

**Date:** 20081128

**File:** 166-02-36590

**Citation:** 2008 PSLRB 101



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**THU-CÙC LÂM**

Grievor

and

**TREASURY BOARD  
(Department of Health)**

Employer

Indexed as  
*Lâm v. Treasury Board (Department of Health)*

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

**REASONS FOR DECISION**

***Before:*** [John A. Mooney, adjudicator](#)

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(Decided without an oral hearing.)  
(PSLRB Translation)

**I. Referral from the Federal Court**

[1] On July 16, 2008, in *Canada (Attorney General) v. Lâm*, 2008 FC 874, the Federal Court allowed an application for judicial review of *Lâm v. Treasury Board (Department of Health)*, 2007 PSLRB 69 (“*Lâm*”), concerning a grievance of Thu-Cúc Lâm (“the grievor”). The Federal Court set aside the adjudicator’s decision and ordered that the grievor’s grievance be remitted to the Public Service Labour Relations Board (PSLRB) so that it could be dismissed based on the Federal Court’s reasons for decision. The Chairperson of the PSLRB referred this grievance to me so that I could render a new decision on this matter.

[2] Given that the Federal Court decision stated that the grievance must be dismissed based on the reasons given in its decision, I did not believe that it was useful to hear the parties on this referral.

[3] 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.

**II. The grievor’s grievance**

[4] The grievor worked as a consultant for the Population and Public Health Branch (PPHB), Quebec Region.

[5] The grievor complained about a harassment situation. On March 18, 2003, the grievor and her bargaining agent representative, Alain Bélanger, met with the grievor’s manager, Michel Gaussiran, and Guy Aucoin, Regional Director, PPHB. While all were seated at a table, Mr. Gaussiran pointed his finger close to the defendant’s face and said, “[translation] I no longer trust you.” On July 3, 2003, the grievor filed a harassment complaint against Mr. Gaussiran with respect to that incident. The grievor requested to no longer report to Mr. Gaussiran.

[6] On August 25, 2003, Suzette Jeannotte, Program Director, wrote to the grievor to inform her that, following an investigation, her complaint was considered unfounded. During the investigation, Ms. Jeannotte did not meet with the grievor or Mr. Gaussiran.

[7] On October 3, 2003, Lucie Myre, Director General, Quebec Region, called a meeting between the grievor and Mr. Gaussiran. At that meeting, Mr. Gaussiran expressed deep regret for his gesture but refused to apologize for the reason that he often gestures with his hands when speaking.

[8] Not satisfied with the results or the process, the grievor filed the following grievance:

[Translation]

*I contest the decision by Health Canada (Appendix 3) regarding the handling of my harassment complaint.*

*Whether in the November 26, 2003 decision or the manner in which the investigation was handled, the employer's representatives failed to respect the spirit and letter of the Health Canada and Treasury Board policies on harassment.*

*Due to these facts and those expressed in the harassment complaint (Appendix 4) the employer has contravened the:*

*Health Canada policy on harassment,*

*Treasury Board policy on harassment,*

*collective agreement article 1,*

*collective agreement article 19, and*

*all other articles in the collective agreement and pertinent policies.*

[9] As corrective measures, the grievor had requested that the investigation be handled in accordance with the Health Canada policy on harassment, that she be given a copy of the investigation report along with the investigators' findings and that Mr. Gaussiran apologize to her.

### **III. Adjudicator's decision**

[10] On September 15, 2005, the grievor referred her grievance to adjudication along with three other grievances contesting disciplinary measures. In *Lâm*, the adjudicator dismissed the three grievances related to the disciplinary measures but allowed in part the grievance dealing with the elimination of discrimination and harassment. The adjudicator found that the employer had contravened article 1 of the collective

agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group (expiry date: June 20, 2007)(“the collective agreement”):

*277 Although the respondent manager's gesture was involuntary, I believe that the employer should take into consideration the fact that the grievor felt intimidated.*

*278 In my opinion, the employer should have told the grievor that it was sorry that she had felt intimidated.*

*279 The employer should have indicated that it did not want such a situation to occur again. I do not believe that we can tolerate having employees and managers pointing their fingers at one another in meetings, particularly as in this case, where the parties were seated next to one another.*

...

*281 However, I believe that the employer did not comply with the letter and spirit of article 1 of the collective agreement and improperly applied the Treasury Board Policy on the Prevention and Resolution of Harassment in the Workplace. The hearing remedied the process, but the employer should reconsider its decision on the validity of the complaint. Article 19 does not apply to the grievor's case.*

[11] Article 1 of the collective agreement reads as follows:

*1.01 The purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Employer, the Alliance and the employees and to set forth herein certain terms and conditions of employment for all employees described in the certificate issued by the Public Service Staff Relations Board on June 7, 1999 covering employees in the Program and Administrative Services Group.*

*1.02 The parties to this Agreement share a desire to improve the quality of the Public Service of Canada and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and efficiently served. Accordingly, they are determined to establish, within the framework provided by law, an effective working relationship at all levels of the Public Service in which members of the bargaining units are employed.*

[12] The adjudicator ordered the employer to reconsider its decision on the harassment complaint. The adjudicator wrote that it would be preferable for the

employer to let the grievor know that it regrets the March 18, 2003 incident and that it hopes that such incidents will not occur again in the future.

#### **IV. Federal Court decision**

[13] The Federal Court first stated that the grievor had received an apology from the manager against whom she had filed the complaint. The Court also pointed out that the adjudicator's order was not an order but a wish. The Federal Court found that the adjudicator had exceeded his jurisdiction by concluding that the employer contravened article 1 of the collective agreement and had rendered an unreasonable decision. The Federal Court decision reads in part:

...

*[27] The adjudicator properly found that article 19 of the collective agreement does not apply in this case because it does not mention personal harassment. However, by deciding that the Treasury Board harassment in the workplace policy is consistent with the objectives of article 1 of the collective agreement, he misinterpreted the article and exceeded his jurisdiction. Furthermore, his decision is unreasonable.*

*[28] Article 1 of the collective agreement is a general clause, an introduction or a preface that does not grant any substantive right to employees. There is nothing in the collective agreement that could support the finding that it was meant to include the Treasury Board policy.*

...

[14] The Federal Court allowed the application for judicial review and issued an order, as follows:

*(1) The application for judicial review is allowed with costs;*

*(2) The adjudicator's decision regarding the harassment grievance (file #166-02-36590) is set aside; and*

*(3) The harassment grievance is remitted to the Public Service Labour Relations Board so that it is dismissed based on the reasons for this decision.*

#### **V. Reasons**

[15] The Federal Court has ordered me to dismiss the grievor's grievance based on its reasons for decision. Accordingly, I dismiss the grievance because the employer did not contravene article 1 of the collective agreement. As the Federal Court explained,

that article does not include the Treasury Board's policy on harassment in the workplace as the grievor argues. It is a general article that does not grant any substantive right to employees.

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

*(The Order appears on the next page)*

**VI. Order**

[17] The grievance is dismissed.

November 28, 2008.

PSLRB Translation

**John A. Mooney,  
adjudicator**