Date: 20041118

Files: 149-2-249
166-2-33140

Citation: 2004 PSSRB 163

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

ROBERT BEDOK

Applicant/Grievor

and

TREASURY BOARD
(Department of Human Resources Development)

Employer

Before: Ian R. Mackenzie, Board Member

For the Grievor: Himself

For the Employer: Harvey Newman, Counsel

Heard at Ottawa, Ontario,
October 5 and 6, 2004.

[1] On January 16, 2004, Robert Bedok applied for an extension of time to refer a grievance to adjudication and subsequently referred a grievance against his termination of employment from Human Resources Development Canada (HRDC). Mr. Bedok's employment was terminated from a specified period appointment as a Program Support Officer (PM-02) with the Canadian Education Savings Grant Program, on October 25, 2001.

[2] The application and the reference to adjudication were scheduled for a hearing in June 2004 but, due to unforeseen circumstances, the Public Service Staff Relations Board (PSSRB) was required to reschedule the hearing.

[3] The employer objected to the jurisdiction of an adjudicator to hear the application and the grievance on the basis that the grievance was settled (correspondence from Harvey Newman dated June 16, 2004). Mr. Bedok replied that the grievance was not settled and the PSSRB, therefore, did have jurisdiction (correspondence from Mr. Bedok dated July 8, 2004). The parties were advised by the PSSRB, on August 9, 2004, that the question of jurisdiction should be raised at the outset of the hearing.

[4] At the hearing, I determined that I would hear evidence and argument on the jurisdiction issue and issue a preliminary ruling on jurisdiction. This decision is the preliminary ruling on my jurisdiction.

[5] Mr. Bedok testified on his own behalf and Denis Trottier, formerly a labour relations advisor with HRDC and now Regional Manager of Human Resources for the Canadian Forces Personnel Support Agency, testified on behalf of the employer.

APPLICATION FOR EXTENSION OF TIME (PSSRB FILE NO. 149-2-249)

[6] The application for an extension of time to refer a grievance to adjudication was received by the PSSRB on January 16, 2004. By e-mail dated January 30, 2004, Lise Bourgeois-Doré, on behalf of the employer, stated that the employer did not oppose the application. At the hearing, Mr. Newman confirmed that the employer did not object to the application for an extension of time.

[7] Accordingly, I ruled that, pursuant to section 63 of the *PSSRB Regulations and Rules of Procedure, 1993*, the application for an extension of time was granted.

TERMINATION GRIEVANCE (PSSRB FILE NO. 166-2-33140)

I Preliminary matters

[8] Mr. Bedok served a summons on Craig Robinson, Special Assistant to the Minister of the Treasury Board. Mr. Newman objected to the subpoena by letter to the PSSRB dated September 10, 2004. He submitted that Mr. Robinson did not have any relevant or material evidence to provide and that the subpoena should be quashed, unless Mr. Bedok could show cause otherwise. The PSSRB stayed the application of the subpoena issued to Mr. Robinson "for the time being". The parties were advised that the matter would be left to the hearing, where the adjudicator would rule on the appropriateness of allowing the obligations under the subpoena to resume or not, after hearing the parties.

[9] Mr. Bedok submitted that Mr. Robinson would have in-depth knowledge of the file from his role as a "go-between" with departmental officials. Mr. Newman stated that Mr. Robinson had had no direct involvement in the file and that his evidence would not be relevant. Mr. Robinson had been acting in his political capacity and not in any capacity as the employer.

[10] I ruled that the subpoena was quashed, as there was no evidence that Mr. Robinson had material or relevant evidence to provide.

II Rulings on Evidence

[11] During the course of the hearing, there were a number of objections relating to the admissibility of evidence, as well as a request for disclosure. I have set out the background, the submissions of the parties and my rulings below.

III Transcripts and Audiotapes of Voicemail Messages

[12] Mr. Bedok sought to introduce transcripts and audiotapes of voicemail messages received from his bargaining agent. He submitted that this would demonstrate the coercion by the bargaining agent, as well as the demands of the employer that he provide an original signature on the Memorandum of Understanding (MOU). Mr. Newman objected on the grounds that the relationship between Mr. Bedok and his bargaining agent was not at issue in this hearing.

[13] I ruled that the transcripts and audiotapes were not admissible. There was no nexus between the tapes and the employer; therefore, the tapes were not relevant. Furthermore, any statements attributed to the employer representative by the bargaining agent would be hearsay.

[14] In his cross-examination of Mr. Trottier, Mr. Bedok requested that the audiotapes be played to "refresh the witness's memory" on his conversations with the bargaining agent. Mr. Newman objected. I ruled that the audiotapes could not be used for this purpose. I told Mr. Bedok that, if he wished, he could ask Mr. Trottier questions about what the bargaining agent alleged he said.

IV Evidence of Jean-François Plamondon

[15] Mr. Bedok sought to call Jean-François Plamondon as a witness. Mr. Newman objected on the basis that Mr. Plamondon had no relevant evidence to provide. Mr. Bedok submitted that Mr. Plamondon could comment on the audiotapes of voicemail messages from the bargaining agent and give his impressions of the demeanour of the bargaining agent representatives.

[16] I ruled that Mr. Plamondon would not testify, as the testimony he would provide would be in the nature of opinion evidence. I did not need to hear his opinion of the matters in dispute. Furthermore, I had already ruled that the audiotapes were not admissible, and it would not be appropriate to hear evidence about those tapes from this witness.

V Disclosure of Grievance File

[17] During the cross-examination of Mr. Trottier, Mr. Bedok asked for disclosure of the grievance file in order that Mr. Trottier could refresh his memory from his notes to file. Mr. Newman objected on the grounds that this was a "fishing expedition".

[18] I ruled that, from his testimony, Mr. Trottier did not appear to need any notes to refresh his memory. Furthermore, Mr. Bedok had already had an opportunity to request disclosure of his file and it would not be appropriate to do so at this time.

EVIDENCE

[19] Mr. Bedok was employed as a Program Support Officer with HRDC on a specified period appointment (in other words, a term employee) commencing on July 17, 2000 (Exhibit E-1). Through a series of extensions (Exhibits E-2 through E-4), his term was extended until October 31, 2001. On October 25, 2001, he was terminated for cause, for non-disciplinary reasons (pursuant to paragraph 11(2)(g) of the *Financial Administration Act*), effective October 26, 2001.

[20] Mr. Bedok grieved the termination of his employment on November 2, 2001, with the support of his bargaining agent representative, Linda Vaillancourt of the Public Service Alliance of Canada (PSAC) National Component. As corrective action, he requested the following:

> *That I not be subjected to any prejudice as a result of having submitted this grievance.*
>
> *That my termination be rescinded and that I be reinstated in my PM-02 position as Program Support Officer within HRDC as of October 26th, 2001 as it was made without just cause.*
>
> *That I be fully compensated with no loss of salary or benefits as of October 26th, 2001 at the appropriate PM-02 group and level.*
>
> *That the employer respect the discipline article 17 of my collective agreement as well as any other relevant or related articles, policies, acts and legislation.*
>
> *That the letter of termination dated October 26th, 2001 as referenced above be removed from my personal file and destroyed in my presence or that of my union representative, including the original, all copies, including paper and electronic, and references made thereto and not be replaced with any other letter or correspondence.*
>
> *That this grievance be transmitted directly to the final level in accordance with article 18 of the Program & Admin. Services (all employees) collective agreement as negotiated between the TBS and the PSAC.*
>
> *That this grievance be placed in abeyance until a mutually agreeable date and time can be set for the parties to meet at the grievance hearing.*

[21] The grievance was transmitted straight to the final level, as provided for in the collective agreement. Mr. Trottier was the labour relations officer who had responsibility for the grievance. He testified that after analyzing the file, he was of the opinion that a settlement might be possible. He contacted the bargaining agent representative, Ms. Vaillancourt, sometime before the end of December 2001. By February 1, 2002, he was in the final stages of negotiations with Ms. Vaillancourt and sought the approval of the manager to pay one month's salary as a settlement (Exhibit E-11). On February 7, 2002, he sent an email to Ms. Vaillancourt with draft language for the MOU (Exhibit E-12). The draft stated that the employer would pay one month's salary, representing the period from October 30 to November 24, 2001. In exchange, the grievor and the bargaining agent were to undertake to withdraw the grievance.

[22] Mr. Bedok described his relationship with his bargaining agent as "acrimonious". He contacted his Member of Parliament, Don Boudria, for assistance. Mr. Boudria wrote a letter to the President of the Treasury Board, Lucienne Robillard, on December 14, 2001. Ms. Robillard replied on February 4, 2002 (Exhibit G-1), indicating that a final-level grievance hearing was scheduled within the "next few weeks". In a letter dated February 25, 2002, Ms. Robillard stated that the final-level grievance hearing occurred on January 31, 2002. Mr. Trottier was not sure when the grievance hearing occurred. He testified that he was delegated to hear grievances and it might have been that the bargaining agent asked that a telephone conversation be deemed to be the hearing at the final level. Mr. Bedok testified that he was not advised of the hearing and was not invited to attend the hearing.

[23] Mr. Trottier testified in cross-examination that he would not have advised the Treasury Board Secretariat of any settlement discussions in response to any enquiries as a result of Mr. Bedok's correspondence to his Member of Parliament, because at that point there had been no settlement reached.

[24] Mr. Bedok wrote to the Prime Minister on February 6, 2002, and the Prime Minister's Office forwarded the correspondence to the President of the Treasury Board (Exhibit G-7). Mr. Bedok also testified that he met with two directors of the Liberal Party of Canada.

[25] Mr. Bedok testified that Mr. Trottier called him sometime around March 16 or 17, 2002, and identified himself as being with the Treasury Board. He also testified that Mr. Trottier said that he should not be talking to him and that he faced a penalty of up to $10,000 if he was caught.

[26] Mr. Trottier testified that he did not initiate the call to Mr. Bedok but was returning his call. Mr. Trottier testified that he may have told Mr. Bedok that it was not usual for a management representative to talk directly to a grievor who was represented by a bargaining agent. He did not identify himself as a Treasury Board employee, nor did he state that he would be subject to a penalty for talking to Mr. Bedok. Mr. Trottier testified that he had talked on the telephone with Mr. Bedok approximately two or three times prior to March 27, 2002.

[27] On March 27, 2002, Mr. Trottier received a voicemail message from Ms. Vaillancourt indicating that she had left many messages for Mr. Bedok. She indicated to him that if Mr. Bedok did not contact her by the end of the next day (March 28), it would be concluded that Mr. Bedok was not interested in the employer's offer (Exhibit E-13).

[28] Mr. Trottier sent a copy of the MOU to Ms. Vaillancourt, by facsimile, on March 28, 2002 (Exhibit E-14). Mr. Bedok discussed the MOU with Ms. Vaillancourt that same day. In a letter he sent to Ms. Vaillancourt dated March 28, 2002 (Exhibit G-2), he wrote:

> *I accept the HRDC department offer, with great reservations... I further indicate at this time, that I do not waive my rights to pursue this matter, through other channels...*

[29] Mr. Trottier did not see this letter to Ms. Vaillancourt. He testified that he knew that the relationship between Mr. Bedok and his bargaining agent was a difficult one. He testified that at no time was he informed that the bargaining agent was no longer representing Mr. Bedok.

[30] Mr. Trottier faxed a copy of the MOU to Ms. Vaillancourt on March 28, 2002 (Exhibit E-14). The MOU contained a "no publicity" clause. However, the terms of the settlement were mutually revealed at the hearing and no objection was raised to the disclosure of the terms of the MOU. The M0U provided as follows:

MEMORANDUM OF UNDERSTANDING

> *Human Resources Development Canada, as the employer, hereby undertakes as follows, without prejudice to any position, which it could take in the future with regard to cases presenting similar issues or circumstances:*
>
> *To pay one (1) month salary, representing the period from October 30, 2001 to November 24, 2001. This amount will be subject to statutory deductions at source. If applicable, Mr. Bedok will be responsible for any reimbursement of benefits received during that period. The note to file, dated fifth (5) 2001, signed by Mr. Marc Lebrun, shall be removed from the personnel file of Mr. Bedok.*
>
> *The aggrieved employee and the National Component, as representative of the bargaining agent, undertake to withdraw grievances 1355-HQ-/2001 HIP 0001, which was referred to the third level of the grievance procedure. This agreement is final and the parties agree that no other recourse, procedure or redress shall be used in relation to these matters.*
>
> *The parties hereto undertake not to disclose this Memorandum to the public or so regard it as a precedent.*

[31] Mr. Bedok testified that at around this time, his house was being repossessed and he was in serious financial difficulty.

[32] Ms. Vaillancourt signed the MOU on April 11, 2002. Mr. Bedok went to the bargaining agent office to review the MOU on the same day, at about 11:00 a.m. or 11:30 a.m. He testified that Ms. Vaillancourt told him that he had until 4:00 p.m. that day to sign the MOU. He took the MOU away from the office and faxed it back to her with his signature sometime in the afternoon of April 11, 2002. He testified that he rescinded his signature on April 15, 2002, and advised his bargaining agent of this. Mr. Bedok introduced a MOU with only his signature along with the notation "(signature withdrawn 15/04/2002) new demands unacceptable" (Exhibit G-3).

[33] Ms. Vaillancourt faxed the signed MOU to Mr. Trottier on April 15, 2002, with the following notation [unofficial translation]: "Mutual agreement signed by Robert Bedok and me." ("Entente mutuelle signée par Robert Bedok ainsi qui moi-même.") Mr. Trottier signed the MOU on April 15, 2001, and forwarded the original MOU to Ms. Vaillancourt (Exhibit E-6). In his letter he stated:

> [...]
>
> *Once I have received the original, signed by all parties, I will ensure that the actions are taken to have the check issued....*
>
> [...]

[34] Mr. Bedok testified that on April 19, 2002, he advised Mr. Trottier that he had rescinded his signature. Mr. Trottier remembered hearing from Mr. Bedok after the MOU was signed. He recollected that Mr. Bedok was not happy with the settlement and that he asked when he could expect his cheque. He did not recall Mr. Bedok saying that he had rescinded his signature.

[35] Mr. Bedok testified that after he had signed the MOU his bargaining agent told him that the employer required his original signature "or else the deal was off".

[36] Mr. Boudria forwarded a letter sent to him by Mr. Bedok to Ms. Robillard, sometime around May 30, 2002 (Exhibit G-1). Mr. Bedok's letter to Mr. Boudria was dated April 25, 2002, and included the following on the MOU:

> [...]
>
> *... I reluctantly agreed to the M.O.U. because I was put under great duress and constant verbal barrage from several Union representatives. I have since refused to sign the original, because after one week of signing a faxed copy, I am told not good enough and some rules are further changed...*
>
> [...]

[37] Mr. Trottier testified that he received an original signature from Ms. Vaillancourt by mail sometime after receiving the faxed signatures. He identified her original signature at the hearing. Mr. Trottier testified that the original signature of the bargaining agent was sufficient authority to process the cheques and finalize the settlement. Mr. Trottier sent a letter to Mr. Bedok on June 3, 2002, including a copy of the MOU, three cheques, his "Record of Employment" and a letter signed by his former manager (Exhibit E-9). Mr. Trottier identified the three envelopes containing the cheques (Exhibits E-15). Ms. Vaillancourt sent an e-mail to Mr. Trottier on June 5, 2002 (Exhibit E-8), confirming that the grievance was "officially withdrawn as the employer has provided the grievor with all redress as requested in the MOU that was signed

between the grievor, union and management. No further action will be taken in this regard."

[38] Mr. Bedok's Member of Parliament (Don Boudria) wrote to the President of the Treasury Board (Lucienne Robillard) on August 12, 2003, and stated that Mr. Bedok had signed the MOU under duress and had withdrawn the signature "the very next day". Ms Robillard replied on September 22, 2003. The letter reads, in part, as follows:

> [...]
>
> *Mr. Bedok did not receive a grievance reply since he and his representative chose to address the resolution of his grievance outside the regulated grievance procedure, as prescribed by the* Public Service Staff Relations Act *(PSSRA). While Mr. Bedok may feel that the matter is not resolved, the Employer has considered this matter closed since the signature of the memorandum of understanding (MOU) which Mr. Bedok signed on April 11, 2002.*
>
> *As for the transcript of the messages that you provided as well as the circumstances surrounding the signature of the MOU, it would be inappropriate for me to comment on the relationship Mr. Bedok has with his bargaining agent, as I indicated in my letter of July 25, 2002.*
>
> [...]

[39] Mr. Trottier testified that he had no reason not to believe that Mr. Bedok was represented by his bargaining agent throughout the negotiations. He had the original signature of Ms. Vaillancourt and that was sufficient authority to implement the MOU.

ARGUMENTS

For the Employer

[40] Mr. Newman submitted that there was a valid settlement agreement between the employer and the grievor and that this was a complete bar to adjudication. He referred me to *Lindor v. Treasury Board (Solicitor General -- Correctional Service Canada)*, 2003 PSSRB 10.

[41] He submitted that the employer had no indication that Mr. Bedok had any problems with the settlement. Mr. Bedok signed the agreement and he cashed the cheques. Mr. Bedok was represented by his bargaining agent and never advised the employer that his bargaining agent was no longer representing him. As his authorized representative, the PSAC was acting as Mr. Bedok's agent. The employer representative

had no reason to believe that the PSAC was not acting in good faith. The bargaining agent also confirmed that all the conditions of the settlement had been met. If Mr. Bedok has concerns about his representation by the PSAC, this is not the forum in which to raise those concerns.

[42] Mr. Newman argued that the settlement was the best that the grievor could hope for. If the grievance had gone to adjudication, the best that Mr. Bedok could have achieved was compensation for the balance of his term: four days.

[43] Mr. Newman submitted that "a deal is a deal is a deal". Although Mr. Bedok was obviously dissatisfied with the deal, it was still a deal.

[44] Mr. Newman submitted that the grievance should be dismissed for want of jurisdiction.

For the Grievor

[45] Mr. Bedok submitted that his signature on the MOU was obtained under duress. He stated that he was "coerced under duress by financial circumstances". He described the relationship with his bargaining agent as acrimonious. He also submitted that the employer knew throughout that his relationship with his bargaining agent was "abrasive". He also submitted that the PSAC told him that as far as the Department was concerned, if there was no original signature there was "no deal". Both the employer and the bargaining agent were acting in bad faith. It was quite clear that the employer knew there was a problem with the MOU. The bargaining agent flagged the difficulties and Mr. Bedok did as well, through his Member of Parliament. The President of the Treasury Board would also have known through her inquiries as a result of the correspondence from Mr. Boudria. He also submitted that he had told Mr. Trottier that he had rescinded his signature. He submitted that the employer would have or should have known that he was not accepting the settlement agreement from his correspondence to his Member of Parliament, who forwarded the correspondence to the President of the Treasury Board.

[46] Mr. Bedok distinguished the facts in *Lindor* (*supra*) from his case. In *Lindor*, the grievor did not dispute that there was a signed valid agreement.

[47] Mr. Bedok submitted that both the employer and the bargaining agent made false statements about the grievance being at the final level. He submitted that he was not part of the negotiations for settlement, nor did he attend any grievance hearings. Mr. Bedok also alleged that no "T4" slip ("Statement of Income") was ever issued for the payment made under the MOU. He then questioned whether it was in fact a valid payment if no "T4" was issued.

[48] Mr. Bedok stated that it was his understanding that if there was no original signature, there was no agreement. He did not know what the cheques were for; he had received a number of different cheques after the termination of his employment for various payments and he assumed that these cheques were for other payments and not the settlement.

Reply

[49] Mr. Newman noted that Mr. Trottier had never heard from Mr. Bedok that "the deal was off". He testified that Mr. Bedok might have said that his signature was rescinded, but that he did not remember.

[50] Mr. Newman submitted that the June 3, 2002, letter was clear that the payments were made pursuant to the MOU.

REASONS FOR DECISION

[51] As noted above, the employer did not object to the application for an extension of time pursuant to the *PSSRB Regulations and Rules of Procedure, 1993*. Accordingly, at the hearing, I allowed the application for an extension of time.

[52] The issue in this preliminary decision on jurisdiction is whether the signed MOU is binding on the parties. If it is binding, I am without jurisdiction to hear Mr. Bedok's grievance.

[53] For the reasons set out below, I have concluded that the MOU is a valid and binding agreement and that, consequently, I am without jurisdiction.

[54] Mr. Bedok has alleged that the agreement was obtained under duress and is therefore not a valid and binding agreement. The Federal Court faced a similar question in *MacDonald v. Canada* (1998), 158 FTR 1 (affirmed, [2000] F.C.J. No. 1902; leave to appeal dismissed, [2001] S.C.C.A No. 30) and framed the issue this way:

> […]
>
> *…the critical issue is whether, at the time he signed the agreement, there was such duress against the plaintiff as to render the agreement, under which he gave up his right to pursue a remedy by way of grievance, an unconscionable bargain…*
>
> […]

[55] The Court went on to set out the test for determining if a transaction should be set aside as being unconscionable. The evidence must show:

- an inequality of bargaining position or power;
- that the stronger party has unconscientiously used its position of power to achieve an advantage; and
- the agreement is substantially unfair to the weaker party.

[56] Mr. Bedok was represented by his bargaining agent during the negotiations and did not decline representation. As he was an employee with representation, I am not convinced that there was an "inequality" of bargaining power between the parties. However, I note that in *MacDonald* (*supra*), the Court concluded that a represented employee was in an unequal bargaining position.

[57] On March 28, 2001, over 10 days prior to signing the agreement, Mr. Bedok indicated to his bargaining agent that he accepted the employer's offer "with great reservations" and also indicated that he was not waiving his right to pursue the matter "through other channels" (Exhibit G-2). He then went to the bargaining agent's office on April 11, 2001, to review the MOU and Ms. Vaillancourt told him that he had until the end of the day to sign it or else the agreement would be "off". Mr. Bedok took the MOU away from the office and faxed in his signature later in the day. He had the opportunity to reconsider whether to sign and he proceeded to sign. I understand that he may have had a strong incentive to sign the agreement, considering his precarious financial situation. This does not, however, equate with coercion or duress. At no point prior to signing did Mr. Bedok indicate to the employer that he was signing under duress. The employer did not use its power "unconscientiously".

[58] The MOU itself does not represent an "unconscionable" agreement or one that is "substantially unfair" to the grievor. Mr. Bedok's employment was terminated for non-disciplinary reasons four days prior to the end of his term. He received one month's pay as part of the settlement, as well as the removal of a note from his personnel file. Given the circumstances, the settlement cannot be characterized as "substantially unfair".

[59] What is critical in assessing whether a settlement is valid is the intention of the parties at the time of signing. As stated in *MacDonald v. Canada* (*supra*):

> […]
>
> *…I am satisfied that there was an agreement among the Department, PIPS [the bargaining agent], and the plaintiff, whatever might have been in the mind of the plaintiff when he signed, figuratively speaking, with his fingers crossed behind his back. The outward expression of his intention was his signing of the agreement. That is what is relevant. His unexpressed intention is immaterial. Once again, in the words quoted from Corpus Juris in* Kerster [Kerster v. Alkali Lake Indian Band [1998] B.C.J. No. 1869 (B.C. S.C.), (Q.L)]*:*
>
> > *if his words and acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.*
>
> […]

[60] In *Re Pacific Forest Products Ltd., Nanaimo Division and Pulp, Paper & Woodworkers of Canada, Loc. 7* (1983), 14 L.A.C. (3d) 151 (Munroe), the adjudicator held that, in assessing whether there has been a settlement, ultimately it is a matter of objectively assessing the parties' intentions at the time of the signing of the agreement "regardless of any subsequent, unilateral statements of subjective intention".

[61] In the testimony of Mr. Bedok, it was clear that he is not pleased with the settlement. There was also some evidence that he expressed his displeasure with the agreement to his bargaining agent prior to signing the MOU. However, he also introduced as evidence correspondence to his bargaining agent that stated that he agreed to the terms of the MOU "with great reservation" and expressed his intent at that time not to waive his right to pursue the matter through "other channels" (Exhibit G-2). This implies that he was prepared to waive his right to grieve. He then signed

the MOU. As late as April 25, 2002, he maintained that he "reluctantly agreed to the MOU" in correspondence to his Member of Parliament (Exhibit G-1). His words and acts, judged by the standard of reasonableness, showed an outward intention to agree.

[62] Mr. Bedok maintained that he rescinded his signature on April 15, 2001. Mr. Trottier had no recollection that Mr. Bedok told him this. Mr. Bedok did not deny receiving the MOU and settlement cheque (Exhibit E-9). His subsequent action in accepting the settlement cheque and not responding negatively to the letter enclosing the signed MOU leads to the conclusion that there was not a rescinding of the agreement. In any event, repudiation of a contract is only justified if consent was not obtained because of the improper persuasive conduct of the employer (see *Skandharajah v. Treasury Board (Employment and Immigration Canada)*, 2000 PSSRB 114). As I have already concluded, there is no evidence that the employer exerted improper persuasion on the grievor.

[63] Mr. Bedok submitted that an original signature was required in order for the MOU to be valid. Mr. Newman submitted that, in labour relations, the parties increasingly rely on faxed signatures. The evidence is clear that there was an agreement at the time of signing of the MOU. Mr. Bedok signed the MOU and there was no dispute on this issue. Therefore, he cannot subsequently rely on the fact that he refused to provide the original signature to the bargaining agent or the employer. Mr. Bedok testified that he was told that the agreement would not be valid without an original signature. However, this was not information provided prior to signing and faxing the MOU back; therefore, it cannot support an argument that he did not intend his signature to be binding.

[64] Mr. Bedok also suggested that there was a "cooling-off" period for signing an agreement that allowed an individual to rescind a signed agreement. Mr. Bedok may have been referring to statutory provisions relating to some consumer contracts. (For example, see the Ontario *Consumer Protection Act,* R.S.O. 1990, Chapter C.31.) However, there is no such "cooling-off" period for other agreements, such as agreements in labour relations.

[65] Accordingly, I find that the MOU was signed voluntarily and the employer was entitled to view the matter as closed.

[66] Mr. Newman suggested that the bargaining agent could have signed the agreement without Mr. Bedok's signature and the agreement would still be valid, as it was acting as Mr. Bedok's agent. I do not need to make any findings on this point, as I have found that Mr. Bedok did sign the agreement. However, it is not a wise course for a bargaining agent to enter into an agreement relating to termination of employment without the grievor's signature, given that the employee has an independent right to refer a termination grievance to adjudication under the *Public Service Staff Relations Act* (*PSSRA*).

[67] Mr. Bedok stated that it was his right to contact his Member of Parliament and other elected representatives in connection with the termination of his employment and grievance. I agree that there is no restriction or barrier to a constituent raising concerns with his or her elected representative. However, if there is important information that a grievor wants to relay to the employer, using a Member of Parliament is a cumbersome mechanism. A more effective and efficient method is to communicate directly with the representatives of the employer in the Department.

[68] In conclusion, the application for an extension of time to file a grievance is allowed, but I find that I am without jurisdiction to hear the grievance because it was settled. Accordingly, the grievance is dismissed.

Ian R. Mackenzie,
Board Member

OTTAWA, November 18, 2004