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*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:*** Nadia Hudon, counsel

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Heard at Montréal, Quebec,  
January 23 to 26, 30 and 31,  
May 3 to 5 and 8 to 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"); at the time of the events described below, he occupied a position at the PM-03 group and level. In 1999, he was President of local 10405 of the Canada Employment and Immigration Union (CEIU), a component of the Public Service Alliance of Canada (PSAC).

[2] On November 5, 1999, the grievor was disciplined (given a three-day suspension) because he used the employer's equipment to send a message to an employee even though such action was prohibited.

[3] On November 30, 1999, the grievor filed a grievance. It was referred to adjudication in January 2003 and was heard in 2006 as part of a group of grievances. The time that elapsed between the reference to adjudication and the hearing can be explained by the fact that the grievor filed complaints under section 23 of the *Public Service Staff Relations Act*. The grievor brought up the fact that the employer had acted in reprisal.

[4] On April 1, 2005, the *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.

**Summary of the evidence**

[5] In 1999, Christiane Beaupré was Associate Regional Director at the Department of Citizenship and Immigration, reporting to Monique Leclerc, Director General. The Inland Services Directorate in Montréal was responsible for cases in the Quebec Region and had 500 employees, 350 of whom worked in Montréal.

[6] In 1999, the grievor worked at the Hearings and Appeals Section and then at Inland Services, reporting to Carole Lamarre, Director. The grievor considered immigration applications on the basis of submitted files and, if necessary, met with applicants to obtain additional information.

[7] In March 1999, the grievor was President of the CEIU local, representing Inland Services employees working in Montréal and in other Quebec cities.

[8] Ms. Beaupré explained that she asked the grievor, in his capacity as the president of the CEIU local, to contact her concerning matters affecting all employees represented by the local.

[9] On September 15, 1999, the grievor sent Ms. Beaupré an email requesting authorization to distribute a petition to employees asking that the union local leave the CEIU (Exhibit E-2). The email read as follows:

[Translation]

...

*Although I believe that your message authorization policy constitutes interference in union business, it seems that we have no choice but to ask you for permission to disseminate this message by email and to post it on the union bulletin board.*

...

[Emphasis in the original]

[10] On September 17, 1999, Ms. Beaupré responded to the grievor indicating that she could not approve his request. Her email (Exhibit E-2) read as follows:

[Translation]

...

*In response to your message below, I wish to inform you that I cannot approve your request. Our decision is based on clause 12.01 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada, which provides that bulletin boards are to be used for posting Alliance notices. The message that you want to send out to employees is not such a notice.*

*Please note that our message authorization policy is based on this article of the collective agreement and consequently does not in any way constitute interference in union business.*

*In addition, I would like to remind you that, pursuant to subsection 10(1) of the Public Service Staff Relations Act, "except with the consent of the employer, no . . . representative of an employee organization shall attempt, on the premises of the employer during the working hours of an employee, to persuade the employee to become, refrain from becoming, continue to be or cease to be a member of an employee organization."*

*You can phone me for further information.*

...

[11] On October 1, 1999, Ms. Beaupré was informed by Lorraine Frigon, Manager that a copy of the union petition was posted on the bulletin board of a union local office in Gatineau (Hull area). That copy would have been sent to Marc Yelle by the grievor on September 21, 1999, and Ms. Frigon obtained a copy of the fax transmission sheet (Exhibit E-3).

[12] On October 15, 1999, Ms. Beaupré called the grievor, telling him she wished to meet at 13:00 about his failure to follow instructions concerning the distribution of the union petition. In the meantime, around 11:00, the grievor sent an email to Ms. Beaupré asking for further details in writing because he considered a written communication to be more appropriate (Exhibit E-6).

[13] The grievor did not attend the 13:00 meeting because he had requested a written communication and he had a meeting with an employee concerning a grievance.

[14] Noting that the grievor did not report at 13:00, Ms. Beaupré asked a manager to look for him. The meeting eventually took place at 13:30. Ms. Beaupré adduced a report (Exhibit E-5) in which she described the meeting's atmosphere. The report reads in part as follows:

[Translation]

...

*I therefore met with Mr. S. Cloutier in the presence of Ms. C. Chilakos, Union Representative, and Mr. A. Hardy, Labour Relations Advisor, shortly after 1:30 p.m.*

*I began the meeting by summarizing the matter, that is, by referring to his initial request and my response. I noted that I had been provided with evidence establishing that he failed to follow my instructions. I asked him if he did indeed send a fax to the office of one of our union locals using Inland Services equipment; he refused to answer. I asked him if he sent a fax to other offices in the region using our fax machines or other communication equipment (such as email) belonging to the employer, and to whom; he refused to answer.*

*I also asked him if he instructed persons to post his petition on bulletin boards. He refused to answer.*

*I then asked to whom he sent my message, which of course gave him an opportunity to circulate the petition; he refused to answer.*

*Mr. Cloutier believes that our reaction is exaggerated. He attempted to minimize the importance of the situation, and does not appear to understand that it is serious.*

*Mr. Cloutier asked me to send him my questions in writing. I did so that same day, requesting a response by Monday, October 18, 1999. . . .*

. . .

[15] After the meeting with the grievor, Ms. Beaupré sent him the following four questions in writing (Exhibit E-6):

[Translation]

. . .

*1-To what office did you send a fax about the petition using the employer's equipment? And to what person?*

*2-Did you use other means of communication belonging to the employer to communicate with some employees on this matter?*

*3-If so, what instructions were given to these persons regarding the material?*

*4-To whom did you send an email containing my September 17 message and of course your message, which was not authorized for distribution, in breach of the collective agreement and the Public Service Staff Relations Act? How do you explain these actions, each of which is contrary to the instructions given to you?*

. . .

[16] The grievor responded to Ms. Beaupré in an October 18, 1999 email (Exhibit E-4) that reads as follows:

[Translation]

. . .

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*Here are the replies to the questions that you asked me on October 15, 1999.*

- 1- Your question, as worded, constitutes interference in union business and to respond would make me an accomplice to your offence.*
- 2- What other means of communication are you referring to?*
- 3- Your question, as worded, constitutes interference in union business and to respond would make me an accomplice to your offence.*
- 4- Your question, as worded, constitutes interference in union business and to respond would make me an accomplice to your offence.*

*Your questions constitute interference in union business because the union referred to in the Public Service Staff Relations Act is in this case the Public Service Alliance of Canada.*

*Our members are in the first place members of the Public Service Alliance because the by-laws of that organization take precedence over any of the by-laws and regulations of its various components.*

*The instructions that you gave us and the question that you tried to force me to answer on October 15, 1999, constitute interference in the affairs of the Public Service Alliance. I also asked myself whether you were certain that your instructions were applied in all regions of Canada.*

*I am also informing you that I have sent a formal complaint to the Director General, CIC, Quebec Region. The complaint concerns this matter, but also, and among other things, relates to the way in which you have handled this matter from the beginning, in particular, the tone and nature of your comments and the circumstances surrounding your meeting on October 15, 1999.*

...

[17] With respect to the instructions, Ms. Beaupré explained that she did not want the employer to become involved in the union's activities concerning the union petition by allowing the use of the employer's equipment, including the fax machines and the computers for sending emails. Since she gave clear instructions, she considered that the grievor should have told her if he used the employer's equipment.

[18] Ms. Beaupré discussed the situation with the employer's labour relations advisors. Together they considered various instructions sent to employees and in particular those on the use of equipment (email and fax machines) (Exhibit E-7) and the employer's Code of Conduct (Exhibit E-8), as well as the grievor's actions. She concluded that disciplinary action was called for.

[19] On November 5, 1999, at a disciplinary meeting, the grievor was given a letter describing the events and indicating that he would be given a three-day suspension. The letter was signed by Ms. Lamarre, Director, Inland Services. In Ms. Beaupré's opinion, the disciplinary action took into account the grievor's disciplinary record (Exhibit E-1).

[20] Under cross-examination, Ms. Beaupré explained that the union represents employees working not only in Montréal but also in other cities. She wanted to know if the union petition was only sent to and posted in the union offices in Gatineau (Hull area).

[21] With respect to the meeting called for October 15, 1999 at 13:00, Ms. Beaupré stated that the grievor did not mention to her on the telephone that he would not attend the meeting. She understood from his 11:00 email that he wished to have the questions in writing, but she thought that he would attend the meeting.

[22] In 1999, Ms. Frigon was Manager of the Citizenship and Immigration offices at the Montréal airport and in Gatineau (Hull area). It was during a visit to the office in Gatineau that she saw the union petition posted on the bulletin board in the cafeteria. She obtained from Mr. Yelle a copy of the fax transmission document (Exhibit E-5) and informed management at the Montréal office.

[23] Ms. Lamarre had been Director, Inland Services, at the Montréal office since 1991. The grievor was one of her employees. In union matters affecting the region, it was established that the union would contact Ms. Beaupré.

[24] Ms. Lamarre stated that it was difficult to manage the grievor's absences. She had difficulty discussing his absences for union activities with him. In 1998, she took disciplinary action against him (by issuing a written reprimand) because he was apparently absent from work for approximately two hours.

[25] According to Ms. Lamarre, the grievor did not request authorization and apparently refused to indicate the nature of his absence. It was established that it was an absence for union business, as is noted in the December 21, 1998 disciplinary action (Exhibit E-11).

[26] Ms. Lamarre emphasized that it was difficult to contact the grievor. With respect to the November 5, 1999 disciplinary action, the meeting was supposed to be held on November 2, 1999 but could be held only on November 5, 1999 (Exhibit E-12).

[27] Ms. Lamarre noted subsequent changes in the union's representation of the grievor's interests. According to a November 18, 1999 letter from the PSAC (Exhibit E-9), the grievor was represented by Robert P. Morissette.

[28] Starting on November 3, 1999, union local 10405 was placed under trusteeship; the employees were notified on November 25, 1999 (Exhibit E-10).

[29] Ms. Lamarre then testified concerning subsequent incidents that are to be dealt with in another case.

[30] The grievor explained that he had been president of the union local since 1997 and that in 1997-1998 he had problems obtaining leave in order to prepare grievances and meet with employees. He emphasized that more leave for union business was given to union representatives at the regional level (Exhibit F-25).

[31] With respect to the union petition that he wished to distribute in September 1999, the grievor noted that he was acting within the PSAC union structure. Throughout the process, he was in contact with the PSAC; he also received a response from the PSAC Regional Executive Vice-President, Quebec Region (Exhibit F-2).

[32] Following Ms. Beaupré's refusal of his request to post or distribute the union petition electronically, the grievor noted that he signed the union petition outside the office and outside working hours. Even in those circumstances, he said, he was the subject of comments by management (Exhibit F-13).

[33] In the grievor's opinion, there was no question of using the employer's equipment to contact all the employees. Someone happened to tell him that some employees in Gatineau (Hull area) were not informed. He therefore faxed the union



petition to a union representative in Gatineau (Hull area), including a copy of the employer's instructions (Exhibit E-3).

[34] In explaining the background to the events concerning the union petition, the grievor adduced copies of the memorandums filed with his complaint of unfair labour practice (Exhibit F-16). He emphasized that on October 15, 1999, he was to represent an employee at 13:30. According to the grievor, he stated that he could not attend the meeting; that was why he asked management to send him its questions in writing. Several emails were exchanged until he was called to the November 5, 1999 disciplinary action meeting (Exhibits F-19 and F-20).

[35] The grievor considered it difficult to respond to the employer's questions concerning the union petition's distribution because it involved union business, in which, in his opinion, the employer had no right to interfere.

#### **Summary of the arguments**

[36] The employer noted that management weighed the pros and cons of refusing to authorize electronic transmission and distribution in the workplace of the union petition. At issue was the possibility of the local's leaving the union structure. The employer might have been asked by other union representatives to distribute documents recommending that the current union structure be maintained. The employer would have been involved in a union struggle.

[37] Once the instructions were given to the grievor, he was required to follow them. If he believed that the instructions were illegal, he was responsible for contesting them in a grievance.

[38] There is a policy on the use of email with which employees are required to comply (Exhibit E-7).

[39] It was established that the grievor used the employer's equipment to send a union petition to Gatineau (Hull area). When questioned on this point, he refused to answer and did not cooperate in order to clarify the situation.

[40] This incident was not the first time that the grievor was absent without informing the employer (his 1998 reprimand) and that he refused to cooperate in order

to clarify the use of his time or his actions. The employer was therefore justified in taking disciplinary action with a three-day suspension.

[41] The grievor argued that he did follow the employer's instructions. The union petition was distributed outside the office. The transmission of one copy of the union petition to Gatineau (Hull area) was an isolated incident, a single transmission; the grievor considered that he had followed management's instructions.

### Reasons

[42] There is no need to debate here the legality of management's instructions prohibiting the union petition's distribution using the employer's equipment. The union petition does have to do with local 10405 withdrawing from the CEIU regional structure while remaining part of the PSAC national structure.

[43] However, the legality of the refusal has not been contested in the present grievance. As president of the union local, the grievor requested authorization to distribute the union petition; the employer refused.

[44] Overall, the grievor respected the employer's decision. The union petition was presented to the employees outside the office and outside working hours.

[45] The incident involving the union offices in Gatineau (Hull area) must be considered an isolated incident.

[46] The employer cited the fact that the union petition was posted in the cafeteria of the Gatineau (Hull area) offices and was faxed. The grievor believed he followed the employer's instructions (Exhibits E-2 and E-3) prohibiting distribution of the petition by email to all employees.

[47] There is no evidence establishing that the grievor incited an employee in Gatineau (Hull area) not to follow the employer's instructions. The employer considers that faxing the union petition incited the employee in Gatineau (Hull area) to post it. The grievor cannot be accused of encouraging that posting simply by association. The employer could have called as a witness the employee in Gatineau (Hull area), Mr. Yelle, to provide his version of the facts. This adjudicator would have appreciated that employee's testimony and, at the hearing, would have verified whether he was incited not to follow the employer's instructions.

[48] With respect to the transmission of the union petition, ultimately the grievor can be blamed for faxing a copy of the union petition. On this point, the employer referred to the December 12, 1996 memorandum (Exhibit E-7) concerning use of the employer's communication equipment. This memorandum reads in part as follows:

[Translation]

...

*Employees who use the system for purposes other than those authorized could be subject to disciplinary or other measures. Management has investigated recent incidents of abuse of the system and has taken disciplinary measures against the employees who ignored the CIC policy on the use of email.*

...

[49] It appears that the employer wishes to punish abusive or repeated use. In this case, this point leads me to reduce the seriousness of the grievor's action.

[50] That said, given that the grievor was refused authorization to use the employer's equipment, he should have exercised prudence before using the fax machine, even though he used it to send one document to only one employee in Gatineau (Hull area).

[51] I also note that, when the grievor was called to a meeting in order to explain his action, he cited interference in union business and provided few explanations.

[52] Ultimately, the employer's questions had to do with facts brought to its attention by the grievor himself, that is, the transmission of a union petition.

[53] The employer noted that it had reprimanded the grievor in 1998 for being absent without prior notice. The employer emphasized that the grievor was reluctant to indicate the nature of his absences.

[54] Given the attenuating factors as well as the grievor's repeated behaviour, I consider a three-day suspension to be disproportionate and I reduce the suspension to one day.

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

*(The Order appears on the next page.)*



**Order**

[56] The grievance is allowed in part, and the disciplinary action taken against the grievor is reduced to one day. The employer must reimburse the grievor amounts equalling two days' wages and appropriate benefits.

April 19, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**

