

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

JAN LIBERTY

Complainant

and

JAN POTTS AND TREASURY BOARD

Respondents

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

Before: Rosemary Vondette Simpson, Board Member

For the Complainant: Barry Done, Public Service Alliance of Canada

For the Respondents: Judith K. Begley, Counsel

Heard at Windsor, Ontario,
April 29, 1997.

DECISION

The complainant, Jan Liberty, was at all material times employed as a CR-5, Service Delivery Agent, with the Department of Human Resources Development Canada. On April 26, 1996, she filed a complaint under section 23 of the *Public Service Staff Relations Act (PSSRA)* naming as respondents the employer and Jan Potts, (then) Acting Area Manager, Human Resources Development Canada, Chatham, Ontario. The complaint alleged that the respondents had failed to comply with the prohibitions found in section 8 of the *PSSRA* in that:

At a staff meeting to discuss ongoing classification concerns called by the employer on November 7, 1996 (sic) at 2:45 p.m., attended by, among others, the complainant, the respondent and at least nine clerical workers/members of the bargaining agent, a direct threat was made by the respondent to those present, "if the grievances go through, I will cancel all acting appointments/situations and remove the surplus CTB staff from their CR-3 support positions, as well as their salary protected status under the W.F.A."

This statement interferes with employees' rights generally under section 6 of the Act and the unions right to refer/provide representation on grievances. Both those who had grieved (53), those who were in acting appointments and representatives were intimidated/discriminated against by this threat.

In her complaint, the complainant requests that the Board issue the following order:

Declare that the respondents have violated the Act (section 8), order the respondents to cease and desist from further similar actions, order the employer to ensure that its employees enjoy their right to grieve without repercussions to their employment and any additional order the Board deems necessary to make the complainant/affected employees whole.

The employer responded by letter dated June 18, 1996 directed to the Board from Georges Hupé, Employer Representation Officer:

The following is in response to the Section 23 complaint recently filed against Jan Potts by Ms. Jan Liberty. The information below will also provide a context to the discussion that occurred on Nov. 7, 1995.

In 1995, the Federal Government decided to transfer the Child Tax Benefit Program (CTB) from the Department of Human Resources Development Canada (HRDC) to Revenue Canada. With the transfer of the program, Revenue Canada offered deployments to the HRDC/CTB employees (July 1995). Some CTB employees who were not mobile to move with the Child Tax Benefit Program to Revenue Canada were offered CR 3 Program Support positions with HRDC.

Before the remaining CTB employees could be deployed or re-deployed to the HRDC positions, Regional Classification advised Management that the Program Support positions had to be updated and reviewed. In addition, Management was advised that this exercise would be required to extend any acting assignments as well.

In recognition of the importance of securing positions for the CTB employees and continuing acting assignments, documentation was submitted in June 1995 to initiate the review and update of the Program Support positions.

It must be noted that Management had expressed concerns to Classification regarding this update and review exercise. While the classification exercise was undertaken in June 1995, it was well known that a National Program review had been underway that would result in new Program Support job descriptions and classification levels in March 1996. It, therefore, seemed inappropriate to Management to update positions that were under review at a national level. Notwithstanding, due to the impact of not carrying out this exercise, Management submitted existing and unrevised job descriptions in June 1995 for the required update and review exercise. Employees were subsequently appointed and deployed to applicable positions. The union was apprised of the actions that had to be taken to deploy and or re-deploy the CTB employees.

In accordance with standard classification procedures, employees were notified in writing that their positions had been updated and reviewed. As updated job descriptions had not been written for this exercise, employees began to enquire into Management's actions.

On Nov. 7, 1995, Management met with the employees to discuss the classification action that had been taken prior to their appointments and deployments. During this meeting Management explained why the positions had been updated without revising the existing job descriptions and that this exercise was undertaken to facilitate and expedite the deployment of employees and extension of acting assignments. Notwithstanding, employees expressed their

concern that Management's decision not to submit an updated job description for the period of August 1995 - March 7, 1996 could impact on their classification level once the Program Redesign was completed.

At no time did Management threaten to end assignments or prevent deployments from being actioned in the event of any form of a complaint. In fact, at this point, the deployments had already been actioned.

While Management explained that Program Redesign was a national initiative which would not be impacted by the old job descriptions, employees decided to file job content and classification grievances. In accordance with the requirements of the collective agreement, Management upheld the employees' grievances and updated job descriptions were written to cover the period between August 1995 and March 7, 1996, (date of regional implementation of new positions under Program Redesign).

It is management's position that no action has been taken to interfere with employee or union rights. In fact, it is management's view that every effort was taken to secure positions for affected employees and continue acting opportunities.

Furthermore, the decision to uphold the job content grievances at the first level, demonstrates Management's recognition of the employees' concerns and their respect for the parameters of the collective agreement.

The complainant testified that in the fall of 1995 many changes had taken place and were taking place in the office. In 1995, the Government decided to transfer the Child Tax Benefit (CTB) program from the Department of Human Resources Development Canada (HRDC) to Revenue Canada. Some CTB employees who chose not to move with the program were given CR-3 program support positions with HRDC.

At least 30 people were in acting positions. The CR-2's had been told that new technology would eliminate them completely. Ms. Liberty was kept very busy answering the questions of staff, questions which were being posed daily and hourly. They were told that they were not yet in the "end-state" of change. The office was in a constant turmoil. A large number of grievances were filed concerning acting pay, classification and statement of duties. At one point, management proposed that the grievors choose one of three options for dealing with the grievances, one of which was

to have them held in abeyance for a time. The grievors decided, however, to have the grievances proceed individually and to have them processed in the usual manner.

Ms. Liberty testified that a staff meeting was held on November 7, 1995. The meeting dealt with classification letters that the staff had received in September 1995. Approximately 53 grievances had been filed against these classification letters. The meeting was called by the Manager, Jan Potts, and purported to be an information session. Ms. Liberty testified, however, that very little information was available from Ms. Potts. The latter appeared to be flustered and annoyed at the repeated questioning of the staff. Staff kept asking her why she had held the meeting if she did not have any answers. Staff members were fearful and frustrated and were concerned about their jobs. Ms. Liberty stated in her notes (Exhibit C-2) that at the meeting Ms. Potts stated that if the grievances went through she would cancel all acting appointments and remove the CTB staff from their positions. They had been placed in CR-3 support positions with salary protection. Ms. Liberty noted that a Patricia Brenders, who was taking minutes for the bargaining agent, asked if this was a threat. There was no response from management and Ms. Potts continued to speak.

In her evidence at the hearing, Ms. Liberty stated that Ms. Potts had said: "If you continue with your complaints, I'll put everything back the way it was. I'll discontinue the acting appointments, the deployments and the redeployments". Several staff members left the meeting and some were in tears. After the meeting, some staff members approached Ms. Liberty and indicated that they had felt threatened.

Ms. Potts' statement caused staff to be fearful and pitted those who had grieved the classification against those who had not grieved and left all doubting the grievance process and those who represented the bargaining agent. After the meeting, nine staff members signed Ms. Liberty's notes indicating their agreement with her version of the events at the meeting (Exhibit C-2).

In cross-examination, Ms. Liberty stated that she had not delayed filing her complaint. Immediately after the incident, she sent a facsimile from her home to her component headquarters even though the complaint itself was not signed until April 26, 1996, some five and one-half months after the incident in question.

Patricia Brenders testified on behalf of the complainant. She was a Canada Pension Plan analyst at Chatham in the fall of 1995 and she also held a position with the bargaining agent as a director of the National Health and Welfare local in Chatham. Ms. Brenders testified that at the November 7, 1995 meeting chaired by Jan Potts, people were getting angry and upset. At one point, Ms. Potts started to become agitated. Her tone became louder, firmer and almost belligerent. She had her hand on her hip and said: "If these complaints persist, I'll undo everything". Ms. Brenders stated that she felt threatened and thought: "That's a threat". Staff members challenged the validity of the meeting saying to Ms. Potts: "If you have no answers, why did you call this meeting?". There was much confusion at the meeting. After the meeting, she was never aware that questions raised had been answered by Ms. Potts through the E-Mail system.

The respondents' position was presented by Jan Potts, the most senior manager at the time in question, Diane Carleton, Program Chief, and Steve Rankin, then a district manager.

Ms. Potts stated that she called the meeting of November 7, 1995 because of the confusion among the staff and their concerns about the ongoing classification exercise. She wanted to address them directly, hear what their concerns were and try to answer their questions. Because of the rapid changes that had recently taken place in the Department, including the movement of the CTB program to Revenue Canada, she had acted quickly to preserve the employment of staff by making deployments, placing people in acting positions and placing some of the CR-4's in salary protected CR-3 positions. All of these activities were going on at the same time. The process ran into a technical snag when it was required that job descriptions in the Department which were outdated had to be submitted even though a review of job descriptions was taking place at the national level. It had been explained to the bargaining agent in September that the job description exercise was a paper exercise only, a paper update which was open and transparent.

In his evidence, Steve Rankin, at the time in question a district manager, stated that he was present at the meeting in September when the bargaining agent was informed that the job description exercise was a paper exercise only and simply to allow the employees to be deployed and placed in their acting positions.

At the meeting of November 7, the staff had many questions, some of which were posed aggressively, and she had no answers for many of the questions. She did, however, promise to find out the answers to their questions as soon as possible. She in fact posted a computerized bulletin answering their questions on the same day as the meeting (November 7, 1995). Using the electronic bulletin board to post information was the usual and preferred method of delivering information. She heard no more about the matters raised at the meeting until March 1996 when she was asked whether or not she had ever answered the questions raised at the meeting. She had answered their questions by E-Mail in “the electronic bulletin board”, the usual way of communicating with employees on a day-to-day basis. When some employees stated that they had not seen the E-Mail and wondered if she had ever tried to answer their questions, she caused the system to be searched and the E-Mail was found, indicating that she had indeed answered their questions. The bulletin she had sent to staff on November 7, 1995 answering their questions was pulled out of the system in March 1996.

At the end of May 1996, Ms. Potts was scheduled to be transferred to another position in a different location. Her last day of work before moving to her new position was May 30, 1996. Never once was she told that Jan Liberty had claimed that she issued a threat at the meeting of November 7, 1995 until her last day of work on May 30, 1996 when she was presented with this complaint. Her reaction was that this was a “parting gift” from Ms. Liberty. Ms. Potts stated that she was not even a step officer in the grievance process. She had nothing to do with the grievance process and to her knowledge the grievances proceeded through the system in a normal fashion. No such threat was uttered. She never attempted to threaten or intended to interfere with any grievance rights. She had worked diligently to put together a system of acting positions and deployment to carry the staff through this difficult transition. She recalls saying something like: “What would you have had me do - not put all the deployment and acting positions in place?” The idea of taking away people’s acting positions was ridiculous because they were going into the busiest part of the season and they needed all the staff available to them. In addition, the changes were already in place and she did not even have the authority to make such changes.

Diane Carleton, who was present throughout the November 7 meeting, heard no threats. She was quite vehement that if she had heard a threat it would have made a big enough impression on her that she would have remembered it. She remembered the tone of the meeting and, if a threat had been uttered, she would have expected a blow-up in the whole room because the atmosphere was so tense. Ms. Carleton stated that as she was a step officer in the grievance process, there was no doubt in her mind that she would have had to deal with the alleged threat in the grievance process. It was impossible that there was any threat made by Jan Potts.

Arguments

In argument, both parties urged the credibility of their witnesses. Mr. Done admitted that the burden of proof was his. They presented the following cases: *McNicoll* (Board file 161-2-173) and *Veilleux* (Board file 161-2-245).

Reasons for Decision

The relevant provisions of the *PSSRA* are sections 6, 8 and paragraph 23(1)(a):

6. Every employee may be a member of an employee organization and may participate in the lawful activities of the employee organization of which the employee is a member.

8.(1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.

(2) Subject to subsection (3), no person shall

(a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;

(b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member

of an employee organization or exercising any right under this Act; or

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee

(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or

(ii) to refrain from exercising any other right under this Act.

(3) No person shall be deemed to have contravened subsection (2) by reason of any act or thing done or omitted in relation to a person who occupies, or is proposed to occupy, a managerial or confidential position.

23.(1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed

(a) to observe any prohibition contained in section 8, 9 or 10;

...

On the balance of probabilities, the complainant did not discharge the burden of proving that a threat was made. I have reached this conclusion for the following reasons. There was much confusion at the meeting. The many changes that had taken place very rapidly in the office created a high level of stress. There were many pressures on both the bargaining agent and management to deal with the concerns of employees who were undergoing a great deal of emotional stress. In this highly charged atmosphere, it is understandable that one might hear a threat where there was actually none.

In addition, from November 7, 1995 to May 30, 1996, nothing arose in the ongoing relationship between the bargaining agent and management that gave Ms. Potts even an inkling that someone had complained of her making a threat that would have interfered with the grievance process. The long delay and the fact that

Ms. Potts was handed the complaint against her on her very last day before her transfer raises some doubt about the seriousness of Ms. Liberty's concerns.

For all these reasons, the complaint is dismissed.

**Rosemary Vondette Simpson,
Board Member**

OTTAWA, November 4, 1997.