

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOYCE PALAGIAN

Plaintiff

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES, JOHN POLLARD in his capacity as Chairman of the Financial Management Board, LEW VOYTILLA and RICHARD WADE



MEMORANDUM

The defendants move the Court to grant an order striking out the plaintiff's statement of claim on the ground that this Court is without jurisdiction to grant the relief sought in this action.

2

According to the affidavit of Guy Bisson, Acting Manager of Labour Relations in the Financial Management Board Secretariat of the Government of the Northwest Territories, sworn on May 9th 1995, the plaintiff occupied a position as Pay and Benefits Clerk with the Board at Inuvik, which position was excluded from the bargaining unit to which she had belonged prior to the exclusion on August 13th 1993.

3

Mr. Bisson deposes furthermore that the exclusion was grieved by the Union of Northern Workers, which I understand is agreed to have been the collective bargaining

agent duly authorised in that behalf. And a letter exhibited to Mr. Bisson's affidavit, sent on March 21st 1995 to the Union of Northern Workers, confirms that an agreement has been reached between the Union and the defendant Commissioner, as "the Employer", that the position in question was returned to the bargaining unit (so as to be subject to the collective agreement) as of the date of its exclusion.

4           According to the letter, "Any persons encumbering this position during the period August 19, 1993 and December 16, 1994 will be entitled to all provisions of the Collective Agreement".

5           Nothing turns on the discrepancy in dates of the exclusion, as referred to in paragraph 4 of Mr. Bisson's affidavit, on one hand, and in the above mentioned letter on the other hand.

6           It is alleged in the statement of claim that the defendant Commissioner terminated the plaintiff's employment in the public service of the Northwest Territories on August 17th 1994. And in paragraph 14 of the statement of claim it is alleged that this was effected unlawfully, contrary to the *Public Service Act*, R.S.N.W.T. 1988, c. P-16.

7           The statement of claim issued on September 28th 1994. At that time, so far as the plaintiff was aware, her employment in the position above mentioned had been terminated while it was excluded from the scope of the collective agreement. That being so, there was no legal bar to her commencing this action for damages for wrongful dismissal.

The defendants, relying upon the agreement reached with the Union regarding the return of the position in question to the bargaining unit, argue that this agreement now ousts the jurisdiction of this Court to entertain the plaintiff's claim to damages for wrongful dismissal. The plaintiff, who has much to gain if she can avail herself of the provisions of the collective agreement, is nevertheless unwilling to concede that her action for damages can be thus defeated by an *ex post facto* agreement between the Union and the defendant Commissioner. In addition, she does not wish at this point to forego her right of action against the defendants in respect of the tort of conspiracy alleged in the statement of claim.

9           The parties agree that a stay of the action, subject to its revival on motion by the plaintiff, will preserve the plaintiff's rights of action in the event that the agreed return of the position to the bargaining unit should fail to yield her the access, which she expects that return should provide, to the grievance and arbitration procedures and remedies available under the collective agreement. While the defendants would prefer to see the statement of claim struck, if only as to the claim for damages for wrongful dismissal, this appears in my opinion to be the appropriate outcome.

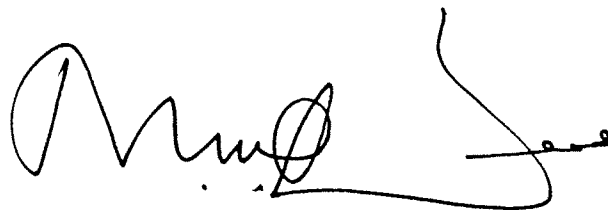
10           The plaintiff's action is stayed pending the further order of the Court, subject to revival as above mentioned.

11           The plaintiff's motion to quash the letter of dismissal from her position, based upon paragraph 14 of the statement of claim, should have been brought on the basis of a separate request for relief in the nature of *certiorari* as provided in the *Rules of*

*Court*, if that is truly the nature of the relief sought. Included in the statement of claim, as it is, this might best be described as a claim to declaratory relief. A declaration is, in any event, in the nature of a final order; it will not be granted merely on an interlocutory basis.

12

The plaintiff's motion is adjourned *sine die*. I do not consider myself to be seized of that motion, notwithstanding my above comments.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a long horizontal flourish extending to the right.

M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories  
May 18th 1995

Counsel for the Plaintiff: Austin F. Marshall, Esq.

Counsel for the Respondents: Ms. Cayley J. Thomas

CV 05432

---

IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

---

BETWEEN:

JOYCE PALAGIAN

Plaintiff

- and -

THE COMMISSIONER OF THE NORTHWEST  
TERRITORIES, JOHN POLLARD in his capacity  
as Chairman of the Financial Management  
Board, LEW VOYTILLA and RICHARD WADE

Defendants

---

**MEMORANDUM**

HONOURABLE MR. JUSTICE M.M. de WEERDT

---

