

Date: 20100420

File: 566-02-3243

Citation: 2010 PSLRB 54



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

AMRIT RAI

Grievor

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

Indexed as
Rai v. Deputy Head (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Michele A. Pineau, adjudicator](#)

For the Grievor: [Himself](#)

For the Respondent: [Hélène Mombourquette, Canada Border Services Agency](#)

Decided on the basis of written submissions
dated December 2, 2009.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] The grievor, Amrit Rai, was hired on November 5, 2007, as a border services officer with the Canada Border Services Agency (“the employer”). The grievor was hired from outside the public service on an indeterminate basis, and as such, was subject to a 12-month probationary period under the provisions of the *Public Service Employment Act (PSEA)*, enacted by sections 12 and 13 of the *Public Service Modernization Act*, S.C. 2003, c. 22, and the *Public Service Employment Regulations*, SOR/2005-334. The grievor was rejected on probation on October 20, 2008.

[2] On October 28, 2008, the grievor filed a grievance stating the following:

I grieve I was unjustly rejected on probation as a BSO on October 20, 2008.

[3] As corrective action, the grievor requested the following:

That my Rejection of employment on Probation letter dated Oct 20/08 be rescinded and that I be reinstated as a BSO retroactive to Oct 20/08 and any other corrective action that may be appropriate in these circumstances.

[4] The undated decision rendered at the final level reads as follows:

...

Decision of management representative / Décision du représentant de la gestion

The following is in response to your grievance in which you are grieving that you were unjustly rejected on probation as a Border Services Officer (BSO) on October 20, 2008. As corrective action, you are requesting that you be reinstated as a BSO retroactively and that you receive any other corrective action that may be appropriate.

I have carefully reviewed and considered information surrounding your grievance, as well as the representation made on your behalf by your CIU representative.

It is my understanding that, during your tenure at the Hamilton Airport, you were alleged to have been involved in two incidents: in the first, you would have sent inappropriate emails, and in the second, you would have accepted tickets to an ultimate fighting competition from a client. Both of these were referred to the Internal Affairs Investigations Division (IAD). The IAD investigation concluded that although you sent the emails, they were found not to be inappropriate as per the CBSA policy on the Use of Electronic Resources. The

investigation also concluded that you accepted the tickets to the fighting competition although it could not be proven that you did accept those tickets in the context of a bribe.

However, the manner in which you conducted yourself during the fact-finding meetings and, later, during the IAD investigation, was of concern to management. You consistently denied any wrongdoing and gave conflicting versions of events throughout the investigation. Much later, you admitted that you sent the emails and that you lied because you did not want your wife to find out about their contents.

The CBSA values are based on trustworthiness, honesty, integrity, respect and professionalism. To this extent, the CBSA Code of Conduct provides employees with the expected standards of conduct based on clear values and ethics. These include, but are not limited to, accountability, integrity, cooperation with governmental investigations, and the non-acceptance of gifts or other benefits.

It is clear that your behaviour was not consistent with these values or a culture where the CBSA strives to earn and maintain public trust through integrity and professionalism.

I am therefore satisfied that management acted in good faith and was correct in exercising its delegated authority to reject you on probation for failing to display the appropriate suitability for the position of a Border Services Officer.

Consequently, your grievance is denied and the requested corrective action will not be forthcoming.

...

[5] The grievance was referred to adjudication by the grievor's bargaining agent on November 3, 2009, as concerning a disguised disciplinary termination and rejection on probation made in bad faith. His bargaining agent is not representing the grievor at adjudication.

Objection to jurisdiction

[6] In a letter dated December 2, 2009, the employer objected to the jurisdiction of an adjudicator to hear and decide a reference to adjudication of a termination of employment under subsection 62(1) of the *PSEA*. That subsection authorizes the employer to terminate an employee's employment while the employee is on probation.

[7] On December 9, 2010, the Public Service Labour Relations Board's Registry ("the Registry") wrote to the grievor, asking him to respond to the employer's objection by

December 24, 2009. The letter was sent by registered mail. Canada Post's scanned delivery date and signature acknowledging delivery of the letter is December 10, 2009. The grievor did not respond to the Registry's letter.

[8] On January 5, 2010, the Registry informed the parties in writing that a hearing had been scheduled from May 5 to 7, 2010, in Hamilton, Ontario.

[9] This matter was later assigned to me for determination.

Reasons

[10] Given the employer's objection and the reasons invoked in the final-level decision rendered on the grievance, and since the grievor declined to respond to the employer's objection, I decided to exercise my authority under section 227 of the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, to decide this matter without holding an oral hearing.

[11] Paragraph 211(a) of the *PSLRA* provides as follows that a termination of employment under the *PSEA* is not an adjudicable matter:

211. Nothing in section 209 is to be construed or applied as permitting the referral to adjudication of an individual grievance with respect to

(a) any termination of employment under the Public Service Employment Act

Rejection on probation is a termination of employment under the *PSEA*.

[12] In his grievance, the grievor admits that he was rejected on probation. Although, when it referred the grievance to adjudication, his bargaining agent alleged that the grievor's rejection on probation was made in bad faith and was a disguised disciplinary measure, the grievance presentation form makes no mention of such concerns.

[13] The employer's decision at the final level of the grievance process sets out in detail why it rejected the grievor on probation. In the absence of any explanation by the grievor why he considers the employer's decision tainted by bad faith or tantamount to a disguised disciplinary measure, I am left with no allegations of facts that, if proven, would justify me taking jurisdiction under paragraph 209(1)(b) of the *PSLRA* to hear this grievance as relating to a disciplinary action resulting in termination.

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

(The Order appears on the next page)

Order

[15] I declare that I have no jurisdiction to hear this grievance and I order this file closed.

April 20, 2010.

**Michele A. Pineau,
adjudicator**