

Date: 20011214

File: 161-2-1199

Citation: 2001 PSSRB 128



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MIKE BUCHANAN

Complainant

and

CORRECTIONAL SERVICE OF CANADA

Respondent

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

Before: [Yvon Tarte, Chairperson](#)

For the Complainant: [Mike Buchanan](#)

For the Respondent: [Chantal Beausoleil, Treasury Board, and Colleen Edwards,
Counsel](#)

(Decided on the basis of written submissions)

DECISION

[1] This decision deals with the issue whether the Board should dismiss, for want of jurisdiction, a complaint filed by Mr. Mike Buchanan pursuant to paragraph 23(1)(a) of the *Public Service Staff Relations Act* (Act), which alleges that the Correctional Service of Canada (Service) failed to observe the prohibitions contained in subsection 8(1) of the Act.

[2] The prohibitions contained in subparagraph 8(1) of the Act read as follows:

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.

Facts

[3] The following facts are not in dispute.

[4] Mr. Buchanan is a correctional officer with the Service at the Bowden Institution, in Innisfail, Alberta. He alleged that, on the occasion of a disciplinary investigation which the Service was conducting in relation to him, he requested to be represented, first by his bargaining agent, and later by counsel. According to Mr. Buchanan, representatives of the Service responded that he was not entitled to representation at that time.

[5] On July 5, 2001, Mr. Buchanan filed his complaint, alleging interference in what he considered was his right to be represented at the disciplinary investigation.

[6] One month before the hearing scheduled in this matter, the Service objected to the Board's jurisdiction to hear this complaint. The parties were given an opportunity to argue that objection in writing. That process was concluded on November 14, 2001. On November 19, 2001, the Board informed the parties that it would render a decision on the basis of their submissions.

Submissions of the parties

[7] The Service argued that Mr. Buchanan has no standing to file his complaint. It submitted that the right to file a complaint alleging a failure to observe the prohibitions contained in subsection 8(1) of the Act is limited to an employee organization. The Service requested that the Board dismiss the complaint accordingly.

[8] The Service referred to the following decisions in support of its position:

Reekie v. Thomson (Board file 161-2-855);

Feldsted v. Treasury Board and Correctional Service of Canada (Board files 161-2-944, 947 and 954); and

Clock v. Board of Governors (Ontario Labour Relations Board file 0832-91-U, June 13, 1991), [1991] OLRB June 734 (Quicklaw).

[9] Mr. Buchanan responded that his bargaining agent had fully endorsed his complaint and requested that "... this matter continue as scheduled."

[10] The Service replied that the bargaining agent's support to Mr. Buchanan's complaint did not give the Board jurisdiction to deal with the matter.

Reasons for Decision

[11] In the case at hand, the issue before the Board is whether it should dismiss Mr. Buchanan's complaint for want of jurisdiction.

[12] Mr. Buchanan's complaint raises a serious concern as to the Board's jurisdiction to hear it. Indeed, the alleged omissions forming the complaint relate to the right of an employee to be represented during a disciplinary investigation. In *Reekie v. Thomson, supra*, the Board found that subsection 8(1) of the Act protects the right of an employee organization, not that of an employee, against the employer's interference and that only an employee organization, or an official representative of an employee organization, can complain of the employer's failure to observe that right. That decision was followed in *Czmola v. Garwood-Filbert* (Board files 161-2-938, 939, 942 and 953), *Feldsted v. Treasury Board and Correctional Service of Canada (supra)* and *Feldsted v. Public Service Alliance of Canada and Union of Solicitor General Employee* (Board files 161-2-945, 946 and 955), where the Board found that:

...

... it is clear upon reading subsections 23(1) and 8(1) of the PSSRA that only an employee organization or a person acting on its behalf has the statutory authority to bring a complaint alleging employer interference in the affairs of the employee organization. I fully agree with the findings of Board member Turner in the *Reekie* case (*supra*).

...

[13] Mr. Buchanan has been provided with a copy of the decisions in *Reekie v. Thomson* and *Feldsted v. Treasury Board and Correctional Service of Canada*, *supra*, and had an opportunity to argue whether and why those decisions should not be followed in this case. He made no submissions in this regard, other than stating that he had the full support of his bargaining agent. I agree with the employer that the support of the bargaining agent is in no way attributive of jurisdiction and I see no reason to depart from the line of reasoning in those decisions.

[14] In the circumstances of the case at hand, as Mr. Buchanan is alleging a failure on the part of the Service to observe the prohibitions contained in subsection 8(1) of the Act, and in light of *Reekie v. Thomson*, as followed in *Czmola v. Garwood-Filbert*, *Feldsted v. Treasury Board and Correctional Service of Canada* and *Feldsted v. Public Service Alliance of Canada and Union of Solicitor General Employee*, *supra*, I find that the Board has no jurisdiction to hear Mr. Buchanan's complaint.

[15] In any event, with regards to the merits of Mr. Buchanan's complaint, I would like to stress that, under the Act, the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* and standard clauses of collective agreements, an employee does not have a right to representation during a disciplinary investigation: *Naidu*, 2001 PSSRB 124 (166-34-30505) § 71-86.

[16] For these reasons, the Service's application is allowed. Mr. Buchanan's complaint is hereby dismissed for want of jurisdiction.

**Yvon Tarte,
Chairperson**

Ottawa, December 14, 2001.