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File: 166-02-35947

Citation: 2006 PSLRB 135



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

STEVE DILLON

Grievor

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Dillon v. Treasury Board (Correctional Service of Canada)

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

REASONS FOR DECISION

Before: Ian R. Mackenzie, adjudicator

For the Grievor: John Mancini, Union of Canadian Correctional Officers –
Syndicat des agents correctionnels du Canada - CSN

For the Employer: Mark Sullivan, employer representation advisor

(Decided on the basis of written submissions.)

REASONS FOR DECISION

Grievance referred to adjudication

[1] The grievor, Steve Dillon, reached a settlement of his grievance, but has not withdrawn the reference to adjudication and has requested that the matter be held in abeyance pending the full implementation of the settlement. The employer maintains that the terms of the settlement have been complied with and that the grievance should be dismissed. The Public Service Labour Relations Board (“the Board”) determined that this matter would be dealt with by way of written submissions.

[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. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication 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 and arguments

[3] Mr. Dillon referred a grievance to adjudication on April 4, 2005. The grievor’s representative, John Mancini, advised the Board orally on May 26, 2006, that there was a tentative settlement of the grievance. In a letter to the Board dated July 25, 2006, Mr. Mancini stated that: “The grievor has withdrawn his grievance as part of a settlement in this matter. . . .” He suggested that the file be put in abeyance pending the implementation of the settlement. The Board wrote to Mr. Mancini (copied to the employer’s representative) requesting clarification as to whether or not the bargaining agent wished to withdraw the reference to adjudication. In his reply, Mr. Mancini stated that he did not agree to withdraw the reference to adjudication, but wanted to place the matter in abeyance pending the implementation of the settlement.

[4] The employer’s representative, Mark Sullivan, submitted that the Correctional Service of Canada had “fully implemented” the terms of the memorandum of agreement. It was the employer’s submission that there was, consequently, no reason to hold this matter in abeyance. In addition, the employer stated that in order to finalize the terms of the settlement, the grievance should be withdrawn immediately.

[5] In a letter dated September 8, 2006, the Board wrote to the parties and denied the request to hold the matter in abeyance. The Board directed the parties to address the following question by way of submissions: “Is there a binding settlement between the parties and does that settlement resolve the dispute between them?”

[6] The bargaining agent made no submissions.

[7] The employer submitted as follows:

. . .

The simple answer to the question being asked by the Board is yes. . . . the MOA that was negotiated in good faith, and fully implemented by the employer, resolves any dispute that existed between the parties in regards to this matter. The absence of any submissions from the other party in support of their position makes it virtually impossible to comprehend why this matter should remain in abeyance.

. . . the employer (Correctional Service of Canada) has fully implemented the terms that were agreed to in the MOA and there is no reason to hold this matter in abeyance. The only remaining matter that needs to be implemented is withdrawal of the grievance.

. . .

Reasons

[8] There appears to be no dispute that the parties entered into a valid settlement agreement. In its earlier correspondence to the Board, the bargaining agent suggested that some of the terms of the settlement had not yet been implemented. However, the most recent correspondence from the employer states that the terms of the settlement (apart from the withdrawal of the grievance) have been implemented. In the absence of any reply submissions of the bargaining agent that contradict this assertion, I find, on balance, that the terms of the settlement have been complied with.

[9] However, it is not necessary for me to determine whether the terms of the settlement have been complied with in order to dispose of this matter. The existence of a valid settlement is not challenged by the grievor. A valid settlement is a complete bar to an adjudicator's jurisdiction (*Lindor v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 10). On this basis, I can only conclude that the referral to adjudication should be dismissed.

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

(The Order appears on the next page)

Order

[11] The reference to adjudication is dismissed.

December 12, 2006

**Ian R. Mackenzie,
adjudicator**