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File: 566-02-3365

Citation: 2012 PSLRB 67

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

CHANDRASHAN PREMAKANTHAN

Grievor

and

DEPUTY HEAD
(Treasury Board)

Respondent

Indexed as
Premakanthan v. Deputy Head (Treasury Board)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Stephan J. Bertrand, adjudicator

For the Grievor: Jeremy Wright, counsel

For the Respondent: Léa Bou Karam, counsel

Heard at Ottawa, Ontario,
December 12 to 14, 2011.

I. Individual grievance referred to adjudication

[1] On September 12, 2008, Chandrashan Premakanthan ("the grievor") began working as a research officer with the Public Service Human Resources Management Agency of Canada, a position classified ES-02. A significant government-wide structural change that took place in early 2009 resulted in the amalgamation of the Public Service Human Resources Management Agency of Canada with the Treasury Board of Canada Secretariat ("TBS" or "the respondent"), effective March 2, 2009.

[2] The grievor's letter of offer of employment specified that his full-time indeterminate appointment was subject to a 12-month probationary period.

[3] On August 19, 2009, the grievor was advised that his employment was being terminated in accordance with subsection 62(1) of the *Public Service Employment Act* (*PSEA*), enacted by sections 12 and 13 of the *Public Service Modernization Act*, S.C. 2003, c. 22. The grievor's alleged inadequacies in the quality of his work, inability to meet critical deadlines, and inability to abide by leave and recording practices were cited by the TBS as the reasons for rejecting him on probation.

[4] On September 18, 2009, the grievor grieved his rejection on probation. He referred his grievance to adjudication as a disciplinary termination covered by paragraph 209(1)(*b*) of the *Public Service Labour Relations Act* (*PSLRA*), enacted by section 2 of the *Public Service Modernization Act*. 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] Although the grievance also raised an issue involving the interpretation or application of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, that issue was abandoned at the hearing.

II. Summary of the evidence

[6] The respondent called two witnesses, Mary McLaren and Richard Roberts, and introduced nine documents as evidence. The grievor testified on his own behalf and introduced 11 documents as evidence. He did not call any other witnesses.

A. Ms. McLaren's testimony

[7] Ms. McLaren was the first witness to testify, in great part to discharge the respondent's initial onus of establishing the probation period and the provision of notice or payment in lieu of notice. She was, at the relevant time, an executive director of the respondent's Human Resources division. She signed the rejection on probation letter of August 19, 2009. According to her, she had, over the last 35 years, been involved in several rejections on probation and was very familiar with the factors to be considered in such cases.

[8] Ms. McLaren confirmed that the grievor's employment was subject to a 12-month probation period, as evidenced by a letter of offer of employment that the grievor accepted on September 12, 2008. She explained that, in the applicable chain of command, Mr. Roberts, Director of Human Resources Planning and Coordination, reported directly to her, and that Karine Allard, a senior advisor, Performance Management and Succession Planning who supervised the grievor, reported to Mr. Roberts.

[9] Ms. McLaren first became aware of the grievor's performance issues in spring 2009, when Mr. Roberts approached her and raised concerns about inadequacies in the grievor's quality of work, his inability to meet critical deadlines, and his inability to abide by leave and recording practices, which had resulted in management requiring the grievor to report his arrival and departures via emails to Mr. Roberts.

[10] Ms. McLaren indicated that she did not immediately act upon Mr. Roberts' concerns because he was keeping her informed of his attempts to assist the grievor, to monitor his progress and to extend deadlines when possible.

[11] Ms. McLaren added that she eventually determined that, based on the information she had gathered from Mr. Roberts, Ms. Allard and Paul Philippe, who had replaced Mr. Roberts in July 2009 following Mr. Roberts' departure, the grievor's performance was not improving and would likely not improve in the future, making him unsuitable for the position he was holding.

[12] Ms. McLaren testified as to her understanding of the three main reasons for rejecting the grievor on probation. First, she referred to his inability to meet critical deadlines in three specific projects, which were (1) the Fourth Quarter (Q4) Dashboard

Report; (2) the EX Talent Management Exercise; and (3) the Assistance in Learning project. Second, she referred to the grievor's poor quality of work, particularly in connection with the Q4 Dashboard Report and with the EX Talent Management Exercise Project. Third, she referred to the grievor's inability to abide by the respondent's leave procedure and recording practices. Although she admitted in cross-examination that she had never directly supervised or witnessed any of the grievor's alleged shortcomings, she felt that the information regularly relayed to her by her directors and managers convinced her that his performance was unsatisfactory and that he was unsuitable for the position he had been offered in September 2008. She also considered the fact that the grievor had been offered assistance on more than one occasion and had refused, that a project had to be completed by others while he was away on the deadline date, and that another project, the Q4 Dashboard Report, still had not been submitted and was two months late when she rejected him on probation.

[13] Ms. McLaren confirmed that her letter of August 19, 2009 was hand-delivered to the grievor on that day and that he received one month's salary in lieu of notice. She insisted that quality work and meeting deadlines were especially important to her directorate because of its mandate, which is to provide federal departments, agencies and institutions with the required tools to achieve efficient and innovative people management as well as high-quality workforces and workplaces able to serve the federal government and deliver desired results for Canadians.

B. Mr. Roberts' testimony

[14] Mr. Roberts reported directly to Ms. McLaren. Like her, he had a long public service career, which ended on June 30, 2009, after 35 years.

[15] As a result of the amalgamation, the grievor reported to Mr. Roberts, who supervised him for approximately four months, from February 2009 to the end of June 2009. Until April 2009, the grievor reported directly to Mr. Roberts, at which time Ms. Allard was appointed to a previously vacant intermediate supervisor position. From then on, the grievor reported directly to Ms. Allard but continued to interact with Mr. Roberts for a number of projects.

[16] Mr. Roberts testified that the first issues brought to his attention were the grievor's hours of work and the recording of his leave transactions, which eventually

led to several meetings to address them and to a requirement for the grievor to report his arrivals and departures. He referred to an example in which the grievor had been absent for two days on March 25 and 26, 2009 and submitted his leave request form by hard copy only on May 20, 2009, despite several reminders to do so electronically. According to Mr. Roberts, the form was posted electronically only in June 2009. The other area of concern was that the grievor often rearranged his hours of work without management's authorization. The requirement to be notified of the grievor's arrivals and departures was instituted on April 11, 2009 and was kept in place until June 23, 2009, once the grievor agreed to abide by certain conditions for his hours of work and leave reporting.

[17] Mr. Roberts also testified about several projects that had been assigned to the grievor, including the three previously mentioned projects. He stated that he noted at an early stage inadequacies in the grievor's quality of work and concluded that he would have to carefully monitor the grievor's work in the future. Mr. Roberts specifically referred to reports containing incomplete data or obvious mistakes. According to him, those inadequacies were brought to the grievor's attention at several work-review meetings and were subsequently reported to Ms. McLaren at bilateral meetings.

[18] Mr. Roberts also provided a number of examples in which the grievor was unable to meet critical deadlines that had been clearly communicated to him. He referred to an assignment for which the grievor was expected to prepare a PowerPoint presentation on the demographics of the EX population, which he qualified as a fairly simple task. He indicated that the objective was to submit a presentation that contained 10 tables and graphs; that the presentation would be submitted to a human resources committee on May 20, 2009; that a first draft was due on May 7, 2009 for review and corrections; and that a final draft was due on May 15, 2009. According to Mr. Roberts, the grievor submitted nothing by the May 7 deadline. He added that only 3 of the expected 10 tables were submitted on May 14, 2009; that, since the grievor was on leave on the May 15 deadline, two other employees were brought in to attempt to finalize the presentation; that the presentation ended up containing only 4 tables and lacked key analytical comments; and that the quality of the product that was submitted to the committee was barely acceptable. An email that was filed as an exhibit (Exhibit G-6) showed that the grievor requested some of the data required for

the presentation from a third party only on May 14, 2009, one day before the final deadline.

[19] Between May 5 and 19, 2009, Mr. Roberts met with the grievor five times to discuss his workload, to review his work, to obtain updates and to discuss the deadline issue. Mr. Roberts indicated that he offered assistance to the grievor but that his offers were declined.

[20] Mr. Roberts also referred to another example in which the grievor was asked to revise a training list of employees, which contained information about training received by those employees, and to transfer that data to his TBS counterpart, who had been assigned the task of monitoring both groups of employees following the amalgamation. Although the request to transfer the information had been made at the end of February 2009, the task was not completed until mid-May 2009, despite numerous reminders. According to Mr. Roberts, this relatively simple assignment should have been completed within two weeks and should never have taken the grievor two-and-a-half months. He added that another similar task, assigned at approximately the same time and involving tracking employees with learning plans, was handled by the grievor in a similarly unsatisfactory fashion.

[21] Because of the grievor's inadequacies and allegedly missed deadlines, Mr. Roberts insisted on being provided with a written work plan for a project that he assigned to the grievor on May 24, 2009. The project dealt with the Q4 Dashboard Report and had a deadline of June 15, 2009. According to Mr. Roberts, it did not involve sophisticated statistical analysis and would normally be completed within two weeks. Mr. Roberts added that the grievor had been working with workforce data since spring 2008, that he had access to a training manual on quarterly dashboard reports and that he also had access to previous examples of quarterly dashboard reports. Despite everything, the grievor failed to provide Mr. Roberts with a draft report by June 7, 2009 and did not provide him with the final report by the end of June 2009, at which time Mr. Roberts ceased working for the respondent. According to Mr. Roberts, assistance was offered to the grievor, but he politely and firmly refused, claiming that he was able to overcome certain difficulties he had encountered, which he never clearly articulated. Eventually, Mr. Roberts was forced to advise Ms. McLaren that the Q4 Dashboard Report would not be submitted by the deadline, which resulted in some disappointment on her part.

[22] Mr. Roberts indicated that he met with the grievor at least 10 times between March 30, 2009 and June 24, 2009 and that he often reiterated his concerns with the quality of the grievor's work and his failure to meet critical deadlines. He added that, although he listened to the grievor's reasons for his shortcomings, he felt that none of those reasons justified the inadequate performance. In particular, he felt that the duplication of data associated with the amalgamation was a factor that could account for some additional time but that it had been considered when the deadlines were set.

[23] Finally, Mr. Roberts confirmed that his concerns about the grievor's performance were regularly communicated to Ms. McLaren during bilateral meetings, until his departure. He admitted in cross-examination that he never reviewed the grievor's performance because he had supervised him for too short a time for the 2008-2009 fiscal year and that, since the grievor was terminated in August 2009, he could not be assessed for the 2009-2010 fiscal year.

C. <u>The grievor's testimony</u>

[24] Although the grievor was hired on an indeterminate basis in September 2008, he was no stranger to the public service. He had previously been employed, from time to time, with several federal departments, both as a student and as a casual employee, since 2003.

[25] The grievor commenced his indeterminate employment with Public Service Human Resources Management Agency of Canada on September 12, 2008. As a result of the 2009 amalgamation, he started to report to a new supervisor, Ms. Allard, in April 2009. Before that, during a transitional period, the grievor reported directly to Mr. Roberts. According to the grievor, that was when issues about his performance and his hours of work began to be raised.

[26] According to the grievor, his attendance at work and how he reported his leaves of absence were not problematic. He indicated that his failure to properly report a leave of absence in March 2009 was due to the fact that he was unfamiliar with the leave procedure being used by his new managers after the amalgamation, that he encountered technical difficulties trying to report his leave electronically and that he eventually submitted the required forms. He resented the fact that he had been required to report his arrivals and departures for approximately two months and stated that that requirement was eventually lifted without incident. He added that he

was also compliant in all subsequent leave transactions and that this issue, according to him, had been resolved.

[27] The grievor provided extensive details of his involvement in the three projects referred to by Ms. McLaren. In essence, he testified that he performed his duties as best he could in light of the circumstances. Although he did not strongly dispute that some of his work was submitted late or might have been submitted with less than the desired quality, he attributed those results to the following main recurring issues: the fact that he could not consult the person who had been previously responsible for preparing the quarterly dashboard reports since she had left the TBS; that he had to rely on instructional materials to prepare the quarterly dashboard reports; that, following the amalgamation, he frequently had to obtain two different sets of data, which needed to be assimilated, thus duplicating the work; that many of the projects he was handling required him to request information from third parties and to wait for that data; that some of the data he received was provided in a format that required reformatting; and that other ad hoc projects sometimes had to be dealt with at the same time. The grievor admitted in cross-examination that some of the ad hoc projects were simple and could be completed in a relatively short period, while others were more time consuming, one of which required his attention for two weeks in July 2009.

[28] The grievor testified that he submitted the Q4 Dashboard Report on August 19, 2009, when he was rejected on probation. However, he could not provide any written documentation to support his allegation. The Q4 Dashboard Report was not filed as evidence; nor were any emails confirming its delivery.

[29] The grievor admitted that he had been offered assistance but indicated that his refusal was based on the fact that his supervisor, Ms. Allard, was not good with statistics or technical data and that he had lost confidence in Mr. Roberts since he had allegedly once counselled him to “fudge” the data in a report he was preparing, something that Mr. Roberts denied doing and qualified when he testified. The grievor described himself as the only subject expert in his unit.

[30] The grievor stated that, although he had many meetings with management about the deadlines and leave issues, he could not recall ever being told that management was dissatisfied with his performance. He added that no performance appraisal had been conducted before his termination. In cross-examination, the grievor was asked questions about 15 meetings that had been scheduled with his supervisors

between March 2009 and August 2009. Although he provided very detailed and precise information about his performance during the very same period in his examination-in-chief, he could not recall the purposes of those meetings or what was discussed during them in cross-examination.

III. Summary of the arguments

A. For the respondent

[31] The respondent argued that I have no jurisdiction over this matter since the grievor was terminated in accordance with the *PSEA* for employment-related reasons. The respondent argued further that the evidence clearly established that the reasons for terminating the grievor while on probation were solely related to his job performance and that the *PSLRA* specifically prohibits the referral to adjudication of such a matter.

[32] The respondent submitted that, although I am entitled to look into the matter to ascertain that the case is really what it appears to be, rather than a sham or camouflage, I cannot substitute my judgment for that of the respondent. The respondent submitted further that I do not have to find that each and every one of its listed reasons for rejecting the grievor is well founded, as one employment-related reason is sufficient.

[33] According to the respondent, all that is required of a deputy head is proof that the rejected employee was on probation, that the probationary period was still in effect when the rejection occurred, and that notice or payment in lieu was provided. There is no requirement for a deputy head to show cause. Rather, it is incumbent on the rejected employee to demonstrate that the employer's decision was not based on a bona fide dissatisfaction as to his or her suitability for employment and that it amounted to a contrived reliance on the *PSEA*, a sham or a camouflage.

[34] The respondent submitted that it met its burden by establishing that the grievor was on probation, that the probationary period was still in effect when he was rejected, that payment in lieu of notice was provided to the grievor and that the respondent's decision was based on three employment-related reasons. On the other hand, the grievor failed to demonstrate that the respondent's decision was not based on a bona fide dissatisfaction as to his suitability for employment and that it was a sham or camouflage. According to the respondent, the fact that the grievor disagreed with the

respondent's assessment of his performance did not make its decision a sham or camouflage.

[35] The respondent argued that, although a deputy head is not obligated to warn an employee that certain conduct does not meet the employer's standard before terminating his or her employment, and is not obligated to attempt to correct such conduct, the respondent nevertheless met with the grievor on several occasions between March 2009 and August 2009 and reminded him of his shortcomings and of its dissatisfaction.

[36] According to the respondent, the reasons for terminating the grievor were legitimately related to his employment, particularly his job performance.

[37] The respondent cited the following decisions in support of its arguments: *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (C.A.); *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529; *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134; *Ducharme v. Deputy Head (Department of Human Resources and Skills Development)*, 2010 PSLRB 136; *McMath v. Deputy Head (Correctional Service of Canada)*, 2011 PSLRB 42; *Dyck v. Deputy Head (Department of Transport)*, 2011 PSLRB 108; *Salib v. Canadian Food Inspection Agency*, 2010 PSLRB 104; *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33; and *Rousseau v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 91.

B. <u>For the grievor</u>

[38] The grievor argued that the respondent is obligated to deal with its employees in a candid, reasonable, honest and forthright manner, and that a decision to proceed with a rejection on probation should be based on objective and demonstrable grounds and must not be made arbitrarily, in a discriminatory manner or in bad faith. The grievor argued further that the respondent's reasons for rejecting an employee must not only be employment related; they must also be legitimate.

[39] The grievor submitted that Ms. McLaren's decision was both arbitrary and made in bad faith. According to the grievor, the fact that she did not personally supervise him and that there is no evidence that the individuals who did supervise him recommended his dismissal speaks volumes. Alternatively, the grievor argued that the

respondent failed to demonstrate a legitimate dissatisfaction as to his suitability for employment through objective and demonstrable evidence.

[40] According to the grievor, the attendance and leave issues should not have been considered legitimate factors by the respondent since they were resolved in June 2009, when it concluded that he was compliant with the leave and attendance procedures.

[41] As for the performance issues referred to by the respondent in the letter of rejection on probation, the grievor offered a number of justifications for the alleged shortcomings, including the fact that he encountered genuine unforeseen challenges in many of the projects assigned to him, that he was imposed unrealistic deadlines, that he was not provided with sufficient training, that the respondent offered no sincere assistance and that it displayed a rigid approach to the unforeseen contingencies he encountered.

[42] In essence, the grievor submitted that the respondent did not deal with him in a candid, reasonable, honest and forthright manner, and that its decision to reject him while on probation was not based on objective and demonstrable grounds. Instead, it was made arbitrarily and in bad faith. The grievor seeks reinstatement, together with all applicable lost pay and benefits. In the alternative, he seeks a monetary award representing his past and future losses.

[43] The grievor cited the following decisions in support of his arguments: *Jacmain v. Attorney General (Can.) al.,* [1978] 2 S.C.R. 15; *Dunsmuir v. New Brunswick,* 2008 SCC 9; *Tello*; *Honda Canada Inc. v. Keays,* 2008 SCC 39; *Dhaliwal v. Treasury Board (Solicitor General Canada — Correctional Service)*, 2004 PSSRB 109; *Morissette v. Treasury Board (Department of Justice),* 2006 PSLRB 10; and *Rousseau*.

IV. Reasons

[44] The jurisdiction of an adjudicator appointed under the *PSLRA* in cases of rejection on probation is governed by well-established legal principles, which are covered in *Jacmain*, *Penner* and *Leonarduzzi,* and more recently in *Tello*. First, a deputy head may reject an employee at any time while on probation, without having to show cause, as long as notice or payment in lieu of notice is provided. That is specifically stipulated by section 62 of the *PSEA* as follows:

> ***62.*** *(1) While an employee is on probation, the deputy head of the organization may notify the employee that his or her employment will be terminated at the end of*
>
> *(*a*) the notice period established by regulations of the Treasury Board in respect of the class of employees of which that employee is a member, in the case of an organization named in Schedule I or IV to the* Financial Administration Act . . .
>
> . . .
>
> *and the employee ceases to be an employee at the end of that notice period.*
>
> *(2) Instead of notifying an employee under subsection (1), the deputy head may notify the employee that his or her employment will be terminated on the date specified by the deputy head and that they will be paid an amount equal to the salary they would have been paid during the notice period under that subsection.*

Second, paragraph 211(*a*) of the *PSLRA* excludes from adjudication a termination under the *PSEA*, as follows:

> ***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*; or*
>
> . . .

As a result, an adjudicator has jurisdiction over a rejection on probation that has not been made under the *PSEA* but that is a contrived reliance on the *PSEA*, a sham or a camouflage. Third, the purpose of a probationary period is to allow a deputy head to evaluate an employee's suitability to perform the duties of his or her position. Therefore, where an employee establishes that the rejection on probation is not based on a bona fide dissatisfaction with his or her suitability to perform the duties of his or her position, an adjudicator has jurisdiction over the employee' termination.

[45] In light of those principles, a high threshold must be met by the rejected employee. He or she must demonstrate that, on a balance of probabilities, the deputy head did not possess a bona fide dissatisfaction with his or her suitability to perform the duties of his or her position and that the termination was a contrived reliance on the *PSEA*, a sham or a camouflage. After all, a deputy head should not be allowed to

use the rejection-on-probation process set out in the *PSEA* to camouflage real but illegitimate reasons for termination that are unrelated to a bona fide dissatisfaction with an employee's suitability to perform the duties of his or her position.

[46] In this case, there is no dispute that the grievor was subject to a probationary period, that he was still on probation when he was terminated and that he was afforded pay in lieu of the notice required in paragraph 61(2)(*a*) of the *PSEA*. The deputy head therefore discharged its onus and the burden of proof then shifted to the grievor to establish on a balance of probabilities that the rejection on probation was a contrived reliance on the *PSEA*, a sham or a camouflage.

[47] The TBS' reasons for rejecting the grievor on probation were three fold: inadequacies in the quality of his work, his inability to meet critical deadlines, and his inability to abide by leave and recording practices. When it presented its case, the respondent provided many concrete illustrations of the grievor's shortcomings, which bolstered the essential reasons for which he had been discharged.

[48] I disagree with the grievor's contention that the fact that Ms. McLaren did not personally supervise him and that she did not seek recommendations from the individuals who had supervised him is indicative of bad faith or arbitrariness. In *Syed v. Deputy Head (National Parole Board),* 2012 PSLRB 16, at para 129, an adjudicator commented as follows on that very issue:

> *[129] I also take the view that, contrary to what the grievor argued, the manager who signs the letter of termination is not required to have personally witnessed the incidents or conduct that led to the grievor's termination. What is required is that the manager makes an informed decision, citing the reasons for the termination, whether they are his or her own observations or those of others. The fact that the manager in this case considered documents that he did not author does not make them hearsay. It is common for a probationary employee to have more than one supervisor. To find that the employer was unfair or that it acted in bad faith in its treatment of a probationary employee due to the mere fact that the person who signed the letter of termination did not personally witness the deficient skills or unsuitable conduct is unreasonable and unrealistic. In this case, the employer adduced substantial evidence through the grievor's two supervisors of the reasons for terminating her employment. Documentary evidence was provided in support of their testimony. The grievor did not object to the introduction of the documents in evidence. Thus, there is no*

> *evidence that the employer's reasons for terminating the grievor were deceptive, irrelevant or bad faith.*

[49] I also find it difficult to reconcile the grievor's suggestion that he lacked guidance or training with the fact that he referred to himself as the only subject expert of his team and that he refused assistance on more than one occasion.

[50] The grievor spent a lot of time attempting to convince me that he performed at an acceptable level and that any shortcomings on his part were due to circumstances beyond his control. However, he presented no evidence that established that the TBS acted in contrived reliance on the *PSEA* or that his rejection on probation was a sham or a camouflage. He suggested that, given the fact that he could not be faulted for missing deadlines or for submitting work of questionable quality, I had to assume that the TBS acted in bad faith or that his rejection on probation was a sham or camouflage. In law, bad faith is not presumed; it must be proven. However, the grievor presented no evidence to suggest that the deadlines that had been imposed on his projects were unrealistic or that extraordinary circumstances beyond what can normally be expected in such projects had been unreasonably ignored by the TBS. I was presented with no comparisons. On the other hand, Mr. Roberts suggested that the projects were fairly standard and simple and that the grievor had sufficient tools, including how-to materials and prior examples, at his disposal. No independent evidence, such as an email or internal memo, was presented to support the grievor's suggestion that the deadlines were unrealistic, that he encountered unforeseen challenges or that he required assistance or specific training to be able to perform at the expected level.

[51] Mr. Roberts' testimony that he met with the grievor on several occasions between March 2009 and June 2009 to review his work and performance was not truly challenged by the grievor. After stating that he could not recall if any inadequacies were raised during those meetings, the grievor acknowledged in cross-examination that it was possible that they in fact were raised.

[52] The grievor did not really dispute the respondent's allegation that some of his work was of questionable quality or that it was submitted after the expected deadlines. Rather, he offered explanations that in his mind justified those results. In cases involving rejection on probation, it is not the role of an adjudicator to revisit the appropriateness of the deputy head's dissatisfaction with an employee's suitability to perform the duties of his of her position by reassessing the employee's performance or

behaviour and by substituting the adjudicator's assessment for that of the deputy head; nor is it the role of an adjudicator to assess the employee's performance during his or her tenure or the validity of his or her justifications. The role of an adjudicator is to ensure that the rejection on probation is what it appears to be and that a deputy head's decision to end an employee's employment during a probationary period was not a contrived reliance on the *PSEA*, a sham or a camouflage.

[53] The evidence before me demonstrated that the grievor was repeatedly late in submitting his work and that in one case he did not submit his work at all (the Q4 Dashboard Report), that he refused assistance, that he submitted work of less than acceptable quality, that several meetings were held with him to discuss performance, deadlines and leave issues, and that the TBS expressed its concerns to the grievor during those meetings. Not only did the grievor fail to establish that the TBS had no bona fide dissatisfaction with his suitability to perform the duties of his position, but the evidence tendered showed clear examples of such dissatisfaction.

[54] I have no reason to cast any doubt on Ms. McLaren's motives. She has worked with the public service for over 35 years, most of which in human resources. She has been involved in a fair number of rejections on probation and undoubtedly recognizes the factors that must be considered when contemplating such measure. There is no evidence before me that her decision to reject the grievor was not motivated by bona fide dissatisfaction with his suitability to perform the duties of his position, that it was a contrived reliance on the *PSEA*, a sham or a camouflage.

[55] Whether or not the leave issue was a legitimate basis for rejecting the grievor while on probation may very well be questionable in the circumstances. There is evidence that the grievor was not compliant with the instructions that he had received from Mr. Roberts. He signed his leave application and absence report form for his sick leave of March 25 and 26, 2009 only on May 20, 2009 following repeated compliance requests by Mr. Roberts. On the other hand, the grievor offered justification for the delay and was compliant on subsequent reports. Mr. Roberts even confirmed that, before his departure in late June, the grievor was compliant but added that there were other issues of concern. Those other issues, namely, the inadequacies in the grievor's quality of work and his inability to meet critical deadlines, consisted, in my view, of a bona fide dissatisfaction with the grievor's suitability to perform the duties of his or her position. I agree with the respondent's submission that an employer is not

required to establish that all the reasons cited for the termination were legitimate. One legitimate employment-related reason can be sufficient to provide a bona fide dissatisfaction with an employee's suitability to perform the duties of his or her position. In this case, there were at least two. I am also of the view that although the three projects were not mentioned in the letter of rejection on probation, they did not need to be, since they were merely examples of the grievor's poor performance that were presented with the view of bolstering the essential reasons for which he had been terminated.

[56] Having reviewed all the evidence, I find that the grievor's testimony did not concord with the preponderance of the evidence in the circumstances. Consequently, on a balance of probabilities, I find that the respondent met its burden of proof and that the grievor failed to discharge his resulting burden of establishing that the respondent's decision to reject him on probation was a contrived reliance on the *PSEA*, a sham or a camouflage. Accordingly, I find that an adjudicator does not have jurisdiction over this grievance.

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

(The Order appears on the next page)

V. Order

[58] I declare that an adjudicator does not have jurisdiction over this grievance.

[59] I order this file closed.

June 14, 2012.

Stephan J. Bertrand,
adjudicator