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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

TERRY OMER

Grievor

and

**DEPUTY HEAD
(Office of the Chief Electoral Officer)**

Respondent

Indexed as

Omer v. Deputy Head (Office of the Chief Electoral Officer)

In the matter of an individual grievance referred to adjudication

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Respondent: Daniel Trépanier

Decided on the basis of written submissions,
filed December 10, 2021, and January 23, 2022.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Terry Omer (“the grievor”) was appointed under the *Canada Elections Act* (S.C. 2000, c. 9) to work as an election officer (service agent and central-poll supervisor) during the last federal election in Canada, held on September 20, 2021. Mr. Omer worked as a service agent for several days in August and September 2021 in the riding of Brossard-Saint-Lambert in Quebec. On September 16, 2021, the riding’s returning officer, Martine Bélanger, told him that his services were no longer required and that he would not work as a central-poll supervisor on election day, despite his expectation.

[2] Mr. Omer grieved this decision as a termination; he submitted that racial discrimination had been a factor. He asked to be paid for the hours he would have worked as a service agent on advance-polling days and as a central-poll supervisor on polling day, had he been allowed to work. He referred his grievance to the Federal Public Sector Labour Relations and Employment Board (“the Board”) on November 15, 2021.

II. Motion to dismiss the grievance

[3] The Deputy Head of the Office of the Chief Electoral Officer (“the respondent” or “Elections Canada”) moved to have this grievance dismissed. Under the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), only employees, as defined by the Act, can submit a grievance and refer it to the Board. The respondent argued that the grievor is not an employee as defined in Part II of the Act.

[4] Mr. Omer replied that he has worked during all federal elections since 2011. He argued that doing so over many years makes it an intermittent or casual employment, and therefore, he should be considered an employee.

III. Background

[5] The grievor asserts that several persons working in the Brossard-Saint-Lambert riding conspired against him to deny him the opportunity to work as an election officer. He believes that his race, colour, and ethnic origin played a role in ending his employment. He describes a conflictual situation in which his good-faith efforts to do his job responsibly were simply ignored. According to his view, he was treated unfairly and without respect.

[6] The grievor started to work for Elections Canada around the end of August 2021. There was some confusion with his schedule, as the supervisor had not been informed that he was to start. He worked four days in advance polling, from September 10 to 13, 2021. During this time, some conflicts arose with his colleagues and superiors that according to him, were due to their incompetence and his desire to do everything correctly. This culminated in Ms. Bélanger dismissing him on September 16, 2021.

IV. Analysis

[7] Election officers are appointed by the returning officer under s. 32(1) of the *Canada Elections Act* that provides as follows:

32 (1) Subject to subsections (2) and (3) and 33(2) and (3), a returning officer shall, after the issue of the writ, appoint in accordance with the Chief Electoral Officer's instructions the election officers that the returning officer considers necessary for exercising election officers' powers and performing election officers' duties under this Act in the returning officer's electoral district.

[8] Even if the grievor were considered employed in the public service, his term of employment is such that he is excluded from the definition of "employee" that would allow him to make a grievance. Part 2 of the *Act*, which deals with grievances, provides as follows in defining "employee":

206 (1) The following definitions apply in this Part.

employee means a person employed in the public service, other than

(a) ...

(b) ...

(c) ...

(d) ...

(e) a person employed on a casual basis;

(f) a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;

...

[Emphasis in the original]

[9] It is clear that the grievor's term of employment with Elections Canada was less than three months.

[10] The grievor cites *Broekaert v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 90, as an example of persons employed on a casual basis being considered employees. This is a misreading of *Broekaert*. In that case, the grievors had been employed on a casual basis before becoming term and then indeterminate employees. There was no question that they had a right to grieve, as employees. As the adjudicator wrote in that decision:

...

[23] Thus, grievances presented by a casual employee would not be adjudicable because casual employees are excluded from the definition of employee in the PSSRA [the Public Service Staff Relations Act (R.S.C., 1985, c. P-35; PSSRA), the predecessor of the Act]...

...

[11] The issue in that case was whether the period of employment on a casual basis had an impact on the calculation of pay increments once the person became an employee. It was clear that the right to file a grievance depended on being an employee, as defined by the *Act* (the *PSSRA* at the time).

[12] Under the *Act*, because a person employed on a casual basis or a term employee (less than three months) is not an employee, the person cannot file a grievance or refer it to adjudication. The right to grieve under s. 208 is reserved for employees. Since no grievance can be presented by someone who is not an employee, no grievance can be referred to adjudication, as the presentation of a grievance at all required levels of an applicable grievance process is also a precondition of a referral to the Board (see ss. 209(1) and 225).

[13] The grievor also cites *Grant v. Deputy Head (Correctional Service of Canada)*, 2017 PSLREB 59, to support his discrimination claim.

[14] Since the Board does not have jurisdiction to decide the grievance, it is not the proper forum for discrimination allegations. Under s. 226(2) of the *Act*, the Board can hear a discrimination claim when it is raised in a grievance; otherwise, nothing in the *Act* gives the Board the authority to hear it.

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

(The Order appears on the next page)

V. Order

[16] The grievance is denied for lack of jurisdiction.

April 4, 2022.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**