

Date: 20070129

File: 166-02-32539

Citation: 2007 PSLRB 15



*Public Service
Staff Relations Act*

Before an adjudicator

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

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 June 2, 2000, Mr. Cloutier was sent a disciplinary letter. The employer suspended him for five days.

[3] On August 4, 2000, Mr. Cloutier filed a grievance to contest the disciplinary measure.

[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* (“the 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 (“the former Act”).

[6] At the hearing of this grievance, the employer raised an objection as to 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 June 2, 2000, and that the grievance was not filed until August 4, 2000, 43 working days after the measure was imposed. This exceeds the 25-day period provided for in the collective agreement.

[8] Mr. Cloutier has not contested the facts. However, he argued that he was on sick leave in July and waited until his return to work to file his grievance, which he did in August after his return to work.

[9] Mr. Cloutier further noted that at that time there were communication difficulties between his union and himself and that he therefore preferred to file his grievance himself after his return from sick leave.

Reasons

[10] Under subsection 96(1) of the former *Act*, the applicable grievance procedures must have been complied with in order for a grievance adjudicator to be able to hear and render a decision on a grievance referred to adjudication.

[11] Under paragraph 61(b) of the *Public Service Labour Relations Regulations*, the Chairperson of the Public Service Labour Relations Board may choose whether or not to extend the prescribed time on the basis of the situation that Mr. Cloutier has presented. This authority may be delegated to a Vice-Chairperson under section 45 of the *Act*. A grievance adjudicator may only find whether or not the grievance is timely or whether or not there was abandonment on the part of the employer.

[12] I note from the record that the employer has raised the issue of timeliness at the various levels of the grievance procedure.

[13] I must note that the evidence on the merits was filed before me subject to a decision with regard to the matter of timeliness. At the hearing Mr. Cloutier indicated that he intended to seek an extension of time from the Board.

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

(The Order appears on the next page)

Order

[15] I find that I do not have the jurisdiction to determine the grievance, given that it was untimely.

January 29, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,
adjudicator**