Date: 20240531

File: 566-02-48500

Citation: 2024 FPSLREB 76

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

PETER LANG

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Lang v. Correctional Service of Canada

In the matter of an individual grievance referred to adjudication

Before: Patricia H. Harewood, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Employer: John Maskine, counsel

Decided on the basis of written submissions, filed February 22 and March 6 and 8, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Peter Lang, filed a grievance under s. 209(1)(c)(ii) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*) to contest his deployment to the Pacific Institution — a correctional facility in Abbotsford, British Columbia, of the Correctional Service of Canada, which in this decision is referred to as "the employer". When it was filed, he occupied an excluded indeterminate deputy warden position (classified AS-07) at a healing lodge in Kwìkwèxwelhp Healing Village near Harrison Mills, B.C. ("the Healing Lodge").

[2] The grievor was deployed to a position as an assistant warden, interventions, (classified AS-07) at the Pacific Institution, which was also excluded from a bargaining unit.

[3] His grievance reads as follows:

> …
>
> *I was deployed out of the above position without my consent. The position is at an indigenous Healing Lodge in Harrison Mills and the current warden replaced me, a s. 35 rights bearing métis person, with a non-indigenous person. This is a violation of my human rights and section 51(6) of the PSEA. Note: this action was originally submitted as a staffing complaint on the day of the appointment (June 1st, 2020). I was directed to use the grievance process as the appropriate mechanism.*
>
> …

[4] As corrective action, the grievor requested an "… apology from the offending manager (warden) and to be made whole".

[5] The grievance was denied at the final level and was referred to adjudication on October 31, 2023. In the final level reply, the employer also noted that the grievor made representations that the deployment was done without his consent in retaliation for him filing a complaint with the Canadian Human Rights Commission.

[6] The employer made a preliminary objection against the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision also refers to any of the current Board's predecessors) to hear the grievance.

[7] The employer argued that the grievor consented to the deployment, so the Board lacks jurisdiction under s. 209(1)(c)(ii) to hear the grievance and requested that it be denied without a hearing.

[8] The grievor argued that he initially consented to the deployment but rescinded his consent prior to the effective date of deployment. He argued that the Board therefore had jurisdiction to hear the matter under the Act since he was deployed without his consent, and consent was required. The grievance file was assigned to me on January 11, 2024, to determine whether the preliminary objection could proceed by way of written submissions.

[9] Pursuant to the Board's authority under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), I determined that the employer's preliminary objection could be addressed on the basis of written submissions alone.

[10] The Board sent a number of questions for the parties to address in their written submissions and requested additional documentation.

[11] Both parties had an opportunity to respond to the Board's questions in their submissions, notably the legal effect of the signed offer letter, whether consent was a condition required for the grievor's deployment, and whether a deployment can be rescinded or withdrawn.

[12] For the reasons that follow, I must uphold the employer's objection and deny the grievance.

[13] The Board does not have jurisdiction to hear the grievance because the grievor consented to the deployment. Further, he failed to establish that his consent was in any way vitiated by coercion or duress of any kind.

II. Background

[14] The parties did not file an agreed statement of facts, but the contents of this section are not in dispute.

[15] The parties agree that the grievor's consent was required to deploy him to the Pacific Institution, under s. 51(6) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*).

[16] On May 14, 2020, the grievor signed an offer letter accepting his deployment to the Pacific Institution as the assistant warden, interventions, effective June 1, 2020.

[17] On May 26, 2020, a "Notice of Consideration" was issued for the deputy director (warden) position at the Healing Lodge.

[18] On May 26, 2020, the grievor emailed the employer to "withdraw [his] initial agreement" and return to the Healing Lodge "… at some point in the near future."

[19] On May 27, 2020, the warden, Robert Harrison, refused the grievor's request to withdraw his consent and be redeployed to the deputy warden position at the Healing Lodge.

[20] On May 29, 2020, the grievor emailed the senior officer, staffing operations, to confirm that he intended to respect his agreement to be deployed, effective June 1, 2020.

III. Summary of the arguments

A. For the employer

1. The offer letter's legal effect

[21] The employer submitted that the grievor signed the offer letter dated May 14, 2020, by placing a checkmark next to the statement, "I accept this offer", and by clearly signing his name.

[22] The grievor's signature was explicit evidence of his intent to accept the deployment, effective June 1, 2020. (See *Baker v. Deputy Minister of Public Works and Government Services Canada*, 2013 PSST 11 at para. 42.)

[23] Further, the employer noted that the grievor signed the offer letter with the expectation that it would be a legally binding agreement once accepted. (See *Nova Scotia Union of Public and Private Employees, Local 13 v. Halifax Regional Municipality*, 2017 CanLII 82065 at para. 66.)

[24] The contract had the three elements of any legal contract — offer, acceptance, and consideration. (See Fridman, *The Law of Contract in Canada*, 6th ed., at 6.)

[25] Therefore, a reasonable person would conclude that there was a meeting of the minds, as the offer letter was clear and unambiguous. (See *MacNeil v. Dana Canada Corporation*, 2009 ONCA 343 at paras. 4 and 5; and *Mad Hatter Technology Inc. v. Short*, 2014 CanLII 23275 at para. 50.)

[26] Consent was required for the deployment, under s. 51(6) of the *PSEA*.

[27] The employer submitted that the *PSEA*'s provisions were respected, as it deployed the grievor with his consent.

[28] In its rebuttal submissions, the employer added that no cooling-off period applies to labour relations agreements. It applies in other contexts, like consumer protection, in which the Ontario *Consumer Protection Act, 2002* (S.O. 2002, c. 30, Sched. A) allows for a 10-day cooling-off period in certain situations.

2. No right to unilaterally rescind a deployment

[29] The employer also submitted that once the grievor consented to the deployment, he could not unilaterally rescind it.

[30] The employer argued that while a deployment could be rescinded prior to its effective date, the employer would have to agree.

[31] In addition, the employer noted that although a deployment cannot be unilaterally revoked, a person is entitled to request that it be revoked up to the effective date, but that the employer is not obligated to approve the request.

[32] The employer explained that requests to rescind deployments can have far-reaching operational and financial implications on both workplaces.

[33] In this case, the employer refused the grievor's request.

[34] Since the employer did not agree to rescind the deployment, the legal agreement to deploy the grievor remained in effect.

3. Discrimination allegations

[35] In its rebuttal to the grievor's submissions, the employer noted that since the Board lacks jurisdiction, it cannot consider the grievor's allegations with respect to his

Indigenous status, the Indigenous status of others employed, or its decision to reject his request to rescind the deployment.

[36] In the alternative, the grievor failed to establish *prima facie* discrimination, which is required (See *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536 at para. 28).

[37] The employer noted that it is not enough to make an allegation of racism but that "[e]vidence of discrimination, even if it is circumstantial, must nonetheless be tangibly related to the impugned decision or conduct." (See *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 88.)

[38] The employer submitted that the grievor simply made allegations but that he provided no evidence to substantiate his claims.

B. For the grievor

[39] The grievor acknowledged that initially, he agreed to deploy to the Pacific Institution by signing the offer letter consenting to his deployment on May 14, 2020.

[40] However, a few days later, he had a "change of heart."

[41] The grievor noted that it was the beginning of the COVID-19 pandemic but that soon, it became clear to him that the pandemic would have a major impact on workplaces.

[42] The grievor alleged that due to several factors, including changes at the Healing Lodge, he began to think that he would have more job security, as an Indigenous man, if he stayed there.

[43] The grievor submitted that he spoke to trusted mentors, who agreed that it would be best for him to stay in his Healing Lodge position.

[44] The grievor alleged that one can back out of contracts during a "cooling off period". He made the decision to back out of the agreement before the deployment took effect.

[45] However, he alleged that later, he agreed to go ahead with the deployment under duress, after his warden yelled at him, and he was advised to file a grievance.

[46] The grievor alleged that therefore, he was forced out of his position under duress because his warden wanted to replace him with a person who was not Indigenous.

[47] The grievor argued that according to "case law", consent may be withdrawn before a deployment's effective date. He said that it is just like withdrawing consent for healthcare or in a sexual-activity context.

[48] The grievor did not address the employer's objection to hear his allegations regarding alleged breaches of the *Canadian Human Rights Act*.

IV. Reasons

[49] The *PSEA* defines "deployment" at s. 2 as "… the transfer of a person from one position to another in accordance with Part 3."

[50] Part 3 sets out of the conditions for a deployment, including the deputy head's sole authority to deploy employees to or within the deputy head's organization.

[51] The *PSEA* is also clear that a deployment is not a promotion or appointment; nor does it have the effect of changing a person's employment period from term to indeterminate.

[52] In essence, a deployment is a staffing action that deputy heads may use if they wish to transfer a person laterally from one position to another, for a host of reasons.

[53] For example, deployments may be used for reasons such as these three:

1) If there are vacant positions and a particular skill set is required in another part of the organization, to meet an existing or emerging organizational priority.
2) If a person must be moved to another part of the organization after a harassment finding is made against them, to protect the health and safety of other employees
3) If the person is part of an occupational group for which deployment may be a condition of employment.

[54] However, with respect to consent, s. 51(6) sets out that the deputy head requires the consent of the person being deployed in all but these two circumstances:

Consent to deployment	***Consentement du fonctionnaire***
51(6) *No person may be deployed without his or her consent unless*	***51(6)*** *La mutation ne peut s'effectuer sans le consentement de la personne en cause, sauf dans les cas suivants :*
(a) *agreement to being deployed is a condition of employment of the person's current position; or*	***a)*** *le consentement à la mutation fait partie des conditions d'emploi de son poste actuel;*
(b) *the deputy head of the organization in which the person is employed finds, after investigation, that the person has harassed another person in the course of his or her employment and the deployment is made within the same organization.*	***b)*** *l'administrateur général dont elle relève conclut après enquête qu'elle a harcelé une autre personne dans l'exercice de ses fonctions et la mutation se fait au sein de la même administration.*

[55] When contesting a deployment, employees are very limited in what they can refer to adjudication.

[56] Section 209(1)(c)(ii) of the *FPSLRA* reads 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*	***209 (1)*** *Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un* membre, *au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada, *peut renvoyer à l'arbitrage tout grief individuel portant sur :*
(a) *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*	***a)*** *soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;*
(b) *a disciplinary action resulting in termination, demotion, suspension or financial penalty;*	***b)*** *soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;*
(c) *in the case of an employee in the core public administration,*	***c)*** *soit, s'il est un fonctionnaire de l'administration publique centrale :*

***(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, or*	***(i)** la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d) de la* Loi sur la gestion des finances publiques *pour rendement insuffisant, soit de l'alinéa 12(1)e) de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite,*
***(ii)** deployment under the* Public Service Employment Act *without the employee's consent where consent is required ….*	***(ii)** la mutation sous le régime de la* Loi sur l'emploi dans la fonction publique *sans son consentement alors que celui-ci était nécessaire* […]

[57] In this case, both parties agree that the grievor's consent was required to deploy him to the Pacific Institution.

[58] In other words, the grievor did not fall under the two exceptions described in s. 51(6) of the *PSEA*.

[59] Further, in his submissions, the grievor acknowledged that he agreed to the deployment on May 14, 2020.

[60] The offer letter, with an attached appendix from the Pacific Institution's acting deputy, reads as follows:

> …
>
> *Dear Mr. Lang:*
>
> *On behalf of the Correctional Service of Canada, I am pleased to offer you a full-time indeterminate deployment to the position noted in the attached appendix, effective June 1, 2020.*
>
> *This offer of employment is conditional upon you signing the enclosed appendix where indicated and satisfying all other requirements set forth in this package. Your signature is an attestation that you clearly understand and will comply with the terms and conditions of employment.*
>
> *Please do not hesitate to contact me if you have any issues or concerns about your offer or start date. If you have general questions, please contact your supervisor.*
>
> …

[61] The appendix is comprised of a detailed explanation of terms and conditions of employment for the assistant deputy, interventions, position at the Pacific Institution.

It reads like a standard employment contract in the federal public service for unrepresented employees who are not covered by a collective agreement.

[62] It included a reference to policies that the grievor had to respect throughout his employment, along with information on his pay and benefits, including the position's salary range.

[63] At the end of the appendix, in the section titled "Acceptance or Refusal", the grievor signed and dated the offer letter checking that he accepted it and that he acknowledged the following: "I Peter Lang have read and understood this offer of employment with a start date of June 1, 2020."

[64] By signing the offer letter, the grievor consented to being deployed to the Pacific Institution on June 1, 2020. I find that this was the consent required under section 51(6) of the PSEA.

A. No allegations of coercion were made with respect to when consent was provided

[65] Further, the grievor does not allege that he signed the offer letter on May 14, 2020, under any duress or coercion.

[66] In *Mangat v. Canada Revenue Agency*, 2010 PSLRB 86, the Board determined that there was insufficient evidence to invalidate a resignation in the absence of any evidence of intimidation or coercion by the employer. While the grievor might have been stressed or under pressure, it was not sufficient to invalidate the agreement.

[67] I find *Mangat* useful to underline the approach to use when reviewing the circumstances of concluding a labour relations agreement.

[68] However, *Mangat* is factually different from the case before me because it involved a contested resignation. In this case, the grievor did not challenge the offer letter's validity, which he confirmed was signed and accepted.

[69] Nonetheless, *Mangat* refers to several decisions in which adjudicators in different circumstances analyzed claims that a resignation was made under duress. The adjudicator in *Mangat* cited the analytical framework in *Dubord & Rainville Inc. v. Metallurgistes Unis d'Amérique, Local 7625* (1996), 53 L.A.C. (4th) 378 at 381, which was described as follows:

> *Thus arbitrators, adjudicating upon the validity of a resignation, will look to both the subjective expression of the employee's decision to resign and the objective manifestations provided by the employee following communication of that decision. As well, arbitrators will look to the circumstances under which the resignation was submitted or secured to ensure that such resignation was not improperly obtained through devices such as threats, intimidation, deception or undue duress.*

[70] I find that this framework of analysis applicable in contexts in which resignations and other kinds of labour relations agreements, like deployments, may be under scrutiny. The approach requires adjudicators to consider both the subjective and objective expressions of the employee's decision to resign.

[71] Many of the Board's decisions and those of its predecessors involving deployments turn on whether the staffing action was a forced deployment or disguised discipline under s. 209(1)(b).

[72] I found only one decision similar to this case, in that the Board was required to examine the grievor's claim that his deployment to a lower-level position was made under duress. However, in reality, any similarity ends there. On reviewing the circumstances of the deployment, the adjudicator did not accept the grievor's claim, as it was made for the first time 18 months after the grievor agreed to be deployed (see *Legere v. Correctional Service of Canada*, 2014 PSLRB 70 at para. 60).

[73] As in *Mangat*, in this case, I must consider both the subjective expressions of the grievor's labour relations agreement and the objective manifestations that occurred after the decision was communicated to the employer.

[74] Mere allegations that the grievor was subsequently yelled at and coerced into being deployed **after** he had a change of heart do not amount to duress when he initially consented to the deployment.

[75] I find that the evidence is clear that the grievor agreed to be deployed.

[76] I accept that the grievor might have had a brief change of heart when the "Notice of Consideration" was posted on May 26, 2020, and he realized that someone else would take on his deputy warden position at the Healing Lodge. It is certainly not uncommon to get cold feet when making important life decisions.

[77] It is also clear that the grievor communicated with the warden on May 26, 2020 about withdrawing his consent to be deployed, as he was concerned about his long-term career prospects and how potential reductions in the inmate population might affect staffing levels.

[78] However, the very next day, the grievor confirmed in writing that he wished to "… stick with the original acceptance of the deployment to PI [Pacific Institution]". Therefore, I find no evidence that the grievor's initial consent was vitiated by his exchange with the warden.

B. No cooling-off period

[79] Further, the Board finds the grievor's references to an applicable "cooling off period" to be without foundation.

[80] There are no provisions in the *PSEA* or in any of the offer letter's clauses that allow for any so-called "cooling-off" period once a person has consented to being deployed.

[81] I agree with the Board's comments in *Bedok v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 163 at para. 64, which are that there is no such thing as a "cooling-off" period for labour relations agreements.

[82] In *Bedok*, to determine whether the Board had jurisdiction, the adjudicator had to decide whether a signed memorandum of agreement was legally binding on the parties. The grievor also claimed that a cooling-off period applied that allowed him to rescind the agreement. The adjudicator noted that the grievor might have been referring to consumer protection legislation but that no such period applied in labour relations.

[83] In this case, once the grievor signed the offer letter and it was communicated to the employer, it constituted the entire agreement to be deployed on June 1, 2020.

[84] The Board also finds that contrary to the grievor's submissions, the applicable law on consent to be deployed in a labour relations context is not analogous to consent to undergo medical procedures or to engage in sexual relations. Vastly different and complex legislative regimes apply to those distinct contexts (i.e., see s. 273.1(1) of the

Criminal Code (R.S.C., 1985, c. C-46) and the Ontario *Health Care Consent Act, 1996* (S.O. 1996, c. 2, Sched. A).

C. The authority to rescind deployments rests with the deputy head

[85] Section 51(4) of the *PSEA* sets out that deployments to or within an organization named in Schedule I or IV to the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) must be made in the manner prescribed by the Treasury Board or according to its regulations. The employer is an organization under Schedule IV of the *FAA*.

[86] The Treasury Board's deployment policy was rescinded in 2007, and the employer had no such policy for individuals in the AS occupational group when the grievor was deployed.

[87] Section 51(1) of the *PSEA* is clear that only deputy heads have the authority to deploy to or within their organizations.

[88] Therefore, persons being deployed have no unilateral authority to deploy themselves to or within an organization; nor can they unilaterally revoke their own deployments.

[89] This means that once the grievor consented to being deployed, it could have been stopped or rescinded only at the discretion of the one person who had the authority to deploy him — the deputy head.

[90] The grievor provided no authority for his claim that after accepting the deployment offer letter and *before the effective date*, he could withdraw his consent and thus rescind the staffing action on his own.

[91] Further, the Board notes that on May 27, 2020, the grievor confirmed with the employer's Labour Relations branch that after speaking to others, including the Pacific Institution's acting warden, who had sent him the offer letter, he intended to respect the agreement to deploy there. Nowhere in his email does he mention that he signed the May 14, 2020, offer letter under any kind of duress. The following is an except of that email:

…

Hi Ann,

> *I spoke with Brooke and Tysha again today. I will stick with the original acceptance of the deployment to PI. The current Warden of Kwìkwèxwelhp Healing Village has made it abundantly clear he would rather have a non-indigenous person in the DW position so I will likely pursue that issue, and his inappropriate memo sent to me yesterday, in a separate submission. I'm thoroughly enjoying working with the team here at PI and my initial hesitation had nothing to do with not wanting to be here. Rather, after some additional thought, I was concerned about the effects COVID may have on positions in CSC in the long term (DRAP) and wanting to be engaged around indigenous culture. Brooke, Tysha and I have discussed this and alleviated those concerns to my satisfaction.*
>
> *Peter Lang*

[92] Given that I have found that the grievor consented to the deployment, I find that the Board has no jurisdiction under s. 209(1)(c)(ii) of the *FPSLRA* with respect to the grievance.

D. Discrimination allegations

[93] The grievor also alleged that his deployment was discriminatory on the basis of his Indigenous status and that it violated his human rights. Those allegations are in the wording of the grievance that was referred to adjudication and were raised at the final level of the grievance process.

[94] The Board would only have jurisdiction to interpret or apply the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) if it had jurisdiction over the substance of the grievance. In this case, I have determined that the Board is without jurisdiction. (See *Chamberlain v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 115, upheld in 2015 FC 50.)

[95] Since I have already determined that the grievor consented to the deployment, I cannot take independent jurisdiction over the discrimination allegations, since they are intricately connected to the deployment. Doing so would be an attempt to surreptitiously enter the back door when the front door is locked.

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

(The Order appears on the next page)

V. Order

[97] The objection is upheld, and the grievance is denied.

May 31, 2024.

Patricia H. Harewood,
a panel of the Federal Public Sector
Labour Relations and Employment Board