

Date: 20091014

File: 566-02-708

Citation: 2009 PSLRB 127



*Public Service  
Labour Relations Act*

Before an adjudicator

---

BETWEEN

**JEFFREY BROWN**

Grievor

and

**TREASURY BOARD  
(Correctional Service of Canada)**

Employer

Indexed as

*Brown v. Treasury Board (Correctional Service of Canada)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** [Renaud Paquet, adjudicator](#)

***For the Grievor:*** [Michel Bouchard, Union of Canadian Correctional Officers -  
Syndicat des agents correctionnels du Canada - CSN](#)

***For the Employer:*** [Martin Desmeules, counsel](#)

---

Heard at Kingston, Ontario,  
September 23, 2009.

## REASONS FOR DECISION

---

### **I. Individual grievance referred to adjudication**

[1] Jeffrey Brown (“the grievor”) was a successful candidate in a competition process for parole officer positions. He was ranked eleventh on the eligibility list of qualified candidates. On October 26, 2005, he grieved the failure of the Correctional Service of Canada (“the employer”) to offer him a parole officer position before the expiry date of the eligibility list. The grievor alleged that the employer manipulated the staffing process to control which candidates would be offered positions. The grievor also alleged that the employer violated the *Public Service Employment Act*, R.S.C. 1985, c.P-33 (*PSEA*), and article 37 of the collective agreement signed on April 2, 2001 by the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the collective agreement”).

[2] As corrective action, the grievor requested an immediate appointment to a parole officer position in the Ontario Region, appropriate financial compensation for his loss and a formal apology from the employer. The grievor also asked for damages. At the hearing, the grievor indicated that he was now limiting his claim to a declaration that the employer violated the collective agreement and the *Canadian Human Rights Act*, R.S.C. 1985, c.H-6 (*CHRA*), and that he be awarded damages.

[3] On February 6, 2009, the grievor notified the Canadian Human Rights Commission that he was raising an issue involving the interpretation or application of the *CHRA* in his grievance.

[4] Article 37 of the collective agreement reads as follows:

#### **ARTICLE 37 NO DISCRIMINATION**

*37.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability, membership or activity in the Bargaining Agent, marital status or a conviction for which a pardon has been granted.*

---

## II. Preliminary objection

### A. For the employer

[5] The employer objected to the jurisdiction of an adjudicator of the Public Service Labour Relations Board (“the Board”) to dispose of the grievance. The grievor is challenging the employer’s decision not to appoint him or, more precisely, the absence of a decision to appoint him from an eligibility list established under the *PSEA*. The employer submitted that the *PSEA* provided administrative procedures for redress that the grievor could have used, namely, the right to appeal under its section 21. Those procedures were the appropriate forum to deal with the substance of the grievance.

[6] The employer argued that this grievance is not adjudicable, based on subsection 208(2) of the *Public Service Labour Relations Act* (“the Act”). Moreover, the employer submitted that the situation grieved does not fall under any of the paragraphs of subsection 209(1) of the *Act*. Those subsections read as follows:

...

*208. (2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the Canadian Human Rights Act.*

...

*209. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*

*(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*

*(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;*

*(c) in the case of an employee in the core public administration,*

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or

...

[7] The employer argued that the grievance deals solely with staffing issues and that all underlying issues and the remedies sought derive from that fact alone. Because there were other administrative avenues for redress, the Board does not have jurisdiction.

[8] The employer referred me to the following decisions: *Cooper v. Canada*, [1974] 2 F.C. 407 (C.A.); *Canada (Attorney General) v. Boutilier*, [1999] 1 F.C. 459 (T.D.); *Marinos v. Canada (Treasury Board)*, [1998] F.C.J. No. 1601 (QL); *Singh v. Canada (Public Works and Government Services Canada)*, 2001 FCT 577; *Browne et al. v. Treasury Board (Revenue Canada - Customs, Excise and Taxation)*, PSSRB File Nos. 166-02-27650 to 276661 (19971201); *Dhudwal et al. v. Canada Customs and Revenue Agency*, 2003 PSSRB 116; and *Hureau v. Treasury Board (Department of the Environment)*, 2008 PSLRB 47.

#### **B. For the grievor**

[9] The grievor is no longer asking that he be appointed to a parole officer position. Rather, he indicated that his grievance is now limited to seeking a declaration that article 37 of the collective agreement and the CHRA were violated. An adjudicator of the Board has jurisdiction to decide if the employer has indeed committed those violations.

[10] The grievor also argued that subsection 208(2) of the Act provides jurisdiction to an adjudicator to hear a grievance on a possible violation of the CHRA. The employer's staffing decisions, based on the eligibility list on which the grievor was qualified, were made in a manner that was discriminatory against the grievor.

[11] Paragraphs 226(1)(g) and (h) of the *Act* specify the powers of adjudicators in human rights issues. Those paragraphs read as follows:

*226. (1) An adjudicator may, in relation to any matter referred to adjudication,*

...

*(g) interpret and apply the Canadian Human Rights Act and any other Act of Parliament relating to employment matters, other than the provisions of the Canadian Human Rights Act related to the right to equal pay for work of equal value, whether or not there is a conflict between the Act being interpreted and applied and the collective agreement, if any;*

*(h) give relief in accordance with paragraph 53(2)(e) or subsection 53(3) of the Canadian Human Rights Act;*

...

[12] The grievor referred me to *Hureau* and to the following decisions: *Pepper v. Treasury Board (Department of National Defence)*, 2008 PSLRB 8; *Pepper v. Deputy Head (Department of National Defence)*, 2008 PSLRB 71; and *Gibson v. Treasury Board (Department of Health)*, 2008 PSLRB 68.

### **III. Reasons on the objection**

[13] Subsection 208(2) of the *Act* is clear: an employee cannot present a grievance in respect of which an administrative procedure for redress is provided under another Act of Parliament other than the *CHRA*. The grievance is also clear in that it relates to staffing. On that point, the *PSEA* provides employees with an administrative procedure for redress. The grievor could have used that procedure to challenge the employer's staffing decision. Consequently, I do not have jurisdiction to hear the grievance.

[14] The grievor argued that I have jurisdiction because the grievance relates to article 37 of the collective agreement and to the *CHRA*. Even if the grievor were to prove that he was discriminated against by the decisions or actions of the employer when it staffed or did not staff parole officer positions, I would still conclude that I do not have jurisdiction. The grievor could have used the administrative redress

procedure provided by the *PSEA* to argue discrimination. One of the intents of subsection 208(2) of the *Act* is to prevent the use of multiple recourses for the same challenged issues or decisions. There was an administrative redress procedure provided by the *PSEA*, and I cannot agree that the grievor is also entitled to refer the same issue to adjudication, even if it deals with human rights.

[15] The same logic applies to the alleged violation of the collective agreement. Even were the grievor to prove that, when the employer staffed parole officer positions, it discriminated against him with respect to one of the reasons listed in article 37 of the collective agreement, I would still conclude that I do not have jurisdiction, the reason being that the discrimination is about a staffing matter. I do not have jurisdiction over staffing matters that are covered by the *PSEA* and for which there is a redress mechanism.

[16] This case differs from *Gibson*. In that case, the employer did not renew the grievor's term employment, and the grievor alleged that she had been discriminated against because of a medical disability. The adjudicator decided that he had jurisdiction to hear a grievance where it was alleged that the reasons were prohibited discriminatory practices. Contrary to Mr. Brown's case, the grievor in *Gibson* could not use any other administrative procedure for redress. The only redress option in that case was to file a grievance.

[17] The two decisions in *Pepper* clearly state that an adjudicator has jurisdiction over human rights issues and that damages may be awarded. I fully agree with those decisions, but the question here is very different. This grievance implies that an adjudicator has jurisdiction when discrimination is alleged about a staffing action or a staffing decision of the employer.

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

*(The Order appears on the next page)*

**IV. Order**

[19] The employer's objection is allowed.

[20] The grievance is dismissed.

October 14, 2009.

**Renaud Paquet,  
adjudicator**