

**Date:** 20040426

**File:** 161-2-1237

**Citation:** 2004 PSSRB 31



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**CLAUDE CARIGNAN**

Complainant

and

**CÉCILE LABISSONNIÈRE AND  
PUBLIC SERVICE ALLIANCE OF CANADA**

Respondents

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

**Before:** Jean-Pierre Tessier, Board Member

**For the Complainant:** Himself

**For the Respondents:** Gaby Lévesque, Public Service Alliance of Canada

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Heard at Ottawa, Ontario,  
November 10, 2003

## DECISION

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[1] Claude Carignan is a plumber (Operational Services Group) for the Department of Veterans Affairs Canada and his workplace is the Hôpital de Ste-Anne-de-Bellevue, Quebec.

[2] On January 20, 2002, he participated in mediation to resolve a grievance that he had submitted to his employer contesting his dismissal.

[3] During the mediation session, various solutions were explored, pension options were discussed and information was exchanged. A settlement was reached during the mediation session and was signed by the parties.

[4] Mr. Carignan subsequently expressed his dissatisfaction with what had taken place and disavowed the settlement he had signed. He alleges that he was poorly represented and misled by Cécile LaBissonnière, the representative of the Public Service Alliance of Canada (Alliance) who helped him during the mediation.

[5] Mr. Carignan filed a complaint with the Public Service Staff Relations Board (Board) on August 20, 2002. He based his complaint on a failure to adhere to the prohibition set out in subsection 10(2) of the *Public Service Staff Relations Act (PSSRA)*, claiming that Ms. LaBissonnière and the Alliance (respondents) poorly represented him and misled him. Mr. Carignan is asking the Board to issue an order so that counsel of his choice can represent him as he pursues his grievance and to require the Alliance to pay the fees and any other costs incurred.

[6] The hearing was held on November 10, 2003, in Ottawa. The delay between the filing of the grievance and the date of the hearing is the result of postponements requested on several occasions.

### Evidence and arguments of the parties

[7] At the hearing, Mr. Carignan explained that he was dismissed by his employer in February 1999. He objected to this dismissal through the grievance process.

[8] Prior to proceeding with the hearing of the grievance, the parties agreed to meet for mediation on January 20, 2000. Mr. Carignan argues that the respondents poorly represented him at that time.

[9] In addition to his detailed complaint (Exhibit P-1), he submitted a summary of the events that occurred prior to mediation (Exhibit P-4) and a list of questions he has regarding the respondent's actions in respect of his grievance (Exhibit P-3).

[10] Mr. Carignan explained his disappointment concerning the amount of pension benefits to which he would be entitled. After the mediation session, he found out that, in fact, he would not be entitled to the amount of pension that he believed he would receive.

[11] Mr. Carignan explained that, during his career, he had to be absent from work for health reasons. He claims that his health problems were related to his work. In his opinion, a pension for medical reasons would be more advantageous than a regular pension. In addition, by retiring, he claims that he is no longer entitled to receive wage-loss insurance from the insurance company.

[12] He argues that he always understood the mediation agreement to be an interim agreement and that he could withdraw from it later.

[13] For her part, Ms. LaBissonnière claims that it was in Mr. Carignan's interest to settle the dispute. She explained that Mr. Carignan was dismissed by the employer and that there is no guarantee under adjudication. The settlement enables Mr. Carignan to be reinstated on leave without pay until his voluntary retirement. While it was up to Mr. Carignan to accept the settlement, she advised him to do so because there were benefits for him.

[14] According to Ms. LaBissonnière, the discussions around the amount of pension to which Mr. Carignan would be entitled were only exploratory. No specific amount or any guarantee could be certified. The important thing was to obtain a concrete outcome for voluntary retirement, rather than risk adjudication where the outcome is unknown.

### Reasons

[15] It is important to fully understand that the mediation agreement constitutes an agreement between the parties and the grievance adjudicator appointed to decide the dispute between the parties may not intervene to ensure its execution. A number of decisions pursuant to the PSSRA deal with this aspect: *Déom* (Board file 148-2-107) and *Fox v. Treasury Board (Immigration and Refugee Board)* (2001 PSSRB 130).

[16] A grievance adjudicator has already ruled that he does not have jurisdiction to intervene in the dispute between Mr. Carignan and his employer on the validity of the agreement and its execution (*Carignan v. Treasury Board (Veterans Affairs Canada)*, 2003 PSSRB 58). Since there is a valid agreement, there is no longer a dispute between the parties. Guy Giguère, the grievance adjudicator, writes:

*[48] Given that the Board has no jurisdiction to decide whether the conditions of the agreement and the rules were respected, it also does not have jurisdiction to determine whether one of the parties acted in bad faith in the application of the agreement. That argument must accordingly be dismissed, as well.*

*[49] Having determined that the parties have settled this grievance, I conclude that there is no longer any dispute between them and accordingly no dispute needs to be resolved by an adjudicator appointed under the Act. These proceedings are thus closed.*

[17] In the instant case, the question is to determine whether, in the performance of their mandate to represent Mr. Carignan, the respondents acted in a manner that was arbitrary, discriminatory or in bad faith.

[18] Based on the evidence presented and a review of the documentation submitted, I conclude that the respondents acted properly. A meeting was held with Mr. Carignan, the dismissal was apparently rescinded and the agreement allowed Mr. Carignan to receive benefits. The explanations provided by the respondents are credible. Action was taken and advice was given to Mr. Carignan that were solely in the latter's interest.

[19] The complainant was unable to satisfy me that the respondents contravened subsection 10(2) of the *PSSRA* by acting in a manner that was arbitrary, discriminatory or in bad faith.

[20] Accordingly, I dismiss the complaint.

**Jean-Pierre Tessier,  
Board Member**

OTTAWA, April 26, 2004.

P.S.S.R.B. Translation