

Date: 20041215

File: 161-2-1265

Citation: 2004 PSSRB 174



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

GERRI ANNE BENNIE

Complainant

and

FRANK LLOYD

Respondent

Before: [Paul Love, Board Member](#)

For the Applicant: [Gerri Anne Bennie](#)

For the Respondent: [Daniel Fisher, Public Service Alliance of Canada](#)

Heard at Edmonton, Alberta,
July 20, 2004.

DECISION

[1] Gerri Anne Bennie (also known as Gerri Anne Klein) filed a complaint pursuant to section 23 of the *Public Service Staff Relations Act, R.S.C. 1985, c. P-35 (PSSRA)*. She alleged that her bargaining agent's representative, Frank Lloyd, failed to represent her properly in the handling of grievances filed against her employer, the Treasury Board of Canada. Ms. Bennie filed her complaint on July 14, 2003.

[2] This matter was set for hearing from January 27 to 29, 2004. Ms. Bennie requested an adjournment of the hearing on January 22, 2004, and the bargaining agent objected to the adjournment. The hearing was adjourned on January 26, 2004, and a Board Registry Officer provided available dates and asked the parties to confirm their availability for a hearing on the dates provided by the Board. On February 4, 2004, after failing to obtain common available dates for a hearing of the complaint, the Board set dates peremptorily for a hearing from March 30 to April 2, 2004, in Edmonton, Alberta. These were dates which Ms. Bennie expressed to the Board as available dates for her and her counsel. On February 23, 2004, a Registry Officer sent the parties a Notice of Hearing.

[3] On March 16, 2004, the respondent's representative requested a postponement because the respondent was on sick leave. Ms. Bennie did not oppose the postponement, and the parties were advised on March 18, 2004, that the hearing was postponed.

[4] On April 13, 2004, a Registry Officer sent Ms. Bennie a registered letter indicating that the matter was tentatively scheduled from July 20 to 23, 2004 (July hearing) in Edmonton, and the letter requested her input. The Board did not receive a response from Ms. Bennie, nor was the letter returned as undeliverable by Canada Post.

[5] A Registry Officer sent Ms. Bennie a Notice of Hearing for the July hearing by Priority Post on May 27, 2004. The letter was returned as undeliverable by Canada Post. These dates were the third ones set by the Board for the hearing of this matter.

[6] Ms. Bennie did not attend on July 20, 2004, the first day of the four days set aside for the July hearing. The respondent submitted that the complaint should be dismissed, as the burden of proof rested with the complainant, and she had not appeared and had not tendered any evidence. Alternatively, the respondent submitted that the Board might wish to make inquiries concerning Ms. Bennie's absence before

making a determination. Following the submissions of the respondent, I reserved my decision.

[7] Following the hearing, a Registry Officer attempted to contact Ms. Bennie. The Registry Officer called Ms. Bennie at her work number on July 21, 2004, and was advised that Ms. Bennie was away until September 2004. The Registry Officer was given a change of address and a change of phone numbers for Ms. Bennie. On July 21 and 22, 2004, a Registry Officer left messages on Ms. Bennie's answering machine, which Ms. Bennie did not return.

[8] On July 26, 2004, a Registry Officer sent Ms. Bennie a letter by registered mail, and also a copy by e-mail to Ms. Bennie's office e-mail address. Receipt of that registered mail was confirmed on July 28, 2004, signed by a Murray James Kleim. The July 26, 2004 letter reads in part as follows:

...

The board member seized of the hearing informed the Board that you did not attend the hearing. . . .

Please advise the Board by return mail of your intentions regarding this matter. Failure to hear from you in writing may result in the matter being decided without further consultation.

...

[9] On September 24, 2004, a Registry Officer called Ms. Bennie at home and left a message asking her to call and to let the Board know what her intentions were. Ms. Bennie did not respond.

[10] A Registry Officer sent a second letter to Ms. Bennie on September 27, 2004, by registered mail and to her office e-mail address. The registered letter was received and signed by a G. Klein on September 28, 2004. The contents of the letter set out the Registry Officer's attempts to make contact with Ms. Bennie. The letter contained the following paragraphs:

...

The board member seized of the hearing informed the Board that you did not attend the hearing. . . .

*Please advise the Board by return mail of your intentions regarding this matter. Failure to hear from you in writing **by no later than October 8, 2004**, will result in the matter being decided without further consultation.*

. . .

[Emphasis in the original]

[11] The Registry Officer left messages, voice and e-mail, and wrote to Ms. Bennie following her non-attendance at the July hearing. On the basis of the record, I find that Ms. Bennie has received, and did not respond to, communication from the Board following the July hearing.

[12] Under the circumstances, I am satisfied that Ms. Bennie does not wish to pursue her complaint against the respondent. Accordingly, I direct that the proceedings be terminated and the file closed.

**Paul Love,
Board Member**

CAMPBELL RIVER, December 15, 2004.