

**Date:** 20070129

**File:** 166-02-32541

**Citation:** 2007 PSLRB 14



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**SIMON CLOUTIER**

Grievor

and

**TREASURY BOARD  
(Department of Citizenship and Immigration)**

Employer

Indexed as

*Cloutier v. Treasury Board (Department of Citizenship and Immigration)*

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Jean-Pierre Tessier, adjudicator

***For the grievor :*** Himself

***For the employer:*** Raymond Piché, counsel, and Nadia Hudon, counsel

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Heard at Montreal, Quebec,  
January 23-26, 30 and 31, May 3-5 and 8-12, and October 31 to November 3, 2006.  
(P.S.L.R.B. Translation)

**Grievance referred to adjudication**

[1] Simon Cloutier (“the grievor”) works for the Department of Citizenship and Immigration (“the employer”).

[2] On October 16, 2001, Mr. Cloutier was sent a disciplinary letter. The employer suspended him for 20 days.

[3] On June 6, 2002, Mr. Cloutier filed a grievance, which was referred to adjudication on July 10, 2003.

[4] The hearing for this grievance was held at the same time as that pertaining to three other disciplinary measures and a termination. The hearings took place in 2005 and 2006. The parties’ arguments were submitted in November 2006.

[5] On April 1, 2005, the new *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

[6] At the hearing of this grievance, the employer raised an objection on the timeliness of the grievance. This decision disposes of that objection only.

**Interim decision**

**Summary of the facts and arguments of the parties**

[7] The employer noted that the disciplinary measure was imposed on October 16, 2001, and that the grievance was not filed until June 6, 2002, more than nine months after the sanction was imposed. This exceeds the 25-day period provided for in the collective agreement for filing a grievance.

[8] Mr. Cloutier has not contested the fact that the grievance was filed several months after the sanction was imposed. He nonetheless noted that he was on sick leave when he received the disciplinary letter.

[9] Mr. Cloutier added that he informed the employer of his intention to contest the disciplinary sanction of October 16, 2001, on November 13, 2001. The letter he sent to the employer reads as follows:

[Translation]

...

*I hereby wish to inform you of my intention to grieve the disciplinary measure you sent me on October 18. My health is such that I am unable to provide you with the wording until my return to work.*

*I am also asking you to refer to the appropriate level of the grievance procedure the grievances for which you requested an extension to November 2, 2001, which thus far have not received a reply, and which are numbered as follows: Qué-01-IMC-234 to 241.*

...

### **Reasons**

[10] The parties recognized that there is a time limit for grieving an action taken by an employer.

[11] In this case, Mr. Cloutier informed the employer of his intention to file a grievance. In the second paragraph of the letter of November 13, 2001, the grievor replied to the employer's application for an extension of time. This information must be taken into consideration when the meaning of the first paragraph of the letter is being interpreted.

[12] I believe that, in light of the wording of the entire letter of November 13, 2001, the employer should have understood that Mr. Cloutier wanted to file a grievance and that he was requesting an extension of time to provide the wording.

[13] Several months elapsed with no response from the employer. Mr. Cloutier was entitled to understand that the employer had accepted the application for an extension of time that appeared in the letter of November 13, 2001.

[14] In his letter, Mr. Cloutier indicated that he would be providing the wording of his grievance after his return to work. After a certain period of time, the employer could have responded and asked the grievor to forward the wording of his grievance within 15 or 20 days in order to clarify the situation.

[15] The employer did not respond to the letter of November 13, 2001. In light of its inaction, it cannot argue at the hearing that the grievance is untimely.

[16] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**Order**

[17] I dismiss the employer's argument that the grievance is untimely and I find the grievance to be admissible.

[18] A decision on the merits of this case will be rendered at a later date.

January 29, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**