Date: 20050614

Files: 161-34-1260 and 1262

Citation: 2005 PSLRB 53

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

CHARLOTTE RHÉAUME

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed
Rhéaume v. *Public Service Alliance of Canada*

Re: Complaints under section 23 of the *Public Service Staff Relations Act*, R.S.C. (1985), c. P-35

REASONS FOR DECISION

Before: Jean-Pierre Tessier, Board Member

For the Complainant: Herself

For the respondent: Laurent Trudeau, Counsel

Heard at Montréal, Quebec,
May 11 and 12, 2004, and February 1 and 2, 2005.
(P.S.L.R.B. Translation).

Complaints before the Board

[1] Charlotte Rhéaume is a federal employee, whose position is classified at the PM-02 group and level. At the time Ms. Rhéaume filed her complaint, she was working for the Canada Customs and Revenue Agency (CCRA), which later became the Canada Revenue Agency (CRA), following the Public Service reorganization announced on December 12, 2003.

[2] In the fall of 1999, Ms. Rhéaume held a position in Montréal that involved several functions related to Goods and Services Tax (GST) activities. She became aware that some of her colleagues in other parts of the country held positions that were classified at the PM-03 or AU-02 level and were better paid even though they also worked on GST-related matters.

[3] At that point, Ms. Rhéaume filed a grievance, requesting that:

> 1. she be treated in a fair and equitable manner like her peers in other parts of the country; and
>
> 2. the position she was in be duly reclassified to a higher level.

[4] Following several discussions with representatives of her union (Public Service Alliance of Canada (PSAC)), the latter refused to represent her in her grievance adjudication.

[5] Ms. Rhéaume was not happy with this and, on May 31, 2003, filed two complaints against PSAC, alleging that her union had acted in an arbitrary and discriminatory manner and in bad faith in the matter of her representation.

[6] These complaints were heard in May 2004 and continued in February 2005.

[7] On April 1, 2005, the new *Public Service Labour Relations Act* (the "new *Act*"), enacted under section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed. Under section 39 of the *Public Service Modernization Act*, the Board remains seized of these complaints, which must be decided under the new *Act*.

Summary of the evidence

[8] At the hearing, Ms. Rhéaume filed several documents related to the grievance. Exhibits P-1 to P-16 are correspondence exchanged between Ms. Rhéaume and her

union, as well as the employer. Exhibit P-17 is the employer's policy on position descriptions. Exhibits P-18 to P-26 are documents provided by the employer and the union, and correspondence sent by Ms. Rhéaume.

[9] The two complaints concern the union's refusal to represent Ms. Rhéaume in her demands. In a letter dated October 1, 2003, however, Ms. Rhéaume indicated that the complaints concerned different facts.

> [Translation]
>
> *First of all, I believe that there was an error in the reference number assigned to each complaint in PSAC's September 8, 2003 position. Complaint 161-34-1260 concerns grievance no. 99-1208-10462, and complaint 161-34-1262 concerns the process used for restructuring jobs and job classifications at the Revenue Canada Technical Interpretation Service (TIS). The two complaints cover different facts and causes of action.* ***I request that the Board file a copy of this letter of comments in each of the above-mentioned complaint files.***

[10] In complaint 161-34-1260, Ms. Rhéaume accuses the union of treating her grievance as a classification issue and of misguiding her in her efforts to argue the discriminatory nature of her receiving a lower salary than her peers elsewhere in Canada.

[11] Referring to an e-mail dated June 8, 2001, from Michèle Julien, a classification advisor for the employer, Ms. Rhéaume repeats her request for equitable compensation (Exhibit P-1).

[12] Referring to Exhibit P-1, as well as to a letter that Ms. Rhéaume sent to Ms. Brown, Customs Excise Union Douanes Accise (CEUDA), a section of the union, on January 27, 2000 (Exhibit P-6), Ms. Rhéaume points out that her file contains a problem with the position description.

[13] In a letter dated October 8, 2002 (Exhibit P-14), Ms. Rhéaume accuses her union of failing to appreciate the scope of her grievance in terms of the performance of higher level functions.

> […]
>
> [Translation]
>
> *In support of your decision, you also refer to our September 30, 2002 telephone conversation, during which I supposedly told you that my position description was complete and up to date. From this conversation, you concluded that I was not contesting the fact that the employer had breached the provisions of Article 55 of my collective agreement. Moreover, you add that, in terms of Article 64, which covers wages, when my employer requested that I perform higher level functions, I did not contest this fact in my grievance. You say that the employer denies having asked me to perform higher level functions, as per clause 64. Thus, you conclude, my employer did not breach the provisions of the collective agreement on this count.*
>
> […]

[14] Subsequently, Ms. Rhéaume filed evidence on the possibility of settling her grievance through mediation.

[15] Ms. Rhéaume alleged that the union acted in a discriminatory manner towards her because, in one of her colleagues' files (Christian Alcindor), there was a settlement that was equivalent to the request she had made for herself. According to Ms. Rhéaume, her colleague was reclassified to the AU-02 group and level.

[16] The union objected to Ms. Rhéaume's disclosure of an agreement that was confidential between the employer and Mr. Alcindor. On this point, I indicated to the complainant that she could not speak to an agreement to which she was not a party. Moreover, if the complainant was to ask Mr. Alcindor to testify, his testimony would have to be limited to the consequences of the agreement and could not address the contents of the discussions and the texts of the agreements, which are confidential between the parties.

[17] In fact, Mr. Alcindor testified that in his case, he had been classified at the PM-03 group and level, while Ms. Rhéaume was at the PM-02 group and level. He indicated that he wanted to get the AU-02 group and level, or at least an equivalent salary. Under the settlement with the employer, he was to retire and receive the appropriate wage compensation in relation to his initial request.

[18] Ms. Rhéaume admitted that she had received an offer from the employer, but accused the union of not having obtained one similar to that received by Mr. Alcindor.

[19] In terms of the second complaint, 161-34-1262, Ms. Rhéaume referred to the employer's policy on position descriptions (Exhibits P-17a) and b)).

[20] This policy came into force in November 1997 and covers promotions to higher groups and levels without competition but based on merit.

[21] Ms. Rhéaume indicated that this policy had been brought to her attention late and, according to her, higher level positions had not been created in Quebec, at least not positions related to the functions she performed. She wondered why the union had not intervened.

[22] Testifying for the union, Francine Cabana indicated that she had worked for the Public Service Alliance of Canada (PSAC) since 1984. From 1984 to 1992, she had been a services officer and, since 1997, had been serving as a grievance and adjudication officer.

[23] Ms. Cabana pointed out that national grievance files are forwarded to the grievance coordinator, who then assigns them to a grievance officer for review. Ms. Rhéaume's files had initially been assigned to Rachel Dugas, and later to Ms. Cabana.

[24] Referring to the letter she had addressed to Ms. Rhéaume on October 4, 2002 (Exhibit S-5), Ms. Cabana explained that she had met with Ms. Rhéaume and reviewed her grievance. In this letter, she outlined the objections expressed by the employer and pointed out that the Public Service Staff Relations Board (PSSRB) did not have the authority to address classification issues and that an adjudicator could not provide the redress sought by Ms. Rhéaume by appointing her to a higher group and level.

[25] Ms. Cabana indicated that she had attached to this letter a copy of the opinion provided by grievance analyst Nathalie St-Louis, which was prepared on August 10, 2001 (Exhibit S-6). Ms. Cabana indicated that Ms. St-Louis' detailed analysis had found that the grievance could not be successfully defended. Moreover, Ms. Cabana pointed out that Ms. Rhéaume had argued her grievance herself at the adjudication and that the adjudicator had dismissed the grievance (2003 PSSRB 114).

[26] Ms. Cabana added that, in her October 4, 2002 letter, she reminded Ms. Rhéaume that the employer had made a settlement offer, which she had turned down.

[27] In terms of the issue of a settlement offer, Ms. Cabana tabled a statement of dues paid by Mr. Alcindor (Exhibit S-7). This statement confirmed that, after signing his agreement with the employer, Mr. Alcindor paid dues to PSAC, which means that he was not reclassified to the AU-02 group and level, since this is covered by another union.

[28] Ms. Cabana pointed out that there may have been some discussion of Ms. Rhéaume's position description, but her grievance concerned issues of classification and discrimination in compensation.

[29] In terms of the creation of positions by the employer, Ms. Cabana indicated that the union was not involved in the matter. According to Ms. Cabana, the positions were created based on each region's requirements. In this regard, she referred to the employer's reply, dated June 28, 2001, from which Ms. St-Louis drew an extract for her review (Exhibit S-6) :

> […]
>
> [Translation]
>
> *In a review of certain positions involving interpretations of the* Excise Tax Act*, it was agreed that AU positions would have to be created, and that each region was responsible for staffing positions based on its requirements. In the Quebec Region, no such position was found to be required because our employees do not have to provide interpretations of Part IX of the* Excise Tax Act*, as it covers the Goods and Services Tax (GST). This job was given to Ministère du revenu du Québec employees under the memoranda of agreement signed between the provincial and federal revenue departments.*
>
> […]

[30] Ms. Cabana believed that the employer's reply made sense, and she did not see why the union should have made special representations. She pointed out that the employer was the one who was responsible for creating positions. In fact, in Quebec, 200 federal employees accepted a transfer to the Government of Quebec, and only two remained with the federal department: Ms. Rhéaume and Mr. Alcindor.

Summary of arguments

Arguments by the parties

[31] Ms. Rhéaume maintained that the situation in Quebec was not much different from that in the other provinces. According to her, higher level positions could have been created in Quebec for the GST, and she met the requirements. The union never informed employees in Quebec that the employer was creating new positions in the other provinces.

[32] Ms. Rhéaume related the key dates when communications transpired concerning the reclassification of jobs and the date when correspondence was exchanged between her and her employer and the union (Exhibit P-26, written submission).

[33] Referring to Exhibit P-1, Ms. Rhéaume pointed out that she had not signed a position description, and that she should be classified retroactively to January 1, 1999.

[34] Ms. Rhéaume maintained that the union knew that there was a gap between the compensation being paid to her and that being paid to her colleagues in other provinces who were working on GST-related issues.

[35] She believed it was unfair that her colleague, Mr. Alcindor, should have been able to sign a satisfactory agreement following his grievance, when the employer was offering her less.

[36] With respect to her grievance, she believed that the union only looked at classification issues and did not consider that the grievance could be argued as a discrimination issue because the grievance indicated that she was requesting the same treatment as her colleagues in other provinces. She referred to *Savoury* v. *Canadian Merchant Service Guild*, 2001 PSSRB 79, and believed that the union was negligent.

[37] For its part, the union maintained that union officials carefully reviewed all aspects of Ms. Rhéaume's case.

[38] In terms of the position description, the union referred to the decision by Justice Rouleau of the Federal Court of Canada in *Rhéaume v. Her Majesty the Queen and Public Service Alliance of Canada,* 2003 FC 1405, at paragraph 47 :

> […]

> *However, the scope of the latter provision is more limited than section 91, so that certain questions which can be the subject of a grievance cannot be referred to arbitration. This indeed explains the union's decision to withdraw the part of the grievance relating to the plaintiff's description of duties a few days before her scheduled arbitration date.*
>
> […]

[39] In terms of the complaint accusing the union of having failed to properly inform and represent the complainant about the restructuring and job reclassification, the union maintained that Ms. Rhéaume filed her complaint in 2003 on matters that occurred in 1999.

[40] In addition to this issue of the lateness of the complaint, the union pointed out that it decided how to best serve the interests of all its members, and that it was up to the employer to create positions in accordance with regional requirements. In Quebec, the GST was transferred to the provincial government and the volume of work is different from that in the other provinces.

[41] In conclusion, the union maintained that it had a certain amount of discretion in how it handled the grievances, and that it was up to the complainant to prove that it acted in a manner that was arbitrary, discriminatory or in bad faith.

[42] With regard to the secondary element of the handling of Mr. Alcindor's file in comparison to the handling of Ms. Rhéaume's, the union submitted that the conditions of settlement were the employer's. In Mr. Alcindor's case, there was an issue of retirement and additional compensation for his PM-03 group and level classification. In Ms. Rhéaume's case, there is no question of retirement, and her position was classified at the PM-02 group and level. Not to mention the fact that she turned down the offer. The union represented her, but it was not responsible for the offers made by the employer.

[43] The union referred to case law to demonstrate that it had considerable discretion in terms of deciding whether or not to refer a grievance to adjudication after having carefully reviewed the file: *Savoury* (*supra*); *Lipscomb v. Public Service Alliance of Canada,* Board file 161-34-1127 (2000) (QL). Referring to *Harrison v. Public Service Alliance of Canada,* Board file 161-02-725 (1995) (QL), the union pointed out that the complainant was required to file her complaint within a reasonable period of time.

Reasons

[44] The complainant believed that the union breached the provisions of the Act when it did not support her in defending the grievance she had filed.

[45] The union analyzed Ms. Rhéaume's file and pointed out to her that the classification issue was beyond the PSSRB's jurisdiction.

[46] With regard to the issue of discrimination in relation to her other colleagues across Canada, Ms. Rhéaume alleged that she handled GST-related matters and had the necessary skills to justify a salary that was equivalent to theirs.

[47] According to Ms. Rhéaume, the union should have argued that she was performing work comparable to that done by her colleagues in the other provinces and that she should therefore be compensated at a higher level, at least on an acting basis.

[48] On this point, the arguments presented by Ms. Rhéaume are quite confusing. Ms. Rhéaume insisted that her functions be reclassified, that she had the skills and ability to hold a higher position and that even though the GST's administration has been transferred to the Government of Quebec, there was no difference between the tasks performed by federal employees in Quebec and in the other provinces. According to her, the employees were all part of the Technical Interpretation Service.

[49] I reviewed the evidence and checked the documentation on file. In the documentation submitted by Ms. Rhéaume, I see no convincing evidence with respect to the performance of higher level functions that the union forgot to consider through either negligence or bad faith. In fact, there is nothing to suggest that Ms. Rhéaume's work matched the quality or quantity of that done by her higher level peers in other provinces. Furthermore, there is no evidence on the details of the functions performed by the employees in the other provinces.

[50] Under the circumstances, I find that the union acted in a responsible and conscientious manner by carefully reviewing Ms. Rhéaume's file before deciding whether or not to proceed to adjudication, and I see no evidence of carelessness or bad faith on its part. This is different from the facts described in *Savoury* (*supra*), where the adjudicator found that there was negligence and improper conduct on the part of the union.

[51] Before addressing the second complaint, I must turn to an issue that keeps coming up in the case documentation. This is the issue of Ms. Rhéaume's position description. In her letter of August 21, 2001 (Exhibit P-22), Ms. Rhéaume indicated that she believed that Ms. St-Louis should not have claimed that a grievance contesting the position description could have been filed since, according to Ms. Rhéaume, she had not received an "official" version of the description. I believe it would be in the parties' best interests to settle their differences on this point. I think that when employees refer to the work they do, it is useful to have an up-to-date and official position description. Although Ms. Rhéaume and the union discussed this point, I see no attitude of discrimination or bad faith on the part of the union towards Ms. Rhéaume.

[52] With respect to the second complaint, concerning the creation of higher level positions, the evidence indicates that these positions were to be created according to each region's requirements. This responsibility falls to the employer, and the union is not a party to the process. The union must take into account the interests of all of its members, and it decided not to confront the employer to pressure it into creating higher level positions in Quebec for GST-related issues when these activities were being transferred to the Government of Quebec for administration.

[53] Under the Act, a bargaining agent must represent its members in a manner that is not arbitrary or discriminatory or in bad faith. When it receives a complaint of unfair representation, the PSLRB must assess the allegedly offending behaviour to determine whether it violates the provisions of the *Public Service Labour Relations Act* (*PSLRA*).

[54] The union reviewed the circumstances surrounding the matter and indicated that Ms. Rhéaume filed her complaint in 2003 relative to events that occurred in 1999. It looked at the merits of the case and decided not to proceed. This decision is not contrary to the requirements of subsection 10(2) of the *PSSRA* (currently 185), as expressed by the PSSRB in *Ford v. Public Service Alliance of Canada*, Board file no. 161-2-775 (1995) (QL) :

> *There is a great deal of jurisprudence emanating from this Board in respect of the above provision and there is no need for me to attempt to summarize it here. Suffice it to say that the Act enjoins the bargaining agent to represent its members fairly and not in a way that is arbitrary, discriminatory or in bad faith. That being said, it does not mean that a bargaining agent is obliged to take every complaint of every member to the highest court in the land.*

> *The member does not have an absolute right to have the bargaining agent represent him or her at adjudication. The bargaining agent has considerable scope and is free to weigh a variety of factors in reaching its decision, such as the relevant jurisprudence, whether the member's case is well-founded, costs and the interests of the bargaining unit as a whole as well as other considerations.*

[55] At the hearing, the union failed to provide any conclusive evidence on the matter of the lateness of the complaint. The complainant indicated that she was informed of the reclassifications in the other provinces only well after the events occurred. Neither party provided an exact date as to when the information on the reclassifications was provided in Quebec. In light of the weakness of the evidence, and in view of the conclusions I reached with regard to the merits of the file, I have not addressed the issue of the lateness of the complaint.

[56] For these reasons, the Board makes the following order:

(The order appears on the next page.)

Order

[57] The complainant was unable to prove that the union breached the provisions of the *PSLRA* by acting in a manner that was arbitrary, discriminatory or in bad faith. Consequently, her complaints are dismissed.

June 14, 2005.

Jean-Pierre Tessier,
Board Member

P.S.L.R.B. Translation