

**Date:** 20071018

**File:** 166-02-37182

**Citation:** 2007 PSLRB 109



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**HUSEIN E. JEEWANJEE**

Grievor

and

**TREASURY BOARD  
(Canadian International Development Agency)**

Employer

Indexed as  
*Jeewanjee v. Treasury Board (Canadian International Development Agency)*

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

**REASONS FOR DECISION**

***Before:*** [D.R. Quigley, adjudicator](#)

***For the Grievor:*** No one

***For the Employer:*** Karl Chemsí, counsel

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Heard at Ottawa, Ontario,  
September 17 and 18, 2007.

## REASONS FOR DECISION

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### **Grievance referred to adjudication**

[1] Husein E. Jeewanjee (“the grievor”) was employed as a senior program officer (PM-05) with the Canadian Partnership Branch/Projects and Innovation Unit, at the Canadian International Development Agency (CIDA). On December 23, 2004, he grieved, with the support of his bargaining agent, the Public Service Alliance of Canada (PSAC), his letter of termination, the absence of a statement of duties and the way his supervisor dealt with him.

[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.

### **Summary of the evidence**

[3] On October 30, 2003, the grievor was offered a specified-period appointment as a senior program officer from October 27, 2003, to January 26, 2004. The letter of offer indicated that his services might be for a shorter period depending on the availability of work and the continuance of the duties to be performed. He was also advised that he was subject to a 12-month probationary period. The grievor accepted the offer on October 30, 2003.

[4] On January 16, 2004, the grievor received another offer of a specified-period appointment from January 26, 2004, to January 25, 2005. The grievor accepted the offer on January 16, 2004. However, on October 25, 2004, Jennifer Benimadhu, Vice-President, Canadian Partnership Branch, the CIDA, advised the grievor that in accordance with section 28 of the *Public Service Employment Act* she was rejecting him on probation, effective November 26, 2004. In her letter, Ms. Benimadhu indicated that after a review of the grievor’s work, she had reached the conclusion that he was unable to perform the full range of the duties of his position. She also noted the grievor’s failure to demonstrate significant and sustained improvement or to demonstrate a firm commitment to do so.

[5] On December 19, 2005, Ric Cameron, Senior Vice-President, the CIDA, denied the grievance at the final-level grievance hearing, stating that the rejection on probation was justified.

[6] The Public Service Labour Relations Board (“the Board”) scheduled the matter for a hearing from September 11 to 13, 2006, in Ottawa, and a notice of hearing was sent to the parties on August 14, 2006. On August 25, 2006, the PSAC requested a postponement of the hearing. The employer agreed to postpone the hearing to further discuss settlement.

[7] The hearing was rescheduled for February 14 to 16, 2007, and a notice of hearing was issued on December 18, 2006.

[8] On January 5, 2007, the PSAC advised the Board that it was no longer representing the grievor and that any further contact should be directly with him. The grievor was copied on this correspondence, and his email address was provided to the Board.

[9] On January 8, 2007, the Board sent a letter to the grievor and to the employer to advise them that all subsequent correspondence would be sent directly to the grievor, since the PSAC was no longer representing him.

[10] On January 26, 2007, the grievor contacted the Board by telephone to request a postponement of the February 14 to 16, 2007, hearing dates. He was advised to put his request in writing.

[11] On January 28, 2007, the grievor wrote to the Board requesting a postponement of three months to adequately prepare for the hearing. On February 2, 2007, the employer replied that it did not object to the postponement, but it requested that the hearing be rescheduled to September 2007, as its key witnesses were unavailable during the summer months. On February 2, 2007, the grievor advised the Board that he opposed the employer’s request to postpone the hearing until September. The Board granted the postponement as well as the employer’s request that the hearing not be scheduled before September 2007.

[12] On March 19, 2007, both parties were asked to confirm their availability for a hearing in Ottawa from September 17 to 19, 2007, which they did.

[13] By letter dated April 4, 2007, the Board confirmed that the hearing would take place from September 17 to 19, 2007.

[14] On August 16, 2007, the Board sent a notice of hearing to the parties stating that the hearing was to take place from September 17 to 19, 2007, beginning at 9:30 a.m. on the first day, in the Board's premises at the C.D. Howe Building, 240 Sparks Street, West Tower, 7th floor, Ottawa. The parties were also informed that if they failed to attend the hearing or any continuation thereof, the adjudicator could dispose of the matter on the evidence and representations placed at the hearing without further notice to them.

[15] On August 29, 2007, the Board sent an amended notice of hearing indicating a change in the hearing location; it would take place at the Radisson Hotel, 402 Queen Street, Ottawa. Again the parties were informed that if they failed to attend the hearing or any continuation thereof, the adjudicator could dispose of the matter on the evidence and representations placed at the hearing without further notice to them.

[16] Both notices of hearing were sent to the grievor by registered mail.

[17] On September 17, 2007, at 9:30 a.m., counsel for the employer was present and ready to proceed but the grievor was absent. I temporarily adjourned the hearing to allow the Board to contact the grievor and ensure that he had received the amended notice of hearing.

[18] At 10:15 a.m., I was advised that the amended notice of hearing sent to the grievor on August 29, 2007, had been delivered and signed by him that same day. I was also advised that the Board had attempted to contact the grievor by telephone but was unable to reach him or to leave a message at his residence since he did not have an answering machine. Therefore, at 10:35 a.m., the Board sent the following email to the grievor:

...

*Mr. Jeewanjee,*

*Have you been advised that the hearing in your matter is scheduled today September 17, at the Radisson hotel starting, at 9:30 am?*

*Please advise.*

...

[19] At 11:30 a.m., I informed counsel for the employer that the Board was continuing to attempt to contact the grievor and that therefore the hearing was adjourned for the remainder of the day and would reconvene at 9:30 a.m. the next day, September 18, 2007.

[20] Late in the evening of September 17, 2007, at 8:25 p.m., the grievor sent the following email to the Board:

...

*Yes, I realized that I was informed of the hearing and the location by you some time last week.*

*I am afraid things have not been going very well for me. After almost 3 years of trying to clear my name and be reinstated in my position with CIDA (that was terminated after I had refused to be involved in what I considered unethical and fraudulent action on the part of my supervisor).*

*In the process, I expended substantial financial resources - on legal advice and in the caring of my family - but it seems that I have not been very successful, although my case was discussed in a Press Conference on June 6, 2007, and later in Parliament on June 8, 2007 and is also being investigated by the Canadian Human Rights Commission.*

*I am currently insolvent (with a total debt of CAD 120,000); have had to give up my custodial rights to my two children last month; and am about to loose [sic] my current place of residence.*

*Given all this, I was unclear as to how to proceed with my scheduled Labour Board hearing.*

...

[21] On September 18, 2007 at 8:33 a.m., the Board received another email from the grievor:

...

*Further to my e-mail of yesterday, and to our telephone conversation right now, I would like to request for an adjournment of my hearing on the CIDA matter.*

*As I had mentioned in my e-mail yesterday, my personal circumstances over the last few months have not enabled me to prepare fully for the hearing, although I have most of the background information ready.*

...

[22] At 8:40 a.m. that same morning, the Board replied to the grievor as follows:

...

*I acknowledge receipt of your email dated September 18, 2007.*

*Please note that the hearing is proceeding as scheduled.*

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

*Any matters that you wish to discuss can be presented before the adjudicator.*

...

[23] On September 18, 2007, at 9:30 a.m., counsel for the employer was once again present but the grievor was not. (I note that the grievor's residence is located three blocks from the hearing site.) I reconvened the hearing at 10:00 a.m. and proceeded to hear submissions from counsel for the employer. Counsel for the employer filed seven exhibits but called no witnesses. He referred to two exhibits, in particular Exhibits E-6 and E-7, as complaints filed by partners of the CIDA concerning the grievor's attitude and behaviour with respect to projects that he had worked on.

[24] Counsel for the employer stated that the grievor's rejection on probation was for employment-related reasons and that the burden of proof rested with the grievor to prove that it was a sham or a camouflage.

[25] Counsel for the employer concluded by stating that since the grievor was not present at the hearing, the grievance should be dismissed.

**Reasons**

[26] As previously noted, the grievor did not show up at 9:30 a.m. for the hearing on September 17, 2007. To respect the rules of natural justice and procedural fairness, I adjourned the hearing for the remainder of the day to allow the Board to contact him.

[27] Since the Board was unable to reach the grievor by telephone, on September 17, 2007, at 10:35 a.m., an email was sent to the grievor inquiring as to whether he had been advised that the hearing was scheduled for 9:30 a.m. that day at the Radisson Hotel. The Board did not hear back from the grievor before the close of business. The following morning, on September 18, at 8:33 a.m., the grievor replied to the Board and requested an adjournment of the hearing scheduled to commence at 9:30 a.m. that day. At 8:40 a.m., the Board advised the grievor by email that the hearing would proceed as scheduled and that any matters that he wanted to discuss could be presented to the adjudicator. The email also stated:

...

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

...

[28] On September 18, 2007, at 9:30 a.m., the grievor was once again absent.

[29] The grievor had full knowledge of the repercussions of failing to attend the scheduled hearing. He was informed on three separate occasions that if he failed to attend the hearing or any continuation thereof, the adjudicator could dispose of the matter on the evidence and representations placed at the hearing without further notice to him. In the circumstances, I must conclude that the grievance is deemed to be abandoned.

[30] This grievance is therefore dismissed and the Board's file is closed.

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

*(The Order appears on the next page)*

**Order**

[32] The grievance is dismissed and the Board's file is closed.

October 18, 2007.

**D.R. Quigley,  
adjudicator**