**Date:** 20100125

**File:** 166-20-34057

**Citation: 2010 PSLRB 11**

*Public Service Staff Relations Act*

Before an adjudicator

BETWEEN

**DANNY PALMER**

Grievor

and

**CANADIAN SECURITY INTELLIGENCE SERVICE**

Employer

Indexed as
*Palmer v. Canadian Security Intelligence Service*

In the matter of a grievance referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Marie-Josée Bédard, adjudicator

***For the Grievor:*** Himself and Jean-François Mercure, counsel

***For the Employer:*** Gordon Kirk, counsel

Decided on the basis of written submissions
filed June 5 and 30, July 31, September 18, October 30 and November 6, 2009.

## Grievance referred to adjudication

[1] Danny Palmer, the grievor, joined the Canadian Security Intelligence Service ("the employer") in 1991. He was dismissed from the employer in June 2003. Mr. Palmer grieved his termination, and the grievance was referred to adjudication. During the course of the hearing, the parties entered into mediation with the assistance of the adjudicator and reached a settlement. In accordance with the terms of the settlement agreement signed by the parties, Mr. Palmer withdrew his grievance in December 2007, and the Public Service Labour Relations Board ("the Board") closed his file.

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 ("the former *Act*").

[3] On June 5, 2009, Mr. Palmer filed a letter with the Board in which he asked it to reopen his case on the basis that he obtained information in 2008 and 2009 that established that the 2007 settlement agreement for his grievance was entered into as a result of fraud and coercion on the part of the employer. Mr. Palmer requested that the Board take jurisdiction and determine whether his consent to the settlement was given as a result of misstatements, misrepresentations, fraud and/or coercion on the part of the employer and that, should that be the case, it declare the settlement null and void and that it deal with his grievance.

[4] In a letter dated June 30, 2009, the employer objected to the Board's jurisdiction to reopen Mr. Palmer's file and deal with his grievance.

## Summary of the arguments

[5] The following factual elements are relevant to understanding Mr. Palmer's allegations.

[6] When Mr. Palmer was dismissed, the employer deactivated his Top Secret security clearance. The evidence relevant to the hearing of his grievance involved classified information and documents (some of which were classified up to Top Secret). To be allowed to hear about that information and access the relevant

documents, Mr. Palmer required a security clearance. In 2006, he was granted a Secret security clearance. In spring 2007, Mr. Palmer's counsel was granted a Top Secret security clearance for the purpose of the hearing. Mr. Palmer also requested a Top Secret security clearance.

[7] In a letter dated August 31, 2007 and addressed to Mr. Palmer's counsel at that time, the employer's counsel indicated that Mr. Palmer would not be granted a Top Secret security clearance. The letter contains the following:

. . .

> *Last year Mr. Palmer was granted a Secret clearance for the purpose of accessing documents that may be relevant to this PSLRB hearing. Mr. Palmer requested a Top Secret clearance. A final determination has been made by the Service that Mr. Palmer will not be granted a Top Secret security clearance.*

. . .

[8] Mr. Palmer alleges that the employer misled him with respect to the impact of its decision to deny him a Top Secret security clearance. On that point, Mr. Palmer alleges that he was informed during mediation both by the employer's representatives and by the adjudicator that the employer's refusal to grant him a Top Secret security clearance would prevent the adjudicator from ordering the grievor's reinstatement (Top Secret security clearance is a prerequisite for employment with the employer), should he allow the grievance on the merits. Mr. Palmer asserts that that was his main consideration for coming to a settlement. Mr. Palmer contends that he later learned that the employer's refusal to grant him a Top Secret security clearance was limited to the adjudication and that it would not have prevented the adjudicator from ordering his reinstatement. He further contends that that information establishes that the employer's refusal to grant him a Top Secret clearance during the course of the hearing was fraudulent and that it was a ruse to obstruct the disclosure of evidence that would have proven his wrongful dismissal and to prevent the adjudicator from ordering his reinstatement. Mr. Palmer argues that, given that his main consideration for reaching a settlement was based on the employer's fraudulent denial of his Top Secret security clearance and the false representations made by the employer about the impact of the denial on his reinstatement possibilities, his consent to the settlement cannot be considered valid and binding.

[9] The employer contends that the Board has no jurisdiction to reopen the case since it has been settled and the grievance has been withdrawn. In a letter dated June 30, 2009, counsel for the employer submitted its position in the following manner:

. . .

> *The Board has no jurisdiction to adjudicate the matter because in 2007, Mr. Palmer opted for the benefits of a settlement, withdrew his grievance, and discontinued the adjudication. We refer to* Maiangowi v. Treasury Board, *2008 PSLRB 6, in which Adjudicator Mooney held at paragraph 61 that "the withdrawal of a grievance is a bar to adjudication, … Once a grievance is withdrawn, the Board loses jurisdiction over all matters related to it." We also refer to* Canada v. Lebreux, *[1994] F.C.J. No. 1711, paragraph 12, where the Federal Court of Appeal held that from the time an employee discontinues a grievance, the Board has no further force or authority.*

. . .

[10] In a letter dated July 31, 2009, Mr. Palmer's counsel replied in the following manner to the employer's objection to the Board's jurisdiction:

. . .

> *With respect, we are of the view that the cases cited by Mr. Kirk do not settle the question of the PSLRB'S jurisdiction in this matter.*
>
> *This issue in* Maiangowi v. Treasury Board, *2008 PSLRB 6 arose out of allegations that one party had not fulfilled its obligations under the settlement agreement which lead to the withdrawal of the grievance. Mr. Palmer is not, at this time, alleging any failure on behalf of CSIS in respecting its obligations under thesettlement.*
>
> *Clearly the broad principle of finality in settlements is defensible but that is not the issue here. Rather, Mr. Palmer is alleging that the settlement agreement was reached as a result of misstatements, misrepresentations, inadequate or misleading disclosure, fraud and/or coercion, as set out in previous correspondence and in a letter dated July 30, 2009 which he will forward to you . . .*
>
> *The integrity of mediation and consensual settlements as a labour relations dispute resolution mechanism must be maintained. To recognize the withdrawal of a grievance and thus refuse rehearing of a matter in circumstances where the*

> *mediation process is tarnished would, in our submission, permit parties to circumvent the PSLRB'S jurisdiction.*
>
> . . .
>
> [*Sic* throughout]

**Reasons**

[11] I must determine whether an adjudicator has jurisdiction to determine if the parties have entered into a valid and binding settlement over a grievance when, in accordance with the terms of the settlement, the grievance has been withdrawn.

[12] For the following reasons, I conclude that I have jurisdiction to determine whether the settlement reached by the parties, and accordingly the withdrawal of Mr. Palmer's grievance, is binding on the parties.

[13] It is well-established jurisprudence that, under the former *Act*, which applies to this case, the Board and its adjudicators did not have jurisdiction over the enforcement or implementation of a settlement agreement. It is also well established that the settlement of a grievance is a complete bar to an adjudicator's jurisdiction over the grievance when a party wished to rescind his or her consent to the settlement on the grounds that the agreement was allegedly not satisfactory.

[14] However, adjudicators have retained jurisdiction when the dispute is over the very existence of a valid and binding settlement and have concluded that they have jurisdiction to determine whether the parties entered into a binding agreement (*Bedok v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 163 and *Skandharajah v. Treasury Board (Employment and Immigration Canada*, 2000 PSSRB 114).

[15] The employer relies on *Canada (Attorney General) v. Lebreux*, [1994] F.C.J. No. 1711 (QL) (C.A.) and *Maiangowi v. Treasury Board (Department of Health)*, 2008 PSLRB 6, to support its position that I am without jurisdiction. With respect, I believe that *Lebreux* and *Maiangowi* do not settle the question raised in this case.

[16] In *Lebreux*, the Federal Court of Appeal ruled that an adjudicator was without jurisdiction to determine any matter related to a grievance once it was withdrawn. The Court expressed the following:

. . .

> *[12] From the time the respondent discontinued his grievances the Board and the designated adjudicator became functus officio since the matter was then no longer before them. The Board was not required either to inquire into the merits or feasibility of such a discontinuance or to agree to accept or reject it. The act of discontinuance forthwith and without more terminated the grievance process in respect of which it was filed. Accordingly, no order or decision could be or was made within the meaning of the Act that could be the subject of cancellation or review under s. 27.*

. . .

[17] *Lebreux* was rendered in a context where the validity of the settlement agreement, and the withdrawal of the grievance that ensued from it, were not questioned. In *Lebreux*, the grievor asked the Board to reopen the grievance on the grounds that ". . . there was no satisfactory agreement. . ." between the parties. The Court concluded that the discontinuance of the grievance was a complete bar to the Board's jurisdiction over the grievance. In my view, the question raised in this case is different. The grievor is alleging that he cannot be legally bound by the settlement agreement and by the withdrawal of his grievance, which resulted from the settlement, on the grounds that his consent was obtained through false representations made by the employer. The dispute in this case lies with the very existence of a binding settlement and the withdrawal that ensued from it, not with the consequences of a valid withdrawal of the grievance.

[18] In *Maiangowi*, in which the adjudicator applied the principles outlined in *Lebreux*, the grievor wanted the adjudicator to reopen his case on the grounds that the employer had not fulfilled its obligations under the agreement. Unlike this case, the dispute was not over the very existence of a valid settlement; it dealt with enforcement issues.

[19] In *Canada (Attorney General) v. Amos*, 2009 FC 1181, the good faith of the parties in conducting the negotiations which led to the settlement was not at issue and was, indeed, explicitly assumed to be present by the deciding judge. In this case, it is that good faith presumption which is being questioned and which therefore distinguishes this case from the precedents cited to me. I take comfort from the fact that although the Federal Court applied the reasoning in *Lebreux* to the decision in

*Amos*, it did so on the assumption that there was no issue regarding good faith (see paragraph 49 of *Amos*), which is not the case here.

[20] When the allegation goes to the very existence of a binding settlement, I am of the view that the withdrawal of the grievance is not determinative. When the grievance is withdrawn as a consequence of the settlement, the withdrawal of the grievance cannot be separated from the settlement itself. If the settlement is declared to be invalid, the withdrawal of the grievance will simply be deprived of its effect.

[21] Therefore, I conclude that an adjudicator has jurisdiction to determine whether the settlement reached by Mr. Palmer and the employer is valid and binding.

[22] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**Order**

[23] The employer's objection to my jurisdiction is dismissed.

[24] The Board's Registry is requested to schedule a hearing to deal with Mr. Palmer's allegations that the settlement that he entered into is not binding.

January 25, 2010.

**Marie-Josée Bédard,**
**adjudicator**