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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

GRACE NGOZI ONAH

Grievor

and

**DEPUTY HEAD
(Department of Employment and Social Development)**

Respondent

Indexed as
Onah v. Deputy Head (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Kelechi Madu

For the Respondent: Joel Stelpstra

Decided on the basis of written submissions,
filed November 19 and December 3, 2018.

REASONS FOR DECISION

Individual grievance referred to adjudication

1 Grace Onah (“the grievor”) was employed as a Service Canada benefits officer (SCBO) classified at the PM-02 group and level with Human Resources and Skills Development Canada, now known as Employment and Social Development Canada, (“the employer”) in Edmonton, Alberta.

2 She filed a grievance on March 5, 2014, which states as follows:

I was advised on December 16, 2013 by ... that my term would not be renewed after March 31, 2014. Further discussions on February 24, 2014 have not been successful. I grieve the non-renewal of my term employment past March 31, 2014.

3 As corrective action, the grievor requested that her term employment be renewed past March 31, 2014.

4 The grievance was denied at all levels of the grievance process. The final-level response was dated December 24, 2014.

5 On February 4, 2015, the grievor referred her grievance to the Board pursuant to s. 209(1)(c)(i) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*). On February 23, 2015, she filed a notice with the Canadian Human Rights Commission (CHRC) indicating that her grievance gave rise to an issue involving the interpretation or application of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*).

She alleged in her notice that she had been treated in an adverse and differential manner when the employer terminated her employment based on race, national or ethnic origin, colour, and sex, including pregnancy and childbirth. The CHRC decided not to make submissions in this matter. She seeks reinstatement to a different section, as well as compensation.

6 In her correspondence to the Board, the grievor indicated that the bargaining agent, the Public Service Alliance of Canada, had declared that it would no longer represent her and that she was representing herself.

7 On November 19, 2018, the employer wrote to the Board, raising an objection to the Board's jurisdiction to hear the matter. As a result, it requested that the matter be dismissed without a hearing. The grievor's counsel responded to the motion on December 3, 2018.

8 On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations 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. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *PSLRA* before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

9 On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *PSLREBA* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *FPSLREBA*), and the *Federal Public Sector Labour Relations Act* ("the Act").

10 Section 22 of the *FPSLREBA* gives the Board the power to decide a matter before it without holding an oral hearing. I am of the view that there is sufficient information in the file to determine this preliminary matter without holding an oral hearing.

11 For the reasons that follow, the employer's request is granted, and the grievance is dismissed.

The employer's objection

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

12 The employer submits that the grievance relates to a termination of employment under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*). It submits that not renewing the grievor's term was not a termination of employment pursuant to the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) and therefore is not within the scope of s. 209 of the *Act*.

13 The employer submitted the letter of offer dated March 22, 2013, which states that the term end date was March 31, 2014. The letter she received from the employer dated December 16, 2013, also states that the grievor's term employment would not be extended past that end date and that she would cease to be an employee at the cessation of her period of employment, pursuant to s. 58(1) of the *PSEA*.

14 The employer submits that the discrimination claim is not adjudicable because the bargaining agent is not representing the grievor, and she has no stand-alone right to adjudication on collective agreement matters. Section 209 of the *Act* provides no authority for such a matter to be referred to adjudication absent the bargaining agent's consent, even if a breach of the *CHRA* is alleged. It refers to *Chamberlain v. Canada (Attorney General)*, 2015 FC 50, in support of its argument. Furthermore, it states that discrimination was not raised in the grievance presentation or at the departmental level and that it may not properly be brought before the Board now, based on the principle in *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.). It submits that the grievance now before the Board must be the same grievance argued at the earlier levels of the grievance process.

15 The employer also refers me to the Board's decision in *Shenouda v. Treasury Board (Department of Employment and Social Development)*, 2017 PSLREB 21, which deals with a similar grievance, filed against the same employer. In that case, the PSLREB concluded that it did not have jurisdiction because the grievance was about term employment, which could not be heard under s. 209 of the *Act*.

The grievor's response

16 With respect to the objection based on the *PSEA*, the grievor's counsel states that the Board has jurisdiction if the grievor alleges that the decision to not renew her employment was based on bad faith and discrimination. Counsel submits that there

was no business-case reason for not renewing her employment. Several people continued to work overtime in the employment unit and area, and the employer was still hiring. Shortly after deciding to not renew the grievor, the employer commenced new hiring.

17 Counsel submits that the grievor's term employment started in November 2009. On March 22, 2013, she was deployed, still on a term. On December 16, 2013, she was dismissed. She spent a combined four years on term employment. Her position is that that was long enough for the employer to have regularized her employment and to have offered her a permanent position.

18 The grievor's counsel further submits that the grievor did not receive proper and complete SCBO training from the employer, despite a business expert's recommendation. That failure and her subsequent termination (via her term not being renewed) resulted from bad faith on the part of the employer and were discriminatory.

19 As for bargaining agent representation, the grievor's counsel confirmed that the bargaining agent advised her after the third level of the grievance process that it was not prepared to continue with the grievance, and it closed its file.

Reasons

20 The employment offer of March 22, 2013, states that the term employment would be from March 28, 2013, to March 31, 2014. The grievor accepted it on March 22, 2013. Her employment ended on March 31, 2014, as stated in the employer's December 16, 2013, letter.

21 Her term extensions also state that pursuant to s. 7.2 of the Treasury Board's *Term Employment Policy*, the employer decided to temporarily suspend the accrual time towards indeterminate conversion for all employees.

22 The grievor referred her grievance to adjudication pursuant to s. 209(1)(c)(i) of the *Act*, which states as follows:

209 (1) *An employee who is not a member as defined in subsection 2(1) of the Royal Canadian Mounted Police Act may refer to adjudication an individual grievance that has*

been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

...

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct

23 In addition to the start and end dates of employment, the letter of offer of March 22, 2013, clearly states that the employment is temporary, as follows:

...

Nothing in this letter should be construed as an indeterminate appointment, nor should you anticipate continuing employment in the public service as a result of this offer. Your services may be required for a shorter period depending upon the availability of work and the continuance of the duties to be performed.

...

24 The employer's December 16, 2013, letter also clearly states that the grievor's term employment would not be extended past March 31, 2014, and that pursuant to s. 58(1) of the *PSEA*, she would cease to be an employee at the cessation of her period of employment.

25 For the Board to have jurisdiction pursuant to s. 209(c)(i) of the *Act*, the grievor would have had to have been demoted or terminated pursuant to the *FAA*. That is not what happened. Her term employment ended on March 31, 2014, in accordance with the terms of the contract. Hence, it ceased pursuant to s. 58(1) of the *PSEA*, as indicated in the December 16, 2013, letter. That section reads as follows:

58 (1) *Subject to section 59, an employee whose appointment or deployment is for a specified term ceases to be an employee at the expiration of that term, or of any extension made under subsection (2).*

26 It has been well established by this Board that when a term of employment expires, an adjudicator does not have the authority to inquire into why the employer did not extend it (see, for example, *Ikram v. Canadian Food Inspection Agency*, 2012 PSLRB 4).

27 The Adjudicator in *Chouinard v. Deputy Head (Department of National Defence)*, 2010 PSLRB 133, dealt with a similar matter and concluded that the expiration of a term contract is not a disciplinary action within the meaning of s. 209(1) of the *Act*.

28 In *Pieters v. Treasury Board (Federal Court of Canada)*, 2001 PSSRB 100 at paras. 45 and 46, the Board found that the failure to renew the grievor's term contract was not considered a termination of employment within the meaning of s. 92 of the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35), which is now s. 209 of the *Act*. It stated that the grievor's employment ended without any action being required of the employer, by virtue of the provisions of the contract and of the *PSEA* (see *Dansereau v. National Film Board*, [1979] 1 F.C. 100 (C.A.)).

29 Consistent with the cases I have cited, I find that the grievance does not fall within s. 209(1)(c)(i) of the *Act* or any other part of s. 209. It is not about the interpretation or application of a provision of a collective agreement (s. 209(1)(a)) or a disciplinary action resulting in termination, demotion, suspension, or financial penalty (s. 209(1)(b)). In addition, to file a grievance under s. 209(1)(a), the grievor must be represented by her bargaining agent; she is not.

30 Therefore, I conclude that the Board does not have jurisdiction to hear the grievance.

31 As for the discrimination issue, the information in the file supports the employer's argument that such an allegation was not raised in the grievance presentation. The bargaining agent's letter of July 31, 2014, entitled, "**Level 3 Grievance Presentation** [emphasis in the original]", makes no mention of any of the grounds the grievor raised in her notice to the CHRC in 2015.

32 I also note that the grievor's response to the employer's objection does not

make any reference to discriminatory actions it took against her. The only thing alleged is that the non-renewal of her term was discriminatory. I find that the *Burchill* principle applies.

33 Even had the discrimination issue been alleged in the grievance presentation, the Board could not hear it because it does not have jurisdiction over the grievance. For me to be able to hear a discrimination allegation, a grievance first has to be properly before the Board, because the *Act* does not include a stand-alone grievance concerning a violation of the *CHRA*.

34 In *Chamberlain*, at paras. 41 to 43, the Federal Court was clear that s. 226 of the *Act* does not create a stand-alone human rights grievance category.

35 Therefore, the issue of discrimination in this case also falls outside the Board's jurisdiction. The grievor could have filed a complaint with the CHRC.

36 For all of the above reasons, the Board makes the following order:

37 Order

38 The employer's objection is granted.

39 The grievance is dismissed.

January 31, 2019.

**Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment
Board**