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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

**ANNE NSIMIRE**

Grievor

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Employer

and

**DEPUTY HEAD  
(Royal Canadian Mounted Police)**

Respondent

Indexed as

*Nsimire v. Treasury Board (Royal Canadian Mounted Police)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Aaron Lemkow and Nathan Hoo, Public Service Alliance of Canada

**For the Employer and the Respondent:** John Mendonça, Treasury Board of Canada Secretariat

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Decided on the basis of written submissions,  
filed May 24 and August 13 and 27, 2024.

(FPSLREB Translation)

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**REASONS FOR DECISION****(FPSLREB TRANSLATION)**

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**I. Overview of the procedural history**

[1] Anne Nsimire (“the grievor”) was in an administrative assistant position with the Royal Canadian Mounted Police (RCMP). She was subjected to a one-year probation. Shortly before her probation ended, the RCMP terminated her employment.

[2] After she was rejected on probation, the grievor filed two grievances. The first alleged that her rejection constituted disguised discipline and that it was tainted by bad faith. A few weeks later, she filed the second grievance, which alleged that her rejection was also tainted by discrimination on the basis of race and disability.

[3] On April 30, 2024, the grievor referred her grievances to the Federal Public Sector Labour Relations and Employment Board (“the Board”) for adjudication. Both referrals were accompanied by a notice to the Canadian Human Rights Commission that the grievances raised discrimination allegations.

[4] The Treasury Board of Canada (“the respondent”) objected to the Board’s jurisdiction to hear the grievor’s grievances. It submitted that the Board does not have jurisdiction to hear a grievance involving a rejection on probation. It asked the Board to deny the grievances without holding a hearing.

[5] The grievor filed written submissions setting out her position that the Board has the jurisdiction required to hear and decide her grievances.

[6] Shortly after that, in turn, the respondent filed written submissions setting out its position that the rejection on probation was based on the grievor’s performance and that for that reason, the Board is without jurisdiction.

[7] Several months passed before the file was assigned to me. In December 2024, I informed the parties that I was considering rendering a decision on the respondent’s objection to the Board’s jurisdiction based on written submissions and the arguable-case test.

[8] I will now open a parenthesis to explain an analysis based on the arguable-case test in the context of a grievance filed by an employee whose employment ended during a probationary period.

[9] As I will explain later in this decision, the Board's jurisdiction is limited with respect to rejection-on-probation grievances. For that reason, the respondent often objects to such a grievance and asks the Board to deny it without a hearing, on the grounds that the Board does not have jurisdiction to hear a grievance filed by an employee whose employment ended during a probationary period.

[10] The Board's resources are limited, and the number of files awaiting a hearing is large. In that context, the principle of judicial economy can mean that before holding a hearing on a grievance involving a rejection on probation, the Board may want to ensure that there are clear indications that it has jurisdiction to deal with the allegations. For that reason, the Board is making greater use of the arguable-case test.

[11] In a sense, an analysis based on the arguable-case test is preliminary and examines the allegations in the grievance with a view to concluding whether the Board should hold a hearing on the merits of the grievance.

[12] In an analysis based on the arguable-case test, the Board must consider the grievor's alleged facts as true and decide on that basis whether they present an arguable case that the rejection on probation was not legitimate. If the grievor presented an arguable case, the Board will proceed to a hearing on the merits. However, if no arguable case was presented, the preliminary objection to the Board's jurisdiction will be allowed, and the grievance will be denied for lack of jurisdiction.

[13] Shortly after informing the parties that I was considering determining the respondent's objection based on the arguable-case test, a case management conference was held to respond to a question that one of the parties posed. At that conference, I reiterated that I was considering determining the objection based on written arguments and the arguable-case test.

[14] The parties indicated that they did not intend to make any additional written submissions on the arguable-case issue. For that reason, this decision is based on the respondent's objection and the written submissions described earlier.

[15] I find that the grievor presented an arguable case. A hearing will take place. The Board will hear her grievances.

**II. The facts, as the grievor alleged them**

[16] The grievor's RCMP employment began at the start of August 2021. She held an administrative assistant position (CR-04). She was subjected to a one-year probationary period from August 9, 2021, to August 9, 2022.

[17] Although the Treasury Board was the grievor's legal employer, for the purposes of this decision, the RCMP is designated as the employer.

[18] The grievor identifies as a Black woman and a person with a disability that affects her mobility.

[19] According to the grievor, she requested accommodation three different times. It was always the same request, for a parking space near her workplace's main entrance because of mobility problems related to her disability.

[20] On her hiring by the RCMP, or shortly after it, the grievor made her first accommodation request, which was denied.

[21] The grievor testified that shortly after the first refusal, she was injured when she walked from where she parked her car to the entrance of the building in which she worked. As a result, she made her request again. In response, an employer representative reportedly told her to "[translation] resign or stay here without a parking space".

[22] The grievor made her request the third time, this time to a new supervisor. According to her, the supervisor reprimanded her for making an accommodation request that had already been refused.

[23] The grievor alleged that after the accommodation request was made to her new supervisor, the supervisor used her probationary period as a bullying tool, not as a legitimate performance-evaluation opportunity. The grievor argued that her supervisor gave her unreasonable tasks, interrupted her when she processed complex tasks with deadlines, and forced her to take on tasks that were not urgent when she had to deal with priority tasks.

[24] The new supervisor also reportedly made a derogatory comment about the grievor's public service ambitions, which was that racialized people seek to take advantage of the system, to secure an indeterminate position.

[25] The grievor alleged that after she made her accommodation request, the employer subjected her to increasing hostility. She also alleged that the hostility affected her well-being and work performance.

[26] On July 11, 2022, the grievor was informed that she was being relieved of her duties. The employer gave her one month's notice. Her employment ended on August 8, 2022.

[27] The letter informing the grievor of her rejection on probation indicated that she did not demonstrate the skills necessary to satisfactorily perform the duties associated with her position. It stated that the employer's decision was based on a review of her performance in three areas: integrity and respect, ability to work effectively with others, and initiative and being action oriented.

[28] The letter also stated that the grievor was advised of the performance objectives and the employer's expectations of her. In very general terms, it referred to measures that would have been taken to guide her, offer her feedback, and identify gaps in her work that she had to improve. It also stated that she would have been informed that if she did not meet her position's requirements, rejection on probation could follow.

[29] As noted, the grievor filed grievances about her rejection on probation. They allege that the decision to reject her on probation was made in bad faith, that it constituted disguised discipline, and that it was tainted with discrimination based on race and disability.

### **III. Reasons**

[30] The question that I must answer is whether the grievor presented an arguable case that her rejection on probation was not legitimate.

[31] I agree with the respondent that at first glance, the Board does not have jurisdiction to hear a grievance involving a rejection on probation.

[32] Section 209 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the Act") sets out the types of grievances that may be referred to the Board. Some terminations, but not all, may be referred to the Board.

[33] As the Federal Court of Appeal noted in *Canada (Attorney General) v. Alexis*, 2021 FCA 216 at para. 7, the Board does not have jurisdiction to hear a grievance

against a termination effected under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12 and 13; *PSEA*), including rejections on probation. The *PSEA* deals with rejections on probation and provides that the deputy head of an organization in the core public administration has the right to terminate an employee's probationary period (see s. 62(1) of the *PSEA*).

[34] However, this apparent obstacle to the Board's jurisdiction to hear grievances about employees' rejections on probation is not absolute (see *Alexis*, at para. 8). The cited sections of the *Act* and the *PSEA* do not completely exclude the Board's jurisdiction.

[35] The Board may consider allegations that the employee was not or was no longer on probation at the moment the termination occurred or that notice or compensation was not provided to them (see *Holowaty v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 44 at para. 11). In addition, the Board's jurisprudence has long recognized that the Board has jurisdiction to consider allegations that if proven, would demonstrate that a rejection on probation was not done for a legitimate employment-related reason (see, among others, *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529 at paras. 31 and 32; *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134 at para. 110; *Kirlew v. Deputy Head (Correctional Service of Canada)*, 2017 FPSLREB 28 at para. 130; and *Holowaty*, at para. 11).

[36] The Board has not always used uniform and consistent language when it described the circumstances in which it found that it had jurisdiction to hear a rejection-on-probation grievance. In some cases, it described the rejections as "a sham", "a camouflage", "a contrived reliance on the *PSEA*" or disguised discipline. In other cases, the Board found that it had jurisdiction to hear grievances that alleged that a rejection on probation was made in an arbitrary, discriminatory, or bad-faith manner. *Holowaty* provides a very useful overview of the Board's case law in this respect (see paragraphs 9 to 14).

[37] Although the Board's vocabulary has been inconsistent in the past, the principle that emerges from its jurisprudence and that of its predecessors is that it may consider a grievance that a rejection on probation was not based on the employee's ability to perform his or her job on an ongoing basis. In other words, it can hear a grievance that the employer's reason was tainted — in whole or in part — by one or

more inappropriate considerations. A veiled attempt to discipline the employee, discrimination, bad faith, and arbitrariness may be examples of inappropriate considerations. However, this is not an exhaustive list, and I cannot rule out the possibility that other inappropriate considerations may be added to those examples.

[38] It is true that an employer has considerable discretion to assess the suitabilities of its employees on probation. However, if it exercises its discretion to reject an employee on probation for a reason inconsistent with the *PSEA*, the Board may hear a grievance that arose from that exercise.

[39] That said, it is not sufficient to simply allege that a rejection on probation was not made for a legitimate employment-related reason for the Board to hear a grievance. More is needed, and it is up to the employee who was rejected on probation to make allegations that if proven at a hearing, would establish that the employment-related reason relied on by the employer was not legitimate. In other words, a grievor may be asked to demonstrate an arguable case.

[40] At this stage of the proceedings, I must decide whether the grievor alleged facts that if proven, would indicate that her rejection on probation was not done for a legitimate employment-related reason; that is, her rejection was tainted, in whole or in part, by discrimination or bad faith. If I find that she has done so, she will have established an arguable case, and the Board will proceed to hear the grievances on the merits.

[41] The grievor established an arguable case. Her discrimination and bad-faith allegations are not mere assertions. The allegations are supported by a detailed factual framework. If the alleged facts were proven at a hearing on the merits, they could indicate that her rejection on probation was not done for a legitimate employment-related reason.

[42] The employer's termination letter indicated that the grievor did not demonstrate the skills necessary to satisfactorily perform the duties associated with her position. It stated that the employer's decision was based on a review of her performance in these three areas: integrity and respect, ability to work effectively with others, and initiative and being action oriented. However, as she pointed out, the letter did not contain examples of related deficiencies; nor did it explain how and why the employer concluded that her performance was poor in those competencies.



[43] The grievor alleged that she made her accommodation requests three different times. She indicated that she suffered consequences twice. Allegedly, she was asked to “[translation] resign or remain here without a parking space”, and she was verbally reprimanded for making an accommodation request that had already been denied. She also testified that she was subjected to hostility that would have affected her work performance. If those alleged facts were established in evidence, they could, at first glance, constitute evidence of discrimination on the basis of disability or, again, hostility and bad faith toward the grievor.

[44] The grievor also alleged that her supervisor made a derogatory comment about racialized people. Again, were this comment established in evidence, it could, at first glance, be an indication of discrimination on the basis of race.

[45] The threshold that the grievor must meet in an analysis based on the arguable-case test is low. To meet it, her factual allegations must appear realistic. They must be factual allegations that if established in evidence at a hearing, could form the basis of the Board’s jurisdiction to hear her grievances. She did so in this case.

[46] She presented an arguable case that her rejection on probation was done not for a legitimate employment-related reason.

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

*(The Order appears on the next page)*

**IV. Order**

[48] The files will be placed on the Board's hearing schedule.

[49] The respondent's objection that the rejection on probation was based on the grievor's performance and that the Board is without jurisdiction will be decided after the hearing.

July 24, 2025.

FPSLREB Translation

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