

**Date:** 20111215

**File:** 566-32-4458

**Citation:** 2011 PSLRB 143



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**FRANK-KAYEMBE TSHIBANGU**

Grievor

and

**DEPUTY HEAD  
(Canadian Food Inspection Agency)**

Employer

Indexed as  
*Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** John J. Steeves, adjudicator

***For the Grievor:*** Himself

***For the Employer:*** Allison Sephton, counsel

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Heard at Vancouver, British Columbia,  
November 15, 2011.

### **Introduction**

[1] The grievor, Frank-Kayembe Tshibangu, alleges that the employer's decision to end his term employment was, in fact, disguised discipline. He sought reinstatement through the grievance procedure, with the assistance of his bargaining agent, but this was not successful. He now seeks reinstatement through adjudication before the Public Service Labour Relations Board ("the Board"). His bargaining agent decided not to support him before the Board.

[2] The Board scheduled a hearing for November 15 to 18, 2011. The grievor was given notice of the hearing, but he did not attend. Nor did he respond to telephone inquiries or a letter from the Board.

[3] The employer attended the hearing and submits that the grievance should be dismissed on the basis of non-suit or, in the alternative, because the grievor abandoned his grievance.

### **Summary of the evidence**

[4] The employer, the Canadian Food Inspection Agency ("the employer"), operates food inspection facilities across Canada.

[5] The grievor was appointed as a meat hygiene inspector in Port Coquitlam, British Columbia, for a term that ended on March 30, 2008. He is or was a member of the bargaining agent, the Public Service Alliance of Canada. On March 5, 2008, the employer advised the grievor in writing that his employment would not be extended beyond March 30, 2008.

[6] On March 26, 2008 the bargaining agent filed a grievance on the grievor's behalf. Under "grievance details" it stated only "wrongful dismissal." The phone number for the grievor given on the grievance was typed as Number A (I have anonymized this number and the ones below for privacy reasons). It is not completely legible because the seven digit number was crossed out by hand and Number B was handwritten above Number A (the area code was unchanged). The grievance proceeded through the grievance procedure without resolution. For example, the employer advised the grievor and the bargaining agent on July 25, 2008 that the grievance was denied and that the reason for the termination of the grievor's term employment was because of " . . . operational needs impacted by changes to our inspection programs."

[7] The bargaining agent submitted the grievance to the Board on September 29, 2010. The covering letter stated, "This grievance concerns Termination (Disguised Discipline)." The Form 21, "Notice of Reference to Adjudication of an Individual Grievance," stated that the referral to the Board was pursuant to paragraph 209(1)(b) of the *Public Service Labour Relations Act* ("the Act"). This provision is summarized on the form as including protection from unjust "Disciplinary action resulting in termination, demotion, suspension or financial penalty." The phone number for the grievor was given as Number B.

[8] The Board issued a "Notice of Hearing" dated October 12, 2011 and it was sent to the bargaining agent and the employer. Among other things, it provided the date, time and location of the hearing. The scheduled dates were November 15 to 18, 2011, the start time was 9:30 a.m. and the location was Vancouver, B. C. The notice also included the following paragraph:

...

*AND FURTHER TAKE NOTICE that if you fail to attend the hearing or any continuation thereof, the Board may dispose of the matter on the evidence and representations placed at the hearing without further notice to you.*

...

[Emphasis in the original]

[9] A previous letter from the Board, dated October 14, 2010, advised the bargaining agent, the employer and the grievor (he was copied with the letter) about a number of procedural requirements for a hearing under the *Act* and the related regulations. It also stated, "It is the responsibility of the grievor to inform the Board of any change in residential address or telephone number."

[10] On or about November 3, 2011, the Board was advised that the bargaining agent was no longer supporting the grievance, scheduled to be heard November 15 to 18, 2011. The bargaining agent advised the Board that the grievor's telephone number at that time was Number C. According to a note prepared by a case management officer at the Board the bargaining agent provided this number because the telephone number on file was not in service. The officer then wrote a letter to the grievor dated November 3, 2011. It referenced the grievance and Board file and stated as follows:

...

*The Board has been advised that the Public Service Alliance of Canada will no longer be representing you in the above matter.*

*Since you will no longer be represented by your bargaining agent, please advise the Board, by no later than **November 8, 2011**, how you would like to proceed with your reference to adjudication.*

*If you wish to proceed and will be represented by someone other than yourself, please advise the Board of that individual's name, address, telephone and fax numbers so that any relevant documentation can be properly forwarded.*

***Please note the hearing of this matter is scheduled to proceed on November 15 to 18, 2011 in Vancouver, British Columbia.***

...

[Emphasis in the original]

[11] The above letter was sent from the Board to the grievor, by Priority Post, to the address of the grievor provided on the September 2010 Form 21 referral to the Board (this was a different address than the one on the March 2008 grievance form). The Board subsequently obtained tracking information that the letter was successfully delivered at 11:05:37 on November 7, 2011. The case management officer did not receive a reply to this letter and he telephoned the grievor. There was no answer, an automated voicemail stated that messages could be left for "Frank Kayembe" and a message was left.

[12] On November 9, 2011, a case management officer of the Board telephoned the grievor on two more occasions, using the number on the grievance (from March 2008). There were no answers. Voice messages were left by the case management officer that included requests that the grievor call the Board. Fourth and fifth messages were left the next day, November 10, 2011. The telephone number used was the one provided by the bargaining agent, Number C. There were no return calls by the grievor.

[13] I was appointed by the Chairperson of the Board as the adjudicator to adjudicate the grievance filed and I attended the hearing scheduled on November 15, 2011. The hearing commenced at 9:30 a.m. as set out in the Notice of Hearing. Representatives of the employer attended but neither the grievor nor anyone

representing him attended. I adjourned the hearing until 11:00 a.m. the same day in case the grievor had been delayed in some way. While the hearing was adjourned, another case management officer attempted to telephone the grievor, using the number provided by the bargaining agent, Number C. This number did not ring or permit a message to be left.

[14] When the hearing reconvened at 11:00 a.m. the employer attended. The grievor did not. At the reconvened hearing, the employer submitted that I should dismiss the grievance on the basis of non-suit or, in the alternative, because the grievor had abandoned his grievance.

### **Reasons**

[15] The above facts establish that the grievor had notice of the hearing scheduled for November 15 to 18, 2011. Leaving aside whether he received the Notice of Hearing dated October 12, 2011 (sent to the bargaining agent and the employer), he received the Board's letter of November 3, 2011. As well, the Board left four telephone messages with the grievor and attempted to contact him on the first day of the hearing. He seems to have had different telephone numbers (and addresses) but the Board can only operate on the basis of the information provided by the parties, including the grievor. The Board's letter of October 14, 2010, copied to the grievor, stated expressly that it was his responsibility to inform the Board of any change in address or telephone number.

[16] It is well established that the employer's failure to renew an employee's term contract of employment is not a dismissal or layoff or other matter covered by section 209 of the *Act*. Unless the non-renewal was, in fact, disguised discipline, the Board does not have jurisdiction over the routine non-renewal of term employment contracts (see, for example, *Chouinard v. Deputy Head (Department of National Defence)*, 2010 PSLRB 133, at para 45). The grievor in the case before me alleges that the termination of his term employment was disguised discipline. He has the legal burden of proving his allegation (*Wong v. Deputy Head (Canadian Security Intelligence Service)*, 2010 PSLRB 18, at para 34).

[17] The Board file includes the short statement in the grievance "Wrongful Dismissal" and the reference to "Termination (Disguised Discipline)" in the covering letter for the Form 21 referral to the Board in September 2010. These are bare

allegations rather than evidence. In fact, there is no evidence to support the grievor's allegations. He has the burden to prove his case with convincing evidence, but he has not done so. As well, despite the Board's efforts to contact him, the grievor has made no attempt to contact the Board. This demonstrates no interest on his part in advancing his grievance.

[18] I can only conclude that, as a result of there being no evidence in support of the grievor's allegation of disguised discipline, his grievance must be denied. Alternatively, the grievor has abandoned his grievance.

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

*(The Order appears on the next page)*

**Order**

[20] The grievance is dismissed.

December 15, 2011.

**John J. Steeves,  
adjudicator**