Date: 20130510

File: 566-34-2517

Citation: 2013 PSLRB 52

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

STEPHEN BYFIELD

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Byfield v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Kate Rogers, adjudicator

For the Grievor: No–one

For the Employer: Victoria Yankou, counsel

Heard at Toronto, Ontario,
December 17, 2012.

Individual grievance referred to adjudication

[1] Stephen Byfield ("the grievor") was employed as an investigator, classified AU-03, in the Enforcement Division, Toronto North Tax Services Office, Canada Revenue Agency (CRA or "the employer"). On May 6, 2008, he filed a grievance, which read as follows:

> *I grieve management's refusal to accept my withdrawal of my resignation. As such, this constitutes termination of my employment. I had resigned under duress. This was an irrational act due to an ongoing medical condition.*

[2] As a corrective measure, the grievor asked that he be reinstated with full back-pay and compensation and that he be made whole.

[3] The grievance was heard at the first, third and final levels of the grievance process. It was denied at all three levels. On October 30, 2008, the grievor referred the grievance to adjudication under paragraph 209(1)(*b*) of the *Public Service Labour Relations Act* (*PSLRA*).

[4] On November 25, 2008, the employer filed an objection to jurisdiction on the grounds that the grievance did not relate to a disciplinary action, as required by paragraph 209(1)(*b*) of the *PSLRA,* but concerned, in fact, the grievor's resignation. The employer contended that resignation of employment at the CRA is governed by section 8 of the CRA "Staffing Program," which it quoted as follows:

> *An employee may resign from the CRA by giving to the Authorized Person notice in writing of the intention to resign. The CRA employee ceases to be an employee on the date on which the Authorized Person accepts in writing the resignation or another date specified by the acceptance letter by the Authorized Person.*

[5] The employer stated that its decision relating to the grievor's resignation arose from the operation of section 8 of the Staffing Program and in no way constituted a disciplinary action, as required by paragraph 209(1)(*b*) of the *PSLRA*. On that basis, the employer contended that the Public Service Labour Relations Board (PSLRB) did not have jurisdiction to hear the grievance at adjudication.

[6] Through his union representative, the grievor responded to the employer's objection to jurisdiction on December 8, 2008. He stated that the PSLRB had jurisdiction to consider a grievance relating to a resignation if the resignation was

obtained in bad faith, was disciplinary or was discriminatory. He stated that he intended to call evidence at the adjudication hearing of his grievance that would demonstrate that his resignation was involuntary and that it was made under duress and in the context of an ongoing medical condition. He stated that the evidence would show that ". . . the resignation was obtained in bad faith, in a discriminatory fashion or as a disciplinary action."

[7] The grievance was scheduled to be heard at adjudication from April 12 to 16, 2010. On March 19, 2010, the PSLRB's Registry Office was advised that the grievor would no longer be represented by his union. On April 1, 2010, the grievor asked for a postponement of the adjudication hearing scheduled for April 12 to 16, 2010, on the grounds that he had not yet received the majority of documents requested through an access to information (ATIP) request. On April 7, 2010, the grievor's request for a postponement of the hearing was granted.

[8] An attempt was made to reschedule the adjudication hearing for February 7 to 11, 2011, but the grievor again asked that the matter be postponed because he had not received the ATIP materials he requested. Another attempt was made to reschedule the adjudication hearing for May 10 to 13, 2011, but it was not successful because the grievor again stated that he was not available on the proposed dates.

[9] At the direction of the PSLRB Chairperson, the parties were asked to identify their availability for a hearing to take place before the end of 2011. They identified December 12 to 16, 2011 as being a period in which they were mutually available for a hearing. However, the grievor noted that he still had not received the documents that he had requested through his ATIP request. He argued that it was unfair to expect him to participate in a hearing while his ATIP request remained outstanding.

[10] In an email on January 28, 2011, the employer responded to the grievor's claim that it had not provided the requested documents. It stated that it had, in fact, provided documents from the grievor's ATIP request and commented that the grievor had provided no context or explanation for the scope of the documents he apparently was still seeking. The employer suggested that the grievor was using the ATIP process to avoid an adjudication hearing and asked the PSLRB to order him to produce his outstanding ATIP request and to provide written submissions as to the relevance of the documents he had sought.

[11] On March 2, 2011, the grievor replied to the employer's claim that it had responded to his ATIP request. He stated that he had received less than 4% of the documents requested and that the delay in their production had continued for a year–and–a–half. He argued that it would be unfair for the PSLRB to schedule a hearing while his ATIP request remained outstanding.

[12] At my request, a pre-hearing conference was held with the parties on June 1, 2011 to resolve the disclosure issues. As a result of that discussion, a process was established to assist in resolving the outstanding issues concerning the grievor's request for disclosure. The process was confirmed in a letter to the parties dated June 13, 2011.

[13] However, disclosure continued to be contentious. On August 4, 2011, a second pre-hearing conference was held. During that teleconference, the parties were given full opportunity to address the particulars of the grievor's disclosure request. As a result of that teleconference, I issued a detailed order with respect to disclosure, which was confirmed in a letter issued on August 10, 2011.

[14] Despite my intervention and direction, on December 12, 2011, the grievor contended that he had not received the documents that he requested pursuant to the order issued on August 10, 2011. He also continued to argue that further disclosure was necessary. On December 21, 2011, the employer contended that all the documents described in my direction of August 10, 2011 had been provided to the grievor. The dispute between the parties concerning disclosure continued in correspondence to the PSLRB until, on January 26, 2012, I directed that the grievance be scheduled for a hearing at the earliest possible time and that any further disclosure issues could be raised at the hearing.

[15] Scheduling the grievance for a hearing proved a difficult matter because the grievor, responding to the dates proposed by the employer, was available only on the dates that the employer had already indicated it was not available. To find common ground, the grievor was asked to provide all the dates in the fall of 2012 that he was available. On March 25, 2012, the grievor stated that he was not available in November or December 2012 and asked for dates in 2013 instead.

[16] On March 29, 2012, at my direction, the grievor was asked to provide further information as to why he was not available for a hearing before 2013. The grievor

responded on April 5, 2012 that he felt that it was prejudicial to his ability to have a fair hearing to schedule it before he had received all the documents that he wanted. However, he also noted that the long delay in scheduling the hearings caused him financial hardship.

[17] I found that the reasons given by the grievor for his lack of availability for a hearing in the fall of 2012 were not sufficient to justify a further delay in scheduling the matter, since he had been told that any outstanding issues concerning disclosure could be raised at the hearing. At my request, the parties were advised on April 13, 2012 that the matter would be scheduled for a hearing to be held before the end of 2012. The grievor was asked to provide his availability for a hearing during the months of October to December 2012. In response to that request, the grievor identified only December 20 to 30, 2012 as a time that he was available for a hearing. Given the scheduling limitations of the holiday season, the grievance was set down for a hearing December 17 to 21, 2012, and the grievor was so advised on May 4, 2012.

[18] On November 14, 2012, a formal notice of hearing was sent to the parties, which confirmed the time and location of the hearing. The parties were advised that, if either of them failed to attend the hearing, the matter could be dealt with on the evidence and representations made at the hearing without further notice.

[19] The hearing convened in Toronto, Ontario, on December 17, 2012. The employer was present, but the grievor did not appear. Attempts by the PSLRB Registry Office to reach him were not successful. The employer asked for an immediate dismissal of the grievance on the ground that the grievor was not present. However, because the notice of hearing stated that the hearing could proceed without further notice in the absence of one of the parties, and because the employer had the burden of proof on the objection to jurisdiction that it had filed, I asked that it present evidence and argument to support its objection to jurisdiction.

Summary of the evidence

[20] The employer submitted into evidence a copy of the grievor's letter of resignation, dated March 4, 2008, and its acceptance of the resignation dated March 6, 2008. The employer also provided copies of an email dated April 2, 2008, from the grievor's union representative that asked that the resignation be rescinded, which was followed up by a letter from the grievor, dated April 7, 2008, in which he

asked to rescind his resignation. On April 8, 2008, the employer denied the request to rescind the resignation.

Summary of the arguments

[21] The employer stated that the matter before me concerned a resignation. The documents presented all demonstrated that the grievor resigned his employment on March 4, 2008 and that the resignation was accepted on March 6, 2008. The PSLRB does not have jurisdiction to hear a grievance related to a resignation. The grievor was not present, and therefore, there was no evidence before the PSLRB to rebut the evidence of the grievor's resignation. Therefore, the employer asked that the grievance be dismissed on the grounds that the PSLRB does not have jurisdiction.

Reasons

[22] This grievance was referred to adjudication under paragraph 209(1)(*b*) of the *PSLRA*, which provides in part as follows:

> ***209.*** *(1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> *. . .*
>
> *(*b*) a disciplinary action resulting in termination, demotion, suspension or financial penalty. . . .*

[23] A resignation is not, on its face, a disciplinary action. Absent evidence or testimony from the grievor to rebut the evidence of resignation tendered by the employer, I must find that the grievor resigned his position on March 4, 2008, and that the resignation was accepted on March 6, making it effective. Although the grievor seems to have regretted resigning his position and sought to retract the resignation almost a month later, there is no evidence before me that the employer's refusal to accept the retraction stemmed from disciplinary motives. Therefore, I do not have jurisdiction to hear this grievance.

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

(The Order appears on the next page)

Order

[25] The file is ordered closed.

May 10, 2013.

Kate Rogers,
adjudicator