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*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**KIM FORSTER**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Forster v. Canada Revenue Agency*

In the matter of grievances referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** John Steeves, adjudicator

***For the Grievor:*** Brendan Quinn, Public Service Alliance of Canada

***For the Employer:*** Harvey Newman, counsel

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Heard at Abbotsford, British Columbia,  
April 27, 2006.

## REASONS FOR DECISION

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### Grievances referred to adjudication

[1] The grievor, Ms. Kim Forster, has filed three grievances. In the first, she grieves the decision of the employer not to pay her for the time she refused to work because of unsafe conditions. The other two grievances are about the employer's refusal to allow paid leave for the grievor to assist another employee with a human rights matter.

[2] The grievor submits that she made a reasonable request to attend a forum on disabilities in the work place. However, the employer's reaction to this request created a poisoned workplace. She was, therefore, justified when she refused to work. It is also submitted that this grievance is properly before the Public Service Labour Relations Board and I have jurisdiction over it. With regards to the grievances about the request for leave, the collective agreement authorizes leave for the grievor to represent and assist a fellow employee for a human rights mediation.

[3] The grievor seeks payment of wages for the unpaid time she spent working through the right to refuse process and for the time she represented the other employee in the human rights matters.

[4] The employer submits that I am without jurisdiction to decide the complaint about unsafe work conditions; it is a matter under the *Canada Labour Code*, R.S.C. 1985, c. L-2, and it is not properly part of the grievance in this case. With regards to the request for leave to assist another employee during a human rights' mediation, the employer submits that this mediation was not an arbitration board. It was also not a conciliation involving labour relations or an "Alternate Dispute Resolution Process" as contemplated by the collective agreement. Therefore, leave was properly denied.

[5] The employer submits that the grievances should be denied.

[6] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, 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*, these references 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 (*PSSRA*).

### Summary of the evidence

[7] The employer is responsible for various revenue activities and facilities for the Government of Canada. One of the facilities is the Surrey Tax Centre (STC) in Surrey,

British Columbia. There are about 800 full time employees at the STC with an additional 1,000 employees when processing is at its peak.

[8] The grievor has been an employee of the employer since 1979. Her current position is as a Complex Reassessments Officer at the STC (although she has been on leave since August 2005). She has also been active with the bargaining agent representing employees at the STC including being a shop steward and being a member of the executive of her union.

[9] The events giving rise to these grievances occurred in 2001.

(a) Right to Refuse Unsafe Work

[10] A Regional Forum for people with disabilities was planned for September 2001 and various people were invited to attend, including staff involved with equity issues and some union representatives. Initially, the grievor was not invited or planning to attend this forum. However, she was interested in the forum because she had attended previous forums and she had an interest in employees with disabilities. She testified that a person who was attending approached her to ask if she could attend as a substitute.

[11] The grievor agreed to substitute but she required leave from her other duties at STC. She contacted her supervisor who agreed that she could attend. However, she did not hear anything else and she began to wonder if there was some preparation she should be doing. She approached the person organizing the forum, Ms. Jacquie Hepner. The grievor estimated this was on September 25, 2001 and she was intending to be at the forum on September 27, 2001. The grievor and Ms. Hepner had a conversation during which the latter stated, among other things, that the person who asked the grievor to substitute had no authority to make that decision.

[12] The grievor then went to the office of the Director of STC, Ms. Rita Baril. She was able to talk to Ms. Baril about her interest and opportunity to attend the forum. Ms. Baril said she would talk to Ms. Hepner and get back to the grievor. The meeting ended on that basis.

[13] The next day, September 26, 2001, the grievor checked her messages and there was a message from Ms. Baril. According to the grievor's testimony, Ms. Baril stated in a "frustrated tone" that the grievor had misled Ms. Baril about participation in the

forum and the grievor was not to attend. At this point, the grievor was, in her words, “really distraught” because of the allegation that she had misled Ms. Baril. She went to see Ms. Hepner again and this “escalated into quite an altercation”, according to the grievor’s testimony.

[14] After this meeting, the grievor sought advice from some colleagues in a workshop that she was attending; that advice was that she should deal with the situation right away, at “the lowest level”. She again sought out Ms. Hepner. However, Ms. Hepner was talking to some other people and so the grievor left without talking to her. The grievor went home “very distressed” because everything had “been blown out of proportion”. In her testimony, she acknowledged that she has a history of depression and she “does not always deal with things rationally”.

[15] The next day, September 27, 2001, the grievor could not go to work because of the events of the previous day. At about 8:30 a.m. she telephoned the president of her union, Mr. Johann Ackermann to tell him that she could not work. Mr. Ackermann explained that he had a copy of a letter from Ms. Hepner, dated September 27, 2001, complaining about the grievor’s actions on the previous day. This was a surprise to the grievor and Mr. Ackermann read the letter to the grievor. The grievor found the letter very upsetting and she told Mr. Ackermann that she was invoking section 128 of the *Canada Labour Code*, her right to refuse unsafe work.

[16] The grievor arranged with Mr. Ackermann to come to the parking lot at the STC to meet him and get a copy of Ms. Hepner’s letter. When they met, Mr. Ackermann advised the grievor that he had told Ms. Baril, the Director of the STC, that the grievor was invoking her right to refuse unsafe work. The grievor’s testimony (Mr. Ackerman did not testify) was that Ms. Baril stated, “That is ridiculous, tell her to come to work or she will not be paid”. The grievor read the letter from Ms. Hepner and it confirmed her decision that it was “completely unsafe” to work. She testified that she thought that Ms. Baril had denied her complaint of unsafe work without an investigation and she told Mr. Ackermann that the employer had to conduct an investigation. The meeting in the parking lot ended on that basis.

[17] As she drove away from the parking lot the grievor telephoned Ms. Baril to make sure that Mr. Ackermann had told her to conduct an investigation. According to the grievor, Ms. Baril stated again that the complaint was being “ridiculous” and she

should come to work because there was no danger. The grievor also called her supervisor.

[18] The grievor received a call the next day, September 28, 2001, from Ms. Baril's assistant, requesting that the grievor come into work for an investigation about her complaint. The grievor did so and the usual steps were followed. A manager reviewed the situation and found no danger. Then an employee representative from the Health and Safety Committee did an investigation and found no danger. Finally, an officer from Human Resources Development Canada attended and, in decision dated October 5, 2001, found no danger. The grievor appealed this decision and an Appeals Officer under the *Canada Labour Code*, in a final decision dated July 4, 2002, denied the appeal.

[19] The grievor returned to work on October 9, 2001. Except for a full shift on September 27 and three hours on September 28, the grievor was on some form of paid leave while she was away. Her claim in this grievance is for a total of ten and one-half hours.

(b) Article 14.04 Leave

[20] As above the grievor is active in her union. In the fall of 2001, another employee was involved with a human rights complaint against the employer and the grievor was assisting this employee.

[21] Part of the complaint process before the Canadian Human Rights Commission is mediation. In this case, a mediation session was planned for November 6, 2001. Before this session, there was a meeting with the mediator on September 5, 2001, and a meeting on October 17, 2001, to prepare for the mediation.

[22] The grievor requested leave with pay, pursuant to Article 14.04, for the time she assisted the employee who was involved in the mediation. The employer denied paid leave on that basis.

Reasons

[23] I will deal with the two issues, refusal of unsafe work and leave under Article 14.04, separately.

(a) Right to refuse unsafe work

[24] On October 12, 2001 the grievor signed a grievance with regards to her right to refuse unsafe work. The grievance stated as follows:

*I grieve the employer's decision to deny me Leave with Pay for September 27<sup>th</sup> and 28<sup>th</sup>. I further grieve the employer's decision contravenes the intent of Article 1 of the Collective Agreement.*

[25] Article 1 of the Collective Agreement is entitled "Purpose and Scope of Agreement". Among other things, it uses broad language to state that the "purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Employer and the Alliance, and the employees". It is agreed between the parties that this provision does not create substantive rights. Therefore, I must conclude that Article 1 cannot be the basis for the grievor's assertion of a right to refuse unsafe work.

[26] I note section 91 of the PSSRA (now section 208 of the PSLRA). It creates the right of an employee to file a complaint where the employee feels "aggrieved" by a "provision of a statute" or a provision of a collective agreement or as a result of "any occurrence or matter affecting the terms of employment of the employee". However, this right is "in respect of which no administrative procedure for redress is provided in or under an Act of Parliament".

[27] The right to refuse unsafe work is contained in Part II of the *Canada Labour Code*. In particular section 128(1) is applicable:

*128(1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that*

*(a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;*

*(b) a condition exists in the place that constitutes a danger to the employee; or*

*(c) the performance of the activity constitutes a danger to the employee or to another employee.*

[28] The *Canada Labour Code*, Part II, also provides for protection against disciplinary action, including the imposition of a financial penalty or a refusal to pay

employee remuneration in respect of the exercise of the rights contained in Part II of the *Canada Labour Code*.

[29] Considering these provisions in the circumstances of this case, I conclude that the right to refuse unsafe work is contained in the *Canada Labour Code*. Further, as contemplated by section 91 of the *PSSRA*, section 133 of the *Canada Labour Code* provides an “administrative procedure for redress” for this right. The logic of these provisions is that I am without jurisdiction to hear a complaint about the right to refuse unsafe work. That matter is properly the subject of a complaint before the Board pursuant to sections 128 and 133 of the *Canada Labour Code* and it is not one that I am authorized to consider as an adjudicator under the *PSSRA*.

[30] For these reasons the grievance related to the right to refuse unsafe work is denied.

(b) Article 14.04 leave

[31] Article 14.04 of the collective agreement is as follows:

*Arbitration Board Hearings, Conciliation Board Hearings,  
and Alternate Dispute Resolution Process*

*14.04 When operational requirements permit, the Employer  
will grant leave with pay to a reasonable number of  
employees representing the Alliance before an Arbitration  
Board, Conciliation Board or in an Alternate Dispute  
Resolution Process.*

[32] As above, the issue is whether the grievor is entitled to leave under Article 14.04 when she provided assistance to a co-worker during mediation of the latter’s human rights complaint against the employer.

[33] I note that the leave created by Article 14.04 is not open ended. There are four restrictions that apply to it.

(a) Leave under Article 14.04 is subject to operational requirements. The employer accepts that operational requirements are not a factor with these grievances.

(b) Only a “reasonable number of employees” will be granted leave. This is not an issue in these grievances.

(c) Leave under Article 14.04 is granted for the purpose of “representing the Alliance”, the bargaining agent. Whether the grievor was representing the Alliance in this case is an issue.

(d) Leave under Article 14.04 is available for representing the Alliance before “an Arbitration Board, Conciliation Board or in an Alternate Dispute Resolution Process”. It is accepted by the parties that the mediation the grievor wished to attend was not an “Arbitration Board” or a “Conciliation Board”. Therefore, another issue in this case is whether the mediation was an Alternate Dispute Resolution Process.

[34] With regards to whether the grievor was “representing the Alliance” when she assisted a complainant in human rights mediation, the evidence is that the Alliance was not a party, interested party or intervener before the Canadian Human Rights Commission. Nor was the Alliance utilizing a representative to apply for standing of some kind before the Commission. I note that the phrase “on behalf of the Alliance” is used throughout Article 14 and the phrase “an employee who represents the Alliance” is also used. I can only conclude that the purpose of paid leave under Article 14.04 is for the purpose of representing the Alliance and there was no opportunity to do that in this case.

[35] The evidence is also that the complainant had able representation already (obtained with the assistance of the grievor). There was a suggestion by the grievor that she was a co-representative. However, the evidence demonstrates that the reason the grievor attended the mediation session (and the preparation before hand) was to assist the complainant in getting through the process. That is a laudable and useful role but it is not one that amounts to representation, in particular representation of the Alliance. And it is not one that justifies leave pursuant to Article 14.04.

[36] The grievor also submits that the mediation session she attended (and the preparation before that session) was an Alternate Dispute Resolution Process, within the meaning of Article 14.04. I accept that, as a general matter, mediation before the Canadian Human Rights Commission is an alternate dispute resolution mechanism. However, in my view the phrase has a more specific meaning in Article 14.04. It is apparent from a review of all of Article 14 that it is intended to apply to leave without pay for Alliance business that is directly related to the administration of the collective agreement or giving evidence before the Public Service Staff Relations Board. Human

rights proceedings are undoubtedly important matters, but I cannot find in the language of Article 14 that representation during those proceedings justifies leave with pay. I am not deciding the issue, but if paid leave pursuant to Article 14 is available for representation during human rights' proceedings, then the representation may also be subject to the duty to provide fair representation under the *Canada Labour Code*.

[37] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

Order

[38] The grievances are denied.

June 7, 2006.

**John Steeves,  
adjudicator**