

**Date:** 20010222

**File:** 161-2-1121

**Citation:** 2001 PSSRB 16



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**JASON T. GODIN**

Complainant

and

**PUBLIC SERVICE ALLIANCE OF CANADA  
(Union of Solicitor General Employees)**

Respondent

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

**Before:** [Yvon Tarte, Chairperson](#)

**For the Complainant:** [Jason T. Godin](#)

**For the Respondent:** [Philippe Trottier and David M. Landry, Public Service Alliance of Canada](#)

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(Decided without an oral hearing)

## DECISION

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[1] This decision deals with the issue whether the Board should exercise its powers pursuant to section 8 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (Regulations) to dismiss, for want of jurisdiction, a complaint filed by Mr. Jason T. Godin pursuant to paragraph 23(1)(a) of the *Public Service Staff Relations Act* (Act), which alleges that the Public Service Alliance of Canada (Alliance) failed to observe the prohibitions contained in subparagraph 8(2)(c)(i) of the Act.

[2] Section 8 of the Regulations read as follows:

*8. (1) Subject to subsection (2), but notwithstanding any other provision of these Regulations, the Board may dismiss an application on the ground that the Board lacks jurisdiction.*

*(2) The Board, in considering whether an application or complaint should be dismissed pursuant to subsection (1), shall*

*(a) request that the parties submit written arguments within the time and in the manner specified by the Board; or*

*(b) hold a preliminary hearing.*

...

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

*8. (2) Subject to subsection (3), no person shall*

...

*(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 . . .*

...

...

### **Facts**

[4] The following facts are not in dispute.

[5] Mr. Godin is a correctional officer with Correctional Service Canada at the Millhaven Institution in Bath, Ontario. He belongs to the Correctional Services Group (CX) bargaining unit, for which the Alliance is the bargaining agent. The Union of Solicitor General Employees (Union) is the component of the Alliance which deals with correctional officers.

[6] Between January 7 and 17, 2000, the Union notified Mr. Godin that it was investigating his conduct in relation to "... his involvement with the CSN in raiding activities involving CX members ..." to determine whether he had violated the Alliance's constitution and Union's by-laws.

[7] On February 7, 2000, Mr. Godin filed a complaint alleging that the Alliance had failed to observe the prohibitions contained in subparagraph 8(2)(c)(i) of the Act. His complaint reads as follows:

...

*... I was notified by the Public Service Alliance of Canada that I was being disciplined for alleged dealings with a rival employee organization. Attempting such 'discipline' is contrary to the provisions of Section 8 of the Act.*

...

Mr. Godin is seeking "[a]n Order requiring the PSAC to cease and desist actions contrary to Section 8 of the Act."

[8] The Union's investigation of Mr. Godin's conduct resulted in a recommendation that he be suspended from the Alliance's membership. However, a decision on whether to accept that recommendation is held in abeyance until the complaint at hand is resolved. Mr. Godin recognized that he has not been the subject of disciplinary action.

[9] A hearing was scheduled in this matter, which was postponed at the request of the parties.

[10] On October 31, 2000, before the date of the rescheduled hearing, the Alliance objected to the Board entertaining Mr. Godin's complaint and requested that the complaint be dismissed.

[11] Pursuant to paragraph 8(2)(a) of the Regulations, the Board informed the parties that it would determine the Alliance's application on the basis of written submissions. That process was concluded on January 4, 2001.

### **Submissions of the parties**

[12] The Alliance argued that, as Mr. Godin has not been disciplined, the object of his complaint is limited to the Union's investigation of his conduct. The Alliance added that such an investigation was not in contravention of the prohibitions contained in subparagraph 8(2)(c)(i) of the Act, as those prohibitions do not apply to an employee organization. The Alliance pointed out that Mr. Godin's complaint is identical to that which the Board dismissed in *Martel v. Veley*, 2000 PSSRB 89 (161-2-1126).

[13] The Alliance also referred to the following decisions in support of its position:

*Lai v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 79 (161-34-1128); and

*Tucci v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 80 (161-34-1129).

[14] Mr. Godin responded as follows:

...

*... Mr. Landry is correct in stating that "I have not been formally disciplined by the union". This is the whole point of my complaint. It has been several months since the PSAC threatened to discipline me for my actions with another organization. I requested in my complaint that the PSAC provide me with the pertinent information concerning my suspension including names, dates, times and any witnesses relevant to my suspension. So far the PSAC has failed to provide me with this essential information. The basis of my complaint is to have the PSAC cease and desist their harassing actions. In other words you are either going to suspend me or not. In which case I will take the appropriate action to defend myself...I would ask that the board intervene and take the appropriate action by putting a stop to the PSAC threatening suspension.*

...

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**Reasons for Decision**

[15] In the case at hand, the issue before the Board is whether it should exercise its powers pursuant to section 8 of the Regulations to dismiss Mr. Godin's complaint for want of jurisdiction.

[16] I will first examine whether having recourse to the process set out in section 8 of the Regulations is appropriate in the circumstances of the instant case.

[17] In *Gascon*, 2000 PSSRB 68 (166-2-28934), the Board was seized with an application to dismiss a grievance for want of jurisdiction. That application had been made pursuant to section 84 of the Regulations, which sets out in relation to grievances a process identical to that in section 8 of the Regulations. In dealing with that application, the Board found at §14 that having recourse to the process set out in section 84 of the Regulations is appropriate where there is a serious concern that the grievance is not one that may be referred to adjudication. The Board further found at §15 that, on the face of the record before it, there was an arguable case that the grievance was one that may be referred to adjudication. The Board therefore denied the application.

[18] The approach developed in *Gascon, supra*, was followed by the Board in *Kehoe*, 2001 PSSRB 9 (166-2-29657). In that case, the Board found that, on the face of the record, the grievance was not one which may be presented pursuant to subsection 91(1) of the Act and, as such, could not be referred to adjudication pursuant to subsection 92(1). The Board further found it appropriate to have recourse, in that case, to the process set out in section 84 of the Regulations. The Board therefore dismissed that grievance for want of jurisdiction.

[19] In the case at hand, Mr. Godin's complaint raises a serious concern as to the Board's jurisdiction to hear it. Indeed, the very wording of his complaint, *supra*, appears to be directed at some disciplinary action on the part of the Alliance or, at the very least, at an attempt to impose such disciplinary action. In the *Lai, Tucci and Martel* cases, *supra*, the Board found, on the basis of *Forsen v. Bean* (148-2-209), that a bargaining agent's decision to suspend the membership of one of its members is an internal union matter over which the Board has no jurisdiction by virtue of subparagraph 8(2)(c)(i) of the Act. Moreover, at §18 of its decision in *Martel, supra*, the Board found as follows:

*... The complaint process is not an appropriate forum for challenging a recommendation that he be suspended from his bargaining agent's membership. That is an internal union matter over which the Board has no jurisdiction.*

[20] In fact, Mr. Godin has been provided with a copy of the *Lai, Tucci* and *Martel* cases, *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 and I see no reason to depart from the line of reasoning in those cases.

[21] In the circumstances of the case at hand, as Mr. Godin is alleging a failure on the part of his bargaining agent to observe the prohibitions contained in subparagraph 8(2)(c)(i) of the Act, and in light of the *Forsen, Lai, Tucci* and *Martel* cases, *supra*, I find that, on the face of the record before it, the Board has no jurisdiction to hear Mr. Godin's complaint. I further find it appropriate to have recourse, in this case, to the process set out in section 8 of the Regulations.

[22] For these reasons, the Alliance's application is allowed. Mr. Godin's complaint is hereby dismissed for want of jurisdiction.

**Yvon Tarte,  
Chairperson**

Ottawa, February 22, 2001.