

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20170112**

**Docket: A-169-16**

**Citation: 2017 FCA 10**

**CORAM: STRATAS J.A.  
GLEASON J.A.  
WOODS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**KAREN GRANT**

**Respondent**

Heard at Toronto, Ontario, on January 12, 2017.

Judgment delivered from the Bench at Toronto, Ontario, on January 12, 2017.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GLEASON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on January 12, 2017)

**GLEASON J.A.**

[1] We have before us an application for judicial review of the April 29, 2016 decision of the Public Service Labour Relations and Employment Board (the PSLREB or the Board), upholding three grievances filed by the grievor stemming from the employer's decisions to suspend the grievor without pay, revoke her reliability status and then terminate her employment. The

PSLREB granted all three grievances in a single set of reasons: *Grant v. Deputy Head (Canada Border Services Agency)*, 2016 PSLREB 37 (available on CanLII).

[2] In reaching its decision, the PSLREB held that it possessed jurisdiction over the three impugned decisions under both subparagraph 209(1)(c)(i) and paragraph 209(1)(b) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the *PSLRA*). The Board thus determined that it could review the decisions to suspend the grievor from her employment and to revoke her reliability status under subparagraph 209(1)(c)(i) of the *PSLRA* to determine whether these acts were reasonably necessary to ensure the security of the Canada Border Services Agency (the CBSA), where the grievor worked. The PSLREB held that the CBSA did not establish that it was reasonably necessary to suspend the grievor or to revoke her reliability status for security reasons. The Board also looked at the same acts as well as the termination under paragraph 209(1)(b) of the *PSLRA* and found that they constituted acts of disguised discipline. The Board therefore found two bases for allowing the grievances, one under subparagraph 209(1)(c)(i) of the *PSLRA* and the other under paragraph 209(1)(b) of the *PSLRA*.

[3] In this application, the applicant submits that the PSLREB's decision is unreasonable as its interpretation of subparagraph 209(1)(c)(i) of the *PSLRA* contradicts a long line of case law from the Board. The applicant says that the PSLREB therefore ought to have found the grievances challenging the merits of the decision to suspend for security-related reasons and to revoke the grievor's security status were non-adjudicable under subparagraph 209(1)(c)(i) of the *PSLRA*. The applicant further submits that the PSLREB's treatment of the disciplinary issues was unreasonable as the Board failed to address whether there was misconduct and whether any

such misconduct merited the sanctions imposed. Finally, the applicant asserts that the CBSA's rights to procedural fairness were violated because the Board determined the issue of remedy without hearing from the CBSA on the issue, after having indicated that the hearing would be bifurcated.

[4] We need not decide in this case whether the Board committed a reviewable error in finding that it possessed jurisdiction to review the merits of the CBSA's decisions to suspend the grievor and revoke her security status under subparagraph 209(1)(c)(i) of the *PSLRA* as the Board offered an alternate basis for its decision, namely that these decisions constituted acts of disguised discipline. Both the Board and this Court have long recognized the jurisdiction of the Board to review acts such as these to determine whether they constitute instances of disguised discipline and, indeed, the applicant does not dispute this.

[5] Turning to the issue of whether the Board committed a reviewable error in its treatment of the disciplinary issue, we believe that when fairly read the PSLREB's reasons show that the Board turned its mind to whether cause existed for the impugned decisions and found that the CBSA did not establish cause. We agree with the respondent that the portion of the reasons that deals with the disciplinary issue cannot be read in isolation from the rest of the reasons, which make it clear that the PSLREB found there was no cause for the impugned actions as the CBSA failed to establish that they were reasonably necessary. There was ample evidence before the Board from which it could have reached this conclusion and therefore its determination cannot be said to be unreasonable.

[6] Finally, we find no breach of the CBSA's rights to procedural fairness. While it is true that the Board did initially rule that it would bifurcate the hearing between the issues of merits and remedy, it later reversed this position and the CBSA provided submissions on the remedial issues, including lost overtime opportunities. The CBSA took the alternate position in the submissions it made to the PSLREB that reinstatement was appropriate and did not ever indicate a position to the contrary nor what evidence it might seek to call in support of a request that the Board not follow its usual practice and instead decline to award reinstatement. If this were the intent of the CBSA, as counsel for the applicant fairly conceded, the CBSA's submissions could have been far clearer. In our view, a party that seeks to have the PSLREB hold further hearings and hear additional evidence must clearly so request. In light of the failure of the CBSA to clearly communicate its position, we do not believe it was incumbent on the Board to hold an additional hearing. Given this and the fact that the remedial award does not deal with any calculation other than the parameters for the quantification of lost overtime opportunities, we do not believe that the PSLREB breached the CBSA's rights to procedural fairness. Moreover, if the CBSA and the grievor cannot agree on the quantification of compensation for lost salary and benefits, which the Board has not yet been called upon to determine, the CBSA will have an opportunity to establish its views on these matters before the Board as it remained seized of implementation issues in its decision.

[7] We accordingly dismiss this application with costs, which we settle in the all-inclusive amount of \$3600.00.

“Mary J.L. Gleason”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-169-16

**APPLICATION FOR JUDICIAL REVIEW OF A DECISION (2016 PSLREB 37) BY  
MS. MARIE-CLAIRE PERRAULT, A BOARD MEMBER OF THE PUBLIC SERVICE  
LABOUR RELATIONS AND EMPLOYMENT BOARD, DATED APRIL 29, 2016**

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. KAREN GRANT

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 12, 2017

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
GLEASON J.A.  
WOODS J.A.

**DELIVERED FROM THE BENCH BY:** GLEASON J.A.

**DATED:** JANUARY 12, 2017

**APPEARANCES:**

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