Files: 148-2-367
151-2-13
151-2-14

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

TREASURY BOARD

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

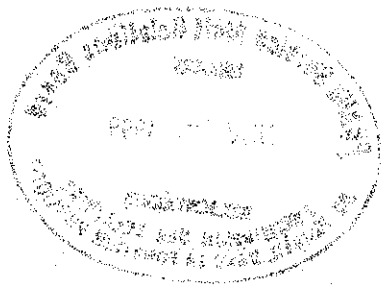
RE: Applications for extension of time by the Employer to section 57 of the *Public Service Staff Relations Act* and complaints by the Bargaining Agent pursuant to section 21 of the said *Act*

Before: Yvon Tarte

For the employer: Raymond Piché

For the bargaining agent: Edith Bramwell

Heard at Ottawa,
31 August 1999



This decision is concerned with two applications by the employer pursuant to paragraph 57(1)(*b*) of the *Public Service Staff Relations Act* (*PSSRA*) to extend the time limit for the implementation of the Operational Services (table II) collective agreement and the Correctional Services (CX) collective agreement as well as two complaints by the Public Service Alliance of Canada (PSAC) pursuant to section 21 of the *PSSRA* relating to the employer's failure to implement the aforementioned collective agreements in the manner prescribed by statute.

Pursuant to section 57 of the *PSSRA*, the parties to a collective agreement are required, where no other time period is specified in the collective agreement, to implement its provisions within ninety days after its execution. Section 57 further allows the parties to a collective agreement to agree to a longer period than the ninety days and, where no such agreement exists, allows the Board to set a longer period on application by either party.

The evidence adduced at the hearing shows that the table II agreement was executed on 16 April 1999 whereas the CX agreement came into effect by order-in-council on 30 March 1999. Thus, the ninety-day period for the table II agreement expired on 15 July 1999 and for the CX agreement, on 29 June 1999.

At the request of the parties all four matters were grouped together for hearing purposes. Only one witness, Tom Smith, the Director of Pay Administration in the Labour Relations Division at the Treasury Board (TB) was called to testify. A summary of his testimony follows.

In early July 1999, the Department of National Defence and the Department of Fisheries and Oceans advised the TB that they would not be able to implement the table II collective agreement within the statutory deadline. Immediately the TB undertook to work with these departments to identify problem areas and find solutions.

Several problems were quickly identified. In many cases, employees owed money had been on strike during the retroactive period. Their files had to be dealt with separately. Furthermore, the table II agreement was extremely difficult to implement because of the changes in pay zones, regional rates and hourly rates.

In addition, the employer was faced with the implementation in rapid succession of several other collective agreements. These factors combined to create an incredible work burden for departmental finance officers.

Most of the benefits under both collective agreements were implemented within the ninety-day period. The accounts in arrears dealt mostly with overtime payments which had to be processed manually by departmental financial officers and generally required between one and two days of work each.

In order to complete the implementation of the table II collective agreement, the employer approved extensive voluntary overtime and work at home, postponed most discretionary leave, temporarily reallocated staff to the compensation function, provided quiet hours to allow financial officers to work without interruptions and gave top priority to the implementation work.

The implementation of the table II agreement was completed by 27 August 1999. Although the employer kept the departments aware of its obligation under section 57 of the *PSSRA*, it did not have in place a formal automated tracking system of the implementation of the various collective agreements.

The employer considered the question of timely implementation prior to signing the table II and CX agreements. It believed that the implementation of those agreements could be done within the statutory ninety-day period. The employer was bolstered in this view by the fact that it had successfully completed the table I collective agreement implementation, covering some 85,000 employees, within the prescribed time limits. Unfortunately, fatigue set in and the necessary work to fully implement the table II and CX agreements could not be completed in time.

Prior to its request for an extension of time on 14 July 1999, the employer contacted the PSAC to discuss the problem and the possibility of an extension.

With respect to the CX collective agreement, the implementation problems were much the same as those for table II. The difference here, however, is in the fact that the employer did not realize it had missed the implementation deadline until it had expired.

Six hundred CX accounts from the Atlantic region out of a total CX population of approximately 6,000 were not completed in time. The implementation of the CX collective agreement was completed by 16 August 1999. Again, the employer, when made aware of the situation, approved extensive voluntary overtime and work at home, borrowed staff from other regions and reallocated resources of the finance sector to complete the CX implementation by 16 August 1999. Correctional Services Canada was slow to react in this case.

Arguments by the parties

The employer argued that the implementation problems which arose in these two cases were not easily foreseeable. Furthermore, the employer might have been overly optimistic in these matters because of its successful implementation of the table I collective agreement.

The table II collective agreement presented extremely complex implementation issues. The employer was not negligent or incompetent in its conduct. In *Treasury Board and Public Service Alliance of Canada* (Board file No. 151-2-12), Deputy Chairperson Chodos (as he then was) allowed an extension of time for the implementation of several collective agreements in similar circumstances.

It was impossible for the employer to foresee all of the problems that would arise in the implementation of the table II and CX collective agreements. Nor was it possible to predict the level of fatigue that set in the ranks of financial departmental officers.

The bargaining agent argued that the employer knew or should have known that it could not meet the ninety-day implementation period and should have raised the question at the bargaining table.

As in *Treasury Board and Public Service Alliance of Canada* (Board file No. 151-2-7), the employer once again showed a lack of foresight. By exercising due diligence the employer would have known the problems that lay ahead. The employer has a very heavy onus to show that the problems which caused the implementation delays could not have been foreseen.

The employer has traditionally been able to get away with violations of section 57. Since no interest is payable for failure to meet the statutory deadline, the employer has no incentive to meet those deadlines.

The PSAC believes that the Board has the authority under section 21 of the *PSSRA* to impose fines for violations of the *Act*.

The Federal Court decision in *Eaton v. Canada*, [1972] F.C. 185 (F.C.T.D.), supports the position that the employer should be held responsible for damages incurred by employees who were not given retroactive payments within the time limits set by the *PSSRA*.

The Board is given the responsibility to administer and enforce the *PSSRA*. With that responsibility comes the authority to award "Eaton"-type damages. The PSAC therefore requests that the Board remain seized of this matter to give the bargaining agent an opportunity to canvass its members to ascertain whether any have suffered damages as a result of the employer's tardiness. In any event, the employer has violated the *Act* and its conduct should not be sanctioned by the granting of an extension of time limits.

In reply, the employer stated that the Board has no jurisdiction to deal with the civil liability of the Crown.

Reasons for decision

Section 57 of the *PSSRA* requires that the provisions of a collective agreement be implemented by the parties, where no period is specified in the collective agreement, within ninety days after the date of its execution. The section allows for the extension of the ninety-day time limit.

The Board has on many occasions previously indicated that this provision requires the employer to make the necessary assessment of its resources for implementation purposes prior to the execution of a collective agreement. The section also dictates that the employer move quickly to address a situation which could not reasonably have been foreseen and which arises after the execution of an agreement. The parties have an onus to properly assess, and continue to assess until its completion, the implementation of a collective agreement.

I would strongly suggest to the parties that the question of implementation be raised officially at the bargaining table in all cases prior to the execution of a collective agreement. A joint and open discussion of all issues surrounding implementation undertaken in a timely manner might very well have prevented some of the problems which arose in these cases.

With respect to the table II agreement, I am satisfied that the reasons given by the employer to explain its failure to implement that collective agreement within ninety days following its execution and its conduct to assess and follow-up quickly when problems arose, justify the granting of an extension of time. Accordingly, the Board extends to 27 August 1999 *nunc pro tunc* the time for the employer to implement the table II collective agreement executed on 16 April 1999. As a result, the bargaining agent's complaint under section 21 with respect to the table II agreement is hereby dismissed.

With respect to the CX agreement, I am not satisfied that the employer acted in as diligent a manner as it should and could have. It is unnacceptable that an implementation date can come and go without the Treasury Board knowing that the *PSSRA* has been violated.

There appears to have been a breakdown in communications and monitoring in the CX situation. The Treasury Board as employer must ensure that all departments involved in the implementation of a collective agreement conduct themselves in keeping with the requirements of the *Act*. I will therefore not grant the extension of time requested by the employer. The employer therefore did not comply with its obligations under paragraph 57(1)(*b*) of the *PSSRA* and I so declare. Since the implementation of the CX collective agreement was completed at the time of hearing, I need not order immediate compliance with the *Act*.

This Board has stated on numerous occasions that it has no authority to award interest in such matters. No order for the payment of interest can therefore be made on the late payments in the CX situation.

The bargaining agent has also sought "Eaton"-type damages for its members without evidence that damages were in fact incurred. The bargaining agent would like to be given the opportunity to go back to its membership to ascertain whether

members have suffered financially as a result of the employer's lateness in the implementation of the CX collective agreement.

Even if the Board has the authority to award damages in appropriate cases, and assuming for the sake of this decision that it does, I do not believe that it would be appropriate to award damages in the circumstances of this case, especially since at the hearing none have been proven to exist.

Accordingly, the employer's application for extension of time to implement the CX collective agreement is denied. The bargaining agent's application under section 21 is granted to the extent stated herein.

Yvon Tarte
Chairperson

DATED in Ottawa this 12th day of October 1999.