Date: 20100616

File: 566-02-3440

Citation: 2010 PSLRB 79

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

SAWSAN A. SHARAF

Grievor

and

DEPUTY HEAD
(Public Health Agency of Canada)

Respondent

Indexed as
Sharaf v. Deputy Head (Public Health Agency of Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Herself

For the Respondent: Jeff Laviolette and Virginie Emiel-Wildhaber, Treasury Board Secretariat

Decided on the basis of written submissions
filed March 4 and 15, May 10, and June 2, 2010.

Individual grievance referred to adjudication

[1] On January 22, 2010, Sawsan A. Sharaf ("the grievor") filed a grievance against the Public Health Agency of Canada ("the respondent"). She referred her grievance to adjudication on February 4, 2010 under paragraph 209(1)(*b*) and subparagraph 209(1)(*c*)(i) of the *Public Service Labour Relations Act* ("the *Act*"). The grievor occupies a managerial position classified at the PM-06 group and level, and she is not covered by a collective agreement or represented by a bargaining agent.

[2] In her grievance, the grievor wrote the following:

. . .

> *The objective of this grievance is to seek redress and reversing* [*sic*] *the decision made pertaining to the classification of my position, Additionally, this grievance seeks to identify the discrepancy between the two written e-mail documents on behalf of the Deputy Head. This action demonstrates clearly an intention of bad faith on the part of the employer and is considered, at best, a disguised disciplinary action and an abuse of authority.*
>
> *ACTION REQUESTED*
>
> - *Reversing the decision of changing my position number and its associated changes (that I am not aware of as yet)*
> - *Issuance of any pertinent information that was used in the employer's decision in arriving at such a decision, inter alia, the classification committee report and evaluation*

[3] On February 1, 2010, Charles Jamieson, a senior labour relations advisor for the respondent, wrote to the grievor about her grievance. Mr. Jamieson stated that he saw no legitimate foundation for filing the grievance and that the respondent would raise an objection about the jurisdiction of an adjudicator should the grievor refer her grievance to adjudication. Mr. Jamieson also mentioned that the respondent would accept the grievor making written submissions in support of her allegations and that they should be made at the first level of the grievance process.

Objection to jurisdiction

[4] On March 4, 2010, the respondent objected that an adjudicator does not have jurisdiction to decide the grievance because it deals strictly with classification.

Pursuant to subsection 209(1) of the *Act*, an employee occupying a managerial position can only refer to adjudication grievances related to a disciplinary action, a demotion or a termination of employment. The grievor was not disciplined, demoted or terminated. The respondent also claimed that the grievance is untimely because the grievor was aware of the incidents giving rise to the grievance in May 2008. Finally, the respondent submitted that the grievor did not present her grievance up to and including the final level of the grievance process. On February 18, 2010, the respondent decided the grievance at the first level of the grievance process. The grievor did not transmit her grievance to either the second or the final level. Rather, she referred it directly to adjudication on February 4, 2010, after receiving Mr. Jamieson's letter.

[5] On April 20, 2010, the parties were informed of the adjudicator's decision to deal with the respondent's objections on the basis of written submissions.

[6] On May 10, 2010, the respondent basically restated the objections that it had raised on March 4, 2010.

[7] On June 2, 2010, the grievor submitted that she was made aware of the incidents giving rise to her grievance only on November 18, 2009. She also submitted that classification grievances should be presented directly at the final level of the individual grievance process. She followed that procedure, but the respondent refused to answer her grievance at that level. Instead, it responded to the grievance at the first level of the grievance process after it had been referred to adjudication.

[8] The grievor did not directly reply to the respondent's objection to my jurisdiction to hear the grievance pursuant to subsection 209(1) of the *Act*. Instead, to summarize her position on that point, I will reproduce as follows some abstracts from her submissions, which are relevant to determining the nature of her grievance:

. . .

> *On November 18, 2009, I received the first ever notification of classification and my rights, if not satisfied; to grieve this proposed classification changes to my position. This marked the first attempt to "duty to warn". November 19, 2009, marked the employer action to rescind its obligation to "duty to warn". There was an inherent deceit on the part of the employer. Instead of treating me fairly by serving me with the official notice of classification, it labels it as an "error". Failing this official notification is a failure to comply the "duty to warn", and is said to constitute "bad faith"; since this*

*grievance could not have led to an upward classification. Has the employer ever send the grievor any official notice to that effect? The response is unequivocal **NO**. These changes of job position and reporting relationship constitute significant changes and indeed may lead to classification downward to a less than a PM-06.*

. . .

*One would argue that for now, it remains at the PM-06 level; however there are no future guarantees. Those proposed changes may become subject to assessment/classification of the new job description (as per the supervisor's words) and as a result, would be declassified at a lower level. With this change, my diminished responsibilities have not yet translated into declassification, demotion and possibly a reduced compensation; this clearly was the case that started with an official notification of classification. **As in Leboeuf vs. TB (Department of Transport) PSLRB 27 (2007);** where the grievance could not have led to an upward classification. In fact the position had been classified downward following a change in the work description. I believe that was the intention behind the changes to my job description. Scrambling to change its position several times, the employer plan is quite clear. Strategy of the Employer is to down grade my job description without calling it by its name, a demotion, and then request declassification based on a new job description. That is considered a bad faith. The employer cannot and should not call the grievor action **"frivolous"**.*

This classification notification directly linked to the changes proposed in my job duties, and the employer's refusal to provide me with a written job description (subject of another grievance PSLRB File # 566-02-2868); since it would be simple to proof the disguised demotion had the employer provided me with a written job description, this would have been forwarded for classification and would have resulted in a downward declassification.

. . .

There is nothing to prohibit the Adjudicator from making a decision that would effectively address how the employer chose not to follow the procedural fairness principle of "duty to inform, duty to examine, and duty to warn". The effect of granting the grievor's grievance would not be to reverse management's decision to classify through reorganization and is thereby within the subsection 209(1)(b) & (c) of the ACT. This grievance is not about anything contradictory to "Section 7," Nothing in this grievance about reclassification of the grievor's position or the organization of the public

> *service. This grievance is based on the terms and conditions of my employment entitled me to a duty to 'inform', "examine" and "warn", and by extension failing to apply the terms and conditions of employment. I believe that the Board has jurisdiction to hear the merit of this case. The Employer was under a "duty to examine" this proposed changes to my position, and if so, whether such duty had been discharged.*
>
> *The employer's posture herein leads only to the nefarious notion that after imposing significant changes to duties upon employees and according the proper classification of position-proper and exclusive employer's functions, the employer can then, by dragging its feet on classification, obtain the employees' consent by just delaying the act, or worse, to conceal the act of classification all together, in hope the employee does not notice. This is a notion philosophically akin to that of "bad faith".*
>
> *I am not seeking a reclassification/declassification of my position or a reorganization of my employer, but instead my rights to submit a classification grievance address the "duty to warn" and the employer's inherent "bad faith" in how it chose to rescind its official notification of classification, then turn around and provide the grievor with a first level grievance response; instead, to preserve my rights to submit a classification grievance and be treated fairly in the process. The adjudicator must determine that Section 7* ***does not*** *apply to this particular grievance and* ***must not*** *ousting its jurisdiction under the subsection 209(1)(b) & (c) of the Act. I am seeking relieve under the terms and conditions of my employment and therefore, the Adjudicator ought to accept jurisdiction over the matter.*
>
> . . .
>
> [*Sic* throughout]
>
> [Emphasis in the original]

Reasons

[9] The respondent has raised three objections to the grievance. It submitted that the grievance is untimely, that the grievor did not follow the grievance procedure and that the grievance does not relate to a subject matter that can be referred to adjudication. That last point directly refers to subsection 209(1) of the *Act*. In this case, the grievor referred her grievance to adjudication under paragraph 209(1)(*b*) and subparagraph 209(1)(*c*)(i) of the *Act*, which read as follows:

> ***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*
>
> . . .
>
> *(*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 . . . .*

[10] Pursuant to paragraph 209(1)(*b*) and subparagraph 209(1)(*c*)(i) of the *Act*, I could have jurisdiction in this case only if the grievance relates to either a disciplinary action resulting in termination, demotion, suspension or financial penalty or a non-disciplinary demotion or termination. Even though the grievor alleged in her grievance that the respondent's action should be considered a disguised disciplinary action, she did not submit any allegations of facts that, if proven, would justify me taking jurisdiction under paragraph 209(1)(*b*) of the *Act* to hear this grievance as relating to a disciplinary action resulting in termination, demotion, suspension or a financial penalty or under subparagraph 209(1)(*c*)(i) in relation to a non-disciplinary demotion or termination. Furthermore, according to her own submissions, she was not demoted, and the respondent did not impose any financial penalty on her. Rather, she submitted that the respondent might eventually demote her.

[11] It is obvious that the grievor is not happy with the changes to her duties, her job description or lack of one, her position level, and the respondent's classification process. She might have very legitimate concerns, but I cannot entertain them because those concerns are not included in the subject matters referred to in paragraph 209(1)(*b*) and subparagraph 209(1)(*c*)(i) of the *Act*.

[12] Considering that I do not have jurisdiction to hear the grievance, I do not need to rule on the other objections raised by the respondent.

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

(The Order appears on the next page)

Order

[14] I declare that I do not have jurisdiction to hear this grievance.

[15] I order this file closed.

June 16, 2010.

Renaud Paquet,
adjudicator