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File: 161-34-1280

Citation: 2004 PSSRB 95



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CHARLOTTE RHÉAUME

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

RE: Complaint under section 23 of the
Public Service Staff Relations Act

Before: [Jean-Pierre Tessier, Board Member](#)

For the Complainant: [Herself](#)

For the Respondent: [Glen Chochla, Public Service Alliance of Canada](#)

Heard at Montréal, Quebec,
March 30 and 31, 2004.

DECISION

[1] Charlotte Rhéaume has worked for Revenue Canada since May 1987. From 1990 to 1993, she filed a number of grievances relating to harassment and discrimination matters. In November 1990, she was absent from work due to illness.

[2] In April 1991, Ms. Rhéaume said she was able to occupy a position in which she would not be in contact with her former supervisors. Following various discussions, the employer found her a new position, and she began working there on April 2, 1993. In the intervening period, the insurance company had terminated Ms. Rhéaume's disability benefits, since, in the company's view, Ms. Rhéaume had been able to work since April 1, 1991. Ms. Rhéaume thus found herself without pay for the period from April 1, 1991, to April 2, 1993.

[3] Between 1991 and 2003, Ms. Rhéaume filed various grievances against the insurance company's decision and filed an application with the Commission de la santé et de la sécurité au travail du Québec (CSST), but without success.

[4] On October 16, 2003, Ms. Rhéaume filed a complaint against the Public Service Alliance of Canada, her bargaining agent, for representing her arbitrarily and in bad faith with respect to the loss of salary she had suffered from 1991 to 1993.

[5] The complaint was heard on March 30 and 31, 2004.

File

[6] It should be noted that various documents were transmitted to the Board by each of the parties between the complaint of October 2003 and the hearing in March 2004, because the bargaining agent argued that the complaint was untimely.

Hearing

[7] At the hearing, the parties commented on the fact that the complaint had been filed after the time limit.

[8] In support of its objection, the bargaining agent filed various documents, including a history of the facts (Exhibit S-1), decisions, exchanges and correspondence with the complainant (Exhibits S-2 to S-12).

[9] The bargaining agent contends that a review of the documents in the file and those filed at the hearing shows its efforts to defend Ms. Rhéaume's interests.

[10] The bargaining agent concluded that, ultimately, Ms. Rhéaume complained in 2003 that it had poorly defended her interests since 1991, as she had been unable to obtain compensation for salary she had lost more than 10 years ago, from 1991 to 1993.

[11] The bargaining agent further emphasized that, even if it were admitted that the situation was unclear at the time of the events, if Ms. Rhéaume believed that she had been poorly represented, she could have filed a complaint against it when it refused to continue the grievance in February 1998 concerning the loss of salary from 1991 to 1993.

[12] The bargaining agent added that Ms. Rhéaume had based her complaint on decision 2000 PSSRB 105. However, she had awaited the outcome of judicial review proceedings (2003 FCA 188) before filing her complaint in October 2003.

[13] Ms. Rhéaume contended for her part that she had not previously filed a complaint against her bargaining agent because her file was still active and she had expected to win at the adjudication stage.

[14] According to the complainant, it was not until November 2000 that she became aware that her bargaining agent could have taken other action to defend her interests from 1991 to 1993. She referred on this point to 2000 PSSRB 105, paragraphs 26 to 28:

[...]

[...] I cannot imagine why, on July 16, 1993 at the latest, at the time she obtained a position, Ms. Rhéaume did not file a grievance claiming compensation for the period when she had no salary if she believed she was so entitled.

[...]

[...] I must find that the grievance is untimely, having been filed several years after the incident that gave rise to it (lack of compensation in 1992-1993). [...]

[15] According to Ms. Rhéaume, she did not realize until after that decision that a grievance could have been filed in 1993. The decision was rendered in November 2000. Ms. Rhéaume contended that she had awaited the outcome of the judicial review proceeding to see what would happen.

[16] In conclusion, Ms. Rhéaume noted that it was difficult to attack her bargaining agent in view of her situation; she had filed a number of grievances and she needed to be represented. It was not until she was faced with the fact that she would be unable to win her case regarding the loss of salary she had suffered from 1991 to 1993 that she decided to file a complaint against her bargaining agent.

Reasons for Decision

[17] For a clear understanding of the case, I refer to the succinct history filed by the bargaining agent (Exhibit S-1), which is consistent with the list of events emphasized by Ms. Rhéaume.

[*Translation*]

HISTORY

- May 1987** *The complainant began working as a verification officer (PM2) at Revenue Canada.*
- September 11, 1990** *She filed the first of nine (9) grievances submitted during the period from 1990 to 1993, involving 32 alleged episodes of harassment and discrimination by her supervisors.*
- November 27, 1990** *She was absent from work due to illness.*
- February 27, 1991** *The complainant exhausted her sick leave credits. Her disability insurance benefits commenced.*
- April 1, 1991** *She said she was able to occupy a position in which she would not be in contact with her former supervisors. Sun Life accordingly terminated disability insurance benefits as of April 1, 1991, and the complainant received no salary from April 1 to August 2, 1993. Sun Life suggested that the complainant file a benefit application with the Commission de la santé et de la sécurité du travail (CSST) for a decision.*
- January 22, 1992** *The complainant filed a harassment grievance seeking payment of an amount of money "covering the total amount of lost salary and all the benefits associated with it, retroactively to April 1, 1991".*

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- June 29, 1992** The CSST denied the complainant's application. She appealed the CSST's decision to the Commission d'appel en matière de lésion professionnelle (CALP).
- June 30, 1993** The employer offered the complainant an inquiry officer position in the interpretation and services division of the REGLO.
- July 16, 1993** The complainant accepted the new position.
- August 2, 1993** She began working in the new position.
- June 27, 1994** The harassment grievance filed on January 22, 1992, was dismissed after seven (7) days of hearings by Yvon Tarte, Deputy Chairperson of the Public Service Staff Relations Board. The other eight (8) grievances filed since September 11, 1990, were withdrawn at the start of the hearings.
- April 18, 1995** The employer informed the complainant that it considered her to be on long-term unpaid sick leave from April 1, 1991, to August 2, 1993.
- January 26, 1996** CALP dismissed the complainant's appeal and decided that she had not been the victim of an industrial accident or occupational disease.
- July 1996** Based on a re-examination of the complainant's file, Sun Life denied disability benefits.
- May 26, 1997** Sun Life agreed to review the complainant's file, and the denial of disability benefits was put before the National Joint Council of the Public Service of Canada (NJC).
- December 15, 1997** The NJC rendered a final negative decision on the complainant's right to disability insurance benefits for the period from April 1, 1991, to August 1, 1993.
- February 2, 1998** The complainant filed grievance 98/1208-002 asking that the employer compensate her for the period from April 1, 1991, to August 2, 1993.
- September 14, 1999** The employer dismissed grievance 98/1208-002 on the ground that it was

untimely and, in view of Yvon Tarte's decision of June 27, 1994, on the ground that it was res judicata.

- December 6, 1999** *The Public Service Alliance decided, for the same reasons as the employer, not to continue grievance 98/1208-002. The complainant submitted the grievance to adjudication independently of the union.*
- November 27, 2000** *Grievance 98/1208-002 was dismissed by Jean-Pierre Tessier, Member of the Public Service Staff Relations Board, on the ground that it was untimely. The complainant filed an application for judicial review with the Federal Court.*
- January 29, 2002** *The Federal Court - Trial Division dismissed the complainant's application for judicial review. The complainant appealed the decision.*
- April 14, 2003** *The Federal Court - Appeal Division dismissed the complainant's appeal.*
- October 17, 2003** *The complainant filed a complaint under section 23 of the Public Service Staff Relations Act, in which the Public Service Alliance of Canada was named as respondent.*

[18] Ms. Rhéaume contended that her complaint was not filed late because it was not until decision 2000 PSSRB 105 was rendered in November 2000 that she realized that a salary claim grievance could have been filed in 1993. Examination of Exhibits S-5 and S-6 filed by the respondent reveals quite a different story.

[19] In his legal opinion on December 6, 1999 (Exhibit S-5), which was forwarded to Ms. Rhéaume that same day, counsel for the bargaining agent addressed the question of the salary claim grievance which could have been filed in 1995. Counsel wrote:

[Translation]

[...]

Furthermore, as sister Rhéaume had previously filed a large number of grievances, we could not claim that she was unaware of the time limits in effect for filing grievances. We believe that it was an error not to file a grievance in the dispute concerning the loss of compensation in April 1995, an error that we unfortunately cannot correct more than

three years later based on the decision of a third party. There was an absence of action or circumstances attributable to the employer in the 25 days preceding the filing of sister Rhéaume's grievance.

[...]

[20] Another part of the legal advisor's opinion is even more revealing of Ms. Rhéaume's knowledge of the file in December 1999, where he referred to a letter that Ms. Rhéaume purportedly wrote to the bargaining agent in response to the employer's refusal in 1995.

[*Translation*]

[...]

Sister Rhéaume moreover stated in her last letter: "The employer wrote a letter to me on April 18, 1995, and contended again at that time that my loss of salary had been caused by my long-term unpaid sick leave. Before filing a grievance to claim my salary as an employee, I had to address the question of harassment for the grievances filed on that matter, a question that was closely related to the industrial accident claim." We do not agree with her analysis. We believe it is incorrect to claim that she had an obligation to address the question of harassment before filing a grievance on the employer's April 1995 refusal to compensate her, notwithstanding the ground advanced by it in support of its refusal. It was at that moment that she should have filed a grievance, if she believed she had been harmed by the employer's refusal to compensate her during the period in question. [...]

[...]

[21] The opinion of the bargaining agent's legal advisor is clear on the timeliness of filing a grievance for lost salary, as is his conclusion that the grievance was filed late. Decision 2000 PSSRB 105 confirms the position that Ms. Rhéaume's grievance was untimely.

[22] The legal opinion of December 6, 1999, is very clear that it was an error not to file a grievance in 1995, and it attributes that error to Ms. Rhéaume, who, having filed many grievances, should have been aware of the time limit.

[23] If, being aware of the position of the bargaining agent's legal advisor in 1999, she sincerely believed that the bargaining agent was responsible for that error and that it

had acted in bad faith, Ms. Rhéaume should have acted as quickly as possible by filing a complaint against her union. It was not until October 2003, three years and nine months later, that Ms. Rhéaume filed a complaint.

[24] Three (3) Board decisions, *Giroux v. Health Canada*, PSSRB files 161-2-825 and 826 (1999) (QL); *Harrison v. Public Service Alliance of Canada*, PSSRB file 161-2-739 (1995) (QL); and *Machnee v. Klaponski*, 2001 PSSRB 28, indicate that the time limit for filing a complaint under section 23 of the *Public Service Staff Relations Act* may be extended over a number of months, but that it is up to the complainant to provide a satisfactory explanation for the delay in filing his or her complaint.

[25] The complaint refers to events in 1991, 1993 and 1995 (employer's letter of refusal). The question as to whether it was appropriate to file a grievance was analyzed in December 1999, and decision 2000 PSSRB 105 of November 2000 confirmed the respondent's analysis.

[26] It must be kept in mind that this complaint refers to events that occurred in 1992 and 1993. The 1999 legal opinion clearly analyzes the earlier situation, and Ms. Rhéaume did not file her complaint until October 2003. I see no reason to allow the complaint, which was filed late.

[27] For these reasons, the complaint is dismissed.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, July 26, 2004

P.S.S.R.B. Translation