

Date: 20120323

File: 566-02-5335

Citation: 2012 PSLRB 35



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**HORIA BELCEA**

Grievor

and

**DEPUTY HEAD  
(Department of Finance)**

Respondent

Indexed as  
*Belcea v. Deputy Head (Department of Finance)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** Stephan J. Bertrand, adjudicator

***For the Grievor:*** Himself

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

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Heard at Ottawa, Ontario,  
February 7, 2012.

## REASONS FOR DECISION

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### **Individual grievance referred to adjudication**

[1] On May 10, 2010, Horia Belcea (“the grievor”) began working as an economist with the Department of Finance (“the respondent”), a position classified EC-02. His letter of offer of employment specified that he was subject to a 12-month probationary period.

[2] On February 25, 2011, the grievor was advised that his employment was being terminated in accordance with subsection 62(1) of the *Public Service Employment Act* (“the *PSEA*”), enacted by sections 12 and 13 of the *Public Service Modernization Act*, S.C. 2003, c. 22. The grievor’s alleged contravention of the departmental and the Treasury Board’s *Policy on the Use of Electronic Networks* was cited by the respondent as the reason for rejecting the grievor on probation.

[3] On March 29, 2011, the grievor grieved his rejection on probation. He referred his grievance to adjudication as referring to a disciplinary termination.

### **Events leading up to the hearing**

[4] The respondent raised a preliminary objection to an adjudicator’s jurisdiction, in which it submitted that the grievor’s employment was terminated in accordance with the *PSEA*.

[5] On August 11, 2011, the parties were contacted by the Registry of the Public Service Labour Relations Board (“the Registry”) to ascertain their availability for a hearing on February 7 to 10, 2012. Those dates were confirmed in the Registry’s letter of September 9, 2011, in which the parties were notified that the dates were considered “final.” At that time, the grievor was represented.

[6] A pre-hearing conference was convened by me on October 25, 2011 to discuss the jurisdictional issue. Although the grievor did not attend, his representative did and participated fully in the discussions that ensued. At my request, the grievor’s representative filed additional documents in support of the grievance, which demonstrated that he was actively representing the grievor and communicating with him. At no point during the pre-hearing conference did the grievor’s representative raise the grievor’s unavailability for the scheduled hearing dates. He, in fact, confirmed the grievor’s knowledge of the hearing dates.

[7] On January 20, 2012, the grievor's representative informed the Registry that he was withdrawing his representation due to the grievor's continued failure to respond to his queries about his willingness to pursue his grievance.

[8] A second pre-hearing conference was convened by me on January 30, 2012. Numerous efforts to notify the grievor of this conference were attempted by the Registry, including two priority post letters, an email and a telephone call. However, the grievor did not attend; nor did anyone appear on his behalf. Canada Post tracking information slips revealed that the Registry's first priority letter was left at the grievor's last known address and that its second letter was never picked up despite the delivery of a notice card telling the grievor where he could retrieve it.

### **Hearing**

[9] The grievor also failed to appear at the hearing on February 7, 2012, although he had been properly notified. I note that on September 9, 2011, the grievor's representative was advised that the hearing of this matter was scheduled to proceed from February 7 to 10, 2012, and that those dates were considered "final". I also note that on January 4, 2012, a notice of hearing was sent to the grievor's representative and referred to the scheduled hearing dates of February 7 to 10, 2012. The grievor had indicated in his grievance presentation form that he was represented and never advised the Registry of any change in that regard. Any notice by the Registry to the grievor's representative until January 20, 2012 was proper notice to the grievor.

[10] The respondent attended the hearing and submitted that the grievance should be dismissed on the basis that the grievor had abandoned his grievance. For the reasons that follow, I granted that request.

[11] According to the respondent, the grievor has displayed all the hallmarks of someone abandoning their case. He has stopped communicating with his own representative and has failed to confirm his willingness to pursue his grievance, despite his representative's requests for such a confirmation. He has failed to respond to the several emails of the respondent's counsel. He has failed to respond to the Registry and has made no effort to provide the Registry or the respondent with an alternate address or telephone number.

[12] On January 25, 2012, after the grievor's representative withdrew, counsel for the respondent emailed the grievor to obtain confirmation of whether he intended to proceed with his grievance and to seek certain clarifications. The email was sent to the two addresses previously provided by the grievor. The grievor did not respond. On January 26, 2012, counsel for the respondent tried calling the grievor at the two telephone numbers he had previously provided but received the same message from both numbers: "The person you are calling is not available, please try again." I note that this message was identical to the one that the Registry officer received when he attempted to reach the grievor by telephone and that no messages could be left for the grievor. Following the January 30, 2012 pre-hearing conference, counsel for the respondent once again emailed the grievor and requested the courtesy of a reply, which did not occur. Counsel for the respondent again attempted to call the grievor on January 30, 2012, February 2, 2012 and February 6, 2012 and received the same automated message as previously received on each attempt. According to the respondent, that clearly demonstrates that the grievor has no interest in pursuing this matter. It also reveals the grievor's complete lack of courtesy to his representative, to the respondent and to the adjudicator.

[13] The respondent submitted that the grievance should be considered abandoned and that, accordingly, it should be dismissed.

### **Reasons**

[14] The grievor was notified of the hearing dates on four separate occasions, by letters from the Registry to his representative dated August 11, 2011 and September 9, 2011 and by a notice of hearing dated January 4, 2012. A subsequent notice of hearing was sent to the grievor on January 20, 2012 by email. The Registry was using an email address provided by the grievor. No notice of change of email address was ever received by the Registry. It was the grievor's duty to notify the Registry of any change of email address. The notices of hearing specifically contained a warning to the effect that, if a party failed to attend the hearing, the adjudicator could dispose of the matter on the evidence and representations placed before it without further notice to that party. Since the grievor was properly notified of the hearing dates through prior correspondence with his representative, since he never requested a postponement of the proceedings and since he failed to attend the hearing without providing any justification, I proceeded with the hearing in his absence.

[15] The evidence and representations that the respondent placed before me clearly established that the grievor had received notice of the hearing scheduled for February 7 to 10, 2012, that his representative attempted to obtain instructions, without any success, that counsel for the respondent attempted on numerous occasions to contact him at the email addresses and telephone numbers that he had provided, without success, and that the Registry was equally unsuccessful in obtaining a response from the grievor, despite numerous attempts of its own. The Registry stated expressly in several of its correspondence to the grievor that it was his responsibility to inform the Registry of any change in address or telephone number. No such change was ever communicated to the Registry or to the respondent.

[16] The recent case law dealing with rejection on probation suggests that once the deputy head has discharged an initial onus regarding the probation period and the provision of notice or payment in lieu of notice, the grievor bears the burden of showing that the termination of his employment was a contrived reliance on the *PSEA* or that it was a sham or a camouflage. In doing so, the grievor must establish that there were no legitimate “employment-related reasons” for the termination or that it was not based on a bona fide dissatisfaction as to his suitability for the position for which he had been hired. The grievance form alone does not come close to containing any allegation that could meet that burden. In fact, the grievance form does not even allege bad faith, a sham or a camouflage by the respondent. And even if the grievor had made such allegations, evidence would still have been required to meet the applicable burden, which could have been challenged by the respondent through cross-examination or counter evidence at the hearing.

[17] Unfortunately, despite the efforts deployed by the grievor’s representative, the respondent and the Registry to contact him, the grievor made no attempt to contact anyone. Undoubtedly, that demonstrates no interest on his part in advancing his grievance. I can conclude only that the grievor does not intend to pursue the adjudication of his grievance and that, for all intents and purposes, he has abandoned his grievance.

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

*(The Order appears on the next page)*

**Order**

[19] The grievance is dismissed.

March 23, 2012.

**Stephan J. Bertrand,  
adjudicator**