File: 166-2-28988

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

MARIA BLAIR-MARKLAND

Grievor

and

TREASURY BOARD
(Citizenship and Immigration Canada)

Employer

Before: Joseph W. Potter, Deputy Chairperson

For the Grievor: Barry Done, Public Service Alliance of Canada

For the Employer: Kathryn A. Hucal, Counsel

Heard at Toronto, Ontario,
September 27 and 28, 1999

The grievor, Maria Blair-Markland, is an Immigration Counsellor at the Etobicoke Canada Immigration Centre and is classified in the programme administration (PM) group, level 2. On July 24, 1997, the grievor received a letter signed by Gerry LeBlanc, Regional Manager, suspending her for 20 days. The letter reads as follows:

> *I have been provided with the information gathered by your manager with respect to your involvement in the inappropriate processing of a client file.*
>
> *Based on this information, it is evident that your processing of this file was contrary to Departmental procedures in that this file was not received by nor referred through appropriate channels. In this regard, I noted that the processing of such cases does not fall within the mandate of the Etobicoke CIC and did not form part of the duties assigned to you. On reviewing the explanation provided by you, I also noted that you were initially contacted by a personal friend to discuss the circumstances of the individual and subsequently arranged to meet with this individual as a client. I understand from this explanation that the client's aunt, who accompanied her at the interview which you personally scheduled, was also someone with whom you had a personal relationship. Review of the file also reveals that the factors which you considered in reaching your decision were not confirmed in that supporting information was neither requested nor acquired. I also noted that no record of this interview was logged nor did you discuss your activities in this regard with your supervisor.*
>
> *The contents and principles of the Conflict of Interest and Post Employment Code and the Departmental Code of Conduct outline our obligations as a Department and as individuals to avoid activities or situations which would place us collectively or individually in a real, potential or apparent conflict of interest. This also includes the requirement that employees not accord preferential treatment or the appearance of preferential treatment in relation to any official matter to family members or friends and to conduct themselves in a manner which enhances confidence in our integrity and objectivity. In assessing what has occurred in this situation, I agree with your manager's assessment that you failed to meet your responsibilities in avoiding a conflict of interest and that you knew or ought reasonably to have known that this was unacceptable. I also agree that your actions in this regard constituted serious misconduct and that disciplinary action which reflects the seriousness of this misconduct is warranted.*

> *In determining the degree of disciplinary action required, I noted that related jurisprudence included cases wherein public servants who also had lengthy service and no prior disciplinary records have been terminated or received suspensions of several weeks or months for similar misconduct. Your position as an Immigration Officer, the level of trust and professionalism expected of staff in those positions and the consequences of your actions are also important factors. In assessing additional mitigating factors applicable in your case, I noted the level of cooperation which you extended to your manager in his investigation and your subsequent expression of remorse for your actions. I also duly noted your manager's personal expression of confidence in your professionalism and commitment in his recommendation for a twenty-day suspension.*
>
> *After having considered all of these factors and consistent with the authorities delegated to me, I have determined that a twenty-day suspension is appropriate and sufficient to ensure your future respect for and compliance with the required standards. I must advise you that were it not for your manager's expression of confidence, I would not have considered this a sufficient corrective measure. I must also advise you that future misconduct of a similar nature will not be tolerated and could result in further disciplinary action up to and including termination.*
>
> *The Acting Manager will advise you as to the period when this suspension will be served. In recognition of the financial or other impacts for you, I remind you of the availability of the Employee Assistance Program to staff and their family members. As well, please note that you have the right to grieve my decision in accordance with the provisions of your collective agreement.*
>
> *Finally, I have asked your manager to personally meet with you after the suspension has been served and upon your return to work to review the Conflict of Interest and Employment Code, the Code of Conduct, etc. I would recommend that you raise any and all questions you may have in this regard to ensure a clear and common understanding. If you should also wish to discuss this matter further with me, please do not hesitate to contact me in future.*

On August 11, 1997, the grievor submitted the following grievance:

> *I hereby grieve the disciplinary action imposed in the letter from Mr. G. LeBlanc, Regional Manager of 24 July 1997.*

> *As corrective action, I request that the suspension be rescinded and that all records of this disciplinary* [sic] *be removed and that I be made whole.*
>
> *Please acknowledge receipt of this grievance in writing.*

This grievance was referred to adjudication on April 29, 1999.

At the outset of the hearing, a request was made, and granted, for the exclusion of witnesses. The employer presented two witnesses and introduced three exhibits. The bargaining agent presented two witnesses and introduced two exhibits.

Evidence

Ms. Blair-Markland joined the federal Public Service on May 3, 1965 and became an immigration officer on July 26, 1988. At the time of the events leading up to her suspension, the grievor had some 32 years of discipline-free service. Her supervisor, James Hogan, stated that, apart from her involvement in this incident, the grievor was and continues to be a good, conscientious employee and a June 30, 1999 performance appraisal (Exhibit G-2) confirms this.

The grievor stated that some time prior to April 27, 1997, she received a telephone call from her cousin telling her that their aunt had a niece visiting Canada from Jamaica who was interested in gaining permanent residency status. The grievor provided general information at that time about completing the necessary application forms.

A second telephone call from the grievor's cousin was received indicating the necessary paperwork had been completed but they wanted the grievor to review it. Ms. Blair-Markland agreed to this request and told her cousin to have their aunt and her niece meet with the grievor on the morning of April 27 at the grievor's place of work. Ms. Blair-Markland agreed in cross-examination that if it were not for the fact her cousin requested the meeting, she would not have met with the applicant.

The grievor went to the records office to obtain a proper identification number and opened up a file for the applicant. She met with both the applicant and her aunt at about 11:00 a.m. on April 27 and conducted an interview which, according to the grievor, lasted about two hours. During this time, the grievor took notes with respect

to the answers provided to her by the applicant and aunt but ultimately the notes were removed from the file. She testified in chief that the purpose of the meeting was simply to review the application for completeness and respond to any questions the applicant may have. It turned out she conducted a two-hour interview, took the necessary processing fee (which she turned over to the accounts section and for which she provided a proper receipt to the applicant) and approved the application in principle. The grievor testified she discussed the processing of the application with a co-worker as she was not trying to hide the fact she processed the application. This was supported by the testimony of the co-worker, Volney Campbell, but he also acknowledged that he would not have conducted an interview at the request of a cousin because it could be perceived to be a conflict of interest.

One of the reasons for disciplining the grievor was that the proper processing of the application was not done. In this regard, the evidence of Ms. Blair-Markland's supervisor, Mr. Hogan, was to the effect that a reorganization of the work had taken place in 1993 or 1994, which precluded the immigration counsellors at Etobicoke from personally interviewing applicants for permanent residency status. The proper procedure was for the application to be sent to Vagreville for processing and, in the event it was determined an interview was necessary, only employees at certain designated sites would conduct the interview. In this case, such an interview would be conducted by staff at the Mississauga immigration office.

The grievor testified that she believed she had the authority to conduct such an interview by virtue of her job description dated January 1997 (Exhibit G-1), and she had conducted similar work in the past. Normally, approvals for permanent residency status are entered into the computer but, following the interview, the grievor discovered the computers were down. She left for home at the end of the workday and placed the file in her "in-basket". The grievor was absent on sick leave the following workday and her back-up officer took the files from the "in-basket" in order to process them. On Monday, April 30, the file was brought to the attention of Craig Morrison, who at that time was the Manager of the Etobicoke Immigration Centre. Initially, there was a concern with respect to the file because it was a line of work which, Mr. Morrison also stated, was not done in the Etobicoke office and, in fact, since 1994 this type of application had been sent to Vagreville for processing. This was still the practice in 1997 when the interview Ms. Blair-Markland conducted took place.

Mr. Morrison met with the grievor on May 5 or 6, 1997 to discuss his concern with the processing of the file. The grievor was offered the opportunity to have a union representative accompany her to the meeting but she declined the offer.

The grievor informed Mr. Morrison that a friend of hers had inquired about how a person could become a landed immigrant and the grievor provided general information. Then, about April 25, the friend called the grievor again and asked if the grievor could meet with the friend and the applicant. Ms. Blair-Markland agreed to this request and scheduled the meeting for 11:00 a.m. on Friday, April 27 in her office. The grievor informed Mr. Morrison that she met with the friend and the applicant as scheduled and conducted an interview, whereupon she approved the application in principle. This meant the applicant could become a landed immigrant subject to routine criminal and medical checks. Ms. Blair-Markland stated to Mr. Morrison that the application was granted on humanitarian grounds.

Mr. Morrison asked the grievor if she was aware of the conflict of interest guidelines and Ms. Blair-Markland said she was. Mr. Morrison told Ms. Blair-Markland of his concern about her handling an interview that involved a friend. He stated he would seek further guidance and get back to her with a decision on what to do. Mr. Hogan, the grievor's supervisor, stated that employees at the Immigration Centre were aware of the Conflict of Interest and Post-Employment Code for the Public Service and identified this document as Exhibit E-2. Paragraph 30 of the exhibit reads:

> ***Avoidance of Preferential Treatment***
>
> *30. Employees must not accord preferential treatment in relation to any official matter to family members or friends, or to organizations in which the employee, family members or friends have an interest. Care must be taken to avoid being placed, or appearing to be placed, under obligation to any person or organization that might profit from special consideration by the employee.*

Mr. Hogan stated that his understanding of this portion of the exhibit meant that employees were not to give preferential treatment to anyone and if relatives and/or friends were involved in an application, the file would go to another employee.

At a second meeting with the grievor, Mr. Morrison informed her she had placed herself in a conflict of interest position and disciplinary action was being contemplated. Ms. Blair-Markland stated she did not view her actions as inappropriate because the applicant was not known to her.

Mr. Morrison consulted with the Department's legal section and was informed that there was no obligation to abide by Ms. Blair-Markland's decision on the application. Consequently, the application was forwarded to Vagreville, as per the established policy and, in turn, it was sent to the Mississauga office in order for them to conduct an interview. Following an interview with the applicant, the request for landed immigrant status was denied. Mr. Hogan acknowledged that approval of an application for permanent residency status is somewhat subjective and two officers reviewing the same file may arrive at two different conclusions on whether to grant status or not.

Mr. Morrison regarded the conduct of Ms. Blair-Markland as very serious and inappropriate. He felt a 20-day suspension was a proper balance given the severity of the misconduct, but also taking into account the grievor's lengthy and discipline-free employment history. In addition, he noted the grievor had been cooperative and appeared remorseful. In cross-examination, the grievor admitted that what she had done was wrong and she was aware of the conflict guidelines; however, she pointed out that she had not benefited from her actions.

Arguments

For the Employer

Ms. Blair-Markland was disciplined because she processed an application for permanent residency status and this action was atypical of the work conducted by the Etobicoke Immigration Centre. Additionally, she was in a conflict of interest position because she interviewed an applicant referred to her by a cousin. The grievor stated that, if it had not been her cousin calling, she would not have interviewed the applicant. The grievor knew this was work which was not done by the Etobicoke office and the evidence indicated a reorganization in 1993 had resulted in this type of work being sent to Vagreville for processing.

By acting as she did, the grievor caused an erosion of the public's confidence in the immigration system. This application was given approval in principle and it was only due to the quick action of the employer that the process could be halted and proper procedures followed. The file was sent to Vagreville and, ultimately, the application was denied.

The employer took into account the grievor's discipline-free 32-year employment history but this does not allow the grievor to have a free pass. The 20-day suspension was necessary to show that the work she did was inappropriate and contrary to the conflict of interest guidelines.

Counsel referred to the following adjudication decisions: *Renouf* (Board files 166-2-27766 and 166-2-27865); *Da Cunha* (Board file 166-2-24725); and *Casselot* (Board file 166-2-3352).

For the Grievor

It is the grievor's position that some mitigation of the penalty is warranted in this case. The grievor is a good performer, as stated by the grievor's supervisor. She has 32 years of discipline-free service and it is not necessary to get her attention with a 20-day suspension. She replied to all questions asked of her by Mr. Morrison and expressed remorse for her actions. The grievor never attempted to conceal her actions.

She conducted the interview at her office, and discussed it with a colleague. She got the proper file number from the records office and turned in the requisite application fee, issuing a receipt for the money. At the end of the workday, she left the file out in the open, in her "in-basket". At the time the event took place, the grievor did not think she did anything wrong but she now recognizes her error. She makes no contest out of that fact.

The grievor did not know the applicant and the only thing she is guilty of in this instance is a lack of judgment. There was no personal gain for the grievor and the employer is aware of this.

The fact that the application was ultimately turned down is not relevant because the evaluation of such applications is subjective. Mr. Hogan even said two different people reviewing the same application could arrive at two different findings.

There was evidence that applications which were sent to Mississauga could then be referred to Etobicoke where the applicant would be interviewed; the grievor had processed them in the past and is doing them now. Therefore, the work may well have been properly done in Etobicoke.

In this situation, the suspension amounts to a penalty of over $3,200 and that is excessive, given all the factors here.

Mr. Done referred to the following adjudication decisions: *Tosh* (Board file 166-2-23614); *Perry* (Board file 166-2-17340); *Danku* (Board file 166-2-18515); *Bastie* (Board file 166-2-22285); *Vaillancourt* (Board file 166-2-3617); and *Conte* (Board file 166-2-22281).

Reply

The evidence from the employer's witnesses, which was unchallenged, was that written applications were to be sent to Vagreville during the 1997 period. From there, they would be sent to Mississauga in the event an interview was needed. Employees at Etobicoke would not process these types of applications in 1997.

Reasons for Decision

The letter of discipline states that Ms. Blair-Markland was involved in the inappropriate processing of a client file. The Department contends this work was not within the mandate of the Etobicoke office to do; yet Ms. Blair-Markland took it upon herself to do the work.

The discipline was imposed in part because the grievor performed work which was not supposed to be done in Etobicoke. Although the grievor testified she did this type of work at one time, and is doing it now, the employer has shown, I believe, that in 1997 this work would be sent to Vagreville. If an interview was required, it would be conducted out of the Mississauga office. When another employee discovered the file the following day, it was brought to the attention of the manager and immediately

reprocessed through Vagreville. Therefore, I find the employer has shown that the grievor did work which was not supposed to be done by the Etobicoke office.

Secondly, the employer contends that the grievor has violated the conflict of interest policy. As the grievor testified that what she did was wrong and that she was aware of the conflict of interest guidelines, this allegation is not contested. In doing this work, the grievor contravened section 30 of the Conflict of Interest and Post-Employment Code in that she provided preferential treatment to the applicant by conducting the interview herself rather than following proper procedures.

In *Da Cunha* (*supra*), the adjudicator dealt with a discharge because the grievor, an immigration counsellor, had contravened the Conflict of Interest Guidelines by providing preferential treatment to members of his family. The discharge was also based on elements of fraud. In dealing with the discharge, Board Member R. Simpson deemed all of the matters to be serious breaches of the duties of a public servant. However, the penalty was reduced to a nine-month suspension in recognition of "…the grievor's long service record of 11 years, without any disciplinary action taken against him" (page 14).

Here we too have what I feel is a serious breach of the duties of a public servant.

The allegations Ms. Blair-Markland is accused of are, in my view, quite serious. As an immigration counsellor the grievor is, in effect, a front line officer in dealing with individuals seeking permanent residency status. Inherent in such a position is the trust that members of the public are entitled to expect that they can place in individuals performing such a task. Ms. Blair-Markland betrayed that trust by processing a file, at the request of a relative, in an inappropriate manner. She granted the applicant's request for permanent residency status which, at that time, she had no authority to do.

Mr. Done stated that 32 years of discipline-free service has to count for something. I agree. However, the evidence shows that the employer also agrees with this statement and, were it not for that fact, the penalty imposed upon the grievor, according to Mr. Morrison, would have been much more severe. I see no reason to interfere in this decision given the fact that I believe this penalty falls within an acceptable range in consideration of all the facts.

Therefore, for all these reasons, the grievance is denied.

Joseph W. Potter
Deputy Chairperson

OTTAWA, November 3, 1999.