

Date: 20100610

File: 566-02-3028

Citation: 2010 PSLRB 76



Public Service  
Labour Relations Act

Before an adjudicator

---

BETWEEN

ÉMILIE MAÏTÉE CARBRAY

Grievor

and

DEPUTY HEAD  
(Correctional Service of Canada)

Respondent

Indexed as  
*Carbray v. Deputy Head (Correctional Service of Canada)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

**Before:** Michele A. Pineau, adjudicator

**For the Grievor:** Herself

**For the Respondent:** Stéphane Ferland, Treasury Board Secretariat

---

Decided on the basis of documents  
filed between August 4, 2009 and May 20, 2010.  
(PSLRB Translation)

**Individual grievance referred to adjudication**

[1] Émilie Maitée Carbray (“the grievor”) was a correctional officer classified CX-01 at the Ste-Anne-des-Plaines Regional Reception Centre. She was hired on July 19, 2007 for an indeterminate period and was subject to the *Public Service Terms and Conditions of Employment Regulations*. The grievor was required to complete a 12-month probationary period. The grievor’s probation was suspended while she was on unpaid leave from February 23 to December 25, 2008 and was restarted on her return to work. The deputy head (“the employer”) terminated the grievor’s employment on March 13, 2009, during the probationary period, under section 62 of the *Public Service Employment Act (PSEA)*.

[2] The reasons for termination are described in a three-page letter dated March 13, 2009 and were based on the following actions of the grievor:

- failing to inform the employer about breaking the law in another country;
- breaking into an employee’s vehicle;
- having a physical altercation with another employee outside the workplace;
- harming the reputations of certain staff members; and
- failing in general to demonstrate sound judgment, discretion and integrity.

[3] On March 23, 2009, the grievor filed a grievance countersigned by the bargaining agent that reads as follows:

[Translation]

*I object to my dismissal from the Regional Reception Centre on March 13, 2009. The dismissal was unjust and arbitrary.*

The grievor asks for the following relief:

[Translation]

*Reinstatement as a correctional officer and the payment of all benefits lost since the dismissal effective March 13, 2009.*

[4] The employer did not respond to the grievance until May 11, 2009, at the second level of the grievance process set out in the collective agreement. The

bargaining agent referred the grievance to adjudication on August 4, 2009, and the Public Service Labour Relations Board (“the Board”) received it on August 6, 2009.

### **Employer’s objection**

[5] On April 1, 2010, the employer filed an objection to the jurisdiction of an adjudicator to hear the grievor’s grievance on the ground that the grievor’s employment was terminated during a probationary period under section 62 of the *PSEA*. In support of its objection, the employer cited the following decisions: *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529; *Archambault v. Canada (Canada Customs and Revenue Agency)*, 2005 FC 183; *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33; *Maqsood v. Treasury Board (Department of Industry)*, 2009 PSLRB 175; and *Currie v. Deputy Head (Department of Fisheries and Oceans)*, 2010 PSLRB 10.

[6] The Registry of the Board wrote to the grievor’s representative on April 7, 2010, asking for a position on the jurisdiction issue by April 21, 2010. No response was received. On April 23, 2010, the Registry sent an email reminder. Again, no response was received.

[7] On May 4, 2010, this matter was brought before me for an evaluation. Given the seriousness of the employer’s objection, I decided to exercise my discretion to determine the matter without a hearing, as provided under section 227 of the *Public Service Labour Relations Act (PSLRA)*. On May 5, 2010, the Registry wrote to the parties to inform them that the employer’s objection would be dealt with on the basis of the information on file.

[8] In an email dated May 20, 2010, the bargaining agent representative stated that he was withdrawing his representation of the grievor in this grievance.

### **Reasons**

[9] In her grievance, the grievor alleges that the “dismissal” was unjust and arbitrary. “Unjust” means unfair or contrary to justice. “Arbitrary” means based on a person’s will rather than on truth alone. In the circumstances of this case, the allegation of an unjust and arbitrary dismissal is inconsistent with a disciplinary layoff.

[10] The facts adduced by the employer show that the grievor was terminated during her probationary period. The termination letter and the employer's decision at the second level of the grievance process clearly state the reasons that led to terminating the grievor during her probationary period as well as the grievor's admissions about the first three reasons for termination (see paragraph 2). All the employer's reasons are employment related. Nothing on file indicates that the deputy head disciplined the grievor, even though it had the authority.

[11] Paragraph 211(a) of the *PSLRA* creates as follows an exception for terminations of employment during a probationary period that excludes an adjudicator's jurisdiction:

*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 . . . .*

[12] The grievor's failure to provide a response denying or disputing the facts adduced by the employer or explaining how the termination did not comply with the *PSEA* leaves me with no allegations of facts that, if proven, would give me jurisdiction under paragraph 209(1)(c) of the *PSLRA* to hear a grievance about a termination of employment.

[13] My only discretionary power is determining whether this grievance is about a termination of employment during a probationary period. I need not determine whether the employer was justified.

[14] I am of the opinion that, in the circumstances of this case, the grievor was in fact terminated during a probationary period. Consequently, a hearing need not be held to determine the merits of the grievance.

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

*(The Order appears on the next page)*

**Order**

[16] I declare that an adjudicator has no jurisdiction to hear this grievance.

[17] I order the file closed.

June 10, 2010.

PSLRB Translation

**Michele A. Pineau,  
adjudicator**