

Federal Court



Cour fédérale

Date: 20230706

Docket: T-461-23

Citation: 2023 FC 929

Ottawa, Ontario, July 6, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JENNIFER HORSMAN

Plaintiff

and

**THE CANADIAN COAST GUARD, as an
agency of FISHERIES AND OCEANS
CANADA**

Defendant

and

**PUBLIC SERVICES AND PROCUREMENT
CANADA, as administrator of the PHEONIX
PAY SYSTEM**

Defendant

ORDER AND REASONS

I. Overview

[1] The Defendants, the Canadian Coast Guard (“CCG”) and Public Services and Procurement Canada (“PSPC”), bring a motion to strike out the Plaintiff’s claim on jurisdictional grounds pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”).

[2] The Defendants submit that this Court does not have jurisdiction to adjudicate the Plaintiff’s claim, as per section 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 (“*FPSLRA*”).

[3] For the reasons that follow, this motion is granted.

II. Facts

[4] The CCG is a special operating agency within the Department of Fisheries and Oceans. PSPC is a department of the Government of Canada that administers pay for federal employers to federal public servants, through the Phoenix Pay System (“Phoenix”).

[5] The Plaintiff, Jennifer Horsman, is self-represented in these proceedings. From November 2011 to May 2021, the Plaintiff was employed by the CCG as Maritime Search and Rescue Coordinator at the Joint Rescue Coordinating Center (“JRCC”) in Halifax, Nova Scotia. On May 1, 2021, the Plaintiff advised CCG of her choice to leave her employment.

[6] The Plaintiff claims that she received a letter from a Life Events Advisor at Fisheries and Oceans Canada on April 26, 2021. The letter advised the Applicant that the only arrear on her account was a one-time transition payment paid on May 21, 2014. The Plaintiff claims that she did not contest this amount and recovered this sum when her termination payment was processed. The Plaintiff claims that she was entitled to rely on this correspondence as the final resolution of her financial relationship with the Defendants.

[7] In March 2022, the Plaintiff resumed work at the JRCC in Halifax on a casual contract. She claims that she submitted her time sheets for this work on July 13, 2022.

[8] The Plaintiff claims that on or about August 15, 2022, she received an email from PSPC, informing her of an overpayment error in the amount of \$8,752.28 for the period of her employment between 2016 and 2020. This amount was the remainder of an overpayment that had been partially recovered, in the amount of \$12,662.49. Recovery of this amount commenced on September 28, 2022, after the Plaintiff had resumed her work with CCG as a casual employee.

[9] The Plaintiff claims that she clearly indicated her intention to contest this overpayment amount. The Plaintiff alleges that she kept a detailed journal of the days she worked, including all overtime shifts, and these records did not correspond with the alleged overpayments listed in the August 15 email from PSPC. She claims that her pay was mismanaged by Phoenix.

[10] The Plaintiff allegedly attempted to resolve her pay issues by contacting CCG management, making a complaint with Employment and Social Development Canada regarding missing wages, and seeking assistance from her union, the Public Service Alliance of Canada (“PSAC”). The Plaintiff claims that these efforts were to no avail and that the mismanagement of her pay caused her serious financial hardship and mental strain.

[11] On March 8, 2023, the Plaintiff filed a Statement of Claim against the Defendants in this Court. On April 21, 2023, the Defendants filed an Amended Notice of Motion for an Order striking out the Statement of Claim pursuant to Rule 221 of the *Rules*.

III. Issue and Standard of Review

[12] The sole issue is whether the Statement of Claim should be struck on jurisdictional grounds, pursuant to Rule 221 of the *Rules*.

[13] This Court has outlined the legal test applicable on a motion to strike on jurisdictional grounds as whether it is “plain and obvious, assuming the facts pleaded are true or provable, that this Court lacks jurisdiction to hear the Plaintiff’s claim” (*Ebadi v Canada*, 2022 FC 834 at para 26). As established by the Supreme Court of Canada in *R v Imperial Tobacco*, 2011 SCC 42, the “plain and obvious” test asks whether “the claim has no reasonable prospect of success” (at para 17; see also *Apotex v Ambrose*, 2017 FC 487 at para 38).

IV. Analysis

[14] The Defendants submit that section 236 of the *FPSLRA* states that there is no right of action where an employee seeks redress for a dispute relating to the terms of their employment.

Section 236 reads as follows:

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

Application

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

Application

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

[15] The Defendants submit that all of the Plaintiff's allegations in her Statement of Claim relate directly to her employment with CCG. They allege that compensation for work performed is clearly an employment issue and governed by the Plaintiff's collective agreement.

[16] The Defendants submit that the right to grieve is available to both unionized and non-unionized employees as per section 206 of the *FPSLRA*. They further submit that section 208 of the *FPSLRA* provides employees with a broad right to grieve, encompassing almost all employment related disputes. The Defendants note that as a former employee of CCG, the Plaintiff's right to grieve under the collective agreement extends to matters that arose while she was employed in the public service, citing *Price v Canada (Attorney General)*, 2016 FC 649 at paras 28-29.

[17] The Defendants rely on this Court's decision in *Adelberg v Canada*, 2023 FC 252 ("*Adelberg*"), which found as follows:

[13] Subsection 236(1) of the *FPSLRA* has been recognized as an "explicit ouster" of the courts' jurisdiction (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at para 4). Once it is established that a matter must be the subject of a grievance, the grievance process cannot be circumvented, even for reasons of efficiency, by relying on a court's residual jurisdiction (*Bouchard c Procureur général du Canada*, 2019 QCCA 2067).

[18] In an affidavit filed on June 13, 2023, the Plaintiff states that she contacted PSAC to seek assistance with her pay issues and a labour relations specialist was assigned to her file. She claims that she was advised to file a grievance. The Plaintiff claims that she was entitled to union representation but was denied. She claims that PSAC eventually advised her to contact her local Member of Parliament's office, who informed her that they could do no more than advocate on her behalf.

[19] I find that the “plain and obvious” test for a motion to strike out a claim for want of jurisdiction is made out in this case. I agree with the Defendants that the statutory language of subsection 236(1) of the *FPSLRA* clearly bars the Plaintiff’s claim and requires that she seek redress through the broad grievance procedure available to her for employment related issues through her collective agreement.

[20] I acknowledge the Plaintiff’s clear frustration at this situation, and the mental strain and financial hardship she claims it has caused. The Plaintiff expressed these frustrations at the oral hearing and I trust that she felt heard by this Court as a self-represented litigant. Though I sympathize with her situation, the Plaintiff’s claims regarding the mismanagement of her pay as a former employee of the CCG are directly related to the terms and conditions of her employment. These claims therefore “must be the subject of a grievance,” which cannot be circumvented “by relying on a court’s residual jurisdiction” (*Adelberg* at para 13, citing *Bron v Canada (Attorney General)*, 2010 ONCA 71 at para 4; *Bouchard c Procureur général du Canada*, 2019 QCCA 2067).

[21] Although the Defendants seek costs of this motion, I do not find that a costs award against the Plaintiff is warranted in this case.

V. Conclusion

[22] In my view, it is plain and obvious that this Court lacks jurisdiction to hear the Plaintiff's claim, as per section 236 of the *FPSLRA*. The Defendants' motion to strike out the Statement of Claim is therefore granted, without costs.

ORDER in T-461-23

THIS COURT ORDERS that the Rule 221 motion to strike out the Statement of Claim is granted, without leave to amend and without costs.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-461-23

STYLE OF CAUSE: JENNIFER HORSMAN v THE CANADIAN COAST
GUARD, AS AN AGENCY OF FISHERIES AND
OCEANS CANADA AND PUBLIC SERVICES AND
PROCUREMENT CANADA, AS ADMINISTRATOR
OF THE PHEONIX PAY SYSTEM

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 15, 2023

ORDER AND REASONS: AHMED J.

DATED: JULY 6, 2023

APPEARANCES:

Jennifer Horsman
(On her own behalf)

FOR THE PLAINTIFF

Corinne Bedford

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada
Halifax, Nova Scotia

FOR THE DEFENDANTS