

Federal Court



Cour fédérale

**Date: 20130424**

**Docket: T-1309-12**

**Citation: 2013 FC 410**

**Toronto, Ontario, April 24, 2013**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**DEBORAH GUYDOS**

**Applicant**

**and**

**CANADA POST CORPORATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns the jurisdiction of an Adjudicator acting under the *Canada Labour Code*, RSC 1985, c L-2 to address Ms. Guydos' complaint of wrongful dismissal. In the decision under review the Adjudicator declined jurisdiction. For the reasons that follow, in my opinion, the Adjudicator was correct in doing so.

[2] The complaint arose from Ms. Guydos' dismissal from her employment with Canada Post. In order for Ms. Guydos to obtain relief from the Adjudicator it was necessary for her to establish that, on the date of the dismissal, her employment was not governed by a collective agreement.

[3] With respect to the date of dismissal, the following actions of Canada Post are key to the jurisdiction issue. On February 25, 2010, Ms. Guydos received a letter from Canada Post stating that she had failed to provide updated medical information to substantiate her ongoing absence from work. Canada Post took the position that, under the terms of the collective agreement, the letter served as a "Notice of Release for Incapacity" (Notice) and her release from employment would become effective on April 2, 2010. However, Ms. Guydos' union filed a grievance with respect to the Notice that had the effect of delaying Ms. Guydos' release pending resolution of the grievance. On June 22, 2011, Ms. Guydos received a notice from Canada Post advising her that her maximum period of sick leave was coming to an end.

[4] On March 28, 2012, the union withdrew the grievance with respect to the Notice with the result that Canada Post argued before the Adjudicator that Ms. Guydos' termination had become effective on April 2, 2010, and since her employment was under a collective agreement at that time, the Adjudicator had no jurisdiction to hear her complaint of wrongful dismissal. Nevertheless, Ms. Guydos took the position that the June 22, 2011 letter constituted dismissal and that she was not under a collective agreement because a strike and lock-out existed at that time. On this basis she argued that she was able to maintain an application for wrongful dismissal under the *Canada Labour Code*.

[5] With respect to the legal operation of the Notice, the Adjudicator accepted Canada Post's argument. With respect to Ms. Guydos' argument about the importance of the June 22, 2011 letter, the Adjudicator found that it had no employment importance other than to give her notice of a fact. In any event Canada Post argued that, as a matter of law, subsequent legislation retroactively extending the previous collective agreement placed Ms. Guydos under a collective agreement in June 2011. The passage from the decision which clearly addresses the arguments is as follows:

I conclude that the dismissal date, pursuant to the Notice of Release for Incapacity which was to take effect April 2, 2010, is the operative date. Even in the alternative, if the dismissal is treated as having occurred in April, 2012, as a consequence of the union's withdrawal of her grievance on March 28, 2012, my ruling would still be that I have no jurisdiction to deal with Ms. Guydos' Complaint of unjust dismissal by reason of the operation of Section 240(1)(b) of Division XIV of the *Canada Labour Code*. On either of those applicable dates, Ms. Guydos was "a member of a group of employees subject to a collective agreement" (Decision, para 29).

[6] I find that the Adjudicator's determination that, in fact, Ms. Guydos' release occurred on April 2, 2010 is reasonable. I also find that, in law, because a collective agreement was in effect on that date, the Adjudicator was correct in the jurisdictional finding made: no jurisdiction existed to address the merits of Ms. Guydos' complaint.

**ORDER**

**THIS COURT ORDERS that:**

1. The present Application is dismissed.
2. I make no order as to costs.

“Douglas R. Campbell”  
\_\_\_\_\_  
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1309-12

**STYLE OF CAUSE:** DEBORAH GUYDOS v CANADA POST CORPORATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 22, 2013

**REASONS FOR ORDER AND ORDER:** CAMPBELL J.

**DATED:** April 24, 2013

**APPEARANCES:**

Deborah Guydos FOR THE APPLICANT  
(on her own behalf)

Daniel McDonald FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A FOR THE APPLICANT

Norton Rose Canada LLP FOR THE RESPONDENT  
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