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File: 566-34-38173

Citation: 2024 FPSLREB 152

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

LUCIE LANGLOIS

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Langlois v. Canada Revenue Agency

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: Nasim Amiri, representative

For the Employer: Serin Cho, counsel

Decided on the basis of written submissions, filed May 10 and 28 and June 6, 2024.

REASONS FOR DECISION

I. Summary

[1] The Canada Revenue Agency ("the employer") filed an interlocutory motion to dismiss the referral of this grievance, filed in March 2016 ("the first grievance") to adjudication that alleged a failure to accommodate. It relies upon an agreement to settle a separate grievance, filed in July 2016 ("the second grievance"), which it maintains settled two grievances that it submits arose from related events.

[2] The bargaining agent, the Public Service Alliance of Canada (PSAC), argues that only the second grievance was settled, and it requests that the motion be dismissed and that the first grievance proceed to a hearing by the Federal Public Sector Labour Relations and Employment Board ("the Board").

[3] A contextual reading of the grievances and settlement agreement provides some support to the employer's submission that the grievances are related and that boilerplate clauses that speak of the final settlement of all matters between the parties exist such that the first grievance could be considered settled.

[4] However, the broadly worded and very general release clauses relied upon by the employer cannot overcome the very clear language requiring only that Lucie Langlois ("the grievor") withdraw the second grievance, in consideration of the monetary sums paid to her in the settlement. She has done so and therefore has properly performed her side of the settlement agreement of the second grievance.

[5] Therefore, the employer's motion to dismiss the first grievance is denied. The referral of it to adjudication before the Board shall be scheduled for a hearing.

II. The grievor's submissions

[6] The grievor's written submissions state that she commenced her tenure with the public service in January 1987 at Environment Canada's Ontario Regional office for Parks Canada in Cornwall, Ontario. In 1992, she relocated with her family to Sudbury, Ontario, and began her service with the employer. Over the years, she held several permanent positions, starting as an administrative assistant to directors and assistant directors and later in officer positions in the PM and SP groups from 2000 onward.

[7] On February 5, 2015, the grievor states that she received an ergonomic assessment. The employer provided her with a rubber mat to stand on, an electronically adjustable sit-stand workstation, and an ergonomic chair with a concave lumbar support to minimize the pressure on her lumbar area. Given that she had a shoulder injury, she also worked with dual monitors, a headset (due to medical issues), and a trackball mouse, to help her work. This initial accommodation was in line with her needs and was satisfactory.

[8] Around May 2015, the grievor prepared to move to Ottawa, Ontario. In anticipation of her new office setting, she spoke to her team lead, George Diamantakos, about her accommodation needs and faxed them the ergonomic assessment on June 5, 2015.

[9] The grievor's first scheduled day at work in Ottawa was July 2, 2015. On her first day, almost 1 month after sending the fax with her assessment, the grievor asserts that she was not provided with an ergonomic chair, a proper adjustable workstation, dual monitors, a trackball mouse, and a rubber mat to stand on. She claims that it took more than 15 months for her to be fully accommodated.

[10] The grievor filed a grievance on March 21, 2016, alleging the employer lacked timeliness and compliance with the ergonomic assessment dated June 5, 2015 ("the grievance"). The corrective actions requested were 1) a timely accommodation, and 2) full compensation for the delay and inconvenience.

[11] On July 19, 2016, the grievor filed a second grievance in relation to the "… employer's violation of Article 19 No discrimination as well as Article 22 Health and Safety Clauses of the collective Agreement".

[12] Additionally, the grievor had made a harassment-and-discrimination complaint, which was investigated. On page 105 of the resulting report, the investigator confirmed this: "As a result of my investigation, I have made five findings of discrimination and one finding of harassment in Mr. Diamantakos' conduct toward Ms. Langlois." (Annex G)

[13] In his March 6, 2020, letter, Maxime Guénette, the assistant commissioner of the employer's Public Affairs Branch, acknowledged the following:

…

> *The purpose of the investigation was to determine if discrimination and/or harassment occurred as per the Discrimination and Harassment Resolution Process. I have reviewed the Final Investigation Report, and determined that the investigator's analysis and conclusions are reasonable, therefore harassment and/or discrimination was found to have occurred in incidents 1, 2, 3, 6 and 8. The allegations in incidents 4, 5 and 7 were determined to be unfounded.…*
>
> *Accordingly, I have determined that some of Mr. Diamantakos's conduct constituted harassment and discrimination that did not contribute to maintaining a respectful workplace. Appropriate action will be taken by management to address these findings and work towards ensuring a respectful and healthy workplace for all employees.*
>
> *…*

[14] The grievor argued that the subject of the second grievance was to address the team lead's harassing and discriminatory conduct. She further submits that this conduct happened during the accommodation process but adds that it does not equate with the employer's failure to provide timely accommodation. The grievor also argued that the team lead violated the grievor's dignity.

[15] After the "Final Investigation Report" and the employer's confirmation of its findings were issued, the grievor states that the parties signed a "Memorandum of Agreement" on May 5, 2022. Its scope is elaborated in the preamble as follows:

> ***WHEREAS*** *the parties have had the opportunity to discuss the issues raised in Ms. Langlois' grievance no. 70138713 as well as the complaint of harassment and discrimination to the Discrimination and Harassment Center of Expertise (DHCE - now the Workplace Inquiries Center) and the findings of the Final Investigation Report dated January 2020.*
>
> ***WHEREAS*** *the parties hereby agree to settle all matters between them arising directly or indirectly out of Ms. Langlois' grievance no. 70138713 and complaint of harassment and discrimination and and* [*sic*] *agree to accept the following terms and conditions in full satisfaction of all claims against the Employer in any way related to this matter and the issues giving rise to this grievance and complaint.*
>
> [Emphasis in the original]

[16] The settlement agreement includes three more references to a grievance in paragraphs 4, 6, and 8, which refer to the second grievance.

[17] The agreement's preamble defines the subject of the agreement, which includes the harassment issues in the second grievance and the Final Investigation Report.

[18] The grievor argued that the fact that there is no reference to the accommodation, while "harassment" and "discrimination" are repeated eight times, reinforces that the settlement agreement was to settle the harassment-and-discrimination complaint exclusively.

[19] The grievor also argued that the sole settlement agreement that the parties signed is the one dated May 5, 2022. It addressed and resolved only the matters raised in the grievance numbered 70138713; i.e., the second grievance.

[20] The grievor noted that in *Corner Brook (City) v. Bailey*, 2021 SCC 29, the Supreme Court of Canada (SCC) set out the principles that clarify that releases should be interpreted in a manner consistent with the general principles of contract interpretation. The SCC states as follows:

> ***20*** *This Court set out the current approach to contractual interpretation in* [*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53]. Sattva *directs courts to "read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": para. 47.…*

[21] In paragraphs 35 and 36 of the *Corner Brook* decision, the SCC highlights the certain features of the releases "… that may give rise to careful interpretations." The Court also elaborates as follows:

> …
>
> ***36*** *… A general release, if interpreted literally, could prevent the releasor from suing the releasee for any reason, forever. While such a release may not be enforceable for other reasons (e.g., unconscionability), the circumstances may also often indicate that such extreme consequences are not what the parties objectively intended. As the Court of Appeal for British Columbia put it in* Strata Plan BCS 327*, "While releases signed in the course of a settlement of a dispute are often worded in a broad and general fashion, appearing to cover the end of the world, they must be considered in the context of the dispute": para. 26. This context can serve as a limiting factor to the breadth of wording found in a release.*

[22] The grievor stated that release clauses tend to be drafted very broadly, but this fact should not be used unreasonably to restrict the releaser's fundamental right to access to justice. As delineated by the SCC, referencing Lord Nicholls in *Bank of Credit and Commerce International S.A. v. Ali*, [2001] UKHL 8, "… the release should apply only to claims, known or unknown, relating to a particular subject matter …". The settlement agreement wording reveals the particular subject matter that it was concluded to cover, which is what the grievor called her "harassment-and-discrimination" claim.

[23] Further, in paragraph 38, the Court concludes as follows:

> ***38*** *… courts can be persuaded to interpret releases narrowly more so than other types of contracts, not because there is any special rule of interpretation that applies to releases, but simply because the broad wording of releases can conflict with the circumstances, especially for claims not in contemplation at the time of the release. The broader the wording of the release, the more likely this is to be so.*

[24] The grievor argued that in the plain language of the settlement agreement, there is no reference to the first grievance; nor is there any mention of accommodation. The release clause is clearly defined. It states that the grievor releases the employer from any further claims directly or indirectly arising from the events covered by the settlement agreement; i.e., harassment.

[25] The grievor submits that the parties have not settled the issue in front of the Board; i.e., the first grievance. Therefore, the Board has jurisdiction to hear it.

III. The employer's submissions

[26] The employer submits that the parties have signed a final and binding settlement agreement for both grievances. It cites the guidance provided on this matter of challenges to the settlement of grievances in *Canada (Attorney General) v. Amos*, 2011 FCA 38, which found that the Board retains jurisdiction to determine three questions when a grievance has been settled: (1) whether a settlement agreement is final and binding, (2) whether a party has complied with it, and, if not, (3) the appropriate remedy for non-compliance.

[27] On October 17, 2016, the grievor made her written complaint, alleging that she suffered discrimination and harassment ("the complaint").

[28] On September 18, 2018, an investigator was assigned and mandated to investigate the grievor's discrimination, discriminatory harassment, and harassment allegations from the second grievance identified by the internal file number 70138713.

[29] The Final Investigation Report declared that among other things, the length of time it took to accommodate the grievor's first and second ergonomic assessments was unreasonable.

[30] On July 18, 2016, the grievor filed a grievance against the "… employer's violation of Article 19 No discrimination as well as Article 22 Health and Safety Clauses …". This second grievance was identified by the employer's internal grievance number, 70138713. Article 22 of the applicable collective agreement between the employer and the bargaining agent that expired on October 31, 2016 ("the collective agreement"), relates to all provisions and regulations under Part II of the *Canada Labour Code* (R.S.C., 1985, c. L-2), including harassment claims.

[31] On January 27, 2020, the Final Investigation Report was issued. It outlined the incidents underlying the grievor's allegations, including these:

- The grievor's arrival at the Ottawa office in July 2015.
- The grievor's requests to accommodate her first and second ergonomic assessments.
- The evidence of Gesine Campbell, a witness from PSAC, who explained the connection between the grievances as follows:

> *Ms. Campbell recalled the issue with Ms. Langlois' sick leave. Ms. Campbell stated that they (PSAC) filed a grievance to get back some of Ms. Langlois' sick leave that she had to use because her ergonomic issues were not resolved. Ms. Campbell stated that she asked for 180 hours back and she thought that she had agreement on 180, but that Ms. Langlois only received 75 hours and that Ms. Campbell was not happy about this. Ms. Campbell stated that they (PSAC) filed a second grievance because they did not honour the agreement.*

- On October 17, 2016, the grievor made the complaint, alleging discrimination and harassment by her Ottawa team leader.
- On September 18, 2018, an investigator was assigned and mandated to investigate the grievor's discrimination, discriminatory harassment, and harassment allegations from the second grievance.

[32] The Final Investigation Report declared among other things that the length of time it took to accommodate the grievor's first and second ergonomic assessments was unreasonable.

[33] On January 6, 2023, the grievor, the bargaining agent, and the employer signed the settlement agreement, to settle all matters arising directly or indirectly out of the second grievance and the complaint (no. 70138713).

[34] The settlement agreement was valid, final, and binding for the following reasons:

- Under its section 8, the grievor and the employer agreed that the settlement agreement "… is a full and final resolution of all issues raised and incidents in any way related to the matters and issues alleged in grievance number 7013813, the complaint dated October 17, 2016 and Final Investigation Report dated January 27, 2020."
- Under its sections 10 and 11, the parties certified that they sought or were provided the opportunity to seek independent legal advice, or other relevant advice, and that they read and understood the settlement agreement.
- All parties signed it.

[35] The employer submitted that according to the language of the settlement agreement, it is clear as follows that the grievor is obligated to release the employer from all claims, including a grievance, which may arise directly or indirectly from the events that also gave rise to the second grievance and the complaint:

> …
>
> ***9.*** *Ms. Langlois fully and forever releases and discharges Her Majesty the Queen in right of Canada and the Canada Revenue Agency as the Employer and their respective heirs, administrators, executors, successors, assigns, Ministers, officers, servants, agents and employees (the "Releases")* ***from all manners of*** *actions, causes of actions, applications, complaints, investigations, suits, claims, proceedings,* ***grievance(s) and demands for damages****, loss or injury debts, wages, salary, remuneration, expenses, interest, disbursements, costs and payments* ***pursuant to any applicable collective agreement or any other form of compensations*** [*sic*]***, at law or in equity, whether known or unknown which the Employee now has, or can****, shall or may hereafter have against the Releases* ***by reason of any matter arising out of directly or indirectly the events which gave rise to the allegations and claims made in the Reference to Adjudication and/or the grievance(s)****, including but not limited to any claims under the Canadian Human Rights Act, Part II of the Canada Labour Code* ***or any other applicable legislation or collective agreement****. Ms. Langlois further agrees not to commence any administrative or*

> *judicial procedures in any Court or administrative tribunal of any jurisdiction in Canada in relation to any matter related in any way to the matters above.*
>
> [Emphasis in original]

[36] The employer also argued that other sections of the settlement agreement support the interpretation that any claim related to the second grievance or the complaint should be released, as follows:

- Section 8 states that the settlement agreement is the full and final resolution of all issues raised and all incidents in any way related to the matters and issues alleged in the second grievance, the complaint, and the Final Investigation Report.
- The preamble states that the parties had the opportunity to discuss the issues raised in the second grievance, the complaint, and the findings of the Final Investigation Report. It continues that the parties agree to settle all matters between them arising directly or indirectly out of the second grievance and the complaint and that they agree to accept the terms and conditions, in full satisfaction of all claims against the employer in any way related to this matter and the issues that gave rise to the second grievance and the complaint.

[37] The employer argued that the first grievance is directly related to the second grievance and the complaint because they all arose from the same events, such that the employer must be released under section 9 of the settlement agreement. The accommodation process of the grievor's first and second ergonomic assessments, after she transferred to the Ottawa office, constitutes the underlying facts of the first grievance, the second grievance, and complaint. As noted in the Final Investigation Report, the grievor filed the second grievance about the same events simply because she was dissatisfied with the first grievance's outcome. As a result, both grievances and the complaint all arose from the same events, such that the grievor must release the employer under section 9. However, she has not because she continues to pursue the first grievance through the Board's adjudication process.

[38] In its rebuttal submission the employer states that *Corner Brook* (paras. 43 and 53) supports the position that the agreement provides settlement of both grievances. It notes that these passages make a distinction between claims based on facts known to both parties and claims based on facts unknown to both parties when interpreting release clauses. It submits that, in *Corner Brook*, the parties were aware of the underlying facts of the settled claim and the third-party claim in question, which weighed in favour of interpreting the release clause to include the third-party claim. It

argues that in the facts at bar, the grievor filed the second grievance and the complaint **after** the first grievance, demonstrating that the parties were aware of the underlying facts of all of them upon signing the settlement agreement. As a result, the release clause of the settlement agreement should be interpreted to include both grievances.

[39] The employer's rebuttal also argued that *Corner Brook* (para. 51) stands for the proposition that the release clause included the third-party claim in question because it arose from the same event noted in the release clause, and there is no principled reason to require parties to list every type of claim imaginable one-by-one.

[40] Therefore, it should not be required to particularize every potential legal issue that may arise from the events covered in the settlement agreement. The release clause in the settlement agreement clearly requires the grievor to release the employer from any matter arising, directly or indirectly, out of the events which gave rise to the second grievance and the complaint.

[41] The employer submitted that in conclusion the appropriate remedial action is to dismiss the remaining grievance due to the grievor's alleged failure to comply with the settlement agreement.

IV. Analysis and reasons

[42] Both parties noted the SCC's direction that contract interpretation should be done in a contextual manner by reading the contract as a whole, giving the words their ordinary meaning, consistent with the surrounding circumstances known to the parties when the contract was formed. (See *Sattva Capital Corp.*)

[43] The employer's submission that the two grievances are linked appears persuasive on its surface, given the fact that the first grievance is solely focused upon a delayed implementation of accommodation based upon a year-old ergonomic report, and given the plainly obvious fact that approximately four months later, the grievor's second no-discrimination and health-and-safety grievance requests a remedy of being accommodated in a manner consistent with policies for persons with disabilities.

[44] This fact supports the employer's submission that the two grievances, and thus the settlement that includes the words "… all matters between them arising directly or indirectly …" and "in any way related" to the second grievance, are connected and dispositive of the matter at bar.

[45] These facts and the other release language noted by the employer would have led me to a conclusion that accepted the employer's motion, were it not for the very plain and clearly written language of article 6 of the settlement agreement, which requires only that the grievor, within five days of signing the agreement, "withdraw the above-noted grievance" (grievance number 70138713).

[46] The grievor notes that at paragraphs 35 and 36 of the *Corner Brook* decision, the SCC highlights that certain features of releases "… may give rise to careful interpretations." The Court states as follows:

> …
>
> ***36*** *… A general release, if interpreted literally, could prevent the releasor from suing the releasee for any reason, forever. While such a release may not be enforceable for other reasons (e.g., unconscionability), the circumstances may also often indicate that such extreme consequences are not what the parties objectively intended. As the Court of Appeal for British Columbia put it in* Strata Plan BCS 327*, "While releases signed in the course of a settlement of a dispute are often worded in a broad and general fashion, appearing to cover the end of the world, they must be considered in the context of the dispute": para. 26. This context can serve as a limiting factor to the breadth of wording found in a release.*

[47] The employer's submissions on *Corner Brook* acknowledge that it was based upon a quite different set of facts than what is before the Board in this matter, that being a third party to the initial action and settlement and release. I also note the distinguishing fact that *Corner Brook* did not consider a settlement of two actions which were allegedly settled with an agreement that only required one of them to be withdrawn, such as is the case here.

[48] While the several boilerplate articles that the employer included in the agreement, which it now relies upon and have been cited in this decision, can be read to bar the grievor from pursuing the second and related grievance, these clauses cannot be read to overcome the very clear language of article 6.

[49] The employer required only that one grievance, numbered 70138713, be withdrawn in exchange for the monetary settlement noted in the agreement. While it might have intended to settle both grievances it did not write that into the agreement.

[50] I note the employer's submission in support of the overarching goal of stability and predictability in labour relations (see *Baker v. Deputy Minister of Public Works and Government Services Canada*, 2013 PSST 11, at para. 36):

> *36 The finality of an agreement is very important to the parties; otherwise, they would never know whether, in fact, an agreement has been reached. Likewise, harmonious relations between the parties are an important component of a good labour relations environment. Uncertainty about the finality of settlement agreements in complaints could therefore be harmful to a good labour relations environment.*

[51] The employer would be well advised to include all the grievances and their file numbers that it intends to settle in future grievance settlement agreements, to further these laudable goals of finality and avoiding uncertainty.

[52] Based upon this clear and compelling evidence as I have noted earlier, and consistent with the Federal Court of Appeal's findings in *Amos*, I conclude that 1) a valid, final, and binding settlement agreement of grievance 70138713 was reached by the parties, and 2) the grievor has complied with the agreement by withdrawing her grievance, numbered 70138713. As such there can be no remedial order of this Board for non-compliance, as is sought by the employer in this motion to dismiss.

[53] Therefore, the employer's motion to dismiss is denied for these reasons.

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

(The Order appears on the next page)

V. Order

[55] I order the employer's motion dismissed.

November 8, 2024.

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