Date: 20140611

File: 566-02-7327

Citation: 2014 PSLRB 63

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

CURTIS JAMES ROBERTSON

Grievor

and

DEPUTY HEAD
(Department of National Defence)

Respondent

Indexed as
Robertson v. Deputy Head (Department of National Defence)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Stephan J. Bertrand, adjudicator

For the Grievor: Andrew Beck, Public Service Alliance of Canada

For the Respondent: Christine Langill, counsel

Heard at Ottawa, Ontario,
March 3 to 5, 2014.

I. Individual grievance referred to adjudication

[1] Curtis James Robertson ("the grievor") was employed with the Department of National Defence (DND or "the respondent") until his employment was brought to an end by a letter of resignation dated November 1, 2011.

[2] The grievor sought to have his resignation rescinded on November 24, 2011, but the DND informed him shortly after that that it had already accepted his resignation and that it declined to accept his rescission.

[3] The grievor filed a grievance on November 30, 2011, which was heard and denied at the first, second and third levels of the grievance procedure. On July 26, 2012, he referred his grievance to adjudication with the Public Service Labour Relations Board ("the Board").

[4] At the hearing, the respondent raised an objection to my jurisdiction on the grounds that the grievor had submitted a valid resignation and that his grievance was not adjudicable. I informed the parties that I would hear all the evidence, including the evidence pertaining to the jurisdictional objection and the merits of the grievance.

II. Summary of the evidence

[5] The grievor testified that he started working at the DND in September 2000 as a mail operations clerk, a CR-02 position. In November 2006, he was promoted to a CR-03 senior mail operations clerk position, the substantive position he held in November 2011. In that position, he reported to the Pearkes building, in Ottawa, Ontario.

[6] In 2011, the grievor was offered and accepted two acting appointments related to a project with the objective of modernizing the local mail delivery service at the DND. He first acted in a CR-05 position between February 28, 2011, and June 24, 2011, and then acted in a CR-04 position between June 27, 2011, and October 26, 2011. While acting in those positions, the grievor reported to a different building, located in Gatineau, Quebec.

[7] In early October 2011, shortly before the expiry of his second acting appointment, the grievor was informed that he would have to return to his substantive position at the Pearkes building and report to Julie Hahn, who was the mail services manager at that time. The grievor indicated that he was extremely displeased with his

employer's decision, as he felt that he had not completed all the tasks he had been assigned and that he ought to have been given another acting appointment to finish the project he was working on.

[8] On or about October 4, 2011, the grievor met with his deputy director, Robyn Hynes, and made it clear to her that he had no desire to return or any intention of returning, to the Pearkes mailroom. He even attempted to give Ms. Hynes a resignation letter he had drafted during that meeting, but Ms. Hynes urged him to give it more thought.

[9] On October 18, 2011, Ms. Hahn reminded the grievor that he was expected to report to the Pearkes building at the end of his acting assignment. He immediately emailed Ms. Hynes to express his resentment and to inform her that he would submit his resignation letter to her in a few days. Once again, Ms. Hynes urged him not to make any rash decisions and to think things through. She reminded the grievor that his substantive position was that of a CR-03 senior mail operations clerk at the Pearkes mailroom.

[10] On October 19, 2011, the grievor emailed Ms. Hynes and informed her that there was "nothing more to think about," that he had written his resignation letter and that his last day of work would be October 28, 2011. He added that he felt that Ms. Hahn was "unceremoniously shoving [him] out of the way" by refusing to offer him a further acting appointment.

[11] On that same day, the grievor exchanged emails with Ms. Hahn. In one email, he indicated that a response to a client inquiry he was about to provide would be "one of [his] last act *[sic]* for that dump," referring to his workplace. In another, he informed her that he would give his resignation letter to Ms. Hynes the next day. The grievor went further and informed the team leader of another DND department he was writing to about a records management initiative that he would be resigning.

[12] Another exchange of emails between the grievor and Ms. Hynes took place on October 25, 2011. At that time, Ms. Hynes reminded the grievor that his acting assignment was coming to an end and that the operations branch had identified a need for his return to the Pearkes mailroom, where his substantive position was located. In his response, the grievor made it clear that he would resign his position rather than

return to the Pearkes mailroom. He asked Ms. Hynes when would be a good time to deliver his resignation letter. Ms. Hynes did not respond.

[13] The grievor did not provide any explanation, whether in the numerous email exchanges with management or at the hearing, as to why he was so adamant about not returning to his substantial position at the Pearkes building.

[14] Although the grievor's CR-04 acting assignment had ended on Wednesday, October 26, 2011, Ms. Hynes had agreed to give him until Monday, October 31, 2011, to relocate to the Pearkes building. However, the grievor failed to report to the Pearkes mailroom that day. This prompted Ms. Hynes to email the grievor on November 1, 2011, and to instruct him to report to the Pearkes mailroom on the following day.

[15] On November 1, 2011, the grievor sent his resignation letter to Ms. Hynes via internal mail. The letter reads as follows:

> *Subj: Resignation*
>
> *Dear Ms. Hynes:*
>
> *This letter is to inform you that I will be resigning my position with Shared Support Services effective 2 Dec. 2011. My last working day will be the same day. I feel that I can no longer contribute to an organization that seems to have it's own agenda & does not have any clear cut idea of what it is doing when trying to run the departmental mail services etc.*
>
> *Therefore I will be seeking employment opportunities elsewhere. I would respectfully request that compensation services pay out the monies owed me A.S.A.P. as it is no secret that I will need it. Please the attachment for current vacation credits.*
>
> *In closing I would like to take this opportunity to wish SSS the best of luck in the coming months.*
>
> [*Sic* throughout]

[16] When he testified, the grievor indicated that his resignation letter had been submitted in a state of rage and that he had placed a yellow "Post-it note" on his resignation letter with the annotation, "Robyn, please hold." According to the grievor, that same day, he also filled out and signed a DND "Notice of Resignation / Retirement

Form" but did not submit it with his letter of resignation. It was found at his desk at a later date, after he had vacated his Gatineau office.

[17] On November 2, 2011, the grievor responded to Ms. Hynes' email of the previous day to inform her that he would not be reporting to the Pearkes mailroom and that his resignation letter had been mailed. No mention was made of any yellow "Post-it" or of any need to put his resignation on hold. That same day, Ms. Hahn emailed the grievor and reminded him that he was expected to take the next internal shuttle and to report to the Pearkes building. The grievor responded as follows: "What part of no don't you understand? Robyn has my resignation. I will finish what's left of my time here, pack up my personal things, leave some notes and go." Again, no mention was made of any yellow Post-it or of the fact that his resignation letter was to be held.

[18] The grievor continued to refuse to report to the Pearkes building after he had submitted his resignation letter, even though he was expected to report to work until December 2, 2011, the date he had chosen as his last working day. This prompted more email exchanges between Ms. Hahn and the grievor, which were no less pleasant on the part of the grievor than the previous ones had been. In one of those emails, the grievor indicated that he would be seeing a doctor "shortly."

[19] On November 7, 2011, faced with an employee who was refusing to report to his substantive position, Ms. Hahn wrote to the grievor and proposed the following three options: (1) that he report to work at the Pearkes mailroom; (2) that he take sick leave, if supported by a medical certificate; or (3) that he resign sooner. On that same day, Ms. Hynes accepted the grievor's resignation by filling out and signing the DND notice of resignation form. In her mind, this meant that the grievor was expected to report to work at the Pearkes mailroom until December 2, 2011, unless he exercised option (2) or (3).

[20] While the grievor did respond to Ms. Hahn on November 7, 2011, by pointing out that some furniture and equipment would have to be moved if he were to return to the Pearkes building until his scheduled last day of work, he did not address any of the options that she had proposed; nor did he report to the Pearkes mailroom on November 8 or 9, 2011. When he testified, the grievor indicated that he had simply decided to stay home on those days, out of frustration.

[21] On November 10, 2011, the grievor called his work to advise his employer that he had fallen ill and would not be coming in. He testified that he called again 10 days later to give his employer an update on his state of health. While the grievor indicated that he had been suffering from a recurring medical condition for some time, he did not allege that his judgment was in any way affected by this medical condition when he drafted and sent his resignation letter to Ms. Hynes; nor were any medical documents submitted to support such an allegation.

[22] On November 22, 2011, the grievor received an email that contained a "Termination / Retirement Information Form" that he was required to fill out and return to the compensation department.

[23] On November 24, 2011, the grievor called Ms. Hynes to inform her that a medical appointment he was scheduled to attend had been delayed and that he did not expect to return to work until the following Monday, November 28, 2011. At that time, Ms. Hynes allegedly responded that he had no need to report to work since his resignation was about to take effect a few days later, on December 2, 2011. According to the grievor, that was when he first learned that Ms. Hynes had accepted his resignation. On that same day, he responded to the November 22, 2011, email from the compensation department and requested that his resignation be rescinded if possible. Ms. Hynes informed him on November 28, 2011 that his resignation had been accepted, that it was considered irrevocable and that management had declined his request to rescind it. According to Ms. Hynes, the grievor had made what appeared to be a thoughtful and voluntary decision.

[24] Shortly after that, the grievor consulted his bargaining agent representative, Kevin Foran, and filed a grievance presentation form on November 30, 2011. In the details box of that form, the grievor indicated the following: "I grieve management's refusal to accept the rescindment of my resignation." The corrective action requested was the following: "That management accept my request to rescind my resignation and that I be made whole in all respects."

[25] Between November 10, 2011, and December 2, 2011, the grievor was paid certified sick leave benefits. Since then, he has been employed on and off and is currently working full-time on contract for the DND through an agency that specializes in providing temporary support staff to employers.

[26] When he testified, Mr. Foran indicated that he had represented the grievor at the first and second levels of the grievance procedure. At the first-level hearing, Mr. Foran raised two key points: the involuntary nature of the grievor's resignation and what he characterized as "veiled discipline" on the part of the employer. It should be noted that while Mr. Foran's notes from the first-level hearing do mention veiled discipline the grievance presentation form makes no mention of any disciplinary measure or veiled discipline. Mr. Foran indicated that he also raised veiled discipline during the second-level hearing, but he had no notes to support or corroborate this point. Larry Surtees, who was the delegated decision maker at the second level of the grievance procedure, testified that the issue of discipline was never raised during the second-level meeting (Exhibit 8). His notes of the second-level hearing, which were entered as evidence, made no mention of discipline. In any event, the grievor's representative conceded that the issue of discipline was never raised by the grievor or his representative at the third and final-level hearing.

[27] When she testified, Ms. Hynes confirmed that in fact she had received the grievor's resignation letter on November 2, 2011, by internal mail, but she denied the presence of a yellow Post-it bearing the note, "Robyn, please hold," on that letter. According to her, if such a note had been affixed to the letter, she would have contacted the grievor to inquire about its meaning. Once in receipt of the resignation letter, Ms. Hynes filled out a formal DND notice of resignation form and attached the grievor's resignation letter to it. She signed the form on November 7, 2011, and forwarded one copy to the compensation department on November 9, 2011, in order to process the cessation of the grievor's employment with the DND, and another copy to the grievor's home address, since he was not at work at that time and did not have a computer in his home. Although the employer initially believed that the grievor's copy had been forwarded by registered mail, and Ms. Hynes is certain that she did so, the employer never located confirmation of such a delivery.

[28] Ms. Hynes also testified that she never contemplated taking disciplinary action against the grievor; nor did she ever initiate any process that could have resulted in disciplinary action being taken against him.

III. Summary of the arguments

A. For the respondent

[29] Relying on *Burchill v. Attorney General of Canada,* [1981] 1 F.C. 109 (C.A.), and *Shneidman v. Attorney General of Canada*, 2007 FCA 192, the respondent argued that it was not open to the grievor to present at adjudication a different grievance than what had been presented at the previous three levels of the grievance procedure and that only those grievances that had been presented to and dealt with by all internal levels of that grievance procedure ought to be referred to adjudication. Therefore, according to the respondent, the grievor should not be allowed to present a grievance based on discipline or on an involuntary resignation, as that was not how the grievance presentation form was worded from the outset or how it was dealt with during the internal grievance procedure.

[30] According to the respondent, this grievance is about its right to accept an employee's resignation, to consider it irrevocable and to refuse to accept the employee's rescission of that resignation once the respondent has accepted it, all matters over which I have no jurisdiction.

[31] The respondent referred me to section 63 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA"*). It reads as follows:

> ***63.*** *An employee may resign from the public service by giving the deputy head notice in writing of his or her intention to resign, and the employee ceases to be an employee on the date specified by the deputy head in writing on accepting the resignation, regardless of the date of the acceptance.*

[32] The respondent contended that I am deprived of any jurisdiction over any termination of employment under the *PSEA*. It referred me to section 211 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act")*, which reads 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*
>
> (b) *any deployment under the* Public Service Employment Act*, other than the deployment of the employee who presented the grievance.*

[33] In the respondent's view, the fact that the grievor changed his mind or regretted his decision to resign does not empower me to deal with this matter. The respondent referred me to a number of authorities in support of that position, including *Byfield v. Canada Revenue Agency*, 2013 PSLRB 52, and *Mutart v. Deputy Head (Department of Public Works and Government Services)*, 2013 PSLRB 90.

[34] According to the respondent, the evidence has clearly established that the grievor gave notice in writing of his intention to resign on November 1, 2011, that it accepted his resignation on November 7, 2011, that the process of finalizing the end of the grievor's employment had been put in place by the respondent's compensation department and that the specified date for the end of the grievor's employment was December 2, 2011.

[35] The respondent further argued that nothing was involuntary about the grievor's resignation, as there was no evidence to suggest that it was given under duress or via coercion or that the grievor lacked capacity to tender it.

[36] The respondent contended that the documentary evidence clearly established that the grievor intended to resign and that resignation was a recurring and consistent theme during the numerous exchanges of emails that took place in October and November 2011. The respondent also reminded me that, during the relevant period, the grievor informed at least three individuals by email that he had resigned.

[37] According to the respondent, the fact that it had accepted his resignation should have been obvious to the grievor on November 7, 2011, when Ms. Hahn presented him with the three options, and on November 22, 2011, when the compensation department advised him it had been notified of his retirement effective December 2, 2011, and provided him with termination forms to complete.

[38] The respondent argued that the grievor brought up his desire to rescind his resignation for the first time on November 24, 2011, long after it had been accepted, and that he never raised that it was invalid or involuntary at that crucial time. According to the respondent, the grievor has not discharged his onus of establishing that his resignation was attributable to some disciplinary motive on the part of the respondent or that it was invalid or involuntary. It referred me to *Flynn v. Treasury Board (National Defence),* PSSRB File No. 166-02-29015 (19991123), and *White v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-25703 (19960221).

[39] Finally, the respondent suggested that the fact that the grievor's actions could have attracted possible or even probable disciplinary action is not sufficient to conclude that the respondent's refusal to accept the grievor's rescission of his resignation amounted to disciplinary action or to veiled discipline. On that point, it referred me to *Canada (Attorney General) v. Assh*, 2005 FC 734.

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

[40] The grievor conceded that if I considered his resignation valid, then the respondent's refusal to accept his rescission was not mine to assess, as I lacked jurisdiction under the *Act*.

[41] In response to the respondent's *Burchill* objection, the grievor referred me to *Thibault v. Treasury Board (Solicitor General of Canada - Correctional Service)*, PSSRB File No. 166-02-26613 (19960909), suggesting that form ought not to prevail over substance and that he had not been represented by legal experts during the internal grievance procedure. I note that this decision of the former Public Service Staff Relations Board preceded the Federal Court of Appeal's ruling in *Shneidman*.

[42] The grievor also referred me to paragraph 103 of *McMullen v. Canada Revenue Agency*, 2013 PSLRB 64, and suggested that the wording of the grievance is not the only element to be taken into account in deciding whether it is adjudicable.

[43] Finally, the grievor referred me to *Delage v. Treasury Board (Department of Fisheries and Oceans)*, 2008 PSLRB 56, and contended that the grievance that had been referred to adjudication was identical to the one that had been argued during the internal grievance procedure.

[44] In essence, the grievor's main arguments were that his resignation was involuntary, that no resignation ever occurred since he never truly intended to resign and that the respondent's refusal to accept the rescission of his resignation was driven by disciplinary motives.

[45] The grievor contended that the yellow Post-it note he had placed on his resignation letter and the fact that he had not submitted the DND "Notice of Resignation / Retirement Form" he had filled out and signed on November 1, 2011, were clear indications that he did not intend to resign.

[46] Relying on *Alberta v. Alberta Union of Provincial Employees,* [2012] A.G.A.A. No. 32 (QL), a grievance arbitration decision, the grievor suggested that the voluntariness of his resignation ought to be assessed based on the following four questions:

> *1. Did the grievor have a reasonable period of time for reflection?*
>
> *2. Should the employer have taken more care prior to accepting the resignation?*
>
> *3. Did the actions result from antagonisms between the grievor and the employer?*
>
> *4. Was the motivation a desire to escape from an unpleasant situation?*

[47] The grievor submitted that his resignation was not voluntary and that it ought to be considered invalid and hence non-existent. He suggested that the circumstances surrounding his resignation mirrored those that applied in *N.B.U.P.P.E. v. New Brunswick (Department of Public Safety) (Walton)* (2011), 212 L.A.C. (4th) 389, a case involving a verbal unexpected and sudden resignation by an employee who had recently been disciplined, who suffered from depression and who had to deal with the death of her treating physician.

IV. Reasons

[48] The issue to be decided in this case is whether the grievor's resignation amounted to one or more of the types of matters that can be referred to adjudication under section 209 of the *Act*. If so, I have jurisdiction to hear it and to consider whether the grievor is entitled to the corrective measure he is seeking. If it did not, I do not have jurisdiction and must decline to deal with his grievance.

[49] The types of matters that can be referred to adjudication are specifically set out in section 209 of the *Act*, which reads as follows:

> *Reference to adjudication*
>
> ***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*

> *(*a*) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*
>
> *(*b*) a disciplinary action resulting in termination, demotion, suspension or financial penalty;*
>
> *(*c*) in the case of an employee in the core public administration,*
>
> > *(i) demotion or termination under paragraph 12(1)(*d*) of the* Financial Administration Act *for unsatisfactory performance or under paragraph 12(1)(*e*) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or*
> >
> > *(ii) deployment under the* Public Service Employment Act *without the employee's consent where consent is required; or*
>
> *(*d*) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.*

[50] On his grievance form, the grievor indicated that he was referring his grievance to adjudication pursuant to paragraph 209(1)(*b*) of the *Act*, that is, due to a disciplinary action resulting in termination, demotion, suspension or financial penalty. As was suggested in *Burchill*, it was not open to the grievor to turn the grievance he presented and argued during the grievance procedure into something new or different at adjudication in order to ensure that it fit within those matters that can be referred to adjudication under section 209 of the *Act*. It goes without saying that a grievance alleging that an employer's refusal to accept the rescission of an employee's resignation was driven by disciplinary motives or one alleging that an employee was terminated on the basis of an invalid or involuntary resignation can both potentially be said to be adjudicable pursuant to paragraph 209(1)(*b*) and subparagraph 209(1)(*c*)(i) of the *Act*, respectively. But are those the allegations that are described in the grievance presentation form and that were ultimately debated throughout the grievance procedure? In my view, the answer to that question is no.

[51] While I do not disagree with the grievor's suggestion that the wording of the grievance is not the only element to be taken into account in deciding whether a grievance is adjudicable, as stated in *McMullen*, I note that in that case, the issue of discipline had been discussed and debated during the internal grievance hearings (see

paragraphs 109 and 113). That was not so in this case. And unlike the fact situation in *Delage*, the grievance that was presented during this adjudication was in no way similar to what had been argued and debated during the internal grievance procedure. In this case, discipline was not discussed or debated during the second- and third-level hearings of the grievance procedure. Although Mr. Foran testified that he raised the issue of discipline during the first-level hearing, I find that the evidence does not support his version of events as to what occurred at the second level and prefer the version put forward by Mr. Surtees, who's notes were filed in support of his testimony. As for the fact that discipline was not raised during the third-level hearing, that is not contested. Furthermore, there is no evidence that the involuntary nature of the resignation was raised during the third-level hearing. Therefore, I agree with the respondent that those subjects should not have been open for discussion or argument at the adjudication phase.

[52] In my view, to argue that the respondent's refusal to accept the rescission of the grievor's resignation amounted to discipline is to change the nature of the grievance that was originally presented and subsequently debated during the grievance procedure. It was not mentioned in the grievance presentation form or raised during the final two levels of the grievance procedure. In addition, if the grievor intended to argue that an invalid or involuntary resignation amounted to termination for any reason that does not relate to a breach of discipline or misconduct, he ought to have referred his grievance pursuant to subparagraph 209(1)(*c*)(i) of the *Act*, which he did not do. Doing so at adjudication is also akin to changing the nature of the grievance that was originally presented. According to *Burchill*, it was not open to the applicant to recharacterize his grievance so that it would be open to adjudication. In *Boudreau v Canada (Attorney General)*, 2011 FC 868, the Federal Court affirmed the importance of holding an applicant to his or her original grievance:

> *[20] … given the different treatment awarded to adjudicable and non-adjudicable matters under section 209 of the Act, an essential element of this system is that employees are not permitted to alter the nature of their grievances during the grievance process or upon referral to adjudication. Otherwise, employees who had grieved a matter not adjudicable under section 209 of the Act would alter their grievances so that an adjudicator could acquire jurisdiction.*

[53] The grievance which was debated between the parties during the whole of the grievance procedure must be the same grievance that is referred to and debated at

adjudication. It must remain the same throughout the process. I find that in the circumstance at hand, this is not the case. The true nature of the grievance that was presented and debated at all levels of the grievance procedure is the respondent's refusal to accept the rescission of the grievor's resignation, something I have no jurisdiction over, given my finding above.

[54] Simply put, the matter raised in this grievance and debated during the internal grievance procedure cannot be referred to adjudication, which means that I cannot deal with it. However, in the event that I am found to have erred in the conclusion that this matter is not adjudicable under the *Act*, I will address the grievor's key arguments.

[55] First, the grievor failed to introduce compelling and convincing evidence suggesting that the respondent's refusal to accept the rescission of his resignation was in any way, shape or form motivated by some disciplinary intent on the part of the employer. While the grievor's refusal to report to work as directed and the overall insubordinate behaviour he exhibited for weeks before tendering his resignation could certainly have attracted some form of disciplinary action which some of the email exchanges allude to, the fact remains that Ms. Hynes never initiated such a process or demonstrated a real intention to. In any event, a causal connection between a refusal such as the one in question and a disciplinary motive must be established through more than the mere possibility or probability of disciplinary action (see *Assh*).

[56] There is no doubt in my mind that the resignation letter represents exactly what it was intended to be. The subject line of the letter is resignation. It notifies the respondent of the grievor's resignation. It provides an effective date of his resignation and his proposed last day of work. It goes on to provide the reason the grievor is resigning. It seeks compensation of all monies owed him, including vacation credits. If anything, this resignation letter is more detailed than the standard DND form that the grievor filled out and signed on November 1, 2011. The wording of the grievor's email of November 24, 2011 is also very telling. In that email he says: ". . . circumstances have developed that require me to respectfully request that my resignation be rescinded. . . ."

[57] I cannot accept the grievor's contention that the yellow Post-it note he allegedly placed on his resignation letter and the fact that he did not submit the DND "Notice of Resignation / Retirement Form" are clear indications that he never intended to resign. First, there is no compelling or convincing evidence that such a note was ever placed

on the grievor's resignation letter; nor is this proposed version of events in harmony with the preponderance of the evidence that was presented to me during the hearing. This yellow Post-it note was never raised or mentioned during the grievance procedure; nor was it mentioned in any correspondence that followed the tendering of the resignation letter. For example, no mention of it is made in Mr. Foran's notes of the first-level hearing or in the grievor's email of November 24, 2011, in which he requests that his resignation be rescinded. In addition, Ms. Hynes categorically denied the presence of a yellow Post-it note. The evidence surrounding the yellow Post-it note is simply not credible. Second, the fact that the grievor took the time and effort to fill out and sign the DND "Notice of Resignation / Retirement Form," if anything, is indicative of someone who clearly intended to resign. The fact that he chose to submit his resignation in a different format does not change that conclusion.

[58] The grievor was given many opportunities to report to his substantive position at Pearkes. He refused every time, without ever giving any reasons, and ultimately chose to resign rather than return to his position, something he had threatened to do on several occasions for an entire month. In the circumstances, it was not unreasonable for the respondent to accept his resignation; nor could it be found unreasonable that the respondent declined to allow the grievor to rescind a resignation it had already accepted and processed.

[59] The grievor's actions and behaviour spoke clearly. They were deliberate and calculated. They were far from sudden or done on the spur of the moment. The grievor was not coerced or provoked; nor did he lack the capacity to make an informed decision. He repeatedly and continuously referred to his resignation, he used an inappropriate tone while corresponding with his superiors, he was insubordinate by refusing to report to his substantive position at Pearkes, and he failed to report to work altogether without prior notice. Simply put, he behaved in a manner that was inconsistent with continued employment. Contrary to what the grievor suggested, the circumstances surrounding his resignation could not be any more different from those that applied in *Walton*. What we have here is a clear and unequivocal resignation, a matter over which I have no jurisdiction, as stipulated in section 211 of the *Act*.

[60] No extenuating circumstances justify not holding the grievor to his declared intention of resigning. The respondent did not breach the *Act* by holding him to the consequences of his actions. The fact that he simply opted to resign rather than face a

potentially less-desirable alternative, i.e., returning to the Pearkes mailroom, or that he might have realized after the fact that he had made an ill-conceived decision in my view do not amount to extenuating circumstances. Again, I must stress that the grievor led no evidence to explain how returning to the Pearkes mailroom and his substantive position was either impossible, unreasonable or would constitute a danger to his health. Absent a compelling reason for such a refusal, I am left with an outright refusal on his part to return to his job.

[61] Although I am not bound by the four-pronged test suggested in the *Alberta* decision and am not convinced that the voluntariness of an employee's resignation ought to be assessed strictly on that basis, I will answer the four questions put forward by that case as follows:

> 1. The grievor had more than a reasonable amount of time for reflection.
>
> 2. The respondent had no reason to take more care before accepting the resignation. In fact, it exhibited a great degree of patience with the grievor.
>
> 3. The resignation did not result from antagonisms between the grievor and the respondent. No evidence of any such antagonism between the two parties was lead. The fact that the grievor continues to work for the same employer on a contractual basis after his resignation indicates as much.
>
> 4. There is no evidence that the grievor was motivated by a desire to escape from an unpleasant situation since he never explained why he did not want to return to his substantial position at Pearkes.

[62] Having considered and weighed all the evidence presented by the parties, I have no hesitation concluding that the severance of this employment relationship was initiated by the grievor and amounted to no less than a voluntary termination of employment on his part, as envisioned by section 63 of the *PSEA*. As I already indicated, and as the grievor conceded, I am statute-barred under section 211 of the *Act* from dealing with matters arising under that provision.

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

(The Order appears on the next page)

V. Order

[64] I order PSLRB File No. 566-02-7327 closed.

June 11, 2014.

Stephan J. Bertrand,
adjudicator