

Date: 20110125

File: 566-34-4599

Citation: 2011 PSLRB 5



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

NIZAR HAJJAGE

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as

Hajjage v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Renaud Paquet, adjudicator](#)

For the Grievor: [Himself](#)

For the Employer: [Sylvie Désilets, Canada Revenue Agency](#)

Decided on the basis of written submissions
filed November 19, 2010 and January 4 and 10, 2011.
(PSLRB Translation)

Individual grievance referred to adjudication

[1] On December 3, 2007, in Montréal, Quebec, the Canada Revenue Agency (“the employer”) hired Nizar Hajjage, the grievor, as a collections contact officer. Mr. Hajjage was hired as a temporary employee for a period of three months or longer. When he was hired, the employer informed him that he would be subject to a 12-month probationary period. On January 14, 2008, the employer informed Mr. Hajjage that his employment would be terminated on January 25, 2008, because he had not met the performance objectives of his position.

[2] On January 24, 2008, Mr. Hajjage filed a grievance against the termination of his employment. The essence of the grievance is as follows:

[Translation]

...

I am aggrieved with respect to the letter of termination dated January 14, 2008, and contest the termination of my employment. I believe that it was a wrongful dismissal.

...

In his grievance, Mr. Hajjage sought reinstatement in his position and the implementation of a fair and just rectification plan.

[3] The grievance was dismissed at every level of the internal grievance process. At each level, the employer dismissed the grievance because the *Canada Revenue Agency Act* provides an administrative procedure for redress for a rejection on probation. The employer reiterated its position in its submissions filed November 19, 2010.

[4] On the referral to adjudication form filed with the Public Service Labour Relations Board (“the Board”), Mr. Hajjage referred his grievance to adjudication under paragraph 209(1)(b) and subparagraph 209(1)(c)(i) of the *Public Service Labour Relations Act (PSLRA)*. The employer, in its November 19, 2010 submissions, objected to the jurisdiction of an adjudicator to hear the grievance because the grievance was about a rejection on probation and not about a disciplinary action. The employer also argued that the Canada Revenue Agency was not part of the core public administration.

[5] Mr. Hajjage replied to the employer's November 19, 2010 submissions on the same day. He maintained that the employer knew that he was challenging the "[translation] employer's disciplinary decision." He based his argument on two emails sent February 15 and March 12, 2010, to Lyson Paquette, a labour relations officer with the Union of Taxation Employees. Mr. Hajjage attached the two emails to his reply, which he filed on November 19, 2010. I have carefully read both emails. Neither contains any suggestion that the employer's decision was disciplinary. Rather, Mr. Hajjage claims that the employer acted in bad faith and that its decision was a sham and a camouflage.

[6] On December 21, 2010, according to my instructions, the Board's Registry Operations asked Mr. Hajjage to provide information and arguments in reply to the employer's objection to the jurisdiction of an adjudicator to hear his grievance and, specifically, how his dismissal and grievance were disciplinary. Registry Operations informed Mr. Hajjage that the adjudicator might rule on the employer's objection based on the documents and information on file, including the additional information asked of him.

[7] On January 4, 2011, Mr. Hajjage replied that the employer should not have raised the issue of an adjudicator's jurisdiction because challenges to employment termination decisions are within the jurisdiction of a Board-appointed adjudicator. Mr. Hajjage repeated that his email to Ms. Paquette dated February 15, 2010 refers several times to the employer's sham and camouflage tactics. Mr. Hajjage also alleged that the employer failed to comply with the collective agreement and the *Access to Information Act*. I shall not comment on the last two points. This grievance does not involve the application or interpretation of the collective agreement and is not supported by the bargaining agent. It also does not involve the *Access to Information Act*, which is beyond my jurisdiction.

[8] On January 5, 2011, according to my instructions, Registry Operations again asked Mr. Hajjage to provide all his information to support his argument that the employer's decision to terminate his employment was a disguised disciplinary decision.

[9] In his reply dated January 7, 2011, Mr. Hajjage repeated that his rejection on probation was a sham and a camouflage and that the employer had acted irrationally toward him. He based that allegation on the fact that the employer ended his contract

only one month after he was hired without giving him a plausible employment-related reason. He added that the employer claimed that he had not met the performance criteria, but such a conclusion was unreasonable after only one month of employment. Mr. Hajjage also alleged that the employer refused to provide him with the information that he requested about his rejection, which was proof of its bad faith. Mr. Hajjage claimed that further proof of the employer's sham or camouflage was the fact that it was blocking his access to other public service positions. In addition, Mr. Hajjage alleged that the employer had exerted a bad influence on the bargaining agent by convincing it to side with the employer. Finally, Mr. Hajjage attached to his reply a document in which he commented on his contact with the employer's representatives on December 5, 2007 and January 7, 2008, about his employment training and work performance. Nothing in the document refers directly or indirectly to disciplinary action.

[10] In support of his submissions, Mr. Hajjage referred me to the following decisions: *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (C.A.); *Maqsood v. Treasury Board (Department of Industry)*, 2009 PSLRB 175; *Melanson v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 33; *Owens v. Treasury Board (Royal Canadian Mounted Police)*, 2003 PSSRB 33; *Canada (Attorney General) v. Leonarduzzi*, 2001 FCT 529; and *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109.

Reasons

[11] Subsection 209(1) of the *PSLRA*, which reads as follows, sets out the types of grievances that may be referred to adjudication:

209. (1) An employee 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

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(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

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or

(d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

[12] Since the Canada Revenue Agency is not part of the core public administration and since Mr. Hajjage was not an employee of a separate agency designated under subsection 209(3) of the *PSLRA*, I have jurisdiction to hear Mr. Hajjage's grievance only if the grievance is about an interpretation or application of the collective agreement or about a disciplinary action as set out in paragraphs 209(1)(a) and (b). Mr. Hajjage is not represented by his bargaining agent. Therefore, the grievance cannot be about an application or interpretation of the collective agreement. It remains to be determined whether the grievance is about a disciplinary action, as Mr. Hajjage claims.

[13] The grievance does not state that the rejection on probation was a direct or disguised disciplinary action. At my request, Registry Operations wrote to Mr. Hajjage twice for additional information about his argument that the rejection was disciplinary and that his grievance was therefore about a disciplinary action. In response to the information requests, Mr. Hajjage submitted documentation that, however, did not support the disciplinary action argument. Certainly, Mr. Hajjage alleges that the employer acted in bad faith, that the termination of his employment was a sham and a camouflage, that the decision to terminate his employment was irrational, that it was unreasonable to conclude that he did not meet the requirements of his position after only one month of employment and that the employer exerted a bad influence on the bargaining agent. Those are not the issues in this case. Rather, the issue is determining whether the employer's decision to reject Mr. Hajjage was disciplinary. However, Mr. Hajjage did not submit anything to support the disciplinary argument.

[14] Given that I have nothing before me to support the allegation that the rejection of Mr. Hajjage was disciplinary in nature, I find that this is not a disciplinary grievance.

Mr. Hajjage acknowledges that he was rejected before the end of his probation. Therefore, I have no jurisdiction under the *PSLRA* to hear this grievance contesting the employer's non-disciplinary decision to reject Mr. Hajjage.

[15] In addition, the employer submitted that Mr. Hajjage cannot file a grievance because the *Canada Revenue Agency Act* provides an administrative procedure for redress for a rejection on probation. Since I have already determined that I have no jurisdiction to hear the grievance, I shall not deal with that objection.

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

(The Order appears on the next page)

Order

[17] I declare that I am without jurisdiction to hear this grievance.

[18] I order the file closed.

January 25, 2011.

PSLRB Translation

**Renaud Paquet,
adjudicator**