

Date: 20050921

File: 561-2-46

Citation: 2005 PSLRB 144



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

DIETMAR BOTTCHE

Complainant

and

**ANN-MARIE ARROWSMITH, DENIS MCCARTHY AND
THE PUBLIC SERVICE ALLIANCE OF CANADA**

Respondent

Indexed as
Bottcher v. Arrowsmith et al.

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: [Ian R. Mackenzie, Vice-Chairperson](#)

For the Complainant: [No one in attendance](#)

For the Respondent: [Edith Bramwell, Public Service Alliance of Canada](#)

Heard at Ottawa, Ontario,
September 12, 2005.

REASONS FOR DECISION

Complaint before the Board

[1] Dietmar Bottcher filed a complaint under section 23 of the *Public Service Staff Relations Act (PSSRA)* against Ann-Marie Arrowsmith, Denis McCarthy and his bargaining agent, the Public Service Alliance of Canada (PSAC), on March 17, 2004. Mr. Bottcher did not attend the scheduled hearing of this complaint. At the hearing, I dismissed the complaint, with reasons to follow.

[2] On April 1, 2005, the *Public Service Labour Relations Act* (the "new Act"), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with this complaint, which must be disposed of in accordance with the new Act.

[3] Mr. Bottcher was a term employee at Statistics Canada in Sudbury, Ontario. In his complaint, he alleged that the union failed to transmit a grievance to the final level within the time limits set out in the collective agreement and breached its duty of fair representation under the *PSSRA*.

[4] The PSAC responded to the complaint by letter to the Public Service Staff Relations Board (PSSRB), on July 13, 2004, denying the allegations and requesting that the complaint be dismissed by the PSSRB without a hearing. By letter dated August 17, 2004, the parties were advised by the PSSRB that the complaint would be scheduled for a hearing.

[5] The employer was advised of the complaint on August 6, 2004, and, by letter dated December 17, 2004, stated that it had no comments.

[6] A hearing was scheduled for January 18 and 19, 2005, in Sudbury, Ontario. The hearing was postponed at the request of the bargaining agent. The PSSRB was unable to reach Mr. Bottcher at the address and contact number provided by him to advise him of the postponement. By letter to the PSSRB dated January 25, 2005, and received by the Board on January 31, 2005, Mr. Bottcher advised that he was now residing in Germany and concluded: "If a personal appearance is necessary, I will be able to meet you in Germany only."

[7] The PSSRB replied on February 14, 2005, indicating that it was prepared to re-schedule this matter, but that any hearing could only take place in Canada. He was also advised that the Notice of Hearing contained the following statement:

...

If you fail to attend the hearing or any continuation thereof, the presiding member of the Board may dispose of the matter on the evidence and representations placed at the hearing without further notice to you.

...

[8] Mr. Bottcher replied by letter dated March 1, 2005, received by the Board on March 7, 2005, stating that if the hearing could not take place in Germany, he assumed that the PSSRB would cover all of his costs for him to come to Ottawa.

[9] By letter dated May 13, 2005 and received by the Board on May 17, 2005, Mr. Bottcher requested that the Board make travel arrangements for September. On June 3, 2005, the Board advised Mr. Bottcher by letter that the Board does not make travel arrangements, nor does it pay for the expenses of any party to a proceeding. He was advised that he was required to make his own travel arrangements and pay his own expenses.

[10] The hearing was scheduled for September 12 to 14, 2005, in Ottawa. Mr. Bottcher was advised of the hearing date on June 3, 2005. A formal Notice of Hearing was sent on August 5, 2005. The Notice of Hearing contained the standard notice that failure to attend could result in the Board disposing of the complaint on the evidence and representations made at the hearing, without further notice.

[11] Mr. Bottcher sent a letter to the Board dated August 30, 2005, received by the Board on September 7, 2005, requesting a postponement of the hearing. In the letter, he stated that he had requested a copy of the collective agreement and copies of the minutes from grievance hearings from the PSAC. He stated that the PSAC had only provided him with a copy of a collective agreement provision and refused to provide copies of minutes. Mr. Bottcher stated that the minutes were vital to the hearing. He requested a postponement until he had received all requested information.

[12] The PSAC objected to the request for postponement. The representative for the bargaining agent, Edith Bramwell, wrote in an e-mail to the Board, dated

September 9, 2005, that the PSAC had replied to Mr. Bottcher's request for documents on August 24, 2005. She stated the PSAC had told him that some of the requested documents were not relevant to his complaint, while others were already in his possession. The PSAC's correspondence to Mr. Bottcher is on file with the Board.

[13] Ms. Bramwell submitted in her e-mail of September 9, 2005, that if Mr. Bottcher wanted to seek an order compelling production of documents, the proper forum was the scheduled hearing.

[14] On September 9, 2005, the Board sent a letter to the parties denying the request for a postponement and advising that the complainant could request an order for production of documents at the start of the hearing. This letter was sent by courier to Mr. Bottcher on September 9, 2005.

[15] At the appointed time for the hearing on September 12, 2005, the representative for the PSAC, Ms. Bramwell, and Denis McCarthy, one of the respondents, were in attendance. Mr. Bottcher was not in attendance. I delayed the start of the hearing until 10:15 A.M. At the commencement of the hearing, the complainant was not present. I invited submissions from the bargaining agent. Ms. Bramwell submitted that the complaint should be dismissed for "want of prosecution". She submitted that the Board had been lenient with the complainant and it was unfair to continually ask the respondent to show up at hearings. She submitted that this was wasteful of resources at the PSAC and the Board.

Reasons

[16] At the hearing, I dismissed the complaint with reasons to follow.

[17] Mr. Bottcher received sufficient notice of this hearing. The Notice of Hearing is clear on the consequences of failing to attend. Issues relating to disclosure of documents are routinely dealt with at the commencement of a hearing. I will not comment on the relevance of the requested documents; however, a request for production could have been made at the commencement of the hearing. Given the scope of the requested documents, even an order of full disclosure could have been accommodated within the three scheduled hearing days.

[18] The complainant bears the burden of proof in a complaint of a breach of the duty of fair representation. By failing to attend the hearing, Mr. Bottcher has not met his burden. Accordingly, the complaint is dismissed.

[19] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[20] The complaint is dismissed.

September 21, 2005.

**Ian R. Mackenzie,
Vice-Chairperson**