

Date: 20120105

File: 166-20-34057

Citation: 2012 PSLRB 1



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

DANNY PALMER

Grievor

and

CANADIAN SECURITY INTELLIGENCE SERVICE

Employer

Indexed as

Palmer v. Canadian Security Intelligence Service

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievor: Roxanne J. Stanners and Jean-François Mercure, counsel

For the Respondent: Karl Chemsy, counsel

Heard at Ottawa, Ontario,
March 21 to 23 and September 19 to 21, 2011.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] Danny Palmer was an intelligence officer with the Canadian Security Intelligence Service (“the employer”). He was dismissed for poor performance on July 2, 2003. Mr. Palmer grieved his termination and it was referred to the Public Service Staff Relations Board for adjudication. While the hearing was ongoing, the parties entered into mediation with the assistance of the adjudicator and a settlement was reached on October 25, 2007. The settlement contained a provision whereby Mr. Palmer would withdraw his grievance. During the mediation, Mr. Palmer was represented by his counsel, James Duggan. Mr. Palmer withdrew his grievance on December 13, 2007.

[2] On May 31, 2009 and encouraged by recent newspaper articles critical of CSIS’s “withholding inconvenient contradictory evidence” in the Mohamed Harkat matter, Mr. Palmer wrote to the Public Service Labour Relations Board (the “Board”) asking that it “revisit” the issues of full disclosure. Mr. Palmer stated that CSIS had no reason to deny him a top secret security clearance and therefore no reason to prevent full disclosure of the evidence that he was seeking for the hearing of his grievance. Mr. Palmer also suggested that the Board make certain inquiries of CSIS for this purpose.

[3] In a letter dated June 30, 2009, the employer objected to the Board’s jurisdiction to revive the grievor’s grievance.

[4] The dispute concerning the Board’s jurisdiction was the subject of a preliminary decision on January 25, 2010 (*Palmer v. Canada Security Intelligence Service* 2010 PSLRB 11) which held that that an adjudicator had the jurisdiction to determine whether the settlement reached by the parties and the consequent withdrawal of the grievance was binding on them. The matter was then referred to me for a hearing and decision.

[5] Mr. Palmer alleges that he was misled in that he was told that his Top Secret Security clearance would not be reinstated should his grievance be successfully adjudicated. The grievor also alleges that this left him with no choice but to settle his grievance because he could not get the information he needed to meet his case on the merits. The grievor further alleges that the employer obstructed the disclosure of documents and thwarted his chances of being successful on the merits of his case.

[6] Mr. Palmer states that he obtained information in 2008 and 2009 that established that the grievance settlement reached in 2007 was entered into “as a result

of fraud and coercion on the part of the employer”. More particularly, Mr. Palmer alleges that the issue of not granting him Top Secret security clearance for the purpose of the adjudication process was “a ruse” to prevent full disclosure of the documents most relevant to defending his termination grievance and to prevent a reinstatement order by the adjudicator. Mr. Palmer alleges that he has since learned that the denial of a top security clearance was limited to the arbitration process and did not affect any future employment at CSIS.

[7] Having heard Mr. Palmer’s evidence and reviewed his 11-page letter, I am satisfied that all the facts he raises in support of reviewing the conditions that led to the settlement of his grievance were in existence and known to both him and his counsel at the time of the mediation and the settlement.

[8] I am singularly unpersuaded by the correspondence Mr. Palmer initiated with CSIS through his new counsel, M^e Mercure, between July 31, 2008 and May 19, 2009. This correspondence is irrelevant to the issue of having the Board revisit his settlement and reopen his grievance. It does not establish that the settlement is not valid or binding.

[9] At the time of settlement, Mr. Palmer was represented by counsel and his counsel at that time raised the issue of CSIS’ refusal of his Top Secret security clearance and its refusal to disclose to him certain documents that he requested because of a concern regarding his reliability. A settlement was reached even though those issues were still outstanding. The correspondence during 2008 and 2009 merely revisits these same issues.

[10] Based on the evidence presented, I am not convinced that Mr. Palmer was misled or that his consent to the settlement was obtained through false representations, fraud or coercion. Therefore, there was a mutual intention of both competent parties to resolve the grievance with finality. Furthermore, a party to a settlement cannot extricate himself from a valid and binding settlement merely by making allegations of bad faith.

[11] Mr. Palmer’s withdrawal of his grievance was communicated to the Board by means of an email from his counsel, Mr. Duggan, which reads as follows:

My client has instructed me to inform you that the settlement in this matter is now complete. Mr. Palmer hereby withdraws

his grievance. We also wish to thank you in particular, as well as the Board, for your valuable collaboration in this case.

[12] The Board closed the file administratively on December 13, 2007.

[13] Accordingly, I find that the settlement reached by Mr. Palmer and the employer, and the withdrawal of his grievance which resulted from the settlement, are valid and binding.

[14] I note that the essence of Mr. Palmer's case and argument is that his consent to sign a settlement agreement was obtained through false representations made by the employer which go to the very existence of a binding settlement and a valid withdrawal of his grievance. Having found that the settlement is binding, including the withdrawal of the grievance, it flows that Mr. Palmer has no further recourse before this Board since the adjudicator is without jurisdiction to determine a grievance once it is withdrawn.

[15] In *Canada (Attorney General) v. Lebreux*, [1994] F.C.J. No. 1711 (QL), the Court of Appeal held that an adjudicator is without jurisdiction to determine a grievance once it is withdrawn. The Court provided the following reasoning in support of its decision:

12. From the time the respondent discontinued his grievances the Board and the designated adjudicator became functus officio since the matter was then no longer before them. The Board was not required either to inquire into the merits of feasibility of such a discontinuance forthwith and without more terminated the grievance process in respect of which it was filed. Accordingly, no order or decision could be or was made within the meaning of the Act that could be subject of cancellation or review under s. 27.

[16] Accordingly, once a grievance is withdrawn, there is no recourse under the *Public Service Labour Relations Act* to deal with it. Mr. Palmer's withdrawal of his grievance is a bar to adjudication as there is simply no longer any grievance before the adjudicator.

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

(The Order appears on the next page)

Order

[18] The grievance adjudicator is without jurisdiction to deal with Mr. Palmer's grievance.

January 5, 2012.

**Michele A. Pineau,
adjudicator**