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File: 566-02-5523

Citation: 2012 PSLRB 73



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

ROXANA STAMP

Grievor

and

**DEPUTY HEAD
(Treasury Board)**

Respondent

Indexed as
Stamp v. Deputy Head (Treasury Board)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Linda Gobeil, adjudicator

For the Grievor: Herself

For the Respondent: Josh Alcock, counsel

Heard at Ottawa, Ontario,
April 30 to May 3, 2012.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On September 24, 2010, the Treasury Board (“the deputy head” or “the employer”) hired Roxana Stamp (“the grievor”) to work as an administrative assistant (AS-01) in its Executive and Talent Management Policies Division. In its letter, the employer informed the grievor that she would be subject to a 12-month probationary period. On February 22, 2011, the employer informed the grievor that she was rejected on probation under subsection 62(1) of the *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12, 13 (*PSEA*) and that she would receive one month of salary in lieu of notice.

[2] In its February 22, 2011 letter, the employer indicated that the grievor’s employment was terminated because her performance was unsatisfactory and because she did not meet the requirements of her position. The employer specified that she did not complete her duties in a timely fashion, that she was unable to follow instructions, that she lacked attention to detail, that she lacked respect for her colleagues and that she was insubordinate toward her Director, with whom she had refused to work.

[3] On February 28, 2011, the grievor filed a grievance against her rejection on probation under section 209 of the *Public Service Labour Relations Act (PSLRA)* as enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22. On August 16, 2011, the employer filed an objection to the jurisdiction of an adjudicator of the Public Service Labour Relations Board (“the Board”) to hear this grievance, on the grounds that the grievor’s employment was terminated under section 62 of the *PSEA* and that paragraph 211(a) of the *PSLRA* specifically precludes the referral to adjudication of a termination of employment made under the *PSEA*.

II. Summary of the evidence

[4] The grievor was not represented. On March 28, 2012, a pre-hearing conference was held with the grievor and counsel for the employer to review the proceedings of the upcoming hearing.

A. For the employer

[5] At the hearing, the employer reiterated its objection to jurisdiction and it filed 16 exhibits. Two witnesses testified on behalf of the employer, Ms. Jacqueline Rigg, Director, Human Resources, Department of National Defence, and Katherine Parker,

Executive Director, Talent Management and Leadership Development at the employer. The employer's witnesses were cross-examined by the grievor.

[6] The testimonies of the employer's witnesses can be summarized as follows: there was broad dissatisfaction with the grievor's quality of work and she had interpersonal issues with her colleagues and supervisors.

[7] Ms. Rigg testified that she hired the grievor in September 2010 and that the grievor was then placed on probation for a one-year period (Exhibit E-8). Ms. Rigg indicated that the grievor initially reported to Ms. C. H. Ms. Rigg indicated that, for the first month, the grievor's work was fine. For instance, the grievor, as a member of a group, received a spot award for work done well in her unit. The grievor then thanked Ms. Rigg, calling her the "best Director in the world" (Exhibit E-9). However, in November 2010, it became apparent that the relationship between the grievor and her colleagues, including her direct supervisor, Ms. C. H., as well as the grievor's quality of work, had deteriorated.

[8] Ms. Rigg testified about the grievor being told on three occasions to not update the inventory list, but she did so. The grievor was also asked to have a colleague vet a staff retreat agenda, but did not do it. That resulted in errors in the agenda, which was circulated to numerous other employees. Ms. Rigg indicated that she personally had to correct the agenda and resend it. Ms. Rigg also testified about an incident in which the grievor again went against instructions provided to her about a "mini list" contact. As a result, mistakes were made. Ms. Rigg testified that the grievor was not careful enough with the details of her tasks, resulting in errors.

[9] Ms. Rigg also testified about the grievor's inability to work with her colleagues and about the grievor always thinking that others were trying to take credit for her work. For instance, Ms. Rigg referred to an incident involving inserting boardroom names into the Outlook calendar. The grievor accused other employees of trying to use her idea to get the credit (Exhibit E-5). Ms. Rigg also indicated that the grievor had been hired to work with an experienced and competent AS-01, Ms. M. L. However, according to Ms. Rigg, the relationship between Ms. M. L. and the grievor proved very difficult from the beginning, because the grievor refused to take advice from and listen to Ms. M. L.

[10] As for the grievor's issues with her supervisor, Ms. C. H., Ms. Rigg testified that part of the problem was the grievor's inability to follow instructions and to pay attention to details. In addition, Ms. Rigg indicated the grievor had a tendency to not follow proper hierarchical levels within her organization; she would bring matters to the director or the director general's attention without first going through her manager. That method caused unnecessary disruption and wasted time.

[11] Ms. Rigg indicated that, to improve things, and since the grievor had indicated that she did not like reporting to Ms. C. H. and that she preferred to report to the manager, Stacey Ileleji, Ms. Rigg agreed to the change of supervisors in December 2010. However, Ms. Rigg testified that, despite the change in the reporting relationship and management's attempts to assign the grievor tasks that were simple to accomplish, things did not improve under Ms. Ileleji's supervision. The grievor continued to make mistakes no matter how basic the task.

[12] Ms. Rigg indicated that, from the beginning, she personally talked to the grievor on numerous occasions, trying to help and encourage her. Ms. Rigg testified that, at one point, she decided to go beyond informal discussions with the grievor and to meet on December 6, 2010 with her and her supervisor, Ms. Ileleji, with the goal of improving things. Ms. Rigg indicated that three key issues were discussed at that meeting, which were following instructions, how to work as part of a team and attention to detail. Ms. Rigg testified that the meeting did not go well, that the grievor denied having any performance or interpersonal issues, and that the mistakes or problems were someone else's fault. Ms. Rigg indicated that the grievor would not listen to Ms. Rigg's and Ms. Ileleji's comments and that she refused any feedback.

[13] Ms. Rigg indicated that another attempt was made to improve things and that, since at that point the grievor had expressed to the Executive Director, Ms. Parker, that she no longer wished to work for Ms. Rigg, it was decided that the grievor would be assigned for two months to Ms. G.-M., another director within the division (Exhibit E-16). The assignment letter indicated that the placement's purpose was to provide the grievor with "a position better suited to her aspirations." Ms. Rigg testified that she met at the end of December 2010 with Ms. G.-M. and the grievor to inform the grievor that she was assigned for two months to Ms. G.-M. because of performance issues. Ms. G.-M. was then to provide feedback to the grievor about her performance. Ms. Rigg made the point that she did not brief Ms. G.-M. about what she considered

were the grievor's shortcomings, to allow Ms. G.-M. to provide an unbiased evaluation of the grievor.

[14] Ms. Rigg indicated that, one month after the assignment began, Ms. G.-M. indicated at a director general meeting that she had the same performance issues with the grievor that Ms. Rigg had had and that, despite the fact that she sent the grievor on administrative assistant training, the grievor was still unsuccessful in her work.

[15] Ms. Rigg testified that, at that point, it was clear to management that the grievor, despite all the efforts, was not suitable for the work expected of her and that she had not met the minimum requirements of the position.

[16] Ms. Parker also testified on behalf of the employer. She is an EX-3 with 17 years of experience in the public service. She explained that, at the time of the events at issue, she had two directors reporting to her, Ms. Rigg and Ms. G.-M.

[17] Ms. Parker testified that, on February 22, 2011, she signed the rejection on probation letter for the grievor (Exhibit E-1).

[18] Ms. Parker indicated that the grievor reported directly to her for a brief period at the beginning of her employment in October 2010. Ms. Parker referred to two incidents. In the first, the grievor was asked to print a simple agenda, but she defied the instructions and printed an entire binder of unnecessary documents. Ms. Parker also referred to another situation in which she asked the grievor to order pens, which ended up taking several weeks.

[19] Ms. Parker indicated that, although the grievor reported to one of her directors, she heard often, over the course of the grievor's four months of employment, about her performance issues and her lack of ability to work with colleagues. She heard these comments through management meetings with her directors, Ms. Rigg and Ms. G.-M.

[20] Ms. Parker indicated that, at the grievor's request, they met on December 21, 2010. Ms. Parker indicated that the grievor brought a binder of documents and that she complained about her colleagues. Ms. Parker also indicated that the grievor told her that she did not want to continue to work with Ms. Rigg and Ms. M. L.

[21] Ms. Parker indicated that the grievor had a toxic effect on the workplace, that her relationships with her coworkers were not good, especially with Ms. M. L., who was very experienced and competent, and that the grievor would tell people that they were lucky that they did not work for Ms. Rigg.

[22] Ms. Parker testified that, at the December 21, 2010 meeting, although she advised the grievor to contact the Employee Assistance Program (EAP), she also decided that, in the circumstances, it would be best if the grievor reported to Ms. G.-M. As outlined earlier, she believed that would provide another perspective on the grievor's work and would validate whether she had a personality conflict with Ms. Rigg. Ms. Parker indicated that she wanted to give the grievor another chance to prove herself. Ms. Parker also mentioned that, even with that second chance, it was made clear that, if her performance did not improve under Ms. G.-M.'s supervision, they would have to reassess her.

[23] Ms. Parker testified that, despite the change in directors, she was told during meetings with Ms. Rigg and Ms. G.-M. that the grievor continued to have performance issues. Ms. Parker indicated that that confirmed that the grievor could not perform satisfactorily even under a different director.

[24] Ms. Parker testified that, while working in Ms. G.-M.'s team, the grievor requested another meeting with her in February 2011. At that meeting the grievor complained about one of the assistant deputy minister's (ADM) staff and indicated that, at the end of her two-month assignment with Ms. G.-M., she did not want to return to Ms. Rigg's unit. Ms. Parker indicated that the grievor referred to Ms. Rigg in very harsh terms. Ms. Parker indicated that after the meeting, taking into account that the grievor had performance and interpersonal skills issues and that she did not want to work in the unit to which her position belonged, and after a discussion with her directors, the decision was made to terminate the grievor.

B. For the grievor

[25] The grievor testified and called six witnesses. Counsel for the employer did not cross-examine the grievor or her witnesses.

[26] Katherine Spencer-Ross testified at the grievor's request. She is a Senior Advisor for the employer, working in the same Division from which the grievor was rejected on

probation. In response to a question from the grievor about whether she would need more than three hours to prepare an employee retreat, Ms. Spencer-Ross indicated that, as a senior planner, she is involved with the substance of the material to be covered at retreats, such as the business plan for the organization. Therefore, her work cannot be compared to that of an administrative assistant asked to type an agenda.

[27] Ms. Spencer-Ross testified that she was not aware of a policy preventing administrative assistants from using the colour printer to print agendas. She also could not recall seeing the grievor crying in the washroom. As for Exhibit G-20, an email exchange between the grievor and Ms. M. L, Ms. Spencer-Ross had no comment.

[28] Réa McKay was the grievor's second witness. At the time of the events at issue, she was a deputy director, reporting to Ms. Rigg. She indicated that she was not aware that the unit had a policy of not using the colour printer. In response to a question from the grievor about an alleged mistake that Ms. Rigg made in the identification of the "University of Ottawa," Ms. McKay indicated that she was responsible for that mistake, not Ms. Rigg. In response to most of the grievor's questions, Ms. McKay was either not aware of the situations or was not in a position to comment.

[29] Kim Giron was the grievor's third witness. At the time of the events at issue she was an administrative assistant in Ms. Parker's division. She also indicated that she was not aware of a policy forbidding administrative assistants from using the colour printer. Ms. Giron denied that she had prevented the grievor from accessing her calendar. Ms. Giron acknowledged that she had no problems with the grievor and that she had nothing negative to say about her.

[30] Mary McLaren was the grievor's next witness. She is the Executive Director of Human Resources at the employer. Ms. McLaren signed the third-level grievance reply denying the grievor's grievance. She testified that she never had a discussion with Ms. Parker about "something of a personal nature." She indicated that she rejected the grievance after a discussion with her staff relations advisor and that, despite the fact that this is a difficult situation, she believes that her decision was correct.

[31] Stephanie Mayer was the grievor's fifth witness. She is Administrative Coordinator at the employer. She testified that, at the relevant time, she was working for another director, Steve Dufour. Ms. Mayer testified that she took a course for administrative assistants with the grievor. She acknowledged sending the grievor

documents in an envelope after the grievor's employment was terminated. However, she indicated that the mistake in the spelling of Ms. Stamp's name on the envelope was not hers but that of the United Parcel Service (UPS) individual responsible for delivering the envelope. In response to a question from the grievor, Ms. Mayer recalled receiving a birthday card from her colleagues.

[32] Ms. Ileleji was the grievor's last witness. Ms. Ileleji was an advisor and economist at the employer. At the time of the events at issue, she reported to Ms. Rigg. She testified that, at some point, it was decided that the grievor would no longer report to Ms. C. H. but to her. Asked by the grievor whether she reported to the ADM that the grievor had complained of being mistreated, Ms. Ileleji indicated that she never mentioned it to the ADM. Ms. Ileleji also testified that she did not recall whether someone replaced the grievor after her employment was terminated and that it is possible that she received a birthday card from staff in 2010. Asked about Exhibit E-13, an email sent by the grievor to Ms. M. L. complaining about a work-related request by the latter, Ms. Ileleji indicated that, although it appears that she received a copy of the email, she did not recall seeing the document and had no comment on its content.

[33] Ms. Stamp also testified. She indicated that she started in the public service at the Road and Safety Group within Transport Canada. She was then a term employee. She left that department because it decided to replace her with someone from a pool of candidates. The grievor indicated that problems occurred there. She indicated that people made allegations about her. She arrived at the employer in October 2010. It was her first permanent public service position. The grievor testified that, while working in the Executive and Talent Management Policies Division, bad people hurt her and that the senior executives did not take action to solve the problems.

[34] The grievor testified that, as soon as she arrived at the employer, people began to gossip about her. The grievor indicated that she suspected that someone at Transport Canada had given her new colleagues false information about her. The grievor indicated that her new colleagues were influenced by that information and they began to say bad things about her.

[35] The grievor indicated that all the allegations contained in the rejection on probation letter of February 22, 2011 are false and that her director, Ms. Rigg, and her

assistant, Ms. M. L., did not have the competencies needed for their positions. They did not want her to succeed; it would have made them look bad.

[36] The grievor argued that Ms. Parker had no bona fide reason to terminate her employment and that the allegations in the rejection on probation letter are only a sham or camouflage. The grievor maintained that she has all the necessary competencies and qualities to do the work.

[37] The grievor contended that her rejection on probation was a plot concocted by Ms. Rigg, Ms. G.-M., Ms. C. H., Ms. Parker and others to get rid of her so that they could fill her position with their friends.

[38] The grievor denied doing anything wrong. She testified that she had initiative and that she was a hard worker, with bright ideas. For instance, she wanted to improve how the names of the two boardrooms were inserted into the Outlook calendar. She did not get permission to do it, probably because others wanted to steal her idea and claim the credit.

[39] The grievor testified that the employer did not introduce any documentary evidence supporting the allegations that she did anything wrong. Moreover, her managers never called her to a meeting to let her know that something was wrong with her work.

[40] The grievor concluded her testimony by reiterating that she did good work, she has the skills to do the work, she is a skilled computer user and she liked to promote a good image for the organization.

III. Summary of the arguments

A. For the employer

[41] Counsel for the employer reiterated his objection to my jurisdiction. He argued that this is a case of rejection on probation under section 61 and subsection 62(1) of the *PSEA*. Also, section 211 of the *PSLRA* prevents the referral to adjudication of grievances about terminations of employment made under the *PSEA*.

[42] Counsel for the employer argued that the employer demonstrated that the grievor was, at the time of the termination, still on a 12-month probation period (Exhibit E-8), that she received a letter on February 22, 2011 rejecting her on

probation (Exhibit E-1), that she was provided with one month of salary in lieu of notice (Exhibit E-1), and that the employer had a bona fide dissatisfaction with her performance.

[43] Counsel for the employer stated that the grievor's employment was terminated on probation for the inadequacy of her overall work and for her inability to work with others.

[44] As for the grievor's inadequate performance, counsel for the employer indicated that the employer's witnesses, two experienced managers, had a chance to observe her and to interact directly with her. Counsel for the employer reviewed the evidence and indicated that, for example, despite receiving extensive instructions from her director, the grievor made mistakes in the employee retreat agenda. In the end, Ms. Rigg had to do it herself. The mini contact list that the grievor was to prepare contained errors, and she created an inventory list without being asked, which confused her colleagues. Counsel for the employer also referred to Ms. Parker's testimony that she asked the grievor to reproduce only one page, but the grievor reproduced an entire binder.

[45] Counsel for the employer argued that, in addition to the grievor's inability to follow instructions and to complete work on time, she also had difficulty working with her colleagues. He argued that the grievor struggled to integrate into her group. He referred to the evidence of Ms. Rigg and Ms. Parker, who testified that they tried to give feedback to the grievor but she was not willing to listen. For instance, Ms. Parker offered to refer the grievor to the EAP in December. In addition, the grievor accused others of trying to take credit for her work and of stealing her ideas.

[46] Counsel for the employer added that the grievor also demonstrated serious misconduct towards her director, Ms. Rigg, to the point that the grievor indicated that she refused to work with her director (Exhibit E-5). Counsel for the employer argued that the harsh, unfounded allegations against the grievor's director in Exhibit E-5 are very serious and that they demonstrate the grievor's lack of respect for her director.

[47] Counsel for the employer argued that the employer tried hard to integrate the grievor and that it wanted her to succeed. For instance, Ms. Rigg, to improve things with the grievor, had her report to Ms. Ileleji instead of Ms. C. H. Later on, the employer even assigned the grievor to another director, Ms. G.-M., all to no avail. Ms. G.-M. reached the same conclusion as Ms. Rigg about the grievor's performance.

[48] Counsel for the employer concluded by stating that it is not enough for the grievor to argue that her termination was not employment-related and that it was a camouflage or sham. She has the burden of demonstrating that assertion. The grievor did not meet that burden.

[49] In support of his arguments, counsel for the employer referred me to the following decisions, among others: *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33, at para 150; *Maqsood v. Treasury Board (Department of Industry)*, 2009 PSLRB 175, at para 37; *Bilton v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 39, at para 35 and 37; and *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, at para 105 and 111.

B. For the grievor

[50] The grievor argued that she has a duty to protect the weak from oppression and that she wanted to ensure by her actions that the conditions under which she worked for Ms. Rigg and Ms. Parker would not happen to anyone else.

[51] The grievor argued that all the allegations in Exhibit E-1 are false and that the employer did not have a legitimate reason to terminate her employment.

[52] The grievor contended that Ms. Parker's letter of February 22, 2011 is just camouflage and that she, the grievor, had all the requisites and the necessary qualities to perform her AS-01 position.

[53] The grievor indicated that, in Exhibit E-2 for example, Ms. Parker, who was about to leave on holiday, never took the time to review the material the grievor had gathered to make her point.

[54] The grievor argued that her rejection on probation was a camouflage by Ms. Rigg, Ms. Parker and others so that someone else could fill her position.

[55] The grievor argued that she was blamed for legitimate actions. For instance, as demonstrated in Exhibit E-13, she had to wait for Ms. Rigg's approval before submitting the required form. Since Ms. Rigg had not yet approved the request, she could not submit it.

[56] The grievor also indicated that she could not understand why others found her email to Ms. M. L. (Exhibit E-13) rude and why they resented being copied on it.

[57] The grievor also referred to Exhibit G-20, an email in which Ms. M. L. responds to a request for assistance from the grievor. Ms. M. L. should have helped her instead of saying that the grievor already had the information.

[58] With respect to Ms. Parker's invitation to consult the EAP, the grievor indicated that she attended an EAP session but that it was two days after her employment was terminated.

[59] As for her assignment to Ms. G.-M.'s team, the grievor contended that, despite the fact that things were much better for her, she still felt like "Cinderella" in that group, meaning that she was assigned less interesting work than others were.

[60] The grievor argued that she was treated unfairly at Transport Canada and that the situation repeated itself when she worked at the employer.

[61] The grievor concluded that, not only is she bilingual and possessed of all the necessary qualities to perform her work, but also that the employer did not demonstrate that she did something wrong. Therefore, she should be reinstated.

IV. Reasons

[62] It is not in dispute that the grievor was offered an appointment to an AS-01 position on September 24, 2010 and that she was informed on hiring that she would be on probation for a 12-month period. The employer rejected her on probation on February 22, 2011, before the end of the probationary period. It paid her a month of salary in lieu of notice.

[63] Paragraphs 61(1)(a) and 62(1)(a) of the *PSEA* allow the employer to impose a probationary period, and it can terminate employment during that probationary period, as follows:

61. (1) A person appointed from outside the public service is on probation for a period

(a) established by regulations of the Treasury Board in respect of the class of employees of which that person is a

member, in the case of an organization named in Schedule I or IV to the Financial Administration Act

...

Termination of employment

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.

[64] Section 211 of the *PSLRA* prevents a grievance about a termination of employment made under the *PSEA* from being referred to adjudication:

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

[65] The issue of an adjudicator's jurisdiction to deal with a grievance about a rejection on probation made under section 62 of the *PSEA* was analyzed at length as follows in *Tello*:

[105] The plain reading of the PSLRA and the new PSEA is that a probationary employee can be terminated with notice for any reason (or no reason) and does not have access to adjudication. Under the new PSEA, the only restriction placed on the deputy head is that the employee must be within his or her probationary period and notice (or pay in lieu) must be provided. However, "[t]he interpretation of the law is always contextual..." (Dunsmuir, para. 74). Statutory restrictions on the deputy head's authority still apply and the deputy head must be acting within the new PSEA for the termination of a probationary employee to be a valid exercise of the deputy head's discretion.

...

[111] ...The deputy head is still required to tender the letter of termination as an exhibit (normally through a witness) to

establish that the statutory requirements of notice and probationary status have been met. That letter will usually state the reason for the decision to terminate the employment of the probationary employee. The burden then shifts to the grievor. The grievor bears the burden of showing that the termination of employment was a contrived reliance on the new PSEA, a sham or a camouflage. If the grievor establishes that there were no legitimate "employment-related reasons" for the termination (in other words, if the decision was not based on a bona fide dissatisfaction as to his suitability for employment: Penner at page 438) then the grievor will have met his burden. . . .

...

[66] In this case, I conclude that the employer met all the requirements imposed under the *PSEA* and that it established a prima facie case that the termination of the grievor's employment was employment-related.

[67] The employer's evidence was that, except for a very short period in October 2010, the grievor demonstrated performance issues. She had trouble completing simple tasks in a reasonable time. The evidence also showed that, despite receiving instructions on how to proceed with certain tasks, the grievor persisted on doing things her way.

[68] In this case, the employer tried from the beginning, through Ms. Rigg's efforts, to improve things. For instance, the employer twice changed the grievor's reporting relationship. The grievor was first reassigned from Ms. C. H. to Ms. Ileleji and then from Ms. Rigg to Ms. G.-M., with no improvement in her results. The performance issues remained. Moreover, the employer established that the grievor had a hard time integrating into her group. For example, she had issues with her first supervisor, Ms. C. H., and with some of her colleagues. Finally, the grievor testified that she could no longer work with Ms. Rigg, against whom she made unsubstantiated allegations.

[69] The grievor's testimony is that she was the victim of some sort of conspiracy that began when she was at Transport Canada and that followed her to the employer, where basically everybody was against her and wanted to see her fail, so that she could be replaced by some of her managers' friends. None of that was supported by evidence.

[70] In her testimony, the grievor alleged that she had never been notified of the employer's dissatisfaction with her performance. While she did not reiterate this

allegation in her submissions, I will nonetheless dispose of it. The evidence disclosed that Ms. Riggs talked to the grievor on numerous occasions about her shortcomings. Ms. Riggs and Ms. Ilelegi also met with the grievor on December 6, 2010 to discuss the grievor's performance issues. Ms. Riggs also met with the grievor and Ms. G.-M. to again discuss the grievor's performance at the end of December 2010. Moreover, Ms. Parker also met with the grievor on two occasions, December 21, 2010 and February 21, 2011. At the December 21, 2010 meeting, Ms. Parker made it clear to the grievor that if her performance did not improve, management would have to reassess her. The employer's evidence about those discussions and meetings was not challenged. I therefore, conclude that the grievor was told about her performance issues.

[71] The grievor argued that she has all the capabilities for the job. But, according to the evidence, she did not put them successfully into action as the employer proved that there were deficiencies in her work. She argues possibilities, the employer has demonstrated reality. Also, the grievor never responded to the employer's argument about her rudeness to Ms. Rigg.

[72] As a result, the grievor's theory remains a mere allegation. The grievor did not meet her burden of demonstrating that the employer's actions were not employment-related and were therefore a camouflage or sham.

[73] I declare that I am without jurisdiction to hear this grievance.

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

(The Order appears on the next page)

V. Order

[75] I order the file closed.

July 5, 2012.

**Linda Gobeil,
adjudicator**