

Date: 20131112

File: 566-02-8046

Citation: 2013 PSLRB 137



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

SHIRLEY CARDINAL

Grievor

and

**DEPUTY HEAD
(Department of Citizenship and Immigration)**

Respondent

Indexed as
Cardinal v. Deputy Head (Department of Citizenship and Immigration)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: John G. Jaworski, adjudicator

For the Grievor: Herself

For the Respondent: Caroline Engmann, counsel

Heard at Ottawa, Ontario,
October 28 and 29, 2013.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] Shirley Cardinal (“the grievor”) was working for the Department of Citizenship and Immigration (“DCI” or “the respondent”) in its Human Resources Branch. On October 11, 2012, the employer terminated her employment. On November 20, 2012, she filed a grievance against the employer’s decision to terminate her employment for reasons that did not relate to discipline or misconduct. The allegations of the grievor included that:

1. the employer contravened the Treasury Board of Canada’s *Policy on the Prevention of Harassment in the Workplace* by failing to provide a harassment-free workplace;
2. the employer contravened the Treasury Board of Canada’s *Guidelines for Discipline* by failing to adhere to the application of the guidelines;
3. representatives of the employer harassed her;
4. her immediate supervisor harassed her;
5. the harassment was disguised and was punitive discipline;
6. the employer violated subsection 155(3) of the *Financial Administration Act*;
7. the employer contravened the Treasury Board of Canada’s *Values and Ethics Code for the Public Service*;
8. the employer contravened the Treasury Board of Canada’s *Policy on Learning, Training and Development* by not providing a learning culture at the DCI and not supporting the grievor’s career development goals;
9. the employer contravened the *Canadian Human Rights Act* and the *Canada Labour Code*;
10. the employer contravened various other Treasury Board of Canada’s Policies with respect to the Duty to Accommodate Persons with Disabilities; guidelines for termination or demotion

for unsatisfactory performance; and termination or demotion for reasons other than breaches of discipline or misconduct;

[2] The employer denied the grievance at the final level of the grievance procedure on December 21, 2012, and the grievance was referred to adjudication on January 29, 2013.

[3] The grievor is not a member of a bargaining unit and is not represented.

[4] On March 19, 2013, the parties were advised by the registry of the Public Service Labour Relations Board (“the Board”) that this matter was tentatively scheduled for hearing in Ottawa, Ontario, from October 28 to November 1, 2013. The parties were asked to advise the Board by April 5, 2013, if they were not available on those proposed dates. The parties were advised that once the proposed dates were confirmed, they would be considered final, and a notice of hearing would be sent to the parties approximately one month before the scheduled hearing. On April 3, 2013, the employer confirmed that it was available and that it would be prepared to proceed on the dates proposed by the Board. No response was received from the grievor.

[5] On April 17, 2013, the Board wrote to the parties and advised them that the hearing for this matter was confirmed for the week of October 28 to November 1, 2013, in Ottawa, and that the dates were considered final.

[6] On August 29, 2013, the Board wrote to the parties, seeking their availability to participate in a pre-hearing conference (“PHC”) to discuss the general management of the hearing. That correspondence confirmed that the hearing of this matter was scheduled to proceed from October 28 to November 1, 2013, at Ottawa, Ontario. The Board’s letter of August 29, 2013, was sent to the grievor via registered mail and email.

[7] The Board’s letter of August 29, 2013, sent by registered mail, was returned to the Board with an indication that the grievor had moved. The Board emailed the grievor on September 4, 2013, advising her that it had been advised by Canada Post that she had moved. In its email of September 4, 2013, the Board requested that the grievor provide it with a new address. The Board received no reply to this email.

[8] On September 12, 2013, at 12:05 p.m., the Board emailed the grievor again. At that time, the Board confirmed to the grievor that it had tried to contact her at the home phone number it had for her but that the phone number appeared to no longer

be in service. The Board also indicated that it had left two urgent voice messages for the grievor on the voice mail of the cellular telephone number it had for her. In the email of September 12, 2013, the Board also confirmed that the hearing was scheduled for October 28 to November 1, 2013, and that in preparation for the hearing, I had requested that the parties participate in a telephone PHC sometime during the week of October 15 to 18, 2013. The grievor was advised that it was urgent that she contact the Board to update her contact information and indicate her availability for a PHC.

[9] On September 12, 2013, at 4:15 p.m., the grievor by email responded to the Board, confirmed her cellular telephone number had remained unchanged, confirmed her availability for a PHC, and advised that, via a separate email, she would confirm her new address.

[10] In a letter dated September 13, 2013, the parties were sent a letter that indicated that both the grievor and the respondent had confirmed their availability for a pre-hearing conference. The letter also notified the parties that the pre-hearing conference would take place on October 15, 2013 at 10:00 a.m., via teleconference and the dial-in particulars were provided. That letter was sent by fax and email to the respondent, and sent to the grievor by email on September 13, 2013.

[11] By September 23, 2013, the Board had still not received a new address from the grievor and, as such, sent her an email on that day at 3:16 p.m., following up and enquiring as to her new mailing address. In that email, the Board confirmed that it required the address to be able to send to her the notice of hearing.

[12] On September 23, 2013, at 4:35 p.m., the Board was notified that counsel for the employer was not available at 10:00 a.m. on October 15, 2013, for the PHC and received a request that the time of the PHC be moved to the afternoon. The Board wrote to the grievor on September 24, 2013, at 8:09 a.m., and asked if she were available in the afternoon of October 15, 2013, for the PHC.

[13] On September 25, 2013, at 12:32 p.m., the grievor emailed the Board, advising it of her new address. At 12:35 p.m. that same day, the grievor sent a second email to the Board, confirming that she was available for a PHC the afternoon of October 15, 2013. On September 25, 2013, at 2:55 p.m., the Board sent an email to the parties, confirming that the PHC originally scheduled for 10:00 a.m. on October 15, 2013, had been changed to 1:30 p.m. on October 15, 2013.

[14] On September 26, 2013, the Board issued and sent the notice of hearing for this matter. The notice was emailed to the grievor at 9:13 a.m. to the email address on file. The copy of the notice sent by Priority Post to the new address of the grievor, as she provided to the Board, was signed for by the grievor on September 27, 2013, at 11:00 a.m. The notice of hearing clearly indicated that the hearing for this matter was scheduled from October 28, 2013, to November 1, 2013. The start time was shown as 9:30 a.m. The location of the hearing was clearly indicated as the C.D. Howe Building, 240 Sparks Street, West Tower, 7th Floor, Ottawa, Ontario. The notice was signed by the registry officer responsible for the file, and her phone number was clearly printed on the notice, below her name.

[15] On October 15, 2013, at 1:30 p.m., I presided over a PHC teleconference with respect to the general conduct of the hearing. The grievor was present, as was counsel for the employer. Process issues were discussed, including the amount of time the parties thought they would need, along with witnesses and documentary production. During the discussion of the matter of documents, it was clear that there were issues to be dealt with, and counsel for the employer indicated and the grievor agreed that they would address this between themselves and would contact the Board if necessary. The grievor confirmed both her address and email address during the course of the PHC, which coincided with the new address and the email address on file at the Board. I urged the parties to deal with the documentary issues as soon as possible, given that the hearing was commencing on October 28, 2013.

[16] After the PHC, the Board heard nothing further from the parties before the scheduled hearing.

[17] On October 28, 2013, at 9:30 a.m., the hearing was scheduled to commence in hearing room 714 on the 7th floor of the West Tower of the C.D. Howe Building, 240 Sparks Street, in Ottawa. Present at 9:30 a.m. were counsel for the employer, a representative of the employer and a number of witnesses. The grievor was not present.

[18] Counsel for the employer indicated to me that she had not heard from the grievor, despite having emailed her about the documentary issue discussed at the PHC on October 15, 2013.

[19] I adjourned the hearing until 10:00 a.m. to allow for the Board's registry services to contact the grievor. The Board's registry services called the grievor at the cellular telephone number on file twice between 9:30 a.m. and 10:00 a.m. and sent an email to the grievor (at the email address on file), confirming that the hearing had started and that she was not present and requesting that she contact the Board as soon as possible.

[20] When the grievor had not responded to the phone messages or email sent by the Board's registry services, I further adjourned the matter until 11:00 a.m., to give the grievor time to contact the Board or arrive for the hearing, in case she had been caught up in the construction traffic in downtown Ottawa. I also instructed the registry officer to continue to try to reach the grievor at the cellular telephone number and to call her on her previous home telephone number. The Board's registry officer left two more messages on the grievor's cellular telephone voicemail and confirmed that the old telephone number was still not in service.

[21] When the Board received no reply to its emails or voice messages by 11:00 a.m., I adjourned the hearing for the day, to reconvene at 9:30 a.m. on October 29, 2013. The Board's registry wrote to the grievor on October 28, 2013, advising her that the hearing was adjourned until October 29, 2013, at 9:30 a.m., at which time it would reconvene, and that if she were not in attendance, it would proceed in her absence without any further notice to her. The grievor was asked to contact the Board as soon as possible. The Board's letter was sent to the grievor via email and courier. The email was sent at 11:43 a.m.

[22] Despite leaving several voice messages, sending emails and couriering a letter to the grievor on October 28, 2013, the Board did not hear from the grievor before 9:30 a.m. on October 29, 2013.

[23] On October 29, 2013, at 9:30 a.m., the hearing reconvened, and the grievor was not present.

[24] Counsel for the employer advised me that she spoke to the grievor at approximately 3:15 p.m. on October 28, 2013, at which time she asked the grievor why she was not at the hearing, to which she stated that the grievor responded that she was preoccupied. Counsel for the employer further advised me that the grievor advised her she would be present at 9:30 a.m. on October 29, 2013.

[25] Counsel for the employer moved that the grievance be dismissed as abandoned. The grievor did not attend on October 28, 2013, the first day of the hearing, and despite being advised by both the Board and counsel for the employer that the hearing was going to proceed at 9:30 a.m. on October 29, 2013, and the grievor advising counsel for the employer she would be present, the grievor was not in attendance.

[26] The employer argued that the grievor was well aware of the hearing dates, had provided no reason for not being in attendance and had not requested any postponement. At the PHC on October 15, 2013, the grievor indicated she would be present for the hearing.

[27] The employer argued that this behaviour exhibited by the grievor with respect to the hearing of this matter is the same behaviour that led to the termination of the grievor's employment in October 2012. The employer referred me to the final-level grievance reply and letter of termination, which are already on the Board's file.

[28] In support of its motion to dismiss, the employer relied on the material already contained in the Board's file and referred me to *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39, and *Howitt v. Canadian Food Inspection Agency*, 2013 PSLRB 51.

Reasons

[29] The grievor had been aware of the hearing dates in this matter since April 2013, some six months before. She had been reminded of the hearing dates on five occasions. The grievor was sent the notice of hearing on two occasions, including once by Priority Post, which was signed for. In addition, I reminded the grievor of the hearing dates during the course of the PHC that took place on October 15, 2013. The grievor had in her possession the address, phone number and email address of the Board and had in the past communicated with the Board via telephone and email.

[30] When the grievor did not show up for the commencement of the hearing on October 28, 2013, I adjourned the hearing until 10:00 a.m. that day to allow for the Board's registry to attempt to contact her. The Board's registry left two voicemail messages for the grievor at the cellular telephone number the Board had on file and sent her an email, advising her that the hearing had commenced and asking her to contact the Board as soon as possible. At 10:00 a.m., I reconvened the hearing briefly,

to see if the grievor had shown up; she had not. I adjourned the hearing a second time until 11:00 a.m. to allow the Board's registry more time to get in touch with the grievor and to allow her time to respond to the voice messages and email that had been sent. The Board's registry left two more voice messages on the voicemail of the grievor's cellular telephone number. At 11:00 a.m., I reconvened the hearing once again; the grievor was still not present. Nor had the Board heard from her. I advised those present that I was going to adjourn the hearing until 9:30 a.m. on October 29, 2013, to allow the Board's registry to send a letter to the grievor by courier, advising her that the matter was adjourned until that time.

[31] On October 28, 2013, the Board's registry, pursuant to my instructions, sent the grievor a letter by courier and email, advising her that the hearing, scheduled to begin on October 28, 2013, and to continue until November 1, 2013, had been adjourned and was going to reconvene at 9:30 a.m. on October 29, 2013, and that if she was not in attendance, the hearing could proceed in her absence. The email copy of the letter was sent at 11:43 a.m., and the Board received confirmation at 1:14 p.m. that the couriered copy of the letter had been delivered.

[32] Despite all those steps taken to get the grievor to attend the hearing, not only did she not attend, I also have been provided with no reason for her non-attendance on October 28 or 29, 2013, except that she told counsel for the employer that on October 28, 2013, she was preoccupied.

[33] In *Fletcher*, the Board was faced with a request for a postponement from a grievor's representative when the grievor failed to attend the hearing of her grievance against the termination of her employment and provided no excuse for her non-attendance. The Board stated that it is well recognized in arbitral jurisprudence that an employer has a legitimate interest in the timely resolution of a dispute. The Board also stated that one of the interests in play in adjudication hearings is the general public interest when considering requests for dismissal on the ground of abandonment. This public interest was characterized at paragraph 36 as follows:

[36] . . . It is the general public interest in an efficient administration of justice that avoids undue delays, promotes the final resolution of conflict and is respected by the parties. This interest becomes a concern in this case, to the extent that the grievor appears not to have cooperated with the efforts to provide her a hearing and to have disregarded the Chairperson's notices and instructions. To some extent, a

decision to grant a further postponement in this context could be read by others as rewarding behaviour that undermines a well-functioning dispute resolution process.

[34] I agree with the comments in *Fletcher*, as set out at paragraph 33 of this decision, and they are applicable in the context of this matter. I find that the grievor, by her actions of not attending at the hearing on October 28, 2013, or on October 29, 2013, although being aware of the date, time and location of the hearing, and upon being reminded of those on several occasions, has failed to pursue her grievance with due diligence and has for all intents and purposes abandoned her grievance, and as such, it shall be dismissed.

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

(The Order appears on the next page)

Order

[36] The grievance is dismissed.

November 12, 2013.

**John G. Jaworski,
adjudicator**