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*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**MICHELINE BÉTOURNAY**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as

*Bétournay v. Canada Revenue Agency*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** Renaud Paquet, adjudicator

***For the Grievor:*** Herself

***For the Employer:*** Anne-Marie Duquette, counsel

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Heard at Montreal, Quebec,  
November 6 and 7, 2012.  
(PSLRB Translation)

## **I. Individual grievances referred to adjudication**

[1] Between November 2005 and February 2006, Micheline Bétournay (“the grievor”) filed four grievances against disciplinary action that the Canada Revenue Agency (“the employer”) took against her between October 2005 and January 2006.

[2] The first grievance (566-34-446) is about a letter of reprimand that the employer gave to Ms. Bétournay on October 17, 2005. In it, the employer faulted Ms. Bétournay for repeatedly refusing to produce her time sheets. During the hearing, I informed Ms. Bétournay that, under paragraph 209(1)(b) of the *Public Service Labour Relations Act* (“the Act”), I could not adjudicate the grievance because the disciplinary action in question did not result in a suspension or financial penalty. Paragraph 209(1)(b) of the Act reads 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 . . . .*

[3] The three other grievances are about a one-day (566-34-447), a three-day (566-34-448) and a five-day (566-34-449) suspension, respectively. The employer dismissed the grievances at the final level of the internal grievance process on June 14, 2006 and submitted its response to Ms. Bétournay on June 21, 2006. She referred her grievances to adjudication on July 19, 2006.

## **II. Summary of the evidence**

[4] The employer called Francine Vallée as a witness. Ms. Vallée is now retired. At the time of the events giving rise to the grievances, about seven years ago, Ms. Vallée was the assistant director of the Scientific Research and Economic Development Division of the Laval Tax Services Office. Ms. Bétournay testified. She worked in Ms. Vallée’s division as a research and development advisor. Ms. Bétournay reported to a supervisor, who in turn reported directly to Ms. Vallée. The parties adduced into evidence a series of documents that, for the most part, were either directly or indirectly about the incidents that led to the discipline imposed on Ms. Bétournay.

[5] Ms. Bétournay explained that, in spring 2005, her union began to pressure the employer to renew its collective agreement, which expired in December 2003. One pressure tactic was that employees stopped completing the time sheets required by the employer. The pressure tactics stopped in August 2005 when an agreement was reached to renew the collective agreement. Time sheets are reports that employees complete to indicate their hours worked by activity or file.

[6] Ms. Bétournay stopped completing her time sheets beginning in August 2005. The work environment in her division was not very good. She indicated that her supervisors often reversed her decisions. In addition, according to her, the employer should not have required employees to complete time sheets because, under clause 8.01 of the collective agreement, it could have asked them to submit only monthly attendance registers specifying overtime or absences. On that basis, Ms. Bétournay continued to not complete her time sheets after August 2005.

[7] On September 30, 2005, Ms. Vallée met with Ms. Bétournay to ask her to produce her time sheets as of April 1, 2005. Ms. Bétournay in turn asked Ms. Vallée to make the request in writing and to provide a justification. Thus, on October 3, 2005, Ms. Vallée made her request in writing and asked Ms. Bétournay to complete her time sheets by October 7 at the latest, failing which she could be subject to disciplinary action. On October 11, 2005, Ms. Vallée once again met with Ms. Bétournay, this time in a disciplinary meeting. The grievor maintained her position that she would not complete her time sheets because the employer could not demand that she do it. In response, the employer gave Ms. Bétournay a written reprimand on October 17, 2005. It also informed her that any recurrence could result in more severe disciplinary action. That same day, the employer emailed the grievor, reiterating its request that she produce her time sheets by October 19, 2005.

[8] On October 19, 2005, Ms. Vallée asked Ms. Bétournay whether she had completed her time sheets. The grievor answered that she had not. She said that she would meet with her counsel the next day and that Ms. Vallée would receive a response. Ms. Vallée never received one. On October 24, 2005, Ms. Vallée held a disciplinary meeting with Ms. Bétournay, as the time sheets still had not been completed. She imposed a one-day suspension on the grievor to be served on October 27, 2005.

[9] On October 28, 2005, Ms. Vallée met with Ms. Bétournay in the presence of her supervisor and reiterated her request to complete the time sheets. During the ensuing

discussion, Ms. Bétournay made no commitment to complete her time sheets. Ms. Vallée then told Ms. Bétournay that insubordination had consequences and that another suspension would be imposed on her. Ms. Vallée imposed a three-day suspension on the grievor on October 31, 2005.

[10] On November 9, 2005, Ms. Vallée once again met with Ms. Bétournay, who agreed to complete her time sheets. It was agreed that she would complete her time sheets for September to November by November 15 and for April to August by November 18. It was also agreed that, as of that moment, Ms. Bétournay would complete her time sheets regularly. On November 21, 2005, Ms. Bétournay's time sheets were all entered in the "portal" according to the employer's established procedure. The portal is an internal computer system used by employees and the employer for administrative purposes, one of which is entering and compiling time sheets.

[11] Around mid-December 2005, the portal changed. According to Ms. Bétournay, employees as of then had to click "OK" to access the register, agreeing to share certain personal information. Several versions of the portal access page were adduced at the hearing. However, according to the grievance (566-34-449) filed by Ms. Bétournay in February 2006, the part of the access page with which she took issue read as follows:

[Translation]

...

*The Self-Serve Portal may be used to gather, modify or view your personal information . . . By clicking "OK" below, you confirm that you agree with this privacy statement and that, in accordance with this statement, you are willing to provide your personal information. **Only** the information necessary for processing employee payroll and benefits is required. The collection and use of personal information comply with the requirements of the Act. In some cases, information may be disclosed without your consent for purposes other than those indicated in this statement, pursuant to subsection 8(2) of the Privacy Act.*

...

[12] Ms. Bétournay did not agree with that statement because she did not want the information disclosed to a third party. According to her, it would have violated section 241 of the *Income Tax Act*, which speaks of communicating and disclosing personal

information. Ms. Bétournay refused to continue to enter her time sheets in the portal because she did not want to click “OK” and agree to the privacy statement.

[13] On December 21, 2005, Ms. Vallée realized that Ms. Bétournay’s time sheets were not up to date. She emailed the grievor, reminding her that she was required to complete them and asking her to complete the missing time sheets for November 26 to December 16, 2005 by 17:00 on December 22, 2005. She stated that, otherwise, disciplinary action could be taken against her. That same day, Ms. Bétournay replied that she would not complete her time sheets unless Ms. Vallée confirmed in writing that she would personally assume the consequences of the disclosure of information referred to on the portal access page. Ms. Bétournay also informed Ms. Vallée that she would agree to enter her time sheets if she had access to the portal without having to click “OK” on the access page. Finally, Ms. Bétournay informed Ms. Vallée that, in the meantime, she would submit paper copies of her time sheets to her supervisor.

[14] By 17:00 on December 22, 2005, Ms. Bétournay still had not completed her time sheets in the manner that Ms. Vallée requested. At the beginning of the day on December 23, Ms. Vallée reiterated her request that the time sheets be completed as requested, unconditionally, by noon that day. According to Ms. Vallée, when she realized at 12:30 that Ms. Bétournay still had not complied with her request, she called the grievor into her office for a disciplinary meeting on January 9, 2006. When the disciplinary meeting finally took place on January 11, 2006, Ms. Vallée imposed a five-day suspension on Ms. Bétournay for refusing to complete her time sheets, without any requirement on her part, for November 26 to December 16, 2005.

[15] Ms. Bétournay indicated that she entered a time sheet in the portal for the week of November 26 to December 2, 2005. She adduced into evidence a time sheet extracted from the portal dated December 6, 2005. It was attached to an email that Ms. Bétournay sent to her supervisor on January 23, 2006. According to Ms. Vallée, Ms. Bétournay did not enter that time sheet into the portal; her supervisor did. Ms. Vallée also testified that, at the end of the disciplinary interview on January 11, 2006, and after being given the five-day suspension, Ms. Bétournay informed her that she completed a time sheet for the week of November 26 to December 2, 2005. Ms. Bétournay did not contradict that part of Ms. Vallée’s testimony.

[16] Ms. Bétournay adduced into evidence emails exchanged with her supervisor that had time sheets attached to them. An email sent at 11:47 on December 22, 2005

contained a time sheet for the week of December 16. An email dated January 9, 2006, contained a time sheet for the week of January 5, 2006. Ms. Bétournay also adduced into evidence her supervisor's reply, dated January 10, 2006, which reads as follows:

[Translation]

*Hello,*

*I acknowledge receiving this information. However, it must be understood that this time sheet, like all the earlier ones of the same type, can in no way be considered as meeting the employer's requirement that employee time must be entered in the self-serve portal.*

[17] Ms. Bétournay proposed adducing into evidence documents about the hearing of her grievances and the employer's response times. I explained to her during the hearing that I would not accept those documents because her grievances were about discipline imposed on her and not how the employer complied with the collective agreement with respect to the grievance process.

[18] Ms. Bétournay also adduced into evidence several documents that showed that problems occurred with the portal in the first months of its use, that several versions existed of the portal access page and that some employees raised questions about the privacy statement.

### **III. Summary of the arguments**

#### **A. For the employer**

[19] The employer affirmed that it had reason to impose discipline on Ms. Bétournay due to her misconduct. The principle of progressive discipline was respected, and the imposed discipline was reasonable, given Ms. Bétournay's repeated insubordination.

[20] Ms. Bétournay knew that she had to complete her time sheets as prescribed by the employer directly in the portal. She decided to stop doing so and assumed a right to which she was not entitled. The employer ordered her to comply with its directives and to complete her time sheets as prescribed. The order was clear, as was Ms. Bétournay's refusal to comply with it. If Ms. Bétournay did not agree with the order that she was given, she should have complied with it first and then filed a grievance to contest it. She clearly did otherwise. She sought justice on her own.

[21] In November 2005, following three successive disciplinary actions, which were a written reprimand and one- and three-day suspensions, Ms. Bétournay decided to comply with the employer's directives and to complete her time sheets as prescribed. A few weeks later, Ms. Bétournay once again refused to complete her time sheets as prescribed, this time to protest the privacy statement on the portal access page. Ms. Bétournay was then found insubordinate and, given the discipline imposed for similar misconduct, the employer was entitled to impose another sanction.

[22] The employer referred to me to the following decisions: *Chauvin v. Deputy Head (Offices of the Information and Privacy Commissioners of Canada)*, 2012 PSLRB 66; *Rioux v. Treasury Board (Canada Border Services Agency)*, 2011 PSLRB 32; *Focker v. Canada Revenue Agency*, 2008 PSLRB 7; and *Byfield v. Canada Revenue Agency*, 2006 PSLRB 119.

### **B. For Ms. Bétournay**

[23] Ms. Bétournay affirmed that the employer should not have imposed discipline on her because she never objected to completing her time sheets. Instead, she objected to the employer's recommended method for doing so. In addition, she believes that the last disciplinary action was taken for a reason different from the first three. Thus, the principle of progressive discipline does not apply because the reasons for refusing to complete the time sheets in the prescribed manner were not the same.

[24] Ms. Bétournay believes that the employer had no right to force her to complete time sheets. She based that belief on clause 8.01 of the collective agreement, which states that monthly attendance registers specifying only overtime or absences could have been required. Consequently, she feels that she was fully entitled to not complete the time sheets to account for her work time by activity or file. Thus, the employer could not have imposed discipline for her refusal to complete the time sheets in its prescribed manner. Nevertheless, beginning in November 2005, Ms. Bétournay began to comply with the employer's directives.

[25] Ms. Bétournay's second refusal to complete her time sheets as the employer prescribed was not related to the first refusal. To her, this refusal arose from completely different reasons. Ms. Bétournay did not agree with the privacy statement on the portal access page that appeared in December 2005. She did not want the information that she entered in the portal disclosed to a third party. According to her,

it would have violated section 241 of the *Income Tax Act*. In short, the employer was asking her to break a law, which it clearly could not ask her to do. On that point, Ms. Bétournay referred me to *Chauvin*.

[26] Since the reasons for the refusal to enter time sheets in the portal in December were not the same as those for the previous refusals, Ms. Bétournay believes that the employer could not have imposed more severe discipline, namely, a five-day suspension, as it did in January 2006. Furthermore, she proposed viable options to the employer, which refused to cooperate by rejecting them.

#### **IV. Reasons**

[27] Ms. Bétournay's first grievance is about a written reprimand. During the hearing, I informed her that I did not have jurisdiction to hear that grievance because the discipline did not involve a suspension or financial penalty. However, I had jurisdiction to hear the three other grievances, about the one-, three- and five- suspensions imposed by the employer, respectively, between October 2005 and January 2006. The employer suspended Ms. Bétournay because it believed that she refused to complete her time sheets as prescribed and because she was insubordinate.

[28] The employer had the burden of proving that Ms. Bétournay was insubordinate. According to the case law, insubordination occurs when an employee refuses to do something that the employer legally requires him or her to do. As I indicated in *Chauvin*, the employer must prove that the employee received an order, that the order was clearly given to the employee by a person authorized to give it and that the employee refused to comply with it. The obligation to comply with an order does not apply if carrying it out would risk the employee's health or safety or would involve the employee in unlawful or illegitimate activities.

[29] Most of the facts adduced into evidence by the parties were not contested by the other party. The facts show that Ms. Bétournay was insubordinate and that the employer was entitled to take disciplinary action against her.

[30] After first asking Ms. Bétournay verbally, Ms. Vallée made a written request that she produce her time sheets, as prescribed by the employer. Ms. Bétournay did not, and Ms. Vallée gave her a written reprimand. On October 19, 2005, Ms. Vallée asked Ms. Bétournay whether she had completed her time sheets. The grievor replied that she had not. On October 24, 2005, the time sheets still had not been completed. Ms. Vallée



then imposed a one-day suspension on the grievor. Ms. Vallée met with Ms. Bétournay again on October 28, 2005 and reiterated her request to complete the time sheets. Since Ms. Bétournay did not complete them, Ms. Vallée imposed a three-day suspension on her on October 31, 2005. On November 9, 2005, Ms. Bétournay agreed to enter her time sheets in the portal according to the employer's established procedure. Then, as of mid-December, she once again refused to enter her time sheets in the portal, this time because she did not want to agree to the privacy statement on the portal access page. On January 11, 2006, Ms. Vallée imposed another suspension, of five days, on the grievor for refusing to complete her time sheets for November 26 to December 16, 2005. Ms. Bétournay claimed that she completed her time sheet for the week of November 26 to December 2, 2005, as prescribed by the employer.

[31] That analysis of the facts shows that Ms. Bétournay refused to complete her time sheets in the employer's prescribed manner. Ms. Vallée, the assistant director to whom she reported through her supervisor, clearly gave her the order more than once. Ms. Bétournay claimed that, pursuant to clause 8.01 of the collective agreement, the employer could not force her to complete time sheets for time spent on different activities. On that point, she admitted that she refused to comply with the employer's directives between August and November 2005. Therefore, she admitted to being insubordinate. She took it upon herself to decide how the employer should apply the collective agreement, without her union's support. Even though her interpretation of clause 8.01 was correct, she should not have acted as she did, since she did not show that complying with the employer's directives would have risked her health or safety or that she was being asked to commit an unlawful act.

[32] After discipline was imposed three times, Ms. Bétournay complied with the employer's directives in November 2005. Then, in December, she again refused to complete her time sheets, this time because she did not agree with the privacy statement on the portal access page.

[33] Ms. Bétournay had no right to refuse to follow the employer's instructions on the pretense that those instructions did not comply with the collective agreement or because she did not want to agree to the privacy statement. Instead, she should have complied with the instructions first and contested them later. She did not have the right to take justice into her own hands. By acting how she did, Ms. Bétournay was

insubordinate. She refused to comply with the clear and repeated instructions that the employer's authorized representative gave to her.

[34] Ms. Bétournay claimed that her refusal in December 2005 to complete her time sheets as the employer required differs from her first refusal. It matters little. Between September 2005 and January 2006, the employer imposed discipline on Ms. Bétournay for refusing to complete her time sheets as prescribed. The employer took issue with Ms. Bétournay's repeated refusals to follow instructions rather than her insubordination.

[35] Ms. Bétournay submitted that she completed her time sheet for the week of November 26 to December 2, 2005, as prescribed by the employer. The employer did not agree and imposed a suspension on her for not completing her time sheets as prescribed for November 26 to December 16, 2005. Even though Ms. Bétournay's version was correct, the fact remains that she was insubordinate by not submitting her time sheets as prescribed for two of the three weeks at issue. Therefore, it in no way changes the seriousness of her misconduct, especially since discipline had already been imposed for similar infractions from earlier weeks.

[36] Ms. Bétournay did not want the information she entered in the portal disclosed to a third party. According to her, it would have violated section 241 of the *Income Tax Act*. Therefore, to her, the employer asked her to break a law, which it clearly could not ask her to do. After carefully analyzing the part of the privacy statement on the portal with which Ms. Bétournay took issue (see paragraph 11), and after considering her related arguments, I still do not see where the problem lies, especially how agreeing to the statement would have violated the *Income Tax Act*. Nothing submitted to me led me to believe it. Therefore, Ms. Bétournay did not meet her burden of proof.

[37] The employer complied with the principle of progressive discipline by successively imposing a letter of reprimand and then one-, three- and five-day suspensions. In addition, since insubordination is serious, particularly when it is repeated and persists even after discipline is first imposed, the suspensions imposed were reasonable given the seriousness of the transgressions.

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

*(The Order appears on the next page)*

**V. Order**

[39] The grievances are dismissed.

November 30, 2012.

PSLRB Translation

**Renaud Paquet,  
adjudicator**