

Date: 20070412

File: 166-02-37130

Citation: 2007 PSLRB 36



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

NANCY B. WITHERSPOON

Grievor

and

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

Employer

Indexed as

Witherspoon 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: Léo-Paul Guindon, adjudicator

For the Grievor: Alan Phillips, Professional Institute of the Public Service
of Canada

For the Employer: Neil McGraw, counsel

Heard by teleconference
February 5, 2007.

REASONS FOR DECISION

Grievance referred to adjudication

[1] Nancy B. Witherspoon (“the grievor”) filed a grievance against her employer, the Treasury Board, on March 22, 2004. In her grievance, she alleges that the employer discriminated against her by failing to find her an “accommodated work assignment”. She referred her grievance to adjudication on March 6, 2006.

[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 and of the arguments

[3] A preliminary objection as to the jurisdiction of an adjudicator to hear this grievance was dealt with by way of a teleconference on June 28, 2006. I rendered a decision on August 31, 2006 (2006 PSLRB 102), declaring that an adjudicator had jurisdiction to hear the grievance and I ordered that a hearing be scheduled on the merits of the case.

[4] A hearing was scheduled for April 3 to 5, 2007, in Halifax, Nova Scotia. On February 1, 2007, the grievor’s representative requested a postponement of the hearing on the basis that the grievor’s chief witness, Dr. Vonda Hayes, would be on sabbatical and out of the country from mid-February to September 2007, and would therefore not be available to testify at the hearing.

[5] I convened another teleconference with the parties on February 5, 2007, in an attempt to find an alternate way to have Dr. Hayes testify. During the teleconference the grievor’s representative stated that Dr. Hayes’ testimony was essential, and that he intended to have Dr. Hayes declared an expert witness. The grievor’s representative also indicated that since Dr. Hayes was out of the country, there were no alternate ways for her to submit her testimony.

[6] Counsel for the employer stated that the employer would challenge, at the hearing scheduled on the merits of the case, the request to have Dr. Hayes declared an expert witness. Counsel stated that if I granted the postponement the employer should

not be held liable for any delays for the period from April 3, 2007 (the date presently scheduled for the hearing), to the date of a later hearing.

[7] In reply, the grievor's representative submitted that the grievor had no say as to Dr. Hayes' decision to take a sabbatical.

Reasons

[8] I advised the parties that my appointment as a full-time member of the Public Service Labour Relations Board ("the Board") is scheduled to end on May 31, 2007, and that postponing the hearing beyond that date might result in the parties having to proceed *de novo* in front of another adjudicator.

[9] In view of the fact that the testimony of Dr. Hayes appears to be essential to the grievor's case, the hearing scheduled for April 3 to 5, 2007, is postponed. The grievor's representative is ordered to contact the Board's Director of Registry Operations and Policy to schedule a new date for the hearing on the merits of the case at the earliest opportunity, based on Dr. Hayes' availability.

[10] Since the request for postponement was made by the grievor's representative, the employer will not be held liable for any delays for the period from April 3, 2007, to the date that is scheduled next for the hearing on the merits of this case.

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

(The Order appears on the next page)

Order

[12] The hearing scheduled for April 3 to 5, 2007, is postponed.

[13] I order the grievor's representative to contact the Board's Director of Registry Operations and Policy to schedule a new date for the hearing on the merits of the case at the earliest opportunity, based on Dr. Hayes' availability.

[14] The employer is not liable for any delays for the period from April 3, 2007, to the date that is scheduled next for the hearing on the merits of this case.

April 12, 2007.

**Léo-Paul Guindon,
adjudicator**