Date: 20160922

Files: 566-02-8420 and 8421

Citation: 2016 PSLREB 88

Public Service Labour Relations Act Before an adjudicator

BETWEEN

LUC BELISLE

Grievor

and

DEPUTY HEAD
(Department of Aboriginal Affairs and Northern Development)

Respondent

Indexed as
Belisle v. Deputy Head (Department of Aboriginal Affairs and Northern Development)

In the matter of individual grievances referred to adjudication

Before: Stephan J. Bertrand, adjudicator

For the Grievor: Nicholas Brunette-D'Souza

For the Respondent: Joshua Alcock, counsel

Heard at Ottawa, Ontario,
January 13 and 14, 2014, and July 30, 2015.

I. Individual grievances referred to adjudication

[1] Luc Belisle ("the grievor") was a resource control officer with Aboriginal Affairs and Northern Development Canada (AANDC or "the respondent"). On October 25, 2012, the respondent terminated his employment for reasons of medical incapacity. He filed a grievance in which he alleged that the respondent had no valid grounds to terminate his employment and that it had failed to accommodate his disability to the point of undue hardship. He also alleged that the respondent discriminated against him, in violation of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*) and article 46 of the collective agreement between the Treasury Board and the Association of Canadian Financial Officers for the Financial Management Group that expired on November 6, 2014 ("the collective agreement").

[2] The grievance was the subject of two referrals to adjudication and one notice to the Canadian Human Rights Commission. That notice stated that the grievor intended to raise an issue involving interpreting or applying the *CHRA*. The Commission declined to make any submissions in this matter with respect to the issue raised by the grievor.

[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 ss. 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 s. 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) as that Act read immediately before that day.

II. Summary of the evidence

[4] The relevant facts pertaining to this grievance were summarized from the documentary evidence filed jointly by the parties and the testimonies of the grievor; Allison Shatford, a labour relations manager; Eva Jacobs, the director of corporate accounting and reporting; and Andrew Francis, the director general, corporate accounting and material management.

[5] The grievor was initially hired by Indian Residential Schools Resolution Canada (IRSRC) in May 1982. In July 2008, IRSRC employees, including the grievor, were transferred to Indian and Northern Affairs Canada (INAC), which eventually became AANDC. He became absent from work due to illness beginning on January 8, 2003. After exhausting his sick leave credits, the grievor was put on leave without pay status from February 20, 2004, until his termination. No workers' compensation claim or grievance was filed in connection with the cause of his illness or disability.

[6] While Health Canada assessed the grievor in January 2004 and a gradual return to work was recommended for him at that time, it appears that neither he nor the respondent made any effort to follow up on that recommendation. However, on January 5, 2005, he applied for long-term disability benefits with Sun Life Financial. Although he was initially denied them, his claim was eventually approved, retroactive to January 2003, following a successful appeal. At that time, he was represented by Bruce Sevigny. He has been receiving disability insurance benefits ever since.

[7] On March 31, 2010, Ms. Shatford wrote to Mr. Sevigny to inquire about the grievor's intentions with respect to his leave situation and to provide him with options available to employees on extended sick leave without pay. She reminded Mr. Sevigny that the grievor had been away from the workplace since January 2003, on leave without pay since February 2004, and receiving disability insurance benefits and that other than a leave form that had been submitted to cover the period of October 1, 2003, to February 19, 2004, no further leave form or medical certificate had been submitted to the respondent to justify the grievor's absence from work. She also reminded him that under the Treasury Board "Directive on Leave and Special Working Arrangements" (Appendix B, Section 2- "Management of Specific Leave without Pay Situations"), long-term leave situations were to be resolved within two years of the leave's commencement. The following three options were presented to the grievor:

1) returning to duty (subject to medical certification by Health Canada);

2) resigning; and

3) retiring on medical grounds (subject to Health Canada's approval).

[8] Ms. Shatford also provided a "Physician's Certificate of Disability for Duty" form and an application for leave form and requested a response within 30 days. When he

testified, the grievor confirmed that Mr. Sevigny had provided him with a copy of this letter shortly after he had received it.

[9] Mr. Sevigny contacted Ms. Shatford and requested a 30-day extension to respond to her letter, which she granted. However, no response was provided. Ms. Shatford called Mr. Sevigny on July 9 and August 12, 2010. She left voicemail messages on both occasions.

[10] Having received no response from Mr. Sevigny, Ms. Shatford wrote to him again on August 27, 2010. On September 13, 2010, Mr. Sevigny emailed her to advise that he had not been able to obtain instructions from the grievor in connection with the options that had been presented to him and that he did not anticipate that any instructions to that effect would be forthcoming.

[11] On September 12, 2011, the grievor contacted Ms. Shatford to request an extension of time to respond to her March 31, 2010, letter. Ms. Shatford told him she would get back to him and eventually indicated to him that she did not have the delegated authority to grant such extensions. She referred him to Ms. Jacobs.

[12] Following a similar request from the grievor, Ms. Jacobs spoke to him on the phone on February 13, 2012. During that conversation, he confirmed to her that he was still receiving disability insurance benefits, that he was unable to attempt to return to work, and that he needed more time to consider his options.

[13] Ms. Jacobs subsequently wrote to the grievor on March 5, 2012, essentially reiterating the content of the March 31, 2010, letter and requesting a response from him by April 2, 2012. She also provided him with additional contact information for resources that could be of assistance to him, including a compensation advisor and a human resources advisor. When he testified, the grievor confirmed that he never attempted to contact them.

[14] Ms. Jacobs' letter was sent to the grievor by registered courier and was subsequently returned to the respondent unclaimed. When informed of this, Ms. Jacobs contacted the grievor on March 28, 2012. During that conversation, she agreed to resend the March 5, 2012, letter and to extend the response deadline to May 2, 2012. According to Ms. Jacobs, in any of her conversations with him or in his correspondence, the grievor never asked for or mentioned any accommodation that

could facilitate his return to work.

[15] On May 1, 2012, the grievor responded to Ms. Jacobs in writing. In that letter, he indicated that he was hopeful that his health condition would improve sufficiently to allow him to return to work but that he could not estimate when that would be. He also indicated that he did not believe that his health condition enabled him to provide a fully informed decision on the proposed options.

[16] Shortly after May 10, 2012, the grievor provided the respondent with a leave application form covering the period from February 20, 2004, until May 1, 2014, and with a note from his physician, Dr. Henderson, which read as follows:

> *Please be advised that the above named has been under my care since July 2003. He is being treated for Major Depressive Disorder (296). He has been unable to work due to illness since February 2004. He is eager to return to work but at this time he remains unable to work for medical reasons. I am guardedly optimistic that he will be able to return to work in May 2014.*

[17] When he testified, the grievor confirmed that throughout his long period of leave, he had been completely unable to work, and that up to his termination, he had been unable to say when he would be in a position to return to work.

[18] On August 29, 2012, Ms. Jacobs wrote to the grievor to inform him that she was unable to approve his leave request to May 1, 2014, given that according to the information provided, he was unable to work for the reasonably foreseeable future. She reminded him that under a Treasury Board directive, which had been provided to him in previous correspondence, leave without pay could not be granted indefinitely. She proposed to end the ongoing leave situation through the following two options: (1), resignation, or (2), medical retirement (subject to Health Canada's approval). She explained to the grievor that since the medical information provided revealed that a return to work in the reasonably foreseeable future was not contemplated, such an option could no longer be offered. The grievor was given until September 28, 2012, to inform the respondent of his choice of option. He was also warned that if he failed to respond within the time specified, it could lead to his employment being terminated for medical incapacity.

[19] The grievor responded to Ms. Jacobs by a letter dated September 19, 2012. In what certainly comes across as articulate and intelligible correspondence, he

challenged the respondent's ground for refusing his leave request and suggested its decision might have been motivated by other considerations. Unlike the previous letter, in his September 19, 2012 letter the grievor he made no reference to his alleged inability to provide a fully informed decision on the proposed options.. When he testified, the grievor confirmed that throughout his long leave period, he handled his own financial affairs, without assistance.

[20] On October 4, 2012, Mr. Francis wrote to the grievor to reiterate why the respondent could not approve his latest leave request beyond October 17, 2012. He reminded him that it was still possible for him to apply for medical retirement or to resign from the public service before that date and cautioned him that action would commence to terminate his employment for medical incapacity effective the close of business on October 17, 2012. According to Mr. Francis' testimony, the history of the grievor's file and the information provided by the grievor's physician gave him no reason to believe that a return to work would take place in a reasonably foreseeable future. What appeared obvious to him in May 2012 was that the grievor would remain incapable of returning to the workplace for at least two more years and that a return to work was at that time unlikely.

[21] On October 16, 2012, Mr. Sevigny emailed Mr. Francis. In that correspondence, Mr. Sevigny confirmed that he was representing the grievor and requested a further four-week extension to the October 17th deadline. Mr. Francis denied that request. According to him, the grievor was by then familiar with the options that had been put to him more than two years before, he had had the benefit of legal representation, and he had been granted numerous extensions in the past, and each time, no decision on his part ever arrived.

[22] Mr. Francis added that the respondent had taken into account the grievor's particular circumstances, that it had given him many opportunities to choose an option that would end his long leave situation, and that it had been provided with information that suggested that a return to work in the foreseeable future was unlikely to occur. According to him, it was time to apply the Treasury Board's leave-without-pay directive and to put an end to a situation that had already gone on too long.

[23] On October 25, 2012, Mr. Francis wrote to the grievor to inform him that his employment with AANDC was terminated for cause, as a result of medical incapacity.

II. Summary of the arguments

A. For the respondent

[24] The respondent argued that its decision to terminate the grievor for medical incapacity was reasonable and that it did not discriminate against him since there was no reasonable expectation of a return to work for him in the foreseeable future.

[25] The respondent contended that the evidence established that the grievor made no attempts to return to work, that he never requested or suggested any accommodation that could foster a return to work, and that he had been incapable of working for the entire leave period and for the foreseeable future.

[26] The respondent also reminded me that the grievor had made no effort to communicate with the respondent for a period of six years (2004-2010), that he had been given several opportunities to choose an option that would bring an end to his long-standing leave without pay situation, including the possibility of returning to work with medical certification, and that he had failed to take any steps to address this issue.

[27] The respondent argued that it should not be obligated to retain an employee that is no longer able to fulfil the basic duties associated with the employment relationship for the foreseeable future. It added that when an employee is unable to work for the reasonably foreseeable future because of illness or disability, and no accommodation can be provided because none is sought or suggested, then the test for undue hardship has been met, and no discrimination can be said to have occurred. In support of its position, the respondent referred me to *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43, *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, 2007 SCC 4, and *Scheuneman v. Canada (Attorney General)*, 2000 CanLII 16701 (FCA).

[28] The respondent also argued that not knowing when it could rely on an employee's services constitutes undue hardship and referred me to *Gauthier v. Treasury Board (Canadian Forces Grievance Board)*, 2012 PSLRB 102.

B. For the grievor

[29] The grievor argued that the respondent had failed to demonstrate how his absence from the workplace amounted to undue hardship, whether financial or operational.

[30] The grievor suggested that the respondent repeatedly failed to consider his functional limitations throughout its exchanges and communications with him.

[31] The grievor faulted the respondent for failing to request a fitness-to-work evaluation or a medical assessment confirming his employability by either Health Canada or his medical practitioner before terminating his employment.

[32] The grievor contended that the respondent's decision to terminate his employment and its conclusion that he would be unable to return to work in the foreseeable future were unfounded and unsubstantiated. He added that the respondent acted in a way that contravened both the collective agreement and s. 7 of the *CHRA*, which prohibits respondents from adversely differentiating a person and from directly or indirectly refusing to continue to employ a person on a prohibited ground of discrimination, mental disability being one of those grounds.

[33] The grievor argued that he had met his onus of demonstrating a *prima facie* case of discrimination, since his disability directly contributed to his termination, and that the respondent had failed to meet its onus of demonstrating that it had sought to accommodate him to the point of undue hardship.

[34] The grievor further argued that the applicable Treasury Board directive on leave without pay must be interpreted to mean that in certain situations, a leave without pay due to illness may extend beyond two years.

[35] The grievor referred me to paragraph 21 of *Hydro-Québec*, at which the Supreme Court stated that a decision to terminate an employee due to an inability to perform his or her job in the reasonably foreseeable future must be based on an assessment of the entire situation. He contended that the respondent had failed to do this in the present case.

[36] The grievor also referred me to a decision of the former Board, *Pepper v. Treasury Board (Department of National Defence)*, 2008 PSLRB 8, which suggests that

an respondent has a duty to establish the exact medical condition of the employee at issue and a prognosis that he or she will be unable to return to work in the foreseeable future before taking the drastic step of terminating his or her employment. According to the grievor, the respondent did not meet this duty when it failed to ensure that it had a proper medical basis upon which to proceed with his termination.

[37] The grievor also suggested that the evidence indicated that he would be fit to return to work in May 2014 and that it had clearly established the likelihood that his disability was not permanent.

III. Reasons

[38] The evidence demonstrated that the grievor was absent from the workplace for an uninterrupted period of 118 months between January 2003 and October 2012, at first on sick leave and, beginning in February 2004, on leave-without-pay status. The evidence also demonstrated that between March 2010 and October 2012, the respondent gave the grievor several ultimatums to either return to work, apply for medical retirement, or resign, failing which he would be terminated for medical incapacity. The grievor failed to proceed with one of these options and was terminated on October 25, 2012.

[39] The fact that at all relevant times the grievor was disabled and that his disability contributed directly to his termination is not disputed. Hence, *prima facie* evidence of discrimination within the meaning of s. 7 of the *CHRA* has been established, and the respondent was required to demonstrate that it sought to accommodate the grievor to the point of undue hardship.

[40] Two key points are important to keep in mind: (1), during the entire leave period, the grievor never sought or requested any type of accommodation, and (2), during that period, according to the medical evidence, his admissions, and the fact that he was receiving disability benefits, he was completely incapable of working or of performing his duties. Nevertheless, the respondent accommodated him by allowing him to remain on leave without pay for nearly 10 years.

[41] The question then became whether in October 2012 continuing to accommodate the grievor by allowing him to remain two more years on leave-without-pay status constituted undue hardship for the respondent. If the evidence suggests that it did,

then the respondent was entitled to terminate the grievor. If it did not, then the respondent discriminated against the grievor and failed to comply with the *CHRA* and the collective agreement.

[42] I agree with the grievor's suggestion the Treasury Board directive that applies in this case must be interpreted to mean that leave without pay due to illness may extend beyond two years in certain situations. However, it should not be extended indeterminately.

[43] The grievor's suggestion is quite inaccurate that the evidence indicated that he would be fit to return to work in May 2014 and that it had clearly established the likelihood that his disability was not permanent. The evidence, taken as a whole, established that the grievor had been away from the workplace and had been on leave without pay for nearly 10 years; that he was receiving long-term disability benefits from Sun Life Financial for that entire period; that other than the 2004 Health Canada assessment, the parties had led no evidence whatsoever that would suggest that a return to work was ever seriously discussed or contemplated, with or without accommodation; and that the only evidence that contemplated a possible return to work is Dr. Henderson's note, which states that he is "guardedly optimistic" that the grievor could return to work in two years, without commenting further on why a further leave period without pay could result in a successful return to work.

[44] The grievor was given 118 months to attempt a return to work, to seek and request accommodations that would foster a return to work, and to satisfy the respondent that there was a good chance that he would be able to return to work and perform his duties within a reasonable period. Unfortunately, he did no such thing. The cautious confidence expressed by the grievor's physician in May 2012 did little to reassure the respondent that a return to work could take place in the reasonably foreseeable future. In my view, the continuation of the grievor's leave without pay was no longer warranted in October 2012; nor was it supported by convincing medical evidence.

[45] In *Hydro-Québec*, the Supreme Court specifically addressed the relationship between an employee's duty to perform work and undue hardship. At paragraphs 15 to 19, it held as follows:

[15] However, the purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, that is, the employee's duty to perform work in exchange for remuneration. The burden imposed by the Court of Appeal in this case was misstated. The Court of Appeal stated the following:

> *[TRANSLATION] Hydro-Québec did not establish that [the complainant's] assessment revealed that it was impossible to [accommodate] her characteristics; in actual fact, certain measures were possible and even recommended by the experts. [Emphasis added; para. 100.]*

[16] The test is not whether it was impossible for the to accommodate the employee's characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work.

[17] Because of the individualized nature of the duty to accommodate and the variety of circumstances that may arise, rigid rules must be avoided. If a business can, without undue hardship, offer the employee a variable work schedule or lighten his or her duties — or even authorize staff transfers — to ensure that the employee can do his or her work, it must do so to accommodate the employee. Thus, in McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal, *[2007] 1 S.C.R. 161, 2007 SCC 4, the employer had authorized absences that were not provided for in the collective agreement. Likewise, in the case at bar, Hydro-Québec tried for a number of years to adjust the complainant's working conditions: modification of her workstation, part-time work, assignment to a new position, etc. However, in a case involving chronic absenteeism, if the employer shows that, despite measures taken to accommodate the employee, the employee will be unable to resume his or her work in the reasonably foreseeable future, the employer will have discharged its burden of proof and established undue hardship.*

[18] Thus, the test for undue hardship is not total unfitness for work in the foreseeable future. If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied the test. In these circumstances, the impact of the standard will be legitimate

> *and the dismissal will be deemed to be non-discriminatory. I adopt the words of Thibault J.A. in the judgment quoted by the Court of Appeal,* Québec (Procureur général) v. Syndicat de professionnelles et professionnels du gouvernement du Québec (SPGQ), *[2005] R.J.Q. 944, 2005 QCCA 311: [TRANSLATION] "[In such cases,] it is less the employee's handicap that forms the basis of the dismissal than his or her inability to fulfill the fundamental obligations arising from the employment relationship" (para. 76).*
>
> *[19] The duty to accommodate is therefore perfectly compatible with general labour law rules, including both the rule that employers must respect employees' fundamental rights and the rule that employees must do their work. The employer's duty to accommodate ends where the employee is no longer able to fulfill the basic obligations associated with the employment relationship for the foreseeable future.*
>
> [Emphasis added]

[46] I believe that the principles established by the Supreme Court in *Hydro-Québec* apply to this case. When a respondent demonstrates that an employee has been unable to work for a considerable period and will continue to be unable to work for the reasonably foreseeable future, such as in this case, the test for undue hardship has been met.

[47] Based on the history of the grievor's file and all available information at the time of the dismissal, it was reasonable for the respondent to seriously doubt that he could return to work after being away from the workplace for 11½ years (using the guardedly optimistic return date of May 1, 2014). Therefore, it was reasonable, given those circumstances, for the respondent to conclude that the grievor would not return to work in the foreseeable future.

[48] The grievor's suggestion that the respondent should be faulted for not requesting a fitness-to-work evaluation or a medical assessment confirming his employability before terminating his employment is, in the circumstances, completely disingenuous. In its totality, the evidence did not support the view that the medical condition that was rendering the grievor incapable of working was only temporary. The reality is that, by his admission and according to the medical evidence, the grievor was incapable of working from January 2003 to the date of this termination and for the reasonably foreseeable future. The fact that he was receiving long-term disability benefits from Sun Life Financial for the entire leave period supports this point. No

amount of accommodation, other than permitting him to remain on leave without pay indefinitely, could have changed this reality. In my view, that option (permitting him to remain on leave without pay indefinitely) constitutes undue hardship.

[49] A respondent should not be expected to continue to employ someone who has been unable to work due to illness for a considerable time and who has for all intents and purposes been declared unable to work for an indeterminate period. In *Scheuneman*, the Federal Court of Appeal also addressed this issue and made the following comments:

> *[7] In my opinion these facts do not establish a breach of section 15. The appellant was dismissed because he was unable to perform* any *work and was unlikely to be able to do so in the foreseeable future. It is a basic requirement of the employment relationship that an employee must be able to undertake work for the employer or, if temporarily disabled by a medical condition from so doing, must be able to return to work within a reasonable period of time. Dismissing a person who cannot satisfy this requirement is not, in the constitutional sense, discrimination on the ground of disability.*
>
> *[8] I can well understand why the appellant would prefer to remain indefinitely on leave without pay. However, an employer to whom the Charter applies is not obliged by section 15 to comply with best employment practices and indefinitely to retain as an employee, even without pay, an employee who, like the appellant, may not be able to work for several years.*

[50] The duty to accommodate is never absolute. The Supreme Court and the Federal Court of Appeal state that dismissing an employee who is unable to return to work within a reasonable amount of time does not amount to discrimination based on disability. As noted by Justice Deschamp in *Hydro-Québec,* the duty to accommodate is "perfectly compatible with general labour law rules, including both the rule that employers must respect employee's fundamental rights and the rule that employees must do their work. The employer's duty to accommodate ends where the employee is no longer able to fulfill the basic obligations associated with the employment relationship in the foreseeable future" (para. 19).

[51] Assessing whether someone was unlikely to be able to work in the "foreseeable future" must be defined in keeping with the circumstances of each case. It is noted that the respondent attempted to seek information from the grievor in 2010 and from

the grievor's representative on more than one occasion. It was only in 2012 that the grievor provided a medical note, which confirmed that the grievor remained unable to work for medical reasons. To be guardedly optimistic that someone will return to work in 2 years after being away from the workplace for nearly 10 is certainly not tantamount to a reasonably foreseeable period.

[52] The grievor's suggestion that the respondent repeatedly failed to consider his functional limitations throughout its exchanges and communications with him is, in my view, without merit. He led no medical evidence to support that cognitive or functional limitations prevented him from understanding the meaning of the options that were put to him from March 2010 to October 2012. While Mr. Sevigny might have alluded to such limitations in his correspondence with the respondent, he is not a medical practitioner, and he could easily have obtained a medical certificate on behalf of his client to certify these alleged limitations. He did not.

[53] The articulate and intelligible letters the grievor wrote to the respondent in May and September 2012, as well as his discussions with Ms. Shatford, Ms. Jacobs, and Mr. Francis, suggested that what prevented him from choosing one of the options presented to him was his perception that such a choice represented what he qualified in his letters as a "life altering decision from which there is no going back". Such evidence did not support the view that cognitive or functional limitations played any part in the grievor's struggle to make a choice.

[54] Furthermore, the respondent provided the grievor with the contact information of additional resources that could have been of assistance in understanding the different options that had been put to him, including a compensation advisor and a human resources advisor. While the grievor had no difficulty contacting Ms. Shatford, Ms. Jacobs, and Mr. Francis to discuss his leave situation, he never once attempted to contact those other resources. It should also be noted that the grievor was represented by counsel when these options were presented to him and that his counsel was provided with the letter containing the options and the contact information of the additional resources.

[55] Contrary to what the grievor contended in his argument, I am satisfied that the respondent's decision to terminate him due to his inability to perform his job in the reasonably foreseeable future was based on an assessment of the entire situation and that it was based on an assessment of the grievor's health by a qualified physician who

had been treating him for nearly 10 years. In my view, the respondent had enough information to logically conclude that there was no reasonable likelihood that the grievor would return to work in the reasonably foreseeable future.

[56] The grievor relied heavily on *Pepper* in his argument. However, the facts involved in that decision differ significantly from those of this case. Therefore, I am not convinced that the principles enunciated in that decision apply or should be followed given the jurisprudence that has been issued since the date of that decision. In any event, I am not bound by the conclusions the adjudicator in that case reached.

[57] Accordingly, I conclude that the respondent reached the point of undue hardship in this case and that terminating the grievor's employment for medical incapacity was justified in the circumstances.

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

(The Order appears on the next page)

IV. Order

[59] The grievance is dismissed. I order PSLREB File Nos. 566-02-8420 and 566-02-8421 closed.

September 22, 2016.

Stephan J. Bertrand,
adjudicator