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File: 566-02-8334

Citation: 2016 PSLREB 06

*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

BETWEEN

BARRY MATCHETT

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Employer

Indexed as

Matchett v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan Gray, a panel of the Public Service Labour Relations and Employment Board

For the Grievor: Himself

For the Employer: Karen Clifford, counsel

Heard at Moncton, New Brunswick,
November 17, 2015.

REASONS FOR DECISION

Summary

[1] Barry Matchett (“the grievor”) is a manager with the Correctional Service of Canada (“the employer”) at its maximum-security Atlantic Institution in Renous, New Brunswick. He grieves the abrupt cancellation and postponement of his return-to-work plan after a period of injury on duty that he alleges caused him financial loss.

[2] The grievance was referred to the Public Service Labour Relations and Employment Board (“the Board”) for adjudication.

[3] A one-day hearing was held to examine the grievance and the supporting evidence. For the reasons set out in this decision, I found during the hearing that the Board does not have jurisdiction to hear the grievance and dismissed it.

[4] The grievor filed the grievance on January 9, 2013, and he referred it to the former Public Service Labour Relations Board (PSLRB) for adjudication on March 20, 2013. On November 1, 2014, the Board was created to replace the PSLRB (see *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365)). 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*.

Facts

[5] The grievor was injured on duty at the Atlantic Institution. After a period of convalescence, his medical team advised that he was fit for a graduated return to duty. As appears from several emails exchanged by officials at his workplace, a date was agreed upon for his return to work, according to which he was to immediately attend French-language training upon his return.

[6] According to the grievor’s testimony and several email exchanges filed in evidence, the employer unilaterally altered his return-to-work plan with very short notice to him. He alleges that the alteration of his return-to-work plan caused him a financial loss because he was no longer able to receive “injury-on-duty” pay and was then required to apply for workers’ compensation.

[7] The grievor alleges that the employer's decision to remove him from injury-on-duty pay was unfair and was motivated by his managers' desire to reduce their budget expenditures, to secure their annual merit pay.

The Board's jurisdiction

[8] The grievor referred his individual grievance to the Board pursuant to paragraph 209(1)(b) of the *PSLRA*, which requires that the grievance be related to a disciplinary action resulting in termination, demotion, suspension or financial penalty.

[9] The employer submits that throughout the grievance process, the grievor made no allegation or references to any of the elements set out in paragraph 209(1)(b). Furthermore, the employer submits that irrespective of whether or not the grievor incurred a "financial penalty", there is no evidence of any disciplinary action being taken against the grievor to bring the matter within the scope of paragraph 209(1)(b).

[10] In his testimony and cross-examination, the grievor admitted that at no time was he disciplined for any reason related to his return-to-work plan being changed. He readily acknowledged that at no time during the grievance process did he tell his employer that he was claiming to have been disciplined.

[11] Given the grievor's candid admissions, the hearing could not continue. I have no jurisdiction under paragraph 209(1)(b) of the *PSLRA* to hear the grievance as that provision requires that an individual grievance referred to adjudication be presented up to and including the final level of the grievance process and that it be related to a disciplinary action resulting (in this case) in a financial penalty.

[12] Not only did the grievor admit that he suffered no discipline but he acknowledged that his discipline allegation was not presented through any of the levels of the grievance process prior to referral for adjudication.

[13] The Federal Court of Appeal's decision in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.) has been relied upon in many Board decisions, and states as follows:

... it was not open to the applicant, after losing at the final level of the grievance procedure the only grievance presented, either to refer a new or different grievance to adjudication or to turn to the grievance so presented into a grievance complaining of disciplinary action

[14] In argument, the grievor cited *McMullen v. Canada Revenue Agency*, 2013 PSLRB 64, which is an interlocutory decision about jurisdiction. He submitted that *McMullen* stands for the authority to somewhat loosen the Federal Court of Appeal's guidance in *Burchill*. The adjudicator in *McMullen*, at para. 113, looked beyond the formal written pleadings in the internal grievance process to find that "[t]he employer has in no way been caught off guard by any of the allegations or arguments raised by the grievor."

[15] Counsel for the employer responded to *McMullen* by suggesting that it has not been followed and that it would have been overturned had it been appealed.

[16] I distinguish *McMullen* on its facts as it finds at paragraph 105 that the grievor in that case was subject to a "disciplinary meeting". There is no evidence whatsoever in the case before me of the grievor experiencing anything even resembling discipline.

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

(The Order appears on the next page)

Order

[18] The grievance is denied due to lack of jurisdiction.

February 1, 2016.

**Bryan Gray,
a panel of the Public Service Labour
Relations and Employment Board**