Gorodnichy v. CBSA (FPSLREB 566-02-48305)
Exhibit G-17

Exhibit sheet description:

Employer’s book of documents : Tab -29 – grievor’s presentation in the course of the grievance

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Source documents and page ranges:

566-02-48305_Employer_Book_of_Documents.pdf:

PDF pages 176-181

Maisonneuve, Karine (Elle/She/Her)

From: Lisa Dubé <ldube@pipsc.ca>
Sent: Wednesday, March 1, 2023 10:24 AM
To: Carr, Jeff; Saumure, Katia
Cc: Gorodnichy, Dmitry
Subject: Grievance Presentation
Attachments: Grievance Presentation_Dmitry Gorodnichy_2nd level.pdf; Fraser v. P.S.S.R.B., [1985] 2 SCR 455.pdf

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Good morning,

As promised, please find attached a copy of the grievance presentation as well as a copy of the Fraser decision.

Dmitry and I remain available should you have any questions and look forward to your response.

Best regards,

Lisa Dubé (she/her/elle)
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IN THE GRIEVANCE MATTER

B E T W E E N

DMITRY GORODNICHY

Grievor

-and-

CANADA BORDER SERVICES AGENCY

Employer

Second Level Grievance Presentation – March 1st, 2023

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1. Grievance

The present grievance was filed on November 10, 2022, in response to the Discipline Letter sent to Mr. Gorodnichy on October 12 of the same year in which he received 5-day suspension without pay. Simply put, the grievance was filed because the grievor believes the 5-day suspension was unwarranted, given the circumstances of his case.

2. Key Events Leading Up to the Grievance

On February 9, 2022, Mr. Gorodnichy was placed on LWOP for non-compliance to the Policy on COVID-19 Vaccination. At the beginning of April, he was invited to participate to an investigation and the fact-finding interview was held on April 27, 2022, followed by a second meeting on May 31, 2022. It was alleged that Mr. Gorodnichy disregarded and willingly neglected to follow his management's expectations when posting information on various social media platforms. Specifically, it was alleged that Mr. Gorodnichy posted information on COVID-19 vaccination' safety and efficiency contrary to the message that the Government of Canada was promoting, which was that the vaccines are safe and efficient. During the two meetings, Mr. Gorodnichy explained that his intention was to help everyone understand the Government's data and make informed decisions on whether or not to get vaccinated and which vaccine to take. An investigation report was produced on June 27, 2022, in which the acting executive director data and strategy, Mr. Kaveh Afshar-Zanjani, concluded that the allegation was founded. A pre-disciplinary meeting was held on August 3rd, 2022, and the disciplinary decision was communicated to Mr. Gorodnichy on October 12, 2022. Considering all mitigating and aggravating factors applicable, for willingly neglecting to follow management expectations and willingly posting information that is contrary to the message that the Government was promoting on social media platforms on COVID-19 vaccination' safety and efficiency, Mr. Gorodnichy was issued a 5-day suspension without pay.

3. Grievance Process

This grievance was presented at the first level on January 12, 2023. The delegated authority, Mr. Nicolas Vincent, indicated that all the factors brought forward in the grievance presentation were already considered prior to the disciplinary measure being rendered. He chose to maintain his initial decision and deny the grievance. We ask you to reconsider this decision.

4. Analysis

The Treasury Board Guidelines for Discipline and case law support the importance of considering all the mitigating factors applicable. According to the Guidelines, the Employer has an obligation to consider all relevant mitigating factors before coming to a decision on the appropriate discipline.

The mitigating factors addressed in the disciplinary decision letter include the fact that Mr. Gorodnichy cooperated and was forthcoming throughout the investigative process, his clear disciplinary record and the delays in the process.

I would like to present to the Employer mitigating factors and information that it did not consider in rendering its decision. First of all, Mr. Gorodnichy worked for the Government for more than 23 years and, as noted, he had a clear disciplinary record at the time of the incidents. He has always been honest and forthcoming during the investigation and that despite the precarious situation he was in. After being placed on LWOP, Mr. Gorodnichy's job was in jeopardy, he didn't have any income, no idea of what would happen next. He was under a great deal of stress, away from his workplace, but still participated in all meetings and cooperated to the best of his ability throughout the 6 months it took to the employer to render its decision.

Mr. Gorodnichy was told by Mr. Afshar-Zanjani that he was to use internal mechanisms before expressing his view publicly. In that regard, we submit that Mr. Gorodnichy did in fact reach out to the office of the auditor general and tried to talk about his concerns with management multiple times.

When asked to remove specific posts, Mr. Gorodnichy always complied, but when given general instructions about the necessity for him not to post anything that may be contrary to or not in line with the Government of Canada's message, he understandably was left a little puzzled. Although Mr. Gorodnichy has every intention of following his manager's instructions, he understandably needs guidance. He welcomed the opportunity to participate in the training *Navigating Social Media as a Public Servant*, but still hasn't been able to do so up to this date, because the training will only be offered later in March 2023.

In the disciplinary letter, on October 12, Mr. Gorodnichy was asked to seek management's and/or the CBSA Office of Values and Ethics guidance prior to posting any information that may be contrary to, or not in line with, either the CBSA's or any of the Government of Canada's policy, procedures or messaging on any social media platform. He reached out to the Office of Values

and Ethics to obtain clarification and has been in contact with Ms. Kimberly Lawrence. At the time of the 1st level grievance presentation, he was still waiting to meet with her and he is still awaiting her guidance as of today. Mr. Gorodnichy is doing his best to act within the boundaries that were set, but perceive these boundaries as vague and needs help figuring this out. As of now, we don't believe it was fair for the employer to take into account his alleged repeated unwillingness to stop posting the information on social media even after being provided with clear expectations as an aggravating factor. Despite multiple clarification requests, the fact is that Mr. Gorodnichy doesn't understand what he can or cannot do to this day and this was not clearly communicated to him. The goal of a disciplinary measure being to correct the undesirable behavior and not to be punitive, it is our opinion that the employer should give Mr. Gorodnichy the help he needs by clarifying what he isn't allowed to say and pinpointing specific statements that they considered to be out of line.

Even though Mr. Gorodnichy is an employee of the Government of Canada and has a duty of loyalty to his employer, he has the right to express his opinion. Freedom of expression is a fundamental freedom protected by the *Canadian Charter of Rights and Freedoms* and an important value in a democratic state like Canada. By imposing disciplinary action upon Mr. Gorodnichy for exercising his freedom, the employer's actions have the effect of imposing limits which are fundamentally inconsistent with section 2(b) of the *Charter*.

Mr. Gorodnichy sincerely believes that he didn't post information that was contrary to the message of the Government that vaccines are safe and efficient, but was simply trying to shed light on the data. Even if his posts could be considered as a critic or an opposition, he submits that they would still have been allowed in the circumstances. In *Fraser* v. *PSSRB (Public Service Staff Relations Board)*, [1985] 2. S.C.R. 455, the Supreme Court recognized that the duty of loyalty could, in certain circumstances, place a limit on freedom of expression, but that it could not result in a denial of freedom of speech in all cases. At paragraph 41, we can read:

> "... in some circumstances a public servant may actively and publicly express opposition to the policies of a government. This would be appropriate if, for example, the Government were engaged in illegal acts, or if its policies jeopardized the life, health or safety of the public servant or others, or if the public servant's criticism had no impact on his or her ability to perform effectively the duties of a public servant or on the public perception of that ability."

Mr. Gorodnichy expressed himself regarding a matter of public importance directly related to the health and safety of the population and therefore submits that no discipline should have been imposed.

In any event, even if there is some basis for disciplinary action, the employer must prove that the disciplinary response was appropriate in the circumstances and must respect the principle of progressive discipline. This case involves an off duty conduct where there was no malicious intent or bad faith and no evidence to suggest that Mr. Gorodnichy's comments had an impact on the Government's reputation. Mr. Gorodnichy never intended to critic his employer or to go against his messaging and sincerely regrets if people misinterpreted his posts. His goal always has been to help the public understands the data and he sincerely believes everything he did was to serve the public.

5. Conclusion

We're asking the Employer today to consider all the mitigating factors, and given those factors and the various information presented, to conclude that a 5-day suspension was excessive. The remedies requested in the grievance would be for the 5-day suspension to be rescinded, for the suspension letter and any other related documents to be removed from Mr. Gorodnichy's file and destroyed, for Mr. Gorodnichy to be reimbursed for any and all salary, pension and benefits lost as a result of the suspension and any other measure deemed necessary to remedy the situation and make him whole.