

**Date:** 20151006

**Files:** 566-34-9573 to 9578

**Citation:** 2015 PSLREB 82

*Public Service Labour Relations  
and Employment Board Act and  
Public Service Labour Relations Act*



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

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BETWEEN

**STEEVE DALLAIRE AND MÉLANIE VILLENEUVE**

Grievors

and

**CANADA REVENUE AGENCY**

Employer

Indexed as

*Dallaire and Villeneuve v. Canada Revenue Agency*

In the matter of individual grievances referred to adjudication

**Before:** Stephan J. Bertrand, a panel of the Public Service Labour Relations and  
Employment Board

**For the Grievors:** Jean-Sébastien Schetagne, Public Service Alliance of Canada

**For the Employer:** Kétia Calix, counsel

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Heard at Saguenay, Quebec,  
February 17 and 18, 2015.  
(PSLREB Translation)

**I. Individual grievances referred to adjudication**

[1] Steeve Dallaire and Mélanie Villeneuve, the grievors, are spouses who have worked for the Canada Revenue Agency (“the employer” or CRA) for successive terms since February 2008, for Ms. Villeneuve, and since November 2011, for Mr. Dallaire. Their employment terms were renewed several times for periods of 6 to 12 months, with modification. On March 1, 2013, the employer suspended each grievor for 20 days without pay, from March 4 to March 28, 2013, inclusive. In addition, on March 12, 2013, the employer informed them that their respective employment terms with the CRA would not be renewed and that they would end on March 28, 2013, as scheduled.

[2] The grievors referred six grievances to adjudication: files 566-02-9573 and 9576 challenged the employer’s decision to not renew their employment terms and to remove their names from the CRA’s rehire pool; files 566-02-9574 and 9577 challenged the employer’s decision to impose a 20-day suspension on them and to remove their names from the CRA’s rehire pool; and files 566-02-9575 and 9578 challenged the failure to comply with the grievance process set out in the collective agreement. As corrective measures, the grievors asked that the discipline be annulled, that they be reinstated in their positions, that their names be reinserted in the CRA’s rehire pool and that their employment terms be renewed.

[3] 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 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[4] The employer objected to my jurisdiction to hear the grievances about its decision to not renew the grievors’ employment terms and to remove their names from the CRA’s rehire pool (files 566-34-9573 and 566-34-9576) because they had not been subjected to one of the measures mentioned in section 209 of the *PSLRA*. It maintained

that that decision was made in accordance with the term appointment provisions and with section 58 of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*). It also objected to my jurisdiction to grant certain corrective measures the grievors sought, i.e., reinstating them to their positions, restoring their names in the CRA's rehire pool and renewing their employment terms.

[5] Section 209 of the *PSLRA* states the following:

*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.*

*(2) Before referring an individual grievance related to matters referred to in paragraph (1)(a), the employee must obtain the approval of his or her bargaining agent to represent him or her in the adjudication proceedings.*

*(3) The Governor in Council may, by order, designate any separate agency for the purposes of paragraph (1)(d).*

[6] Section 58 of the *PSEA* states the following:

*58. (1) Subject to section 59, an employee whose appointment or deployment is for a specified term ceases to be an employee at the expiration of that term, or of any extension made under subsection (2).*

*(2) A deputy head may extend a specified term referred to in subsection (1), and such an extension does not constitute an appointment or a deployment or entitle any person to make a complaint under section 77.*

*(3) This section does not apply in respect of appointments made on an acting basis.*

[7] However, I note that section 58 of the *PSEA* does not apply to CRA employees (*Canada Revenue Agency Act* (S.C. 1999, c. 17, s. 53)).

[8] At the start of the hearing, the grievors' representative conceded that I did not have jurisdiction to hear the grievances on the employer's decision to not renew the grievors' employment terms (files 566-02-9573 and 9576) and that I did not have the authority to grant the corrective measures listed in the employer's objection. Therefore, he abandoned those grievances on the grievors' behalf as well as those about the failure to comply with the grievance process (files 566-02-9575 and 9578). Mr. Schetagne indicated that the grievors would proceed at the grievance hearing only with the grievances about the discipline that the employer imposed, i.e., the 20-day suspensions without pay imposed on each of the two grievors.

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

[9] The relevant facts about the issues still in dispute before me are simple and largely uncontested. The grievors held positions as assessment processing, accounts and benefit processing officers at the SP-04 group and level at the CRA's Jonquière Tax Centre. They were on the benefits examination team, which consisted of a dozen employees hired successively for terms from a rehire pool of bilingual temporary employees. In part, their duties consisted of verifying the authenticity of documents provided by taxpayers wishing to benefit from certain tax credits or benefits provided under the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.)). Those duties require good observation skills and good judgment.

[10] At the relevant time, the grievors were renting their lodging in Chicoutimi, Quebec, and wanted to purchase a house. They consulted a mortgage broker to obtain a mortgage loan from a financial institution. As part of that exercise, they had to

provide the mortgage broker with an employment confirmation letter. On January 17, 2013, Ms. Villeneuve asked a CRA manager, Annie Desgagné, to provide her with a letter confirming her CRA employment, her position, her annual salary and her initial CRA hire date. She requested an identical letter for her spouse, Mr. Dallaire.

[11] On January 18, 2013, Ms. Desgagné gave the grievors the employment confirmation letters containing the requested information as well as the start and end dates of their most recent employment terms, from October 26, 2012, to March 28, 2013. That addition did not please them, particularly because the mortgage broker had not requested that information and because they feared that the financial institution would assume that their employment would end on March 28, 2013. Mr. Dallaire met with Ms. Desgagné to ask her not to include the terms' start and end dates in the letter because, according to him, the financial institution might not approve their application for a mortgage loan based on that information. Ms. Desgagné refused because, according to her, it was important to indicate the duration of the grievors' terms so that the financial institution would know that they were not appointed indeterminately (permanently) but to terms (temporarily). Ms. Desgagné then suggested to Mr. Dallaire that he accept the letters as she had written them or that he simply return them to her. He agreed to take the letters that mentioned the employment terms' start and end dates.

[12] Fearing that no financial institution would agree to grant them a mortgage loan based on such information, the grievors photocopied the employment confirmation letters, taking care to place a white strip over the employment terms' start and end dates. They provided those modified versions to their mortgage broker, who in turn provided them to the financial institution concerned.

[13] However, following some telephone discussions with representatives of the financial institution and the mortgage broker, Ms. Desgagné learned that without her consent, the grievors had covered up information in the letters she had provided to them before they gave them to the mortgage broker. Ms. Desgagné testified that she then indicated to the financial institution representative that her opinion was that the grievors had falsified the letters that she had provided to them. She added that the representative replied that she did not believe that the financial institution would grant the mortgage loan to the grievors given the reported behaviour. Ms. Desgagné then sent the same information to the mortgage broker representative, who responded

similarly to the financial institution representative.

[14] On February 1, 2013, Mr. Dallaire met again with Ms. Desgagné to obtain confirmation that his and his spouse's employment terms would be renewed for one year, beginning on March 29, 2013. Ms. Desgagné had told them as much in December 2012 during a team meeting. According to the grievors, it was important to mention that fact to the financial institution since the end date of the employment terms was mentioned in Ms. Desgagné's letter and was approaching quickly. Offended by the information that was covered up in her employment confirmation letters, Ms. Desgagné took the opportunity to inform Mr. Dallaire of her grave disappointment. She also told him that she had reported the events to CRA senior management and that given the circumstances, she would not provide him with the requested renewal confirmation letter.

[15] Following Ms. Desgagné's denunciation, the employer launched an investigation, which concluded that the grievors had falsified CRA documents for personal purposes. On March 1, 2013, the employer suspended each grievor for 20 days without pay, from March 4 to March 28, 2013, inclusive. Additionally, on March 12, 2013, it informed them that their respective employment terms with the CRA would not be renewed and would end on March 28, 2013, as scheduled.

[16] In her testimony, Diane Gagnon, Director, Jonquière Tax Centre, indicated that she had consulted the CRA's "Discipline Policy," specifically the "[translation] Table of Suggested Disciplinary Measures." She added that because the act involved falsifying CRA documents for personal purposes and because it constituted an act of misconduct listed under "[translation] Financial Management and Fraud" in that policy and attributed to Group 5 in the table, she was required to impose the disciplinary measure associated with that group, i.e., a sanction ranging from a minimum of 20 days' suspension without pay to dismissal. Ms. Gagnon indicated that she had considered the fact that the grievors' act affected the CRA's image but that nevertheless she chose suspension rather than termination.

[17] It is important to note that by means of the evidence adduced, the employer did not demonstrate that the grievors benefitted from or could have benefitted in any way from the situation.

[18] As indicated in the suspension letters dated March 1, 2013, no past discipline

appeared in the grievors' personnel files, and they admitted to their conduct and then expressed remorse.

[19] In the end, the consequences of the grievors' act can be summarized as follows: the financial institution refused to grant the mortgage loan to them based on Ms. Desgagné's information, they were not able to purchase the home that they were renting, they were each suspended for 20 days without pay, and their employment terms at the CRA were not renewed, even though most of their colleagues' terms were, at the time at issue.

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

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

[20] According to the employer, the grievors committed a wrongdoing that justified discipline. It added that a 20-day suspension without pay represented appropriate and reasonable discipline given the facts reported during its investigation, particularly that the grievors had modified Ms. Desgagné's letters after she refused their request to modify them. In support of that argument, the employer referred me to *McKenzie v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 26, and *Morrow v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 43.

[21] The employer submitted that the changes in question represented a falsification of official CRA documents for personal purposes, to obtain a mortgage. According to the employer, it was serious and fraudulent misconduct that justified severe discipline. It suggested that the grievors' act was more serious than a theft committed at a workplace.

[22] The employer also submitted that the nature of the grievors' positions and the fact that their conduct tarnished its image were aggravating factors that had to be considered when imposing discipline. According to the employer, therefore, 20-day suspensions without pay were appropriate and reasonable under the circumstances.

#### **B. For the grievors**

[23] The grievors reminded me that they never denied their act, and they submitted that the sanctions that the employer imposed were too severe.

[24] The grievors also reminded me that in neither its suspension letters nor its

investigation report did the employer indicate the provisions of the CRA's "Code of Ethics and Conduct" that had been violated. They learned of that only at the hearing.

[25] According to the grievors, the description of the misconduct the employer used to justify the imposed sanctions, from its table of suggested disciplinary measures, was not appropriate and did not correspond to the act or what is set out in the "Financial Management and Fraud" section of the CRA's "Code of Ethics." Instead, that section of the Code deals with financial benefits, which were not part of their case, according to the grievors. They submitted that their act might correspond to what is set out under "[translation] Care and Use of Agency Information" in the Code, which specifically states that employees must not remove or hide information or change any official CRA document without express authorization from their managers. According to the grievors, if the alleged misconduct corresponds to the section of the Code on "Care and Use of Agency Information," to which a description of wrongdoing is associated, it instead justifies measures from Group 1 of the employer's table of suggested disciplinary measures, i.e., suspensions of no more than five days without pay.

[26] The grievors also submitted that a mortgage loan does not represent a benefit but instead a debt to a financial institution and that the employer did not establish that the changes to Ms. Desgagné's letters were made for personal purposes.

#### IV. Reasons

[27] At the hearing, the grievors abandoned their grievances in files 566-02-9573, 9575, 9576 and 9578.

[28] The only grievances that remain before me are about the discipline that the employer imposed, i.e., the 20-day suspension without pay imposed on each of the two grievors under paragraph 209(1)(b) of the *PSLRA*, which reads 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 . . . .*

[29] My opinion is that trust and honesty are the cornerstones of a solid employer-employee relationship. However, in this case, I note that the relationship of trust between the employer and the grievors was not completely destroyed as the employer did not consider dismissal appropriate. When it decided to suspend them, it had not yet decided whether their employment terms would be renewed. At the least, no evidence to the contrary was presented to me. The decision to not renew the grievors' terms was communicated to them only 12 days later. Thus, it was possible that when the employer decided to suspend rather than dismiss them, they would have returned to their positions after the 20-day suspension. I deduct from those facts that their act, which was an isolated act, was not, according to the employer, serious enough to justify their dismissal but was serious enough to justify suspensions without pay. I must determine whether the discipline was excessive, as the grievors suggested.

[30] The decisions that the employer cited were not very useful to what I had to determine. *Morrow* dealt with the dismissal of a grievor who had filed false documents on 14 separate occasions between 1999 and 2003 to justify sick leave, which constituted a financial benefit, and who had lied during her testimony at the hearing. *McKenzie* deals with the dismissal of a grievor who had forged her doctor's signature on nine medical certificates to have sick leave approved, which also represented a financial benefit. She had already been suspended for five days without pay for serious misconduct.

[31] Contrary to the decisions the employer cited, the grievors' personnel files contained no past discipline. Their act represented an isolated incident that did not destroy the relationship of trust between them and the employer because it did not feel the need to terminate them. They immediately admitted to their act and then expressed remorse. They also testified credibly at the hearing.

[32] In terms of Ms. Desgagné's concerns that the financial institution should know that the grievors were not indeterminate but term employees, I note that although the grievors concealed their employment terms' start and end dates in the second paragraph of Ms. Desgagné's letters, they did not conceal the indication that they were term employees in the letters' first paragraphs. Because of that fact, I deduced that they were not trying to hide that they were term employees but instead that they did not want to let the financial institution know that their employment terms would end

on March 28, 2013, knowing that they had not received any renewal confirmation.

[33] As for the employer's concerns that the grievors' act tarnished its reputation with third parties (the financial institution and the mortgage broker), I note that Ms. Desgagné voluntarily qualified the grievors' act as a falsification, which in no way was she authorized to do. She simply needed to obtain a copy of the letters given to the third parties, compare them to those that she had kept on file, provide the originals to the third parties and relate her observations to her superiors. In my opinion, Ms. Desgagné's qualification of the grievors' act was excessive. At most, it was a form of redaction.

[34] Finally, I feel in no way bound by the CRA's table of suggested disciplinary measures, which Ms. Gagnon relied on to impose the 20-day suspension on each grievor, a tool designed by and for the CRA. I am also not convinced that the grievors' act satisfied the employer's description of misconduct used to justify the discipline that was imposed. This case does not involve deliberate abuse or a deliberate false application of CRA resources, revenues, information or workforce. Instead, it is a redaction of the grievors' personal information. Furthermore, no evidence was adduced about the personal profit that the grievors received or could have received from their act. I acknowledge that it is common to consider that access to a loan can benefit a borrower, but it is not always the case. For example, the grievors might have tried to purchase an overvalued home in a declining real estate market. If so, it would have been difficult to conclude that their act was done for personal profit. Regardless, no evidence was adduced at the hearing to establish that their act was done for personal purposes. Thus, I am not convinced that the act in question represented misconduct justifying discipline.

[35] My opinion is that the employer did not have valid grounds to impose discipline and that the 20-day suspensions without pay were excessive. In my opinion, a simple warning about the redaction would have been enough under the circumstances.

[36] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

## **V. Order**

[37] I declare that the grievors abandoned their grievances in files 566-34-9573, *Public Service Labour Relations and Employment Board Act* and *Public Service Labour Relations Act*

9575, 9576 and 9578 and order those files closed.

[38] I annul the 20-day suspensions without pay.

[39] I order the employer to reimburse the 20 days of pay and benefits to each of the grievors.

[40] I will remain seized of this case for a period of 90 days from the date of my decision to resolve conflicts that may arise with calculating the amounts to reimburse to the grievors.

October 6, 2015.

PSLREB Translation

**Stephan J. Bertrand,  
a panel of the Public Service  
Labour Relations and Employment Board**