



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

AMARIA BOUKHELOUA

Grievor

and

TREASURY BOARD
(Revenue Canada - Taxation)

Employer

Before: Thomas W. Brown, Board Member

For the Grievor: Georges Nadeau, Public Service Alliance of Canada

For the Employer: Dora Benbaruk and H el ene Laurendeau, Counsel

Heard at Ottawa Ontario,
May 3 to 7; November 1 to 5 and 15 to 19, 1993;
April 19 to 22, 1994; August 8 to 11 and December 11 and 15, 1995.

DECISION

This matter involves four grievances submitted by the grievor, Amaria Boukheloua.

It is acknowledged by the grievor's representative and emphasized by counsel for the employer that all four grievances are founded on allegations that the provisions of clause M-16.01 of the collective agreement covering the grievor were violated. Clause M-16.01 reads as follows:

M-16.01 There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race, creed, colour, national origin, religious affiliation, sex, sexual orientation, family status, mental or physical disability or membership or activity in the union.

Some 23 days of hearings were held in this matter prior to December 1995. On August 31, 1995, the Federal Court of Canada, Trial Division, rendered its decision in the matter of *Chopra v. The Treasury Board* (Court file T-813-94) maintaining the decision of Deputy Chairperson P. Chodos wherein he determined that, by reason of subsection 91(1) of the *Public Service Staff Relations Act*, he did not have jurisdiction to consider the grievance brought by the grievor in that case.

On October 11, 1995, the employer reiterated in writing its objection to my hearing this matter on the basis that I did not have jurisdiction to do so because the grievances before me alleged discrimination based on a ground prohibited by the *Canadian Human Rights Act* and that, accordingly, jurisdiction to hear these matters was vested in the Canadian Human Rights Commission. The employer relied in support of its objection on the decision by the Court in *Chopra*.

On December 20, 1995, I informed the parties, through the office of the Board's Manager of Operations, that because the decision of the Federal Court, Trial Division, in *Chopra* was the subject of a reference to the Federal Court of Appeal, all further hearings in the instant cases were suspended until a final decision by the courts was rendered in the *Chopra* matter.

On January 30, 1997, the Board informed the parties in these matters that it had received a Notice of Discontinuance in the *Chopra* (supra) case as a result of the parties in that case having agreed to discontinue the reference to the Federal Court of Appeal. The Board requested the parties in the instant cases to advise it of their intentions in the face of the discontinuance in *Chopra*.

On April 7, 1997, counsel for the employer reiterated in writing her objection to my continuing to hear this matter, the whole in light of her earlier arguments that I did not have jurisdiction to hear these matters, supported by the decision of the Federal Court, Trial Division, in the *Chopra* matter. The grievor's representative in turn reiterated his earlier filed arguments in support of my continuing to assume jurisdiction and hear these matters on their merits and render decisions thereon in favour of the grievor.

The subject matter of the four grievances before me involves allegations of discrimination based on race, or ethnic origin, as the parties agree, a ground prohibited by the *Canadian Human Rights Act*. The grievor does not invoke any other provision of the collective agreement. The employer argues that the proper forum for these grievances thus is the Canadian Human Rights Commission. The Federal Court of Canada, Trial Division, in *Chopra* had before it for consideration an identical or similar grievance alleging discrimination based on race or ethnic origin. The Court in *Chopra* considered that the Canadian Human Rights Commission and not this Board was the proper forum to hear such a grievance. In denying the application for review, as it did, the Court held:

The Adjudicator was correct when he concluded that he was without jurisdiction to hear the Applicant's Grievance by reason of Section 91(1). I am satisfied that the CHRA provides "redress" on the facts of this case because the CHRC has jurisdiction over the substance of the Grievance and because the CHRC can offer a broader range of remedies than an adjudicator under the Master Agreement. The differences in the procedures under the CHRA and the Master Agreement in terms of parties, public interest input and control of the process do not, in my view, detract from the fact that the Applicant will receive redress under the CHRA.

The grievor's representative argues that the grievor in this case complains of a violation of the collective agreement covering her. The Canadian Human Rights Commission does not have jurisdiction to interpret the collective agreement and to determine whether there has been a violation of its provisions. Only an adjudicator under the *Public Service Staff Relations Act* has such jurisdiction. This has been recognized by the Supreme Court of Canada in *Ste-Anne-Nackawic v. C.P.W.U.* (1986), 68 N.R. 114 (S.C.C.) and in *Weber v. Ontario Hydro* (1995), 95 CLLC 141, 231 (S.C.C.). These decisions establish that arbitration tribunals take precedence over other forms in matters of application or interpretation of collective agreements. The grievor's representative argues that the decision of Simpson, J. in *Chopra* (supra) goes against these Supreme Court of Canada decisions and he concludes, essentially, that I should not follow the *Chopra* decision and that I should continue to hear these cases and render a decision thereon.

It was my earlier intention, in December 1995, to await the outcome of the appeal of the *Chopra* decision prior to ruling on the question of whether I had jurisdiction to hear these matters. As the appeal of the *Chopra* decision was discontinued, I must apply its findings to the instant grievances which involve matters identical or similar to those in *Chopra*. Accordingly, I am bound to similarly dismiss the instant grievances on the ground that I do not have jurisdiction to rule upon them.

These grievances are thus dismissed.

**Thomas W. Brown,
Board Member**

OTTAWA, June 4, 1997.

Certified true translation

Serge Lareau