could result in the termination of the proceedings and the closing of his file.

[11] Mr. Tremblay, however, did not respond by the June 1 deadline.

[12] As of the date of this decision, Mr. Tremblay has not communicated with the Board.

Reasons

[13] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[14] That the proceedings be terminated and the file closed.

June 17, 2005.

**Yvon Tarte,
adjudicator**