

Date: 20070614

File: 566-02-130

Citation: 2007 PSLRB 63



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

EDWARD SYNOWSKI

Grievor

and

**DEPUTY HEAD
(Department of Health)**

Respondent

Indexed as
Synowski v. Deputy Head (Department of Health)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Ian R. Mackenzie, [adjudicator](#)

For the Grievor: Himself

For the Respondent: Neil McGraw, counsel

Heard at Ottawa, Ontario,
May 22, 2007.

I. Individual grievance referred to adjudication and background

[1] Edward Synowski was terminated from his employment with Health Canada on October 13, 2005, for disciplinary reasons, under paragraph 12(1)(c) of the *Financial Administration Act*. He grieved this termination and referred the matter to adjudication on January 20, 2006. The termination grievance was postponed, at Mr. Synowski's request, pending a determination of another grievance referred to adjudication. I heard that grievance and issued a decision on January 11, 2007 (*Synowski v. Treasury Board (Department of Health)*, 2007 PSLRB 6).

[2] The termination grievance was scheduled for a hearing commencing on May 22, 2007. In an email sent to the Public Service Labour Relations Board's Operations Registry ("Operations Registry") on May 4, 2007, Mr. Synowski stated "This is to inform you that I will not be attending the upcoming hearing due to the fact that Mr. Ian Mackenzie has been assigned as the adjudicator"

[3] Mr. Synowski was advised by the Operations Registry in a letter sent on May 15, 2007 (and copied to counsel for the deputy head) that the hearing would proceed as scheduled on May 22, 2007, unless a postponement was requested and granted:

. . .

I have been directed by the Chairperson to advise the parties that the hearing is proceeding as scheduled, on May 22, to 25, 2007, based on the availability given by the parties. The notice of hearing dated March 7, 2007, remains valid. Please note that subsection 102(2) of the Public Service Labour Relations Board Regulations enables an adjudicator to proceed with the hearing and dispose of the matter without further notice to any person who has been provided with a notice of hearing and fails to attend the hearing.

If this date is no longer agreeable to a party, that party may request a postponement from the Chairperson, giving reasons therefor. If the postponement is granted, the parties would be canvassed for new dates.

The assignment of the adjudicator is the prerogative of the Chairperson and he sees no justification in the present instance to remove the adjudicator who has been assigned. It is open to you to request, at the opening of the hearing, that the adjudicator step down. If you decide to do so, you should be prepared to explain the reasons for the request and the other party would be given an opportunity to respond. The

adjudicator may either adjourn the hearing to render a written decision on the request or render a decision orally at the hearing. In the event that the adjudicator denies the request orally at the hearing, the parties must be ready to proceed on the merits of the grievance.

...

This letter was sent to Mr. Synowski's home address and was also emailed to him. The file shows that email was used consistently by the grievor and the Operations Registry as a method of communication.

[4] Mr. Synowski did not show up at the hearing on the morning of May 22, 2007. I adjourned the hearing to allow the Operations Registry to contact him. Mr. Synowski advised a registry officer that he did not plan to attend the hearing. Mr. Synowski claimed that he had not received the letter from the Operations Registry of May 15, 2007, and that he had not looked at his email. The registry officer summarized the contents of that letter to Mr. Synowski. Mr. Synowski confirmed again that he would not attend. I then reconvened the hearing to hear submissions from counsel for the deputy head.

II. Summary of the arguments

[5] Counsel submitted that I should regard this as an abandonment of grievance and dismiss the grievance without hearing evidence from the deputy head. He argued that the email correspondence from Mr. Synowski established a clear intent to abandon the grievance. Counsel also submitted that Mr. Synowski, through the Operations Registry's correspondence, had full knowledge of the repercussions of failing to attend. Counsel referred me to *Ramirez v. Canada Customs and Revenue Agency*, 2004 PSSRB 158, and *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39.

[6] I determined that I would only need to be provided with a copy of the letter of termination, for the record (Exhibit E-1). I then reserved my decision.

III. Reasons

[7] Most adjudication decisions rendered under the *Public Service Staff Relations Act* or the *Public Service Labour Relations Act* on abandonment of grievances have involved a total lack of response on the part of the grievor to correspondence from the

Operations Registry. In this case, Mr. Synowski has directly communicated his intent not to appear at the hearing. In this sense, the case is more akin to a withdrawal from the grievance process than an abandonment of that process.

[8] Mr. Synowski clearly communicated his intention not to attend the hearing when he was advised that I would be the adjudicator. His email to the Operations Registry (reproduced in part above) clearly states the following: “. . . I will not be attending the upcoming hearing”

[9] The Notice of Hearing on record clearly states that the hearing can proceed in the event that one party does not attend. That message was clearly communicated to Mr. Synowski in a letter sent to him and dated May 15, 2007, citing subsection 102(2) of the *Public Service Labour Relations Board Regulations*. This letter was mailed to Mr. Synowski and was also emailed to him. Significant correspondence between Mr. Synowski and the Operations Registry had already been conducted by email so it is reasonable to assume that he received this correspondence. Mr. Synowski also clearly communicated to a registry officer on the day of the hearing (after the registry officer contacted him) that he would not be attending.

[10] I therefore conclude that Mr. Synowski clearly abandoned or withdrew his grievance from the adjudication process. In light of this conclusion, the grievance is dismissed.

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

(The Order appears on the next page)

IV. Order

[12] The grievance is dismissed.

June 14, 2007.

**Ian R. Mackenzie,
adjudicator**