Date: 20061122

File: 566-34-185

Citation: 2006 PSLRB 128

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

DAWIT TUQUABO

Grievor

and

CANADA REVENUE AGENCY

Other party to the grievance

Indexed as
Tuquabo v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Ian R. Mackenzie, adjudicator

For the Grievor: Himself

For the Other party to the grievance: Sonia Virc

Heard at Ottawa, Ontario
September 18, 2006.

Individual grievance referred to adjudication

[1] Dawit Tuquabo was a term employee at the Canada Revenue Agency (CRA) from March 15, 2004, to February 12, 2006. He alleges that his term employment was not renewed for disciplinary reasons. The CRA raised a preliminary objection to the jurisdiction of the Public Service Labour Relations Board (the "Board") on the basis that Mr. Tuquabo had not filed a grievance pursuant to the grievance procedure. Written submissions were provided by the parties on this issue, and the Board ordered an oral hearing on the jurisdictional issue only.

[2] At the commencement of the hearing Mr. Tuquabo asked if he could tape-record the proceeding. I ruled that he could not record the proceeding.

[3] Since Mr. Tuquabo raised allegations of a breach of human rights, the Canadian Human Rights Commission (CHRC) was advised of the reference to adjudication. The CHRC reserved its right to make submissions, but did not attend the hearing.

[4] There was no evidence tendered at the hearing on the jurisdictional issue. However, there are a number of facts and documents that are not in dispute, which I have summarized below. At the hearing, Mr. Tuquabo wanted to introduce tape-recorded conversations with his supervisor. The employer's representative objected, and I ruled that I would not admit the tapes. Generally, the surreptitious recording of conversations in the workplace should not be encouraged. Both Mr. Tuquabo and his supervisor could be called as witnesses in the event that the content of the conversation was relevant to the hearing. After discussion with the parties, I determined that the evidence of the conversation was not relevant for a determination on jurisdiction.

Background

[5] Mr. Tuquabo was employed as an assessing services clerk in the Return Processing Division at the International Tax Services Office of the CRA. He was in this position from March 15 to July 18, 2004. He then accepted a temporary lateral move to the Compensation Client Service Centre at the Ottawa Technology Centre. His term was extended on a number of occasions, with the last extension ending on February 3, 2006. The Assistant Director for the Returns Processing Division decided on January 12, 2006, not to extend Mr. Tuquabo term past February 3, 2006.

[6] On January 13, 2006, Mr. Tuquabo wrote to Michel Dorais, Commissioner of the CRA. In his letter he asked the Commissioner to investigate "abuse of power" by his supervisors. He alleged that these supervisors terminated his employment at the CRA and discriminated against him. He also asked the Commissioner to overturn the decision to "terminate" until a full and complete investigation was completed. He wrote additional letters (on file with the Board) to the Commissioner on January 31 and February 2 and 14, 2006.

[7] In his reference to adjudication, Mr. Tuquabo indicated that the date that the grievance was presented at the final level was January 13, 2006 (the date of his letter to the Commissioner).

[8] The applicable collective agreement is the agreement between the CRA and the Public Service Alliance of Canada (PSAC) (expiry date: October 31, 2007). The collective agreement provides that the final level of the grievance procedure is the Commissioner or his authorized representative.

Summary of the arguments

[9] The employer's representative submitted that the letter to the Commissioner of January 13, 2006, did not constitute a grievance within the meaning of the collective agreement or the *Public Service Labour Relations Act (PSLRA).*

[10] Mr. Tuquabo presented a written argument at the hearing, as well as making oral submissions. The written submissions are on file with the Board. Mr. Tuquabo submitted that the ending of his term was disciplinary. His collective agreement provides that disciplinary grievances go straight to the final level of the grievance process. He argued that, in this case, his letter to the Commissioner constituted a grievance to the final level.

[11] The employer's representative did not agree that the ending of Mr. Tuquabo's term was disciplinary.

Reasons

[12] The issue before me is whether Mr. Tuquabo's reference to adjudication is a valid referral. Specifically, the question to answer is whether the letter Mr. Tuquabo submitted to the Commissioner can be considered a grievance under the *PSLRA*. I advised the parties at the hearing that to make this determination I did not need to

determine whether the ending of Mr. Tuquabo's term was disciplinary or not. The objection of the employer was that no grievance had been filed. The matter of the appropriate level of the grievance process to be used in the circumstances was not at issue. I advised the parties that the issue of whether or not the ending of Mr. Tuquabo's term employment was disciplinary could be addressed in further proceedings, if I found that the reference to adjudication was valid.

[13] The relevant provisions of the *PSLRA* are as follows:

> ***208.*** *(1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved*
>
> *(a) by the interpretation or application, in respect of the employee, of*
>
> *(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or*
>
> *(ii) a provision of a collective agreement or an arbitral award; or*
>
> *(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.*
>
> . . .
>
> ***209.*** *(1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process . . .*
>
> . . .
>
> ***225.*** *No grievance may be referred to adjudication, and no adjudicator may hear or render a decision on a grievance, until the grievance has been presented at all required levels in accordance with the applicable grievance process.*
>
> . . .
>
> ***241.*** *(1) No proceeding under this* Act *is invalid by reason only of a defect in form or a technical irregularity.*
>
> *(2) The failure to present a grievance at all required levels in accordance with the applicable grievance process is not a defect in form or a technical irregularity for the purposes of subsection (1).*

. . .

[14] The narrow question for me to determine is whether the letter of January 13, 2006, constitutes a grievance under the *PSLRA*. The grievance process is set out in the collective agreement. The *PSLRB Regulations* also set out the basic framework for the grievance process. The *Regulations* require that an employee who wishes to present a grievance "shall do so" on a form provided by the employer and approved by the Board (section 67). It is clear that Mr. Tuquabo did not submit a grievance form.

[15] However, subsection 241(1) of the *PSLRA* is clear that a "defect in form" does not make a proceeding invalid. It is, therefore, necessary to look closely at the letter of January 13, 2006, to determine if it can be considered a grievance under the *PSLRA*.

[16] The letter that Mr. Tuquabo wrote was addressed to the Commissioner, the final level of the grievance process. Mr. Tuquabo's letter requested an investigation and the maintenance of his employment status pending the investigation. He did not state in his letter that he wanted to grieve the decision of the employer not to renew his term employment. A request for an investigation is not the same as a grievance against an alleged disciplinary termination. It was natural that the employer would not treat Mr. Tuquabo's letter as a grievance, since he did not refer to it as such in his letter. Furthermore, Mr. Tuquabo did not request a grievance hearing at the final level. A grievance hearing is a part of the grievance process and is normally expected to occur prior to a referral to adjudication. The grievance procedure exists for a reason, and normally should not be circumvented prior to referring a matter to adjudication. In the absence of a grievance form, there must be a fully-formed intention to grieve expressed by the employee in a letter or other document provided to the employer. In this case this intention to grieve was not expressed by Mr. Tuquabo. Therefore, I am without jurisdiction to hear this reference to adjudication.

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

(The Order appears on the next page)

Order

[18] I am without jurisdiction and the reference to adjudication is dismissed.

November 22, 2006.

Ian R. Mackenzie,
adjudicator