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**File:** 566-02-12852

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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

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BETWEEN

**GUILLAUME LOISELLE**

Grievor

and

**TREASURY BOARD  
(Service Canada)**

Employer

Indexed as

*Loiselle v. Treasury Board (Service Canada)*

In the matter of an individual grievance referred to adjudication

**Before:** Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

**For the Grievor:** Guido Miguel Delgadillo, Public Service Alliance of Canada

**For the Employer:** Kétia Calix and Peter Doherty, counsel

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Decided on the basis of written submissions,  
filed January 28, February 12, and March 5, 2021.  
(FPSLREB Translation)

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**REASONS FOR DECISION****FPSLREB TRANSLATION**

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**I. Background**

[1] Guillaume Loiséle (“the grievor”) occupied a position under a term contract that expired on December 30, 2015, and that was not renewed. He filed a grievance in which he alleged that not renewing his contract constituted constructive dismissal. The employer denied the grievance, which was then referred to adjudication under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[2] On January 28, 2021, the employer asked the Federal Public Sector Labour Relations and Employment Board (“the Board”) to decide the matter of its jurisdiction to hear the grievance before proceeding with a hearing on the merits. After a pre-hearing conference during which the employer’s request was discussed, the Board Member handling the case allowed the request and ordered that the jurisdiction question be decided by written submissions.

[3] To decide the employer’s request, I must determine whether by considering the alleged facts as true, they can support an arguable case that not renewing the grievor’s term contract constituted disciplinary action resulting in termination under s. 209(1)(b) of the *Act*. If the alleged facts cannot support an arguable case of that nature, the grievance can be denied on that ground alone.

[4] I read all the parties’ written submissions and considered all the alleged facts as true. Having done that, my view is that the grievance should be denied. The grievor did not make an arguable case that not renewing his term contract constituted a dismissal under s. 209(1) of the *Act*, which is the legislative provision that describes the Board’s jurisdiction with respect to grievances referred to adjudication. Thus, I conclude that the Board does not have jurisdiction to decide this grievance.

**II. Grievance referred to adjudication**

[5] As no hearing was held, no evidence is on file. The parties made written submissions. At the Board’s request, the employer provided the grievor’s offer letters.

[6] The grievor was a citizen services officer with Service Canada under a term contract. The following is according to the information in the employer’s written submissions, which the grievor did not contradict:

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

- The grievor was hired under a term contract on April 28, 2014. Less than one month later, he was assigned, in the same position, to a different Service Canada service centre. Later, his contract was renewed until December 30, 2015.
- The offer letters issued to him included a statement indicating that they should not be interpreted as offers of indeterminate appointment or guaranteed employment with the public service.
- In July 2015, the grievor asked a colleague to view his father's employment insurance file, without his knowledge. After questioning the grievor and others, the employer found that a misconduct allegation was substantiated.
- On November 27, 2015, the employer informed the grievor of its decision to not renew the term contract. That same day, it communicated that decision to his union representative. Two reasons for the lack of renewal were communicated at that time — a 10% reduction in the volume of work at the service centre where he worked, and his misconduct.
- In a telephone conversation on December 1, 2015, the grievor's manager told the grievor that the employer would not take disciplinary action against him, even though it had found that the misconduct allegation was substantiated.

[7] On December 22, 2015, the grievor filed a grievance stating the following: “[translation] ... the fact that the employer decided to terminate my term contract as an employee effective December 30, 2015, without valid reasons.” The grievance also stated that the grievor “[translation] ... considers the termination of employment constructive dismissal and not the termination of a contract caused by a so-called reduction in work volume”. Through his grievance, he also contested the sufficiency of the notice of the lack of renewal, which was sent to him on November 27, 2015. He alleged that the employer did not make the necessary efforts to permit an extension of the contract by offering his services to a different Service Canada office.

[8] The corrective measures that the grievor requested in his grievance include, among other things, a request that the employer review its decision and that it rehire him immediately, retroactively to December 31, 2015.

[9] The employer denied the grievance at the final level. It found that not renewing the term contract was not constructive dismissal and that it was not done in bad faith. Not renewing the contract was justified by “[translation] operational reasons and by [the grievor's] misconduct with respect to the Department's Code of Conduct”. The employer also stated that not renewing a term contract is done in accordance with the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) and that the notice

dated September 15, 2015, which extended the grievor's contract, clearly indicated that the employment period was to end on December 30, 2015. The employer also found that the grievor's argument about the sufficiency of the notice dated November 27, 2015, was unfounded. It stated that the notice conformed with the Treasury Board's *Term Employment Policy*.

[10] On August 15, 2016, the grievor referred the grievance to adjudication under s. 209(1)(b) of the *Act*.

### III. Reasons

[11] The Board has no inherent jurisdiction. It obtains its jurisdiction from its enabling legislation. Its jurisdiction over the referral of a grievance to adjudication is limited to the areas listed in s. 209(1) of the *Act*. I recall that the grievor referred his grievance to adjudication under s. 209(1)(b). In August 2016, the date on which the grievance was referred to adjudication, this section stipulated the following:

*209 (1) An employee 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*

...

*(b) a disciplinary action resulting in termination, demotion, suspension, or financial penalty ....*

[12] Section 209(1)(b) of the *Act* does not grant the Board jurisdiction over all discipline that an employer imposes on an employee. At adjudication, the Board may review only certain disciplinary action, namely, action that results in termination, demotion, suspension, or a financial penalty.

[13] The grievor stated that the Board has jurisdiction to hear the grievance under s. 209(1)(b) of the *Act* because not renewing his contract constituted disguised discipline. According to him, employees accused of misconduct should be able to contest the allegations brought against them and make their arguments. He claimed that he did not have that opportunity and is of the view that it was disguised discipline. He maintained that the operational reasons that the employer identified had no bearing on the decision to not renew his contract. Even if the volume of work at the service centre where he worked had gone down, the employer had vacant positions in other service centres in the region before and after his contract ended.

[14] The grievor also maintained that not renewing his contract was disguised discipline related to his misconduct in July 2015. According to him, the employer was still accusing him of misconduct in the final weeks of his contract and would have hindered his chances of being hired elsewhere after his contract ended by mentioning his misconduct in reference checks.

[15] In addition to claiming that the Board does not have jurisdiction to hear this grievance because not renewing a term contract is not a termination, the employer made arguments relative to the Board's jurisdiction to allow the grievor's requested corrective measures. I agree with the grievor's representative that those measures have no bearing on the Board's jurisdiction as to whether to hear the grievance. It is important to maintain the distinction in the Board's jurisdiction between hearing the grievance and allowing corrective measures.

[16] As stated at paragraph 7 of this decision, the grievance referred to adjudication included four statements of grievance. Two were about not renewing the grievor's term contract and are relevant to the question of the Board's jurisdiction of which I am seized. The statements contest the employer's decision to "[translation] terminate the [grievor's] contract" and the reasons that the contract was not renewed. The other two statements were about matters that will be reviewed further only if I find that the Board has jurisdiction to hear the grievance.

[17] Extensive jurisprudence from the Board and its predecessors, the Public Service Labour Relations Board and the Public Service Staff Relations Board, supports the principle that not renewing a term contract does not constitute termination under s. 209(1) of the *Act*; see, among others, *Dansereau v. National Film Board*, [1979] 1 F.C. 100; *Pieters v. Treasury Board (Federal Court of Canada)*, 2001 PSSRB 100 at para. 45; *Ikram v. Canadian Food Inspection Agency*, 2012 PSLRB 4 at para. 8; and *Chouinard v. Deputy Head (Department of National Defence)*, 2010 PSLRB 133.

[18] When a term contract is not renewed, the employment relationship ends, based on the terms of the contract; see *Dansereau*. The employer has no obligation to renew it. An employee appointed for a specified term loses employee status when the employment contract expires; see s. 58(1) of the *PSEA*. In such circumstances, the end of employment does not constitute a termination, dismissal, or lay-off.

[19] The reason for not renewing a term contract is relevant only when allegations are made of discrimination contrary to the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) or when the employer ends the contract prematurely; see *Chouinard*.

[20] In this case, the grievor did not make a discrimination allegation, and the employer did not end the employment contract prematurely. He worked and was compensated for the entire term of his contract.

[21] The offer letters that the grievor signed included a statement that none of their contents should be interpreted as offers of indeterminate appointment or guaranteed employment with the public service. The notice of extension of his term contract stipulated an employment end date of December 30, 2015, which was the date on which his employment ended.

[22] The grievor alleged that not renewing his contract constituted disguised discipline that arose from his misconduct in July 2015. Even without deciding it, if I take for granted that the grievor's misconduct was one of the reasons or the only reason his term contract was not renewed, the Board still does not have before it one of the conditions for applying s. 209(1)(b); namely, a termination, demotion, suspension, or financial penalty. Not renewing a term contract does not constitute a termination. Moreover, the jurisprudence has clearly established that the Board may review the reason for not renewing a term contract only if discrimination is alleged or the contract is ended prematurely. In this case, the employer had no obligation to renew or extend the term contract; it expired due to its terms, and he lost his employee status, as prescribed by the *PSEA*. Therefore, the Board has no jurisdiction to hear the grievance.

[23] Having found that there is no jurisdiction to hear the grievance, it is not necessary for me to rule on the Board's jurisdiction to allow the grievor's requested corrective measures.

[24] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**IV. Order**

[25] The employer's objection is allowed.

[26] The grievance is denied.

September 1, 2021.

FPSLREB Translation

**Amélie Lavictoire,  
a panel of the Federal Public Sector  
Labour Relations and Employment Board**