

Date: 20020408

File: 166-34-29784

Citation: 2002 PSSRB 38



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

ROULA (R.J.) SOTIRAKOS

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Before: Marguerite-Marie Galipeau, Deputy Chairperson

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

For the Employer: Caroline Engmann, Counsel, and Lara Speirs

Heard at Toronto, Ontario,
February 7 and 8, 2002.

DECISION

[1] The hearing was scheduled to start at 9:30 a.m. The grievor was not available. Her representative made telephone calls and informed me that, according to the grievor, she had had to attend to an emergency at the hospital. The grievor showed up at 1:30 p.m., at which time the hearing commenced.

[2] This decision follows the hearing of a grievance referred to adjudication by Roula (R.J.) Sotirakos ("the grievor"), PM-02, employed as a Trust Examiner at the Canada Customs and Revenue Agency (CCRA), in Toronto, Ontario. The object of the grievance is a one-day suspension.

[3] The "Notice of Disciplinary Action" (Exhibit E-1, tab 32) dated December 16, 1998, reads as follows:

[...]

You made an unsubstantiated accusation in your letter of June 12, 1998, contrary to an instruction provided to you in a letter from your Assistant Director, M. Mihaly, dated May 19, 1998. You were further instructed by M. Mihaly to provide the substantiating details in a letter dated July 24, 1998. You later explained, in a letter to M. Mihaly dated November 16, 1998, that you were provided with the statement, but with no substantiating details, by your Union Representative, Mr. J. Chorostecki. Regardless of the source of the remark, it is your responsibility to ensure that any accusation you make against any employee is substantiated.

You have therefore failed to follow the instruction contained in M. Mihaly's letters to you of May 19 and July 24.

Furthermore, the following considerations are noted.

- 1) There is nothing in your explanation that indicates any justification for your original failure to comply with M. Mihaly's instruction to you, as contained in her letter of July 24, 1998, to supply substantiating details for the allegation in your letter of June 12.*
- 2) In addition, you were provided with the opportunity to comply with these instructions at a meeting on September 24, 1998. As you did not supply the information, management deemed it appropriate to give you a written reprimand.*
- 3) Because of your continued non-compliance with respect to the above, you were further instructed in writing by letters dated November 5, 1998 and November 13, 1998 of your responsibilities in this*

matter. It was indicated to you that further, more severe, disciplinary action would have to be taken until and unless you complied.

In light of the forgoing, I am giving you a one day suspension to be served at such time as your Section Manager will determine and communicate to you.

[...]

[4] There were two witnesses: M. Mihaly, Assistant Director, Revenue Collections, Toronto Centre Tax Services Office, and the grievor, Roula (R.J.) Sotirakos.

[5] The grievance was drafted on January 5, 1999, and it was referred to adjudication on May 31, 2000.

[6] Here is a chronological overview of the salient events, which occurred before the imposition of the suspension.

[7] On March 9, 1998, M. Mihaly addressed, in writing, (Exhibit E-14, tab 1) some of the concerns of the grievor about her dealings with John Wright, her immediate supervisor. The grievor had complained of harassment by the latter.

[8] On March 17, 1998, a meeting took place between the grievor and M. Mihaly. It was also attended by a team leader, Danny Ducas. M. Mihaly questioned the capacity in which Danny Ducas was attending.

[9] On March 20, 1998, the grievor alleged, in a letter addressed to M. Mihaly, (Exhibit E-23, tab 12) that M. Mihaly had made a “direct threat of intimidation” to Danny Ducas.

[10] On April 1, 1998, M. Mihaly wrote (Exhibit E-24, tab 14) and denied the grievor’s allegations.

[11] On June 12, 1998, the grievor wrote (Exhibit E-2, tab 18) to M. Mihaly, maintaining her comments regarding M. Mihaly’s alleged statement regarding Danny Ducas and added a second allegation, which reads as follows:

[...]

It has recently come to light that you have directed such a comment in the past to at least one other Revenue Canada individual who was in the capacity of representing another employee.

[...]

[12] On July 24, 1998, M. Mihaly wrote to the grievor (Exhibit E-3, tab 20) that if she continued to make statements “which accuse without any substantiating documentation”, she would take disciplinary action. She also asked her to provide by August 14, 1998 details regarding the accusation in her letter of June 12, 1998 (Exhibit E-2, tab 18) and which is reproduced in the preceding paragraph.

[13] On September 15, 1998, M. Mihaly wrote to the grievor (Exhibit E-28, tab 22) and required her to appear in her office for disciplinary purposes in view of the grievor’s failure to provide details regarding the accusation.

[14] On September 24, 1998, M. Mihaly gave a written reprimand to the grievor (Exhibit E-9, tab 25) for not having provided the substantiating details, nor having provided an explanation for not having done so. She also ordered the grievor once more to provide the details substantiating her accusation in her letter of June 12, 1998, and she was further reminded not to make unsubstantiated accusations.

[15] On November 5, 1998, M. Mihaly reminded the grievor (Exhibit E-10, tab 27) of her order regarding her requirement for substantiating details and asked her to do so by November 10, 1998.

[16] On November 6, 1998, the grievor replied (Exhibit E-11, tab 28) as follows:

I am in receipt of your letter dated November 4, 1998.

In response to your letter, and on the advice of my Union Representative, I am advising you that the information outlined in my memorandum dated June 12, 1998; specifically, that “It has recently come to light that you have directed such a comment in the past to at least one other Revenue Canada individual who was in the capacity of representing another employee”, was provided by Jim Chorostecki, Ontario Regional Coordinator, PSAC.

As the senior PSAC staff person in Ontario I rely on his awareness and knowledge of issues relating to union representation.

I trust this complies with your request.

[17] On November 13, 1998, M. Mihaly responded that the grievor's November 6, 1998 letter was not satisfactory. She clarified that she wanted the following (Exhibit E-12, tab 29):

[...]

The details to substantiate your accusation, as referred to above, must include the name of the Revenue Canada 'individual' to whom I purportedly directed the remark in question, the name of the employee he or she was representing, when the incident took place, and what was said.

[...]

[18] She added that she was giving the grievor a further deadline (November 18, 1998) to comply.

[19] On November 16, 1998, the grievor replied (Exhibit E-13, tab 30):

In response to your letter of November 13, 1998, I am not aware of the details that you are requesting.

When I explained to Mr. Chorostecki the circumstances of your attempt to intimidate Mr. Ducas at the meeting of March 17, 1998, he advised me that you had directed such a comment to at least one other Revenue Canada individual who was in the capacity of representing another employee. Mr. Chorostecki did not provide me with the name of the individual, the name of the employee being represented, when the incident took place, and what was said.

Given your behaviour at the March 17, 1998 meeting, Mr. Chorostecki's comment was consistent with my experience in dealing with you. Behaviour, I will remind you, for which I am still awaiting an apology.

[20] On December 1, 1998, M. Mihaly invited the grievor (Exhibit E-31, tab 31) to a disciplinary hearing on December 14, 1998, which the grievor chose not to attend. M. Mihaly testified that she would have been prepared to hear out the grievor's explanations had the grievor shown up at the disciplinary hearing.

[21] On December 16, 1998, M. Mihaly gave the grievor the one-day suspension (Exhibit E-1, tab 32) which is reproduced at the beginning of this decision.

[22] Several documents (Exhibits E-14, E-16, E-18 and E-26) suggest a context of difficult communications between the grievor and her supervisors, in particular M. Mihaly, including an accusation by the grievor (Exhibit E-16, tab 3) sometime in December 1998 that M. Mihaly had assaulted her back in March 1998.

[23] The rest of the evidence can be summarized as follows.

[24] The grievor testified that she had tried several times, between September 24 and December 16, to obtain from Mr. Chorostecki the details required by M. Mihaly and that she only obtained them “two or three months” after her one-day suspension. (She did not volunteer any details at the hearing, nor was she asked to do so.) However, she added that she also approached (at an unspecified time) a Mary Fenney, President and Vice-president of the local, and that the latter had said, of M. Mihaly: “She has done it lots of times and we are familiar with the manner in which she conducts herself.”

[25] For her part, M. Mihaly testified that Danny Ducas had sought a clarification from her on her reasons for having asked, back in March 1998, in which capacity he wished to attend the March 17, 1998 meeting. According to M. Mihaly, he did not indicate that he had felt threatened by her question.

[26] M. Mihaly also indicated that had the grievor attended the disciplinary hearing, she would have been prepared to discuss the matter further and, if appropriate, to mitigate the disciplinary penalty.

Arguments

[27] The argument of counsel for the employer can be summarized as follows.

[28] A clear and reasonable order was given and understood. The documents speak for themselves. The grievor obtained four opportunities to substantiate her accusations (September 24, November 10 and 18 and December 1, 1998). She did not furnish any mitigating factors. It is a clear case of insubordination, and progressive discipline was applied. I was referred to the following jurisprudence: *Bousquet* (Board file 166-2-16316); *Cahill* (Board file 166-2-25854); *Enniss* (Board files 166-2-17728 to 17732 and 17849); *Imperatore* (Board files 149-2-169 and 166-2-27963); *Johnston*

(Board file 166-2-26460); *MacLean* (Board file 166-2-27968); *Madden* (Board file 166-34-29529); and *Nowoselsky* (Board file 166-2-14291).

[29] The argument of the grievor's representative can be summarized as follows.

[30] The grievor received a written reprimand on September 24, 1998, and the employer exhausted its ability to impose further discipline for the same misconduct. It is double jeopardy. The evidence does not support the conclusion that the employer acted reasonably, fairly or in good faith. There is no evidence of culpable behaviour. She could not give details if she was not in possession of these details. She did make attempts, after September 24, to obtain them.

[31] As of November 16, the employer knew that the source of the information was Mr. Chorostecki. It was not necessary to give a one-day suspension. The letter of reprimand had made the point.

[32] In reply, counsel for the employer stated the following.

[33] This is not a case of double jeopardy, as the letter of reprimand contained a further order. The unsubstantiated allegations were a serious matter, not only because they attacked M. Mihaly's integrity but also because they could have triggered a complaint under section 8 of the *Public Service Staff Relations Act*.

Reasons for Decision

[34] This grievance is dismissed for the reasons that follow.

[35] The grievor was instructed to substantiate by August 14, 1998 (Exhibit E-3, tab 20) an accusation she made against M. Mihaly. She failed to do so, by the given deadline, and for this first omission and misconduct received a written reprimand (Exhibit E-9, tab 25).

[36] She received a second instruction to do so, at the bottom of the Notice of Disciplinary Action (Exhibit E-9, tab 25). She complied in a very limited sense by providing on November 6, 1998 (Exhibit E-11, tab 28) the name of the person who allegedly had given the information on which was allegedly based her accusation. The employer was not satisfied and asked (Exhibit E-12, tab 29) for precise details. The grievor was given three more chances (November 10, November 18, and

December 14, 1998) to comply to the employer's satisfaction (Exhibits E-10, tab 27, E-12, tab 29 and E-31, tab 31). I am of the view that the second order given in the written reprimand (Exhibit E-9, tab 25) was a legitimate one and that in the end the employer was entitled to conclude that the mere giving of the name of the grievor's source of information as a result of the second order was not satisfactory compliance to this second order and therefore constituted a new misconduct. In my view, double jeopardy would have occurred if the grievor had received two sanctions for her first omission. This is not the case here. In this case, there were two separate omissions following two distinct orders. A second order occurred between both omissions.

[37] The grievor's admission during her testimony that she could not substantiate her allegation because she did not have the details (other than the name of the person who had passed on the allegation to her) does not mitigate her misconduct. She is accountable for her accusations and, having chosen to proffer them, should have been prepared to substantiate them to the employer's satisfaction. Passing on hearsay obtained from another source (Mr. Chorostecki) will not suffice.

[38] Unfortunately for her, she came up against a manager who was not willing to let the matter die and insisted by resorting to a second order. This should be a lesson to her for the future that she should refrain from accusations which she cannot substantiate. Based on her testimony, I am not confident that she has learned it for, during the hearing, once more, she made a new allegation against M. Mihaly this time based on hearsay in the form of comments allegedly made by the President of the local, a Ms. Fenney. Ms. Fenney did not testify to corroborate the grievor's allegation.

[39] I note that neither Mr. Chorostecki (who, according to the grievor, was the source of her information) nor Danny Ducas testified to corroborate the grievor's testimony.

[40] At no point during her testimony did the grievor exhibit any regret for having made an accusation which she could not substantiate.

[41] In summary, I am of the view that the employer was entitled to pursue the matter after the letter of reprimand and to give the grievor a second order. This order was legitimate and it was not complied with through the grievor's own fault, since by basing her accusations on hearsay, she, herself, placed herself in the position of not

being able to give the substantiating details. In short, she was hoist with her own petard.

[42] For all these reasons, the grievance is therefore dismissed.

**Marguerite-Marie Galipeau,
Deputy Chairperson**

OTTAWA, April 8, 2002.