

ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

BLAIR R.S.J., BENOTTO S.J. AND SOMERS J.

B E T W E E N: )  
)  
DAVID EARL SMITH ) *In Person*  
)  
Applicant )  
)  
- and - )  
)  
)  
THE ONTARIO PUBLIC SERVICE ) *Yasmeena Mohamed, for the Respondent,*  
EMPLOYEES UNION ) *Her Majesty the Queen in Right of Ontario,*  
- and - ) *as represented by the Ministry of the*  
) *Environment*  
)  
HER MAJESTY THE QUEEN IN RIGHT )  
OF ONTARIO AS REPRESENTED BY THE ) *Timothy G.M. Hadwen, for the Respondent,*  
MINISTRY OF THE ENVIRONMENT ) *Ontario Public Service Employees Union*  
- and - )  
)  
)  
ONTARIO CROWN EMPLOYEES )  
GRIEVANCE SETTLEMENT BOARD )  
- and - )  
)  
ROBERT SMITH )  
)  
Respondents )  
)  
) **HEARD:** May 5, 2003

BLAIR R.S. J.: (Orally)

[1] The applicant, David Earl Smith, was employed in the Ontario Public Service from 1976 through 1999. On October 27, 1999 he received a letter from the Assistant Deputy Minister, Operations Division, of the Ministry of the Environment indicating that his employment with the

Ministry was terminated because of a reorganization at the Ministry that would result in the elimination of his position.

[2] Mr. Smith held a unionized position included in a collective bargaining unit represented by the Ontario Public Service Employees Union (OPSEU). Upon receiving the notice of termination, Mr. Smith filed a grievance through the Union, as he says in his factum, "in accordance with the grievance process set out in the collective agreement between OPSEU and the Government of Ontario". The grievance, together with the companion grievance on behalf of another employee eventually found its way before the Crown Employees Grievance Settlement Board (the "GSB").

[3] At the hearing, the two grievances were consolidated by agreement. The hearing however did not proceed as such. Instead counsel for the Union and counsel for the Employer engaged in settlement discussions in the form of a mediation conducted by Mr. Harris, Vice Chair of the GSB. The applicant and the other released employee also participated in the negotiations.

[4] After a full day of mediation, the parties arrived at a settlement, which is set out in a confirming letter from Mr. Harris to counsel for the Employer and counsel for the Union, dated October 26, 2000. The operative portions state as follows:

"This will confirm the agreement reached on October 16, 2000 in the David Smith and Robert Smith matters. After a full day of mediation the following terms were agreed between the parties:

- 1) The employer will pay each grievor the sum of \$30,000 as general damages plus \$30,000 as compensation (subject to statutory deductions);
- 2) These grievances and any and all existing grievances, grievable matters or any other outstanding disputes between the grievors and the employer are discontinued and withdrawn, including, without diminishing the generality of the forgoing, the matters currently being pursued before the Ontario Labour Relations Board;
- 3) The parties and both grievors are bound by the terms of this settlement;
- 4) OPSEU agrees that the preliminary issue relating to the allegation that there was no valid delegation of authority to authorize the actions taken in respect of these grievors will not be raised in any other matter relating to any employer actions involving the reorganization of this branch of the Ministry of the Environment to the date of the agreement, being October 16, 2000;
- 5) The parties agree to keep the terms of this agreement confidential;

- 6) This is a full and final settlement between the parties and the grievors and no other proceedings in any other forum will be commenced or entertained regarding these issues.

The paragraphs 4 and 5 are subject to the ratification of OPSEU and the employer respectively."

[5] Counsel subsequently confirmed items 4 and 5. The settlement was later incorporated into an order of the GSB dated December 15, 2000.

[6] Mr. Smith now applies for judicial review of that Order.

[7] The nub of his complaint is that the Assistant Deputy Minister did not have properly delegated authority to dismiss him on October 27, 1999. Therefore, he submits, the purported dismissal is a nullity. Therefore there was nothing to grieve and the GSB erroneously assumed jurisdiction to arbitrate and settle the complaints.

[8] We note at this point that the issue of proper delegation of dismissal authority was a matter to be raised by Mr. Smith and OPSEU in argument, had the hearing proceeded and indeed, in a broader sense formed part of the overall settlement between the Employer and the Union (see paragraph 4 of the letter of Mr. Harris cited above and paragraph 4 of the operative terms of the GSB's order dated December 15, 2000).

[9] We are all of the view that the application must be dismissed on the ground that Mr. Smith does not have standing to bring it. As a member of the bargaining unit represented by OPSEU he does not have standing in his own right to process a grievance respecting his employment. Only the Union may do so.

[10] At the instance of Mr. Smith in this case it did so. And a settlement was effected in which Mr. Smith himself participated and, on his own admission, initially accepted when it was first made. He subsequently had second thoughts.

[11] We do not accept the argument that a lack of delegated authority on the part of the person purporting to dismiss Mr. Smith is sufficient to take the matter outside of the governing collective agreement and therefore outside of, at the very least, the GSB's jurisdiction to determine whether it had jurisdiction to hear the matter.

[12] The dispute arose out of Mr. Smith's position as an employee and as a result of the purported termination of his employment. The "management rights" clause in the collective agreement gives management the power to hire, to layoff or to dismiss. This is what it said it was doing. Whether it was entitled to do so, or whether if it were, it did so properly, are matters that fall under the collective agreement for grievance purposes and can only be pursued by the Union bargaining agent.

[13] Thus, the issues were properly before the GSB. Had there been a hearing that Board would have been entitled to determine whether the Assistant Deputy Minister had properly delegated authority in purporting to dismiss Mr. Smith and, if not, what consequences should

follow from that. The Board in such circumstances may have decided the purported termination was void ab initio. We do not think such a decision would have deprived the GSB of "jurisdiction" however. Rather, it would simply follow that there was no need to deal with the grievance on its merits as the purported dismissal was void from the outset. The Board has authority to determine its own jurisdiction. The determination of those questions would still fall within the purview of a grievance under the collective agreement concerning the termination of Mr. Smith's employment.

[14] In this case, however, the GSB was not required to make such a decision. The Union and the Employer reached a settlement and the Vice-Chair of the Board, who acted as mediator in respect of the negotiations was justified in the circumstances in assuming that role and, once the settlement was reached, in incorporating its terms into an order as requested by the parties.

[15] As a member of the bargaining unit whose complaint regarding his purported termination was properly pursued by the grievance process set out in the collective agreement and before the Board, Mr. Smith is bound by that settlement and order. Only the parties to the collective agreement may pursue that employment-related grievance.

[16] Accordingly, Mr. Smith has no standing to pursue this application for judicial review. It is therefore dismissed.

*RA Blau (RS)*  
*M. Berotto*  
*William H. Duns. J.*

Date of Reasons for Judgment: May 5, 2003

Date of Release:

**MAY 16 2003**

COURT FILE NO.: 311/2001

DATE: 20030505

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ORAL REASONS FOR JUDGMENT

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