

Date: 20060110

File: 561-33-45

Citation: 2006 PSLRB 2



*Public Service Labour
Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

DIANE DUCLOS

Complainant

and

ANDRÉ GRÉGOIRE

Respondent

Indexed as
Duclos v. Grégoire

In the matter of a complaint made under section 23 of the *Public Service Staff Relations Act*

REASONS FOR DECISION

Before: Georges Nadeau, Vice-Chairperson

For the Complainant: The Complainant herself

For the Respondent: Laurent Trudeau, counsel

Heard at Bathurst, New Brunswick,
from November 1 to 3, 2005.
(P.S.L.R.B. Translation)

Complaint before the Board

[1] On July 12, 2004, Diane Duclos filed a complaint dated July 4, 2004 against shop steward André Grégoire. This document read as follows:

[Translation]

André Grégoire

(8) section- violation of my rights. Mr. Grégoire gives me false information about my grievance and refuses to help me

- He held a position as a steward for (the union)

- He is acting on behalf of Michel Bujold

- He makes vicious comment about me

- Many provisions, to cause harm, he displays an unexpected tendency

- Vicious conformation

...

It is very difficult for me to go into specific details because he had so much discrimination. It would be advantageous for me to have a hearing. To process and activate my case. Section (23) is based by the rules that they have supposedly been violated!

To elaborate on the first sexual assaults by...xxxx...in the years 1992-2002 until the last week of my contract on October 11, 2002.

(Given that the person who is the subject of the sexual assault allegations was not present at the hearing and is not the subject of the complaint that I am dealing with at this time, I have chosen not to identify him.)

[2] Ms. Duclos is therefore requesting a hearing to have her case dealt with and has indicated that her complaint under section 23 of the *Public Service Staff Relations Act* (the former *Act*) was based on regulations that Mr. Grégoire allegedly violated.

[3] During the hearing Ms. Duclos gave me a document that reproduced the above wording, with the following addition:

[Translation]

[...]

- He called me Madame la Pompadour, reportedly the king's mistress (1745-1751) she played a major political role contributing to the reversal of alliances while making her fortune!

- Hurtful comment of my personal assets, reference ex-husband (Chief of Police)
Administrator of social assistance for the Listuguj and Maria Reserves.

Of not being Acadian, that her ancestors created New France.

[4] Mr. Grégoire's representative objected to this amendment of the complaint. Because these were clarifications of the remarks of which Mr. Grégoire was accused and they did not in any way change the nature of the complaint, I agreed to this amendment.

[5] Mr. Grégoire's representative began with some preliminary objections as to my jurisdiction to hear this complaint. He first asked me to find that the complainant failed to act within a reasonable time and then that section 8 of the former *Act* therefore did not apply and that the complaint was too vague and confused to be responded to.

[6] In order to be able to rule on these preliminary questions with full knowledge of the facts, I decided to hear the evidence needed to be able to dispose of these objections before proceeding on the merits, should that prove necessary.

[7] 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. Under section 39 of the *Public Service Modernization Act*, and in accordance with the Board's decisions in *Lamarche*, 2005 PSLRB 153 and *McConnell*, 2005 PSLRB 140, the Public Service Labour Relations Board (the Board) remains seized of complaints filed before it came into force.

[8] During the hearing the parties referred to the prohibitions set out in the former *Act*. Given that the parties' rights were realized at the time when the complaint was filed in July 2004, I disposed of the complaint under the provisions of the *Act* in effect at that time.

Summary of the evidence

[9] During the summer of 1992 Ms. Duclos worked as a security guard at Pointe-à-la-Croix, a historical site at which the battle of Restigouche took place, for Sécurité Gaspenec Inc., a private company. She alleges that during this employment she was sexually assaulted by a third party. Following this assault, her relationship

with her husband, the chief of police for the reserve, deteriorated, to the point that her marriage ended.

[10] In the summer of 1998, after making representations to the Band Council, Ms. Duclos obtained a term appointment as an interpretive guide for Parks Canada at that same location from August 17 to October 11, 1998. The following summers, until her employment ended in October 2002, Parks Canada offered her term positions as an interpretive guide from May to October each year at the same place. These job offers came under an aboriginal hiring program in which the Band Council had a say.

[11] Ms. Duclos testified that, although initially she got along well with her colleagues, the situation deteriorated over time. In the summer of 2000 she decided to break the silence regarding the sexual assault allegation and began contacting politicians, a judge and Parks Canada. It was at that time that she heard comments from coworkers to the effect that she was subject to closer supervision.

[12] Ms. Duclos indicated that during the seasons that followed she was no longer allowed to attend union meetings and that her colleagues deliberately used cleaning products and scents that provoked serious allergic reactions, one of which required a visit to hospital. She also stated that a coworker had brought a turtle to work, which also caused a serious allergic reaction. She complained that she did not have access to direct deposit of her paycheques.

[13] Ms. Duclos alleges that in 2001 a coworker tampered with the food she brought to work, to the point that she no longer used the office refrigerator and kept her snack in her car. She complained to Mr. Grégoire, who raised the matter with the supervisor. The supervisor held a meeting with the employees and asked them to stop this harassment. Copies of the workplace harassment policy were handed out.

[14] Ms. Duclos nonetheless indicated that the situation did not improve and that she continued being mistreated by her colleagues. Furthermore, Ms. Duclos' supervisor asked her every day to look at a poster of an old woman with two faces. She was jokingly referred to as "Madame la Pompadour", even by the shop steward. Her colleagues made negative comments about the privileges granted to aboriginal people.

[15] In 2002, all of the other employees received new uniforms but Ms. Duclos did not. On one occasion, the supervisor assigned a work schedule that forced her to work

72 hours without a day off. She was nonetheless congratulated by visitors who received her services.

[16] In summer 2002, a decision was made to transfer the interpretive guide positions from term to seasonal indeterminate for the next season. The staffing process started some time after the end of the 2002 season. The Band Council was consulted but Ms. Duclos learned in early 2003 that her application had not been selected after the supervisor made representations to the Band Council. In response to this refusal, she tried to give some documents to Mr. Grégoire, who refused to accept them.

[17] In response to this decision, and after contacting her union, Ms. Duclos sent the former Board an initial document of complaint in September 2003. This complaint alleged that her union had not followed up on an arbitral award.

[18] On September 29, 2003, this document was returned to Ms. Duclos, who was informed that it was impossible to identify the arbitral award in question. In May 2004, she attempted to file a similar complaint with the Canada Labour Relations Board. The latter forwarded the documentation to the former Board, which in June 2004 sent her a letter giving her more information on the filing of a complaint under section 23 of the former *Act* and informed her that it could not deal with the complaint without receiving further details. It was at that point that she sent the document received on July 12, 2004.

[19] Ms. Duclos stated that she raised with Mr. Grégoire, the shop steward, many of the situations that she was experiencing with her colleagues and that he was at least aware of them, but that he did nothing. She believes that the steward should have filed a grievance to defend her.

[20] Ms. Duclos nonetheless acknowledges that it was not until March 2003 that she raised with Mr. Grégoire the question of the assault of which she was allegedly the victim. She stated that had not done so because she did not have confidence in him.

[21] On May 4, 2003, Ms. Duclos was involved in a car accident that forced her to take four months of rest. She filed a medical certificate indicating a four-week period of rest, adding that this period had been extended and had lasted four months.

[22] At the end of the hearing, the complainant wanted to adduce as evidence facts relating to their supervisor's behaviour at the time of the Band Council's decision not to choose her for a seasonal position and the interventions by the shop steward, J. Cloutier. Since we are dealing here with preliminary objections relating to Ms. Duclos' complaint against Mr. Grégoire, I did not agree to hear these facts, especially since Mr. Grégoire was not involved in the Band Council's decision and no complaint was brought against Mr. Cloutier.

[23] Mr. Grégoire testified regarding the circumstances that the complainant referred to. He has been working every summer for the past 20 years as a seasonal indeterminate employee for Parks Canada. However, it was not until 2002 that he agreed to act as shop steward. There had not been a shop steward at that site until then.

[24] Mr. Grégoire stated that there had not been any formal union meetings at the workplace since he became steward and that therefore Ms. Duclos could not have been excluded from any such meetings. He indicated that he had received verbal complaints from her a number of times and had contacted the supervisor in an effort to resolve or to find out more about the situations brought to his attention. When Ms. Duclos complained that her food was being tampered with, he brought this situation to the attention of the supervisor, who called a staff meeting. At this meeting the supervisor asked the employees to stop this type of behaviour.

[25] When Ms. Duclos informed him of the alleged sexual assault in the spring of 2003, he contacted the union representative, who was already aware of the situation. Ms. Duclos never filed a signed grievance in writing. She always proceeded orally and that was how he took steps on her behalf.

[26] Ms. Duclos never informed him of any problems with her work schedule. Mr. Grégoire acknowledged having referred to her as "Madame la Pompadour" but indicated that it was Ms. Duclos who had brought this on herself by continually referring to her ancestors from Versailles.

[27] When Ms. Duclos tried to give him some documents in the spring of 2003, Mr. Grégoire no longer considered her a union member, since her employment ended on October 11, 2002. He nonetheless referred her to Mr. Cloutier, the union representative posted in Gaspé, who was serving in that capacity at that time.

[28] Further to these events, Ms. Duclos contacted a representative of her union posted in Ottawa and corresponded with Heather Brooker, president of her component, and Nycole Turmel, President of the Public Service Alliance of Canada.

Summary of arguments

[29] Although neither the *Public Service Staff Relations Act* (the former Act) nor the associated *Regulations* provides a specific time limit for filing a complaint, counsel for the respondent argued that a person filing a complaint must do so within a reasonable period.

[30] The complainant's employment ended on October 11, 2002 and the complaint was filed with the Board on July 4, 2004. As a result, the facts of which Mr. Grégoire are accused are too vague. The time that has passed hampers his ability to respond to the allegations against him.

[31] The respondent's representative adds that nothing in the evidence filed by the complainant indicates that Mr. Grégoire provided false information or refused to file a grievance.

[32] The respondent's representative cited in support of his arguments the decisions in *Harrison v. Public Service Alliance of Canada and Treasury Board (Revenue Canada Taxation)*, PSSRB file 161-2-725, (1995) (QL); *Giroux v. Séguin (Health Canada)*, *Whitney and Vincent (Public Service Alliance of Canada)*, PSSRB files 161-2-825 and 826 (1998) (QL); *Horstead v. Public Service Alliance of Canada et al.*, PSSRB file 161-2-739 (1995) (QL); and *Rhéaume v. Public Service Alliance of Canada*, 2004 PSSRB 95, on the matter of timeliness, as well as the decisions in *Desrosiers v. Public Service Alliance of Canada and Union of Solicitor General Employees*, 2001 PSSRB 41; *Quesnel v. Public Service Alliance of Canada and Union of Solicitor General Employees*, 2001 PSSRB 35; *Godin v. Public Service Alliance of Canada (Union of Solicitor General Employees)*, 2001 PSSRB 16; *Martel v. Veley et al.*, 2000 PSSRB 89; *Tucci v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 80; and *Lai v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 79, on the application of section 8 of the Act.

[33] Ms. Duclos essentially argued that she is not a lawyer and that she acted with the greatest diligence possible in a situation that was very difficult for her. She was unable to respond during the period of convalescence from her car accident. She is

asking me to agree to hear her complaint because of her hospitalization and the prejudice she suffered in not being rehired.

[34] She is asking me to recognize the injustice, trickery, deception, breach of trust and ignorance of her union, which was unable to defend her. She gave me a sheet of paper that reads as follows:

[Translation]

2005-03-12

Public Service Labour Relations Board

Registry Officer

Dear Board Member:

Today I would like to elaborate on the injustice and ignorance of my union! The joint committee barely did its work, they can congratulate themselves for the difficulty and the situation I am currently experiencing and for everyone being here today!

This confusing situation, the uncertainty of my union's position towards the personal damage of my future life! The joint committee, which had been established during the last round of collective bargaining between PSAC and the Treasury Board.

Reference:

Union Update

Vol. 14 No. 12

After two years of service, term employees are entitled to an indeterminate position (period from August 19 -September 6, 2002)

I have in fact been tricked by deception, breach of trust by my union! I deplore this unfortunate situation of the state of my current finances! I am asking for an opportunity to elaborate, on all that is essential to my complaints, already filed with my union, which has failed to take action!

This is why, this is the reason I am indicating favourably a hypothesis indicating how to respond to all the whys! Give the freedom the power to do, who authorized Michel Bujold and André Grégoire to have acted with no humanity. Never, never in the time to come will I be able to forget the tragedy of losing my work [because] of a man in power!

Reasons

[35] Ms. Duclos stated that the facts of which Mr. Grégoire is accused took place over the period between May 2000 and October 2002, as well as in early 2003. She did not file her complaint with the former Board until July 14, 2004.

[36] On a number of occasions the former Board has been asked to rule on the time period for filing complaints. In the decision in *Walcott v. Turmel*, 2001 PSSRB 86, its current Chairperson summarized the general principle on which it is based as follows:

. . . complaints should be filed within a reasonable time frame following the events on which they are based. When such is not the case, the complainants bear the burden of establishing that circumstances which are exceptional or outside of their control prevented them from acting any sooner; they must establish that the delay in filing their complaints is not unreasonable.

[37] Regardless of the question of whether or not there is any merit to the accusations, a great deal of time elapsed between the incidents and the filing of a complaint in July 2004. Even if I take into consideration the four-month period during which the complainant maintains she was convalescing and if I allow a non-represented person a certain amount of time to become familiar with the process required for filing a complaint, I cannot help but observe that the delay in filing her complaint is unreasonable. Ms. Duclos could have resubmitted her complaint in the fall of 2003. She did not do so until July 2004. I therefore allow the preliminary objection by the respondent's representative and dismiss the complaint.

[38] I would also like to add that, even if I had dismissed this preliminary objection, I also would have allowed the objection to the effect that her complaint cannot fall under section 8 of the former *Act*, which does not apply here, and that her complaint is too vague and confused.

[39] Indeed, the arbitral jurisprudence of the former Board clearly establishes that the prohibitions under subsection 8(1) of the former *Act* apply only to the employer or its representatives, with a view to blocking the employer's participation in an employee organization. As shop steward, Mr. Grégoire had no authority to apply or impose conditions of employment. Therefore, he cannot be the subject of a complaint brought against him alleging a violation of these prohibitions.

[40] In her complaint, Ms. Duclos seems to be making a connection between the allegations that false information was filed with regard to a grievance, refusal to help and section 8. It is obvious that Ms. Duclos does not fully understand the prohibitions set out in the former *Act* and would be advised to review subsection 10(2) in due course.

[41] Subsection 10(2) of the former *Act* reads as follows:

10. (2) No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.

[42] However, even if were to agree that Ms. Duclos' complaint might in fact have pertained to the duty of representation provided for in section 10 of the former *Act*, I note that nothing in the complainant's facts or arguments suggests to me that Mr. Grégoire's representation was in any way arbitrary, discriminatory or in bad faith. The incidents related are too vague or involve the conduct of other people, and it is thus inadvisable to explore this matter any further.

[43] Ms. Duclos did not indicate in any way that Mr. Grégoire refused to represent her during the time when she was a member of the bargaining unit. She did not identify any conduct that was arbitrary, discriminatory or in bad faith when Mr. Grégoire was acting as representative. In the spring of 2003, when she brought up his refusal to rehire her and the matter of the sexual assault, Mr. Grégoire referred her to Mr. Cloutier, the union representative in Gaspé. If Mr. Grégoire still failed to act wisely from a human standpoint in his dealings with the complainant in, for example, using negative labels in referring to her, this has nothing to do with the application of section 10 of the *Act*.

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

(The order appears on the following page.)

Order

[45] For these reasons, I dismiss the complaint.

January 10, 2006.

P.S.L.R.B. Translation

**Georges Nadeau,
Vice-Chairperson**