Date: 20100813

File: 566-34-3084

Citation: 2010 PSLRB 86

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

AMRIT MANGAT

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Mangat v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Beth Bilson, adjudicator

For the Grievor: Himself

For the Employer: Isabel Blanchard, counsel

Heard at Vancouver, British Colombia,
June 21, 2010.

I. Individual grievance referred to adjudication

[1] Amrit Mangat ("the grievor") was employed by the Canada Revenue Agency ("the CRA" or "the employer") as an auditor/verification officer in the Burnaby-Fraser Tax Services Office ("the Burnaby-Fraser TSO"). His employment was brought to an end by a letter of resignation dated April 15, 2008 (Exhibit E-6). In his grievance dated May 7, 2008, the grievor alleged that his employment had in fact been terminated and that the letter of resignation had been obtained under duress.

[2] Prior to the hearing, the employer raised an objection to the jurisdiction of the adjudicator on the grounds that the grievor had submitted a *bona fide* resignation and that his employment had not been terminated for cause. The June 21, 2010 hearing concerned only the question of whether the end of the grievor's employment had come about through termination or resignation.

II. Summary of the evidence

A. For the employer

[3] Joanne Ralla testified on behalf of the employer. At the time of the events relevant to the grievance, Ms. Ralla was Assistant Director, Audit. She had four managers reporting directly to her and had overall responsibility for staff relations issues for approximately 300 employees, among them the grievor. Ms. Ralla was an experienced manager and had been involved in disciplinary actions, including dismissal, taken against other employees.

[4] In January 2007, the employer carried out an investigation into allegations of misconduct against the grievor. The investigator's report was completed in September 2007, and the grievor was given a copy of the report that had been redacted in accordance with access to information and privacy guidelines. A meeting with the grievor to discuss the content of the report was scheduled for September 20. Ms Ralla was present at the meeting, and the grievor was accompanied by a representative of his bargaining agent, the Union of Taxation Employees. Ms. Ralla asked the grievor whether he had had an opportunity to review the report carefully, and he indicated that he had not finished reading it. Ms. Ralla testified that she was concerned that the grievor did not seem to grasp the seriousness of the allegations against him, and she suggested adjourning the meeting so he would have a chance to review the report thoroughly.

[5] A further meeting was held on October 2, 2007. Ms. Ralla, a representative of the employer's human resources unit, the grievor and his bargaining agent representative were present. At the meeting, Ms. Ralla said she walked the grievor through the report, issue by issue, and indicated that he should put forward his version of the events covered in the report as well as any mitigating circumstances.

[6] After considering the findings of the investigator's report and some additional information provided by the grievor following the meeting of October 2, the employer ultimately decided to terminate the grievor's employment. Ms. Ralla said that this kind of decision would normally have been made sooner, but she was absent on holiday in November and shortly after her return was injured in a car accident. She felt the response to the allegations against the grievor was sufficiently important that she did not want to delegate the decision to one of her subordinates, and chose instead to delay attending to it until her return after three months off work.

[7] Before she went on holidays in November, Ms. Ralla said she did consider whether the grievor should be permitted to continue to carry out his responsibilities. She decided that, since his work would be monitored during that period, he could continue to work. She said that in making that assessment she was not, of course, able to predict that she would be injured and off work for an extended period.

[8] The grievor was invited to a meeting on April 15, 2008. The intention of the employer was to present the grievor with a letter of termination. The grievor was accompanied by his bargaining agent representative, Terry Ruyter. The meeting was also attended by Ms. Ralla and Sue Fleming, a human resources representative. Following the meeting, Ms. Ralla made notes about what transpired, and these notes were made available to the adjudicator (Exhibit E-4).

[9] Ms. Ralla said that the letter of termination was given to the grievor, and there was a brief discussion of the letter. The grievor stated some of his factual disagreements with the allegations made against him, and Ms. Ralla responded that the statements in the letter were consistent with the results of the investigation report. Both Ms. Ralla and Ms. Ruyter advised the grievor that it was open to him to file a grievance if he wished to contest the allegations that formed the basis of the decision to terminate his employment.

[10] Ms. Ralla testified that she then put forward the option of resignation for consideration by the grievor. She told him that a resignation might have different financial implications than a termination, and would also leave him with a clear disciplinary record. Ms. Ralla said that it is common to put forward this option to employees in these circumstances, as it is often important to them for different reasons to have the end of their employment described as a resignation rather than a termination. However, she said that it was not her practice to counsel employees about which option they should choose, and she did not provide any specific information about what the implications of the choice would be in the grievor's case. She did not know, for example, what severance payment he might be entitled to. Ms. Ralla said that, contrary to part of the grievor's testimony, she did not tell him that if he accepted the termination he would be immediately escorted from the building; she said that, in cases of termination, employees were allowed to return to their workstations to collect their personal items. She indicated that she did not recall telling the grievor that he would get a letter of reference from the employer if he resigned, as this would be contrary to her usual practice; she said she likely did tell him that he would get a standard letter confirming the dates and nature of his employment at the CRA.

[11] Ms. Ralla said that, at this point in the meeting, the employer's representatives left the grievor and Ms. Ruyter alone to discuss the situation. Ms. Ruyter stated that she made it clear to the grievor that he should take some time to come to a decision. At one point, Ms. Ruyter asked for a copy of the collective agreement, which was provided. Later, Ms. Ruyter asked if the grievor could use the telephone to call his wife; he did make this call.

[12] At approximately 17:00, one and one-half to two hours after the meeting began, the grievor indicated that he had decided to resign and gave Ms. Ralla a hand-written letter of resignation (Exhibit E-5). Neither the grievor nor Ms. Ruyter asked for any additional time to discuss the matter or asked for further information. Ms. Ralla typed up a letter accepting the resignation (Exhibit E-6), and the grievor and his representative departed at approximately 17:45.

[13] On April 16, 2008, Ms. Ralla advised the CRA central compensation office in Winnipeg that the grievor had resigned (Exhibit E-8); she also informed her superior, the director of the Burnaby-Fraser TSO (Exhibit E-9). Ms. Ralla said that on July 16 she spoke with an employee of Service Canada, who informed her that the grievor had

applied for employment insurance benefits; the grievor had said that his employment was terminated and had filed a grievance. Ms. Ralla said she told the Service Canada employee that the grievor had resigned and that his letter of resignation had been accepted. She said she did not provide any further information.

B. <u>For the grievor</u>

[14] The grievor testified on his own behalf. He said that he had been informed in June 2007 that he was under investigation and had met with the investigator, David Morgan. Ms. Ruyter was present at that meeting, and the grievor said he had answered truthfully all of the questions put to him. He had a second meeting with Mr. Morgan three weeks later and was able to provide clarification on some points. The grievor confirmed that he had been provided with a copy of the investigator's report in September 2007. He said that the version he received was very heavily redacted, and that it was difficult to respond to the allegations in that form. He did disagree with the allegations, as he understood them, however, and denied that he was guilty of any wrongdoing. The grievor said that, when he discussed the significance of the allegations against him with Ms. Ruyter, she told him that some disciplinary action might be taken against him, but he did not understand that dismissal was a possibility.

[15] The grievor said that, at the time of the meeting with Ms. Ralla in September, he had only read the conclusions of the report; she told him he should read the entire report. When they met again on October 2, he said that Ms. Ralla had "taken the offensive," and had made additional allegations against him. He stated to Ms. Ralla that he did not think he had done anything that was a breach of the CRA Code. Between October 2007 and April 2008, he was in contact several times with Ms. Ruyter, who informed him that she had been asking without success whether the employer had made any further decisions. The grievor said that the absence of any further steps confirmed his belief that he had done nothing wrong.

[16] He said that it came as a surprise to him to be informed by Ms. Ruyter, immediately prior to the meeting of April 15, that the employer had decided that his employment should be terminated. The letter of termination was given to him at the meeting, and he testified that there was no opportunity for him to respond to the content of the letter. Ms. Ralla merely said the decision had been made. The grievor said he asked if any points he had raised at earlier meetings had been taken into account, as it seemed obvious to him that they had not.

[17] The grievor said that when Ms. Ralla put forward the option of resignation, she told him that it would mean he would be entitled to severance benefits, that he would get a letter of reference from the employer, and that he would be free to seek other public-sector employment in the future. The grievor also said Ms. Ralla told him he would not have an opportunity to talk to a lawyer. He said Ms. Ruyter gave him limited assistance and that his wife was extremely upset when he talked to her on the telephone and could not give him any help. He said he was in a state of shock and unable to process the implications of the decision he was being forced to make. The grievor said that he and Ms. Ruyter did not discuss in specific terms what amount of severance pay he might be entitled to, but he thought it should be substantial given the length of time he had been working at the CRA.

[18] About a week after the meeting of April 15, the grievor said he phoned the human resources office in Winnipeg to inquire when he would be getting his severance pay. The person he spoke to said it would be included in his final cheque. When he received that cheque, it showed that he was receiving vacation pay, but no severance pay. He contacted the union and eventually filed a grievance claiming that his employment had been terminated without just cause. He said he thought, since he had been "allowed" to file a grievance, this meant that the employer was accepting that the letter of resignation was of no further effect. During the grievance settlement procedure, the bargaining agent argued the grounds of the termination of employment, but the employer responded that the grievor had resigned.

[19] The grievor testified that he had worked for the employer for more than 10 years; that was the basis on which he thought he would be entitled to a substantial severance pay. Under cross-examination, he acknowledged that he began work in February of 1998 on a series of term contracts and that there had been a break – he thought about a month – in his service before he became a permanent employee in January 1999. In rebuttal, Ms. Ralla said that the human resources records kept by the employer showed that the grievor had been a term employee until April 1998 and had then returned as a permanent employee in January 1999.

III. Summary of arguments

A. For the employer

[20] Counsel for the employer argued that the evidence established that the grievor's resignation was genuine. Under those circumstances, an adjudicator lacks jurisdiction to consider the case or to provide relief. The authority of an adjudicator is derived from section 209 of the *Public Service Labour Relations Act*, the relevant portions of 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*
>
> 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.*
>
> . . .

[21] Counsel for the employer said that the evidence of the employer's witness and of the grievor himself indicated that he had been given the option of resignation or termination and had chosen the latter. The onus is on the grievor to establish that the resignation was not *bona fide*; counsel argued that he failed to do so.

[22] Counsel for the employer pointed to clause 63.01(b) of the collective agreement between the Canada Revenue Agency and the Public Service Alliance of Canada for the Program Delivery and Administrative Services Group, expiry date October 31, 2010, which provides for severance payment as follows:

> *b) Resignation*
>
> *On resignation, subject to paragraph 63.01(d) [having to do with retirement] and with ten (10) or more years of continuous employment, one-half (1/2) week's pay for each complete year of continuous employment up to a maximum of twenty-six (26) years with a maximum benefit of thirteen (13) weeks' pay.*

Since the grievor had not been in continuous employment for 10 years or more, he was not entitled to a severance pay under this article. Counsel for the employer said that Ms. Ralla was well aware that the collective agreement would be the authoritative source of any entitlement for the grievor and would not have committed the employer to pay severance that was not contemplated by the agreement. The grievor did not file any grievance contesting the employer's interpretation of this provision of the collective agreement; even by his own account, there was a break in his service prior to his becoming a permanent employee in January 1999.

B. For the grievor

[23] The grievor argued that the letter of resignation was not valid, as he was under stress and was not in a position to make a rational decision.

[24] He further argued that the consequences of a resignation were misrepresented to him by Ms. Ralla and Ms. Fleming. He said he understood that he would receive severance pay, that the employer would write him a letter of reference, that he would have other opportunities for public-sector employment, and that these points were crucial in his decision to choose the option of resignation. He argued that the choice of resignation would not be rational if these conditions were not in place, as there would be no benefit in that choice. He urged me to find that the misrepresentation of the terms constituted sufficient duress to invalidate his resignation.

IV. Reasons

[25] The issue that was the subject of this hearing is the narrow one of whether the letter of resignation submitted by the grievor on April 15, 2008, was valid; if it was, I do not have jurisdiction to consider the grievance. In these circumstances, the onus rests on the grievor to establish that the resignation was not valid.

[26] In *Dubord & Rainville Inc. v. Metallurgistes Unis d'Amérique, Local 7625* (1996), 53 L.A.C. (4th) 378 at 381, the task of an adjudicator considering this issue was described as follows:

. . .

> *Thus arbitrators, adjudicating upon the validity of a resignation, will look to both the subjective expression of the employee's decision to resign and the objective*

> *manifestations provided by the employee following communication of that decision. As well, arbitrators will look to the circumstances under which the resignation was submitted or secured to ensure that such resignation was not improperly obtained through devices such as threats, intimidation, deception or undue duress.*
>
> . . .

[27] Counsel for the employer provided me with a number of arbitral decisions in which this issue was considered, including: *Rinke v. Canadian Food Inspection Agency*, 2004 PSSRB 143; *Charron v. House of Commons*, 2002 PSSRB 90; *Arsenault v. Treasury Board (Solicitor-General - Correctional Service Canada)*, PSSRB File No. 166-02-23957 (19930722); *McNab v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-14343 (1984); and *Bodner v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-21332 (19910607). As the grievor pointed out, the resignation in each of these cases arose in distinct circumstances, none of which are exactly like the situation in the grievor's case. These decisions do, nonetheless, provide some examples of how adjudicators have analyzed the claims of grievors that their resignations were submitted under duress.

[28] It is clear from these cases that regret on the part of the grievor or the stress of making a significant decision will not be sufficient to invalidate a resignation. In *Arsenault*, *supra*, for example, the adjudicator said:

> . . .
>
> *On September 1, 1992, Ms. Arsenault may have been panicky, ashamed and suffering from emotional problems. She may even have resigned under pressure. However, none of this was caused by the employer. She was facing discharge and had to make a choice.*
>
> . . .

[29] It is also clear that the fact that the resignation is given when it is clear that termination is the alternative does not in itself constitute coercion; see *Dubord & Rainville Inc.* at page 384.

[30] The grievor obviously regretted his decision to submit a resignation rather than challenge the allegations against him through a grievance contesting the termination, and there is no reason to doubt that he found the process of making the choice

between resignation and termination a stressful and alarming one. The question is whether he has succeeded in showing that the conduct of the employer amounted to deception or coercion, and I have concluded that he has failed to do so.

[31] The grievor was aware, starting as early as June 2007, that allegations of serious misconduct were being made against him. He met with the investigator twice, and on one of these occasions, he was accompanied by a bargaining agent representative. He was also accompanied by a bargaining agent representative at the meetings of September 20 and October 2, 2007, at which the report of the investigator was discussed; the grievor was invited to, and did, submit some additional information to Ms. Ralla. The grievor acknowledged that the bargaining agent had advised him that disciplinary action might be taken against him as a result of the report, although he said that he never thought of termination as a possibility.

[32] The grievor was also accompanied by a bargaining agent representative at the meeting of April 15, 2008. The grievor's evidence was that he was taken by surprise when he was presented with a letter of termination at that meeting, and that the letter affected his ability to think clearly. If, as he stated, he thought the employer had decided to take no action on the investigator's report because of the time that elapsed since October 2007, this was an unrealistic conclusion on his part given the seriousness of the allegations against him. In any case, the allegations themselves and the fact that disciplinary steps might be taken had been known to the grievor for some months before the meeting in April.

[33] With respect to the meetings in September and October 2007, Ms. Ralla was careful to ensure that the grievor had an opportunity to read the investigator's report in full. Indeed, the meeting of September 20 was halted and rescheduled to give the grievor a chance to consider the report thoroughly. Ms. Ralla also gave a reasonable explanation for the employer's delay after October 2 in taking further action concerning the grievor; her wish to make the decision herself and not to delegate the decision to a subordinate is consistent with the measured approach she took at other points.

[34] The meeting of April 15, 2008, was a stressful event for the grievor. He was presented with a letter terminating his employment; Ms. Ralla then suggested the option of a resignation. I do not find credible the grievor's claim that Ms. Ralla made the specific commitments to him that he regarded as the terms of submitting his

resignation. Ms. Ralla was an experienced manager who had attended similar meetings in the past. It is highly unlikely that the employer would have offered to write a positive letter of reference for the grievor, since, from the employer's point of view, the investigation had established that the allegations of misconduct against the grievor had some foundation. Though the allegations might or might not have held up at a hearing on the merits of the termination in April 2008, the employer took the position that they were true and could not be expected to offer to provide more than the bare facts about the grievor's employment to prospective employers.

[35] Ms. Ralla said that she or Ms. Fleming made a general observation that resignation might have different financial consequences for the grievor than termination, but she said that she did not know whether he would be entitled to severance pay or how much such pay might be. In due course, the employer took the position, based on clause 63.01 of the collective agreement, that the grievor was not entitled to severance pay, and it is improbable that Ms. Ralla would have made a commitment that was inconsistent with this provision, or would have made a commitment at all without seeking further information.

[36] The grievor stated that he made the decision to resign under severe time pressure, and he may indeed have felt such pressure, but there was no evidence that the grievor or Ms. Ruyter asked for additional time. At the meeting of September 20 concerning the investigator's report, Ms. Ralla had allowed the grievor to take extra time to read the report - indeed, she had insisted on it - and, if asked, she might have allowed further time to the grievor to make his decision. Neither was there evidence that the grievor or Ms. Ruyter asked for any additional information about what kind of severance settlement might be possible.

[37] In argument, the grievor said that one indication of the likelihood that his decision was made under duress was that the resignation decision had no benefits to him. His testimony at the hearing made it clear that he was sincere in feeling that he had been misled into making a choice that was not of any benefit to him. It is not entirely true, however, that the choice of resignation under these circumstances is without benefit to an employee facing termination. While it is true that a termination can be challenged through the grievance procedure, the outcome of such a procedure is always uncertain; if the termination is upheld at arbitration, then the employee must face the future with the misconduct stated as a fact on the record. A resignation, on

the other hand, has more neutral results, in the sense that the employee has a record free of allegations of misconduct and can proceed to look for new employment on that basis. An individual employee may, for a variety of reasons, find one or the other more advantageous, and the advantages can only be weighed by the individual.

[38] In this case, the grievor was given the opportunity to consider the relative advantages of resigning or having his employment terminated, and had a bargaining agent representative present to advise him. He may have misunderstood the significance of the resignation, and he may have made the decision on the basis of mistaken assumptions, but I cannot find that the employer was responsible for them. Ms. Ruyter did not testify, and it is therefore impossible to know what advice she provided, but even if she reinforced the grievor's misunderstanding of his situation, no responsibility can be laid at the door of the employer, and the employer is entitled to regard the letter of resignation as valid.

[39] There is no doubt that the grievor was truthful in saying he felt he was under pressure as he made the decision whether to resign or to challenge a termination. Overall, however, the evidence does not support a claim that representatives of the employer coerced or intimidated him, or that they misrepresented his situation in a way that would render his resignation less than genuine. The grievor's bitter regret over the choice he made cannot be held to invalidate that choice.

[40] I therefore find that employer's objection to my jurisdiction must be upheld, and the grievance dismissed.

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

(*The Order appears on the next page*)

V. Order

[43] The grievance is dismissed.

August 13, 2010.

Beth Bilson,
adjudicator