

*Liberty*

Date: 20070426

File: 166-02-35943 *e*

Citation: 2007 PSLRB 40



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**CLAUDE ROBILLARD**

Grievor

and

**TREASURY BOARD  
(Department of Finance)**

Employer

Indexed as  
*Robillard v. Treasury Board (Department of Finance)*

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

**REASONS FOR DECISION**

***Before:*** Jean-Pierre Tessier, adjudicator

***For the Grievor:*** Julie Skinner, counsel, and André Lortie, Professional Institute of  
the Public Service of Canada

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

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Heard at Ottawa, Ontario,  
February 7 to 9, May 30 to June 2 and June 7 and 8, 2006.  
(P.S.L.R.B. Translation)

**Grievance referred to adjudication**

[1] Claude Robillard ("the grievor") has worked since 2000 at the Department of Finance ("the employer"), where he occupies an Information Technology (IT) solutions analyst position classified at the CS-02 group and level. He works at the Information Management and Technology Directorate ("the Directorate"), Corporate Services Branch.

[2] On December 7, 2004, the employer called the grievor to a meeting at which he was questioned about certain incidents that had occurred during previous months and that had to do with office equipment disappearing.

[3] On December 8, 2004, the employer again called the grievor to a meeting, this time a disciplinary one. He was informed that he was being suspected of theft and of making threats against certain employees. That same day, the employer suspended him pending an inquiry.

[4] On December 20, 2004, the grievor was called to a disciplinary meeting at which he was dismissed on grounds of theft and threats.

[5] On December 23, 2004, the grievor filed a grievance contesting his suspension and dismissal.

[6] On January 12, 2005, the grievor filed the present grievance, alleging that the employer did not respect his right to union representation at the December 7, 2004 meeting. This grievance refers to the application of clause 36.03 of the collective agreement for the Computer Systems (CS) bargaining group signed by the Treasury Board and the Professional Institute of the Public Service of Canada on June 3, 2003 (Exhibit F-1a). This clause reads as follows:

*36.03 Where an employee is required to attend a meeting on disciplinary matters, the employee is entitled to have a representative of the Institute attend the meeting when the representative is readily available. Where practicable, the employee shall receive in writing a minimum of two (2) working days notice of such meeting.*

[7] The grievor's grievance is worded as follows:

[Translation]

...

*I am lodging a grievance because my employer breached clause 36.03 of my collective agreement (CS) in that, on December 7, 2004, I was required to attend a meeting that led to disciplinary action without being given a chance to be accompanied by a union representative. As well, without justification, my employer did not advise me in writing at least two working days before that meeting was held.*

...

*Corrective action: that my employer set aside my suspension and dismissal; that I be reinstated in my CS-2 position; that I be paid the wages and benefits of which the suspension and dismissal deprived me; that my employer acknowledge that the CS group collective agreement was not respected; and that my employer agree to respect the collective agreement fully in the future.*

...

[8] This grievance was referred to adjudication in April 2005. At the joint request of the parties, the hearing initially scheduled for September 19, 2005 was postponed; the parties were not available for a hearing until February 2006.

[9] 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**

[10] The grievance filed by the grievor contesting his suspension and dismissal will be the subject of a separate decision.

[11] Helen O'Kane is Director of the Directorate. She is responsible for coordinating the purchase, installation and repair of computer equipment. The Directorate also provides services to the Treasury Board Secretariat and the Public Service Commission.

[12] Reporting to Ms. O'Kane are section managers at the CS-04 group and level as well as employees at the CS-01, CS-02 and CS-03 groups and levels. The employees who

report to her work in the Directorate's workplace and respond to service calls external to that workplace.

[13] Ms. O'Kane explained that in 2004, there was some uneasiness among the Directorate's employees. Equipment worth a total of \$24,000 had disappeared from the warehouse, including diskettes, memory chips, printers and laptop computers (Exhibit E-1a). A register must be signed to obtain the warehouse key. Over 20 people have authorized access to the warehouse.

[14] Also, the employees' social committee had purchased wine and had collected money for a party. Money (\$100) as well as bottles of wine had disappeared. This situation contributed to an atmosphere of mistrust at the Directorate.

[15] In the fall of 2004, Ms. O'Kane asked the managers reporting to her to inform employees that the security directive would be changed. In particular, access to the warehouse would be limited to employees at the CS-03 group and level.

[16] Employees at the CS-01 and CS-02 levels were angered by this directive, which appeared to cast doubt on some of them. A few employees asked to meet with their respective managers, reporting rumours that one or more CS-03s were responsible for the thefts.

[17] In a November 4, 2004 memorandum to Ms. O'Kane, Gertie Senuik, a manager at the Directorate, noted this situation (Exhibit E-1b). In this memorandum, Ms. Seniuk states that some IT solutions analysts, in particular Paul Levecque, Joseph Boushey and Roland Sarault, apparently heard comments about remarks and actions by the grievor and another employee (whom I will identify as Mr. "A").

[18] Carole Mainville, another manager at the Directorate, sent a similar memorandum to Ms. O'Kane, noting comments by Mr. Boushey.

[19] Ms. O'Kane then contacted Marilyn Dingwall, Senior Director, Human Resources Services, Human Resources Division, Corporate Services Branch, Department of Finance. Ms. Dingwall is responsible for labour relations. Ms. O'Kane informed Ms. Dingwall that equipment had disappeared from the Directorate. Ms. O'Kane and Ms. Dingwall agreed to meet with approximately 10 employees, some of whom had provided information, and with Mr. Robillard and Mr. "A," who had been identified as

possibly having committed certain offences. Ms. O'Kane indicated that at that point they were dealing with rumours.

[20] Taking their availability into account, Ms. O'Kane and Ms. Dingwall scheduled meetings with the 10 employees on December 7 and 8, 2004 to gather as much information as possible about anything having to do with the computer equipment's disappearance. They met with each employee individually outside the Directorate's workplace. They called each employee by telephone to a 30- to 40-minute meeting and waited until each employee left before calling another. Ms. O'Kane emphasized that they explained to each employee with whom they met that the meeting was for fact-finding. She asked each employee with whom they met not to discuss with other employees what had been said and not to spread rumours.

[21] The first employee with whom they met, Mr. Levecque, provided the following information with respect to Mr. Robillard and Mr. "A" (Exhibit E-1e):

- Mr. "A" has a key to the warehouse and lent it to the grievor ;
- Mr. Levecque discussed the disappearance of equipment with Mr. Boushey, who said that, over a beer after work, Mr. "A" apparently told him that he was able to obtain equipment belonging to the Department; and
- Mr. Levecque emphasized that Mr. "A" apparently expressed the opinion that there is a difference between stealing from the government and stealing from an individual.

[22] Ms. O'Kane referred to the report of the December 7, 2004 meeting with Mr. Boushey (Exhibit E-1f). Mr. Boushey apparently made some comments regarding Mr. Robillard and Mr. "A." At the meeting, Mr. Boushey confirmed that Mr. "A" has a key to the warehouse. Mr. Boushey has worked with Mr. "A" since 1999 and they have become friends. In 2000, the grievor joined them. The grievor often talked with Mr. "A" because their spouses worked together.

[23] At the December 7, 2004 meeting, Mr. Boushey stated that one day he noted that Mr. "A" had a Pentium 4 computer in his office. Mr. "A" apparently explained that the grievor had sold a computer to a friend and that the motherboard was defective. To replace it, Mr. "A" said that he had ordered one under another serial number. On

another occasion, Mr. "A" apparently stated that he used taxi vouchers for personal use.

[24] When Ms. O'Kane and Ms. Dingwall met with the grievor on December 7, 2004, they had the information contained in Ms. Seniuk's November 4, 2004 memorandum and the information obtained from the first two employees with whom they had met, that is, Mr. Levecque and Mr. Boushey. At the meeting with the grievor, they referred to the disappearance of equipment in general and asked the grievor if he was aware of anything. Then they questioned him on specific points. They asked the grievor whether he knew Mr. "A" had a key to the warehouse and whether he himself had used that key. The grievor apparently answered that he had used it only once, but then stated that he had used it on several occasions.

[25] Ms. O'Kane stated that the grievor was then asked about the use of taxi vouchers. Was he aware that taxi vouchers had been used for unauthorized personal ends, and had he himself used some? The grievor answered that he travelled to work by bicycle. However, he admitted that he had occasionally used taxi vouchers, but for authorized purposes. Ms. O'Kane stated that the grievor, like the other employees questioned previously, was told not to discuss with other employees the content of the meeting.

[26] Ms. Dingwall wrote a report of the meeting with the grievor. This report was adduced in evidence (Exhibit E-1g).

[27] Ms. O'Kane added that on December 8, 2004 she was informed by an employee that an incident involving the grievor occurred on December 7, 2004. That employee stated that the grievor had threatened him and another employee.

[28] A union representative was informed that the grievor was called to a meeting late in the afternoon of December 8, 2004. As agreed, a meeting with the grievor took place on December 8, 2004. The grievor was told that he could be accompanied by a union representative. The union representative was present in another room. At the beginning of the meeting the grievor did not request that his union representative be present but, when told that the meeting had to do with theft and threats, he requested that his union representative be present.

[29] In the presence of the union representative, the grievor was given information about the December 7, 2004 incident. Some employees had felt threatened, and an

inquiry would be conducted into the incident and into the disappearance of equipment. The grievor provided few responses, indicating that there had been no threats but merely a joke. He was told that he would have to leave work and would be suspended without pay for the duration of the inquiry. He was given a note to this effect (Exhibit E-11).

[30] In November 2004, Ms. Dingwall was informed by Ms. O'Kane of the disappearance of equipment from the Directorate. She stated that she agreed with Ms. O'Kane to question certain employees who had reported offences or rumours regarding certain employees, including Mr. Robillard and Mr. "A." It was also necessary to meet with Mr. Robillard and Mr. "A" in order to ascertain whether they had any information to provide.

[31] Ms. Dingwall explained what happened at the December 7 and 8, 2004 meetings. Her testimony corroborated that of Ms. O'Kane.

[32] Following the inquiry, the employer decided to dismiss the grievor on December 20, 2004.

[33] The grievor testified that, at the December 7, 2004 meeting with Ms. O'Kane and Ms. Dingwall, he told them that he had no specific information with respect to the theft of equipment and that he was prepared to cooperate. He was then questioned about the use of keys and taxi vouchers.

[34] On this point, the grievor reiterated what he had said at the December 7, 2004 meeting, as reported by Ms. Dingwall in her testimony. However, regarding Mr. "A"'s key, he added that he had the impression that Mr. "A" had special authorization. With respect to the taxi vouchers, he established that, in large part, their use was for authorized purposes.

### **Summary of the arguments**

[35] The grievor's representatives argued that the employer did not respect the collective agreement (Exhibit F-1a) at the meeting with the grievor on the morning of December 7, 2004. In their opinion, that meeting was a disciplinary meeting and, because the procedure set out in the collective agreement was not followed, the report of that meeting could not be adduced in evidence. Clause 36.03 of the collective agreement reads as follows:

*36.03 Where an employee is required to attend a meeting on disciplinary matters, the employee is entitled to have a representative of the Institute attend the meeting when the representative is readily available. Where practicable, the employee shall receive in writing a minimum of two (2) working days notice of such meeting.*

[36] The grievor's representatives also argued that failing to follow that procedure affected subsequent events. In their opinion, if a union representative had been present at the December 7, 2004 meeting, that person could have advised the grievor not to communicate with any of his co-workers, which would have avoided the incident that occurred on the afternoon of December 7.

[37] The grievor's representatives referred to various adjudication decisions and awards in arguing that the right to representation is a fundamental right. They argued that, when disciplinary action is taken against an employee, each stage leading up to the decision forms part of a disciplinary continuum. In their opinion, the decisions *Riverdale Hospital v. Canadian Union of Public Employees, Local 79* (2000), 93 L.A.C. (4th) 195; *Medis Health and Pharmaceutical Services v. Teamsters, Chemical and Allied Workers, Local 424* (2001), 100 L.A.C. (4th) 178; and *Axis Logistics Inc. v. United Food and Commercial Workers International Union, Local 175* (2000), 87 L.A.C. (4th) 100, are applicable to the present case.

[38] On this point, the employer emphasized that the December 7, 2004 meeting was administrative. At that meeting, reference was made to the theft of equipment in general, and the grievor was questioned about the use of keys and taxi vouchers.

[39] According to the employer, the grievor must establish that his right to representation, provided for in clause 36.03 of the collective agreement, was not respected at the December 7, 2004 meeting. To do so, he must convince the adjudicator that the meeting was disciplinary in nature, that he did not have an opportunity to be represented and that this breach cannot be corrected by a *de novo* hearing before the adjudicator.

[40] The wording of clause 36.03 of the collective agreement provides for the right to representation at "a meeting on disciplinary matters." This right is different from the rights set out in charters, and its extent is determined by the stipulations agreed to by the parties. According to the employer, that clause provides for the right to



representation only at disciplinary meetings, as is noted in *Naidu v. Canada Customs and Revenue Agency*, 2001 PSSRB 124.

[41] At the December 7, 2004 meeting, the employer learned little from the grievor. The grievor stated that he had no information regarding the theft of equipment. He stated that he had not made illegal use of taxi vouchers. His only admission was that he had used Mr. "A"'s key. Would the meeting have gone differently if a union representative had been present?

[42] Given the nature of the present case, the grievor's request that his suspension and dismissal be set aside is excessive. The dismissal decision was based on a number of grounds: threats, use of keys and unauthorized use of taxi vouchers.

[43] Nor would a finding by the grievance adjudicator that the collective agreement was not respected at the December 7, 2004 meeting set aside the dismissal. Corrective action could consist of setting aside part of the grounds for the disciplinary action, as in *Naidu*, reiterating the reasoning by the Saskatchewan Court of Appeal in *Canada Safeway Ltd. v. Retail, Wholesale and Department Store Union Local 454*, 2000 SKCA 119.

[44] In *Canada Safeway*, the Saskatchewan Court of Appeal writes, in particular, as follows:

...

37 While we do not regard the failure to observe the requirements of Article 23.05 as merely procedural (having observed the right of representation to which it gives rise is substantive), we do agree with much of this analysis. We are not to be taken, however, as suggesting that a board of arbitration is precluded from setting aside a suspension or discharge and reinstating an employee in consequence of a breach of the Article. In some instances this might be an appropriate remedy within the power of the board to grant, though in our respectful opinion reinstatement is not to be treated as a presumptive remedy.

...

40 Of these, it was principally the last of [these interests] that was compromised by the breaches. Had [the employee] been represented at the time of the suspension she might not have confessed to the alleged theft. Indeed, it is to be assumed for the purpose at hand that she would not have done so. Theoretically, had she not done so the company

*would either have refrained from suspending and later discharging her, or to have done so in reliance alone upon the evidence it had collected against her beforehand. As a practical matter, given the findings of fact of the majority, the company would have suspended her in any event, convinced as it was, before the meeting at which she was suspended, that she was guilty of theft, and committed as it was to the work-place policy visiting theft with dismissal.*

...

### Reasons

[45] The grievor has alleged that the employer did not respect his right to prior notification of the December 7, 2004 meeting or his right to be accompanied by his union representative. As corrective action, he has requested that his suspension and dismissal be set aside, invoking procedural equity in disciplinary matters.

[46] The grievance refers to the following clause of the applicable collective agreement:

*36.03 Where an employee is required to attend a meeting on disciplinary matters, the employee is entitled to have a representative of the Institute attend the meeting when the representative is readily available. Where practicable, the employee shall receive in writing a minimum of two (2) working days notice of such meeting.*

[47] The wording of clause 36.03 of the collective agreement is specific: it refers specifically to meetings on disciplinary matters. In assessing the nature of the meeting referred to, the grievance adjudicator must take into account the background and facts adduced.

[48] The evidence has established that a number of rumours were circulating in the Directorate and that employees had told managers that they had certain information. Ms. O'Kane and Ms. Dingwall stated that they wished to meet with employees in order to obtain more specific information.

[49] At the December 7, 2004 meeting, the grievor was questioned on three points. Did he know anything about the thefts? Did he use taxi vouchers? Did he use copies of keys, in particular Mr. "A"'s key? In my view, those were simply questions and there was no mention that the grievor was personally targeted or that the employer suspected him in particular.

[50] It is true that the grievor was suspended on December 8, 2004. However, a major incident occurred in the afternoon of December 7, 2004 that could have constituted threats. The employer stated that it would inquire into that allegation of threats and into aspects of the thefts.

[51] On December 8, 2004 the employer informed the grievor that the inquiry to be conducted during his suspension could have repercussions. The suspension letter (Exhibit E-11) reads as follows:

[Translation]

...

*I am writing in order to inform you that you are suspended without pay for an indeterminate period, starting on December 9, 2004, pending the results of an inquiry into allegations of theft and threats.*

*You are prohibited from entering the workplace except at management's request. During your suspension, you must request authorization from Robert Brodeur to enter the workplace. . . .*

*A final decision in this matter will be made only following a full inquiry; as soon as we receive the inquiry report, you will be informed of the outcome.*

...

[52] In this case, it is clear that the right to representation is limited to meetings about disciplinary action; the wording of clause 36.03 of the collective agreement does not include fact-finding meetings that are administrative in nature. Finding otherwise would run counter to the well-established principle that an adjudicator may not make alterations or additions to the wording of a collective agreement (Brown and Beatty, *Canadian Labour Arbitration*, 4th ed., paragraph 2:1202).

[53] I conclude that the December 7, 2004 meeting was an administrative meeting. An employee may react differently at a general inquiry than at a disciplinary meeting. In this case, the grievor was not required to provide specific responses or justification.

[54] In light of that reasoning, I consider that clause 36.03 of the collective agreement is not applicable to this case.

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

*(The Order appears on the next page)*

**Order**

[56] The grievance is denied.

April 26, 2007.  
P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**

