

**Date:** 20150129

**Files:** 566-34-3629 and 3630

**Citation:** 2015 PSLREB 13

*Public Service Labour Relations Act*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

---

BETWEEN

**MICHÈLE LE PAGE**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Le Page v. Canada Revenue Agency*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

***Before:*** Margaret T.A. Shannon, a panel of the Public Service Labour Relations and  
Employment Board

***For the Grievor:*** No one

***For the Employer:*** Allison Sephton, counsel

---

Heard at Vancouver, British Columbia,  
January 6 and 7, 2015.

### **I. Details of grievances**

[1] The grievor, Michèle Le Page, alleged that the termination of her employment during her probationary period was disguised discipline. She further alleged that the employer discriminated against her, in violation of article 19 (“No discrimination”) of the collective agreement between the Public Service Alliance of Canada (“the bargaining agent”) and the Canada Revenue Agency (CRA or “the employer”) having an expiry date of October 31, 2010 (“the collective agreement”), by failing to accommodate her.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the new Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) as that Act read immediately before that day.

[3] In other words, the new Board is now performing the functions that were previously exercised by the former Board.

### **II. Summary of the evidence**

[4] At the hearing, Nicole O’Young, counsel for the bargaining agent, advised me that the bargaining agent was withdrawing its support for the grievances and that it was no longer representing the grievor. As the grievance in PSLREB File No.-566-34-3629 alleged a violation of the collective agreement, it could not proceed without the bargaining agent’s support (s. 208(4) of the Act). However, since the grievance in PSLREB File No.-566-34-3630 alleged disguised discipline as the reason for the grievor’s release on probation, it could proceed without the bargaining agent’s support. Ms. O’Young advised the grievor of this and of her right to represent herself at the hearing. Despite having been given this information and having been advised of the time and place of the hearing, the grievor did not appear. She made no request for postponement of the hearing. Consequently, the hearing in relation to the second grievance (PSLREB File No.-566-34-3630) proceeded as scheduled.

[5] Gail Krestanovich was called to testify by the employer. At the time of the grievor's release from probation, she was Manager of the Fraser Valley and Northern Tax Services Office call centre. The grievor was hired to work at the call centre on a part-time basis commencing January 14, 2008. Pursuant to the CRA's staffing program, she was subject to a 12-consecutive-month probationary period (see the letter of offer, Exhibit 2). As a CRA employee, the grievor was required to review its *Code of Ethics and Conduct* (Exhibit 6) and to demonstrate the values identified in it.

[6] From the beginning of her employment, the grievor exhibited a disruptive, rude, demeaning and belittling conduct, which resulted in her rejection on probation on January 8, 2009 (see Exhibit 1). This behaviour did not demonstrate the expected standard of conduct as envisioned in the employer's values of integrity, professionalism, respect and cooperation.

[7] The employer submitted as evidence numerous email exchanges in which the grievor demonstrated her unsuitability for employment with the CRA (see Exhibits 7 to 14, 16 and 17). In the emails, the grievor refers to her colleagues and to management in very offensive terms and illustrates her disrespect for those with whom she worked.

[8] Ms. Krestanovich described the grievor as difficult to deal with and as behaving inappropriately in the workplace. The grievor would not engage with co-workers or management, would not follow directions and would not participate in discussions to resolve issues. She has described her manager, in emails, as a "Nazi" (see Exhibit 7) and has expressed a hatred of English people. Despite being advised that these comments were inappropriate, the behaviour continued. She would challenge Ms. Krestanovich on her opinions of her and of people with mental illness and repeatedly demanded responses to these challenges in writing. At one point, the grievor challenged Ms. Krestanovich's ability to think in the absence of written policies and directions.

[9] By email, on July 2, 2008, the grievor was reminded that there were expectations of appropriate conduct in the workplace to which she, like everyone else, was accountable (see Exhibits 10 and 16). Her response was an email asking Ms. Krestanovich whether she despised her or considered her despicable (see Exhibit 11).

[10] The grievor's conduct did not change, and her co-workers were reluctant to continue working with her. She continued to make comments about her co-workers

that were inappropriate and unprofessional (see Exhibit 13). Despite being counselled on appropriate communication with her colleagues, her pattern of unprofessional communication persisted (see Exhibit 14). Co-workers who sat near her asked to be relocated.

[11] On September 1, 2008, the grievor was put on an action plan to correct her behaviour (see Exhibit 15), which she and her team leader developed. Its focus was to deal with the grievor's demonstrated inability to cooperate with her co-workers and to help her communicate positively and professionally.

[12] On January 5, 2009, the grievor sent an email to Ms. Krestanovich, indicating that she would not be changing her behaviour in 2009 (see Exhibit 17), which was became the deciding factor in Ms. Krestanovich decision regarding the grievor's probation. The grievor subsequently sent emails imploring Ms. Krestanovich to ignore the first email, as it was intended as a joke. Ms. Krestanovich submits that this was consistent with the grievor's pattern of being offensive and unprofessional in her communication and then seeking forgiveness.

[13] As a result of the grievor's consistent disrespectful conduct towards her colleagues and management, despite efforts to correct it, and the negative impact her presence had on the workplace, Ms. Krestanovich recommended to management that the grievor be rejected before the end of her probationary period.

[14] On January 8, 2009, the grievor was advised that her employment was terminated for her failure to successfully complete the probationary period. She was provided with two weeks' pay in lieu of notice (see Exhibit 1) and was informed of her right to have this decision reviewed by way of an "Individual Feedback and Decision Review" process. She exercised that right, which confirmed the decision to reject her on probation (see Exhibits 4 and 5).

[15] No evidence was provided by the grievor.

### **III. Summary of the arguments**

#### **A. For the employer**

[16] I have no jurisdiction to deal with this matter as it is one of rejection on probation. According to *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134, I am without jurisdiction under section 209 of the *Act* as a rejection

on probation is administrative and not disciplinary in nature. In addition, as a remedy was available under the *Canada Revenue Agency Act* (S.C. 1999, c. 17), the grievor was not entitled to refer a grievance to adjudication under the *Act* (see *Hajjage v. Canada Revenue Agency*, 2011 PSLRB 5).

[17] Despite the lack of jurisdiction, in cases of rejection on probation properly before the new Board, the employer is not required to prove just cause for the termination. Once the employer established that the grievor was terminated during her probationary period for employment-related reasons and that she was provided salary in lieu of notice, I was without jurisdiction to review the employer's decision in the absence of evidence that the termination had no legitimate employment-related reason and was in fact disguised discipline, a sham or a camouflage (see *Tello* at paras. 111 and following.)

[18] The grievor bore the burden of proof that the rejection on probation was for other than legitimate employment-related reasons. She chose not to appear at the hearing and provide any evidence to discharge the burden, although she was fully aware of the time and place of the hearing and of her right to proceed despite her bargaining agent's withdrawal of support.

[19] On the other hand, the employer established that the grievor's consistent inappropriate behaviour was disruptive to the workplace and that attempts to have her alter her behaviour were unsuccessful. This was sufficient to support rejecting her on probation (see *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33).

[20] The grievor has not discharged the burden of proof as she led no evidence. Therefore, I have no jurisdiction or authority in this matter. Furthermore, by failing to appear, the grievor has abandoned her grievance (see *Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*, 2011 PSLRB 143; *Gallan v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 19; and *Smid v. Deputy Head (Courts Administrative Service)*, 2014 PSLRB 24).

#### **IV. Reasons**

[21] The employer's counsel accurately pointed out the shifting burden of proof as described in *Tello* in matters of rejection on probation. In this case, the employer has established a clear employment-related reason for the decision to reject the grievor

before the end of her probationary period. The employer's concerns with the nature and manner of the grievor's communications are legitimate.

[22] I have reviewed all the emails submitted as exhibits. Some are, in my opinion, particularly negative and do not indicate any attempt by the grievor to address the employer's concerns. In particular, I note the reference to being a "good Nazi" in Exhibit 7, the references to calling "mom and dad to fix it for me" and "you stupid [expletive] kid" in Exhibit 8, the email questioning whether her manager despised her (see Exhibit 11), and her opinion of her co-workers in Exhibit 13 as indicative of her unsuitability and unwillingness or inability to meet the employer's expectations as set out in her letter of offer (see Exhibit 2) during the probationary period.

[23] While there are references sprinkled throughout the exhibits by the grievor claiming she suffered from health concerns and her sense that she was being treated differently because she is a Francophone and a Jew (see Exhibits 7, 9, 10 and 13), these appear to be nothing more than abstract beliefs on her part that are insufficient to either establish a *prima facie* case of discrimination(see *Filgueria v. Garfield Container Transport Inc.*, 2006 FC 785 at paras. 30-31) or to discharge the burden of proof as described in *Tello*. In the absence of clear and cogent evidence to support her grievance that established a fraud or sham, disguised discipline, or discrimination on a prohibited ground, I must rely on what evidence is before me, and I conclude I am without jurisdiction to hear this matter.

[24] I do not need to deal with the question of whether the grievor has abandoned her grievance, as based on the evidence before me, I have no jurisdiction in the matter.

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

*(The Order appears on the next page)*

**V. Order**

[26] This grievance is dismissed.

January 29, 2015.

**Margaret T.A. Shannon,  
a panel of the Public Service Labour  
Relations and Employment Board**