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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

ANN-ROSE ADAMS

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Adams 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: Herself

For the Employer: Elizabeth Matheson, counsel

Decided on the basis of written submissions, filed April 17, February 23, and May 2, 2024.

I. Summary

[1] Ann-Rose Adams ("the grievor") is a retired Canada Revenue Agency ("the employer" or CRA) employee who began her career in 1981. She grieved a one-day suspension without pay that occurred in August 2015 for insubordination. The employer alleged that she defied a repeated direction given to her verbally and then in writing to work solely on the backlog of her CRA files. It also alleged that when she was confronted about that failure to follow the direction, she spoke to her supervisor in a disrespectful manner by calling him a dictator.

[2] The grievor provided hundreds of pages of documents and lengthy written submissions that were largely unrelated to this matter before 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).

[3] The grievor's submissions sought to prove that her past performance assessments, which cited deficiencies in her work, were unfair, that a performance improvement plan that she was on at the time of the incidents at issue was unfair, and, finally, that her supervisor had treated her unfairly. Thus, impliedly justifying her uncontested disrespectful comments to her manager.

[4] For the reasons detailed in this decision, I find no errors in the employer's conclusion that the grievor was insubordinate when she failed to follow clear direction and for speaking to her supervisor in a disrespectful manner. Therefore, I find that the one-day suspension without pay was not excessive in the circumstances.

[5] The grievance is denied.

II. Evidence

[6] The grievor was an SP-04 non-filer/non-registrant officer in the CRA's Non-filer Division at all relevant times. From May 4, 2015, to May 1, 2016, her team leader was Les Durant, and her manager was Ivan Isop.

[7] On January 13, 2016, the grievor met with Mr. Durant in his office, and he advised her that she had 82 accounts with overdue bring forwards ("BFs"). He also advised her that 85 of her accounts were over 120 days old and asked her if she was preparing summaries for them.

[8] On January 14, 2016, the grievor met with Mr. Durant again, and he told her to spend all Monday, January 18, doing BFs on her files. She agreed. He followed up with an email on January 15, in which he stated this: "You will spend Monday morning BF'ing your accounts …you will easily be able to BF all your accounts in the 9 hour day." He reviewed her account list on January 19 and found that she had brought forward approximately 15 accounts.

[9] The grievor, her union representative, and Mr. Durant met on January 20. During the meeting, Mr. Durant asked the grievor why she did not complete the BFs for all her accounts. He stated that an entire day of work should have been enough time to do it. She told him that she had had a 2.5-hour meeting and that her day was interrupted by phone calls. When she was asked how much time she had spent on the phone, she was not able to provide an estimate.

[10] Mr. Durant asked her to spend the rest of the day on the BF of her accounts. He further stated that there should be enough time left in the day to BF most if not all her accounts. He told her to let her phone go to voicemail. He reviewed his instructions with her, and she confirmed that she understood them. Mr. Durant emailed her on January 20, stating, "you are to spend the rest of the day re-bfing [*sic*] your accounts", and he told her to seek assistance if she could not finish the task that day.

[11] Mr. Durant printed and reviewed the grievor's BF list the following day. He found that she had not completed all her BFs, only less than half of them. He then went to her desk and saw that she was working on entering account information. She then confirmed she was entering information on one of her accounts. He told her that she was to BF her accounts. She responded that she was entering the information because she was going on holiday the next day, and she did not want to forget.

[12] He told her that she was not following instructions, as he had instructed her not work on anything but to BF her accounts until that task was completed. She responded that she would do it after she finished entering the information on the account that she was working on. Mr. Durant then told her that she should fetch him when she was done and that he would sit with her while she did the BF of her accounts.

[13] Mr. Durant later returned to the grievor's desk and asked her if she was finished entering the information into the account. She replied that she was. He then instructed her to BF her accounts and asked her why she had not called him as she had been instructed to.

[14] The grievor replied that she had gone to see "CP" about her work. She then raised her voice to him and said that he was a dictator and that he was harassing her.

[15] She further stated that she wanted the harassment to stop. Mr. Durant told her that he advised her to follow the instructions in her performance improvement plan and that he would discuss her failure to do so with his manager, Mr. Isop. The grievor received a one-day suspension for insubordination on March 22, 2016.

[16] The few portions of the written statement of fact relevant to this grievance that were submitted by the grievor include her assertion that she swore that she completed the work that the employer alleged was not completed. She stated that she made the two minor changes necessary in the document at issue and that she saved it. But her changes did not show up in the saved version.

[17] She stated that she called two people and asked that the file be unlocked so that she could remake the changes. She stated that she told a manager that she had completed the work that she had been told to do but that a conversation became heated, and she claimed that she was being harassed.

[18] On the morning of the alleged name-calling incident, the grievor said that her supervisor offered to sit at her desk while she worked but that she did not call him. He then went to her desk later that morning and asked why she had not called him. Then, a heated discussion ensued, in which she said that he was harassing her.

III. The employer's submissions

[19] This grievance is about whether failing to work exclusively on a specific task after being ordered to and also speaking disrespectfully to a supervisor amount to insubordination. The grievor not only failed to do the work that she was ordered to do, but also, she called her team leader a "dictator" when he followed up on her progress. A one-day suspension was warranted in the circumstances, as she was not only insubordinate but also responded disrespectfully when her team leader attempted to resolve the situation.

[20] The employer submitted that the test for insubordination is satisfied when 1) the employee receives an order, 2) the order was clearly given to the employee by a person authorized to give it, and 3) the employee refused to comply with the order. The essence of insubordination is a challenge to authority, which can come in the form of conduct that displays a contemptuous attitude or defiance of authority.

[21] In this case, the grievor's team leader told her to do her BFs on Monday, January 18, and she was not to work on anything else that day. This was a clear order to do a specific task that was given to her both verbally and followed up in writing. This satisfied the first step of the test. When Mr. Durant followed up in writing, he further explained that he believed that she would be able to BF all her accounts in one day. By doing so, he further clarified the order by elaborating not only that she was to BF her accounts exclusively but also that he expected the work to be completed before she moved on to any other task. Additionally, she had agreed. Her agreement to complete the task demonstrates that she understood the direction. This satisfies the second step of the test, as the order was clear, was explained in further detail, and was given by her team leader.

[22] When Mr. Durant checked on the grievor's progress on January 19, she had not completed the assigned work. When he asked her why she had not completed the work on January 20, she informed him that she had spent some of her day on phone calls, but she was unable to provide an estimate of how much time she had spent making them. Using the time to make phone calls when she was directed to work on her BFs for the entire day demonstrates that she did not follow the clear direction that she was given. This satisfies the third step of the test, as she failed to comply with a key aspect of the order: working exclusively on her BFs.

[23] Mr. Durant then gave the same instruction for the remainder of January 20, which was to use the rest of the day to work on the BFs and to let calls go to voicemail. When the work was not completed the following day, he checked in on the grievor and found her doing work that was other than the assigned task. When he asked her why she was not working on her BFs, she responded that she would do it after she finished entering the information on the account that she was working on.

[24] This, again, was a failure to follow a clear instruction given by a person with the authority to give orders. Further, her response demonstrated that she understood the order but that she decided to substitute the assigned task with a different one.

[25] The employer submitted that when supervisors give clear instructions to their employees, they are entitled to expect that their instructions will be followed. In *Bétournay v. Canada Revenue Agency*, 2012 PSLRB 128, the Board found that an employee had been insubordinate when she failed to fill out her timesheets after being repeatedly asked to, both verbally and in writing.

[26] While the grievor in this case did not explicitly say that she refused, she was told to work exclusively on her BFs verbally on January 14 and 18 and in writing on January 15 and 20. The act of doing other work when she was told to work exclusively on her BFs was still a refusal to comply with the order, albeit by a less-direct communication method. Her comment on January 21 that she would work on BFs after she entered account information, and her justification that she was entering it due to being on holidays the next day, demonstrate that she chose not to comply.

[27] Once misconduct has been established, the Board cannot intervene, unless the discipline chosen was out of proportion to the misconduct. The Board must answer these three questions to determine whether its intervention is appropriate:

1) Did the employer prove misconduct that justified imposing a disciplinary measure?
2) If so, was the disciplinary measure imposed excessive in the circumstances?
3) If so, what disciplinary measure should be substituted?

[28] Additionally, the Board has in the past highlighted that as a guiding principle, it "… should be hesitant to intervene and risk usurping the role of management in determining effective means to deliver corrective measures meant to avoid the repeat of unacceptable behaviour" (see *Yuan v. Canada Revenue Agency*, 2021 FPSLREB 113 at para. 56).

[29] In *Byfield v. Canada Revenue Agency*, 2006 PSLRB 119, the Board upheld a one-day suspension for a grievor who had failed to attend four meetings. In that case, the repeated refusals all took place within a short period, the grievor had used a disrespectful tone with his supervisor, and there was no suggestion that there was a long-standing pattern of behavioural issues. All three circumstances are the same in this grievance.

[30] In *Byfield*, the Board found that the one-day suspension should not be reduced to a written warning, as that grievor had already received written warnings that his actions could result in disciplinary consequences and chose to disregard them.

[31] While the grievor in this case was not given warnings that if she failed to work exclusively on her BF list, disciplinary action could result, she was repeatedly told to do it and did not do it, and her reaction to being reminded was disrespectful. Given her choice to disregard the orders, and given her hostile reaction to the reminders, there is little reason to believe that a written reprimand would be treated differently; therefore, a one-day suspension was warranted in the circumstances.

[32] In its rebuttal submission, the employer responded to the grievor's age-based discrimination allegation and noted that it was the first mention of any such concern.

IV. The grievor's submissions

[33] The grievor began her written submissions by stating, "This discipline stems from and includes performance evaluation [*sic*] for the periods …". She listed three annual periods commencing in September 2012. Her submissions included recollections of commendations that she received from clients and supervisors over the years, including one that stated, "a big job well done", after a client left a note commending her, and she also completed a large volume of files within a short time.

[34] She continued by writing as follows:

> *Despite what is written in the first paragraph of the Investigation Report Feb 02-2016 there are several emails and document, a review of which shows the Employer's display of malice, deceit, discrimination, abuse of authority and bad faith in its treatment of me, its assessment of my job performance, its putting me on a performance improvement plan and suspending me for a day.*
>
> …
>
> [*Sic* throughout]

[35] One employer email (dated February 2, 2012) included in the grievor's documents, includes this statement: "I looked at a random sampling of accounts assigned to Ann-Rose. They are a disaster. On one account that she has had for over 1000 days, there hasn't even been a TX notice issued. This isn't an isolated case."

[36] Many more pages of grievor allegations followed, each citing dozens and dozens of pages of documents derived from an access-to-information request to support her allegation that she was unfairly criticized in the previously noted performance evaluation. She also noted that the employer accused her of having age-related work-performance problems and stated that this part of the alleged harassment that she suffered was discriminatory. An employer email included in her two-volume book of documents notes as follows, that it was hoped that she would soon retire:

> …
>
> *The Employer applied different standards in its assessments and rating of my job performance compared to other employees in the Edmonton non-filer area.*
>
> *The Employer misrepresent the number of Revenue type of files I worked on or that was in my inventory.*

> *The Employer assessed me on policies that were not provided to me ….*
>
> …
>
> *The Employer deliberately misrepresents that the December 17, 2014 information request for the copies of the policy was given to me by management when it was not.*
>
> …
>
> *The Employer misled me into beleiving that the meeting with the conflict resolution officer on September 25 2015 was a genuine process whereas it was not it was contrive to get the Employers unsavory purpose.*
>
> *The Employer conspired to attribute things to me that was false.*
>
> …
>
> *The Employer assessed my performance as a Does not meet and except for the meetings on January 13, January 14, January 20 and January 21st 2016 the Employer did not involve me in the creation of the Action Plan.*
>
> …
>
> [*Sic* throughout]

[37] In closing, the grievor submitted that the employer's actions were a sham and camouflage, that she was not insubordinate, that she did not disobey an order, and that her work was not subpar.

V. Reasons

[38] The employer carried the burden of proof in this matter to establish on a balance of probabilities that the decision to impose a one-day suspension without pay on the grievor was just, given all the relevant circumstances.

[39] I noted the following in *Yuan*, at paras. 28 to 30:

> *[28] The case law before the Board governing discipline is well established and traces back to the case of* Wm. Scott & Company Ltd. v. Canadian Food and Allied Workers Union, Local P-162*, [1976] B.C.L.R.B.D. No. 98 (QL) (*"Scott"*).*
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> *[29] I summarized this authority as follows in my decision in* Braich v. Deputy Head (Correctional Service of Canada)*, 2017 FPSLREB 47:*
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> …
>
> **15** The Board frequently cites the decision in … *Scott* …, as authority for determining whether there was just and reasonable cause for a termination. *Scott* finds that for a dismissal for cause to be considered just, firstly, the

> employer must consider whether the employee has given it just and reasonable cause for some form of discipline. Secondly, it must be determined whether the decision to dismiss the employee was an excessive response in all the circumstances. And thirdly, if the adjudicator considers that the dismissal was excessive, then he or she must determine the measures that should be substituted as just and equitable (see *Scott*, at para. 13).
>
> **16** For the first two elements, *Scott* considers the seriousness of the offence, whether it was premeditated or spontaneous, whether the employee had a long-standing and good record of service, whether progressive discipline was attempted, and finally, whether the discharge was consistent with the employer's established policies or whether the employee was singled out for harsh treatment (see paragraph 14).
>
> …
>
> *[30] Recently, the Federal Public Sector Labour Relations and Employment Board ("the Board"; note that "Board" refers to the current Board and any of its predecessors, in this decision) canvassed the jurisprudence in the area of insubordination. The key aspects of the law in this area are well-captured in* Kenny v. Deputy Head (Department of National Defence)*, 2021 FPSLREB 91, which states as follows:*
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> …
>
> [234] As a general rule, to establish that an employee has been insubordinate, an employer must establish the following three things (see Mitchnick and Etherington, *Labour Arbitration in Canada*, at page 351):
>
> 1) a clear order was given, which the employee understood;
>
> 2) a person in authority gave the order; and
>
> 3) the employee disobeyed the order.
>
> …

[40] In the evidence, it is not contested that the grievor received clear verbal and then written direction from her supervisor and finally that this direction was not followed. She gave a lengthy explanation of doing things and speaking to other supervisors for help, but she did not contest the essence of what her supervisor directed her to do or that it was not followed.

[41] The grievor did not contest her utterance of the word "dictator" as a descriptive term used to tell her supervisor what she thought about his management style. She did not contest it but rather provided a very long description of why it was justified.

[42] Calling a supervisor such a name is disrespectful. I note the following passage from *Yuan* on the requirement that all members of the public service be treated and treat others with respect:

> …
>
> *[32] The Board has also considered the important matter of the respect required by the codes of conduct in place throughout the federal public service and stated as follows in* Charinos v. Deputy Head (Statistics Canada)*, 2016 PSLREB 74:*
>
> …
>
> **119** The code of conduct requires employees to treat all people with respect and dignity and to refrain from making personal remarks or comments about the organization, its staff, or the federal government (Exhibit 1, tab 33). Clearly, the evidence of both the respondent and the grievor has established that he has not met this obligation. The disrespect he demonstrated in writing and in his description of his coworkers is irrefutable. His behaviour also clearly violated expected behaviours identified in the *Values and Ethics Code for the Public Sector* (Exhibit 1, tab 34), in particular, treating every person with respect and fairness and working together in a spirit of openness, honesty, and transparency that encourages engagement, collaboration, and respectful communication.…
>
> …

[43] While the employer acknowledged that it has a policy of progressive discipline, it submitted that the facts in this case, including the grievor's repeated failure to follow a direction and her disrespectful reference to her supervisor, justified the one-day suspension.

[44] The employer noted that in *Bétournay*, the Board found that an employee had been insubordinate when she failed to fill out her timesheets after being repeatedly asked to, both verbally and in writing:

> …
>
> *37 The employer complied with the principle of progressive discipline by successively imposing a letter of reprimand and then one-, three- and five-day suspensions. In addition, since insubordination is serious, particularly when it is repeated and persists even after discipline is first imposed, the suspensions imposed were reasonable given the seriousness of the transgressions.*
>
> …

[45] In *Mohan v. Canada Customs and Revenue Agency*, 2005 PSLRB 172, the Board found that a grievor calling his team leader either a "bone-head" or "boned-headed" amounted to insubordination. It determined that a written reprimand was deserved rather than a one-day suspension, stating as follows:

> …
>
> *[97] The grievor is also alleged to have called his Team Leader a "bone-head" or "bone-headed". There were no witnesses to this alleged comment other than Mr. Iannuzzi and the grievor. In my view, this is not something that Mr. Iannuzzi was likely to make up. The comment is in keeping with the general tenor of the conversation between the two and the view expressed by the grievor that he was prepared to make changes to the letter that he felt were "reasonable". On balance, I find that the comment was likely made. Name-calling in the workplace is never appropriate. When the name-calling is against a supervisor, it can constitute insubordination. In my view, this comment amounted to insubordination on the grievor's part.*
>
> …

[46] Based on the evidence, the grievor demonstrated insubordination when she called her supervisor a "dictator" and repeatedly failed to follow her employer's instructions.

[47] The grievor maintains that she did nothing wrong and deserved no corrective measures, even for calling her supervisor a dictator. She said that if the Board found some aspect of her actions unwarranted, she would recommend that she receive a written reprimand.

[48] While in theory, the progressive discipline approach to corrective measures would suggest that an oral or written reprimand in this case might have been sufficient, given the apparent lack of previous discipline, I note that such measures are not mandatory and that an employer is entitled to proceed directly to more substantive corrective measures if the relevant circumstances warrant.

[49] In this case, I accept that the employer repeatedly warned both verbally and in writing that the grievor's past-due files had to be rectified and that it repeatedly asked her on the day in question to work solely upon those tasks. And further, she ignored these directions and worked on other matters.

[50] As the employer submitted, and contrary to the outcome in *Mohan*, where the Board intervened to reduce a one-day suspension to a written reprimand, which I am

not bound by nor agree with, I have previously found and emphasize again that as a guiding principle, the Board "… should be hesitant to intervene and risk usurping the role of management in determining effective means to deliver corrective measures meant to avoid the repeat of unacceptable behaviour" (see *Yuan*, at para. 56).

[51] The grievor's claims of unfair performance appraisals, unfair performance management plans, and, finally, harassment by her supervisor were not before the Board in this matter, and in any event, they do not justify her being disrespectful.

[52] The employer objected to the grievor introducing an allegation of age-based discrimination on the grounds of it being introduced for the first time at the Board's hearing of this matter by means of written submissions.

[53] My review of the file shows that the grievor did not allege discrimination in her originating grievance form nor in the referral of it to this Board. I have no evidence before me suggesting that this was raised in her grievance presentations to the employer.

[54] I agree with the employer, such an allegation of discrimination is precluded because it's a substantial change to the nature of the grievance (see *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.)).

[55] For these reasons, I find that the grievor's actions were deserving of discipline and that the one-day suspension without pay was not excessive, given all the relevant circumstances.

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

(The Order appears on the next page)

VI. Order

[57] The grievance is denied.

November 20, 2024.

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