

Date: 20070518

File: 166-02-36339

Citation: 2007 PSLRB 54



*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: Michel Morissette, counsel

For the Employer: Raymond Piché, counsel

Heard at Montréal, Quebec,
January 23 to 26 and July 10 to 13, 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”) in a position at the PM-03 group and level. On May 9, 2003, he requested paid leave to file a grievance to the Public Service Staff Relations Board (“the Board”) and a confirmation that he would not be granted paid leave to prepare for a hearing before the Board on May 26, 2003. The employer refused the request for leave and confirmed that no leave would be granted for hearing preparations.

[2] The grievor filed a grievance on June 9, 2003, contesting the employer’s refusal to grant paid leave to file a grievance with the Board.

[3] The grievance was referred to adjudication on June 30, 2005. The parties were unavailable to attend a hearing before January 2006.

[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] The grievor stated that he requested leave on May 9, 2003, by email. It reads as follows (Exhibit E-21):

[Translation]

...

Since Julie Thibodeau is away, I am sending you the following requests.

I would like to have some time to file a new grievance to the Public Service Staff Relations Board.

I would also like confirmation from you that I will not be granted paid leave to prepare for the hearing that will take place on May 26.

...

[6] The grievor stated that Julie Thibodeau, his supervisor, had refused to grant him leave. On May 22, 2003, he received confirmation of this refusal by email (Exhibit F-8). That email reads as follows:

[Translation]

. . .

I checked with HR, in particular with Dominique Nadeau, who confirmed the discussion or message from Dianne Clément on May 9, 2003, which informed you that the collective agreement and the Administration do not provide for time to prepare for hearings before the Public Service Staff Relations Board.

Therefore, I cannot grant such a leave. However, if you wish to submit an annual leave compensatory time request if you have the credits I will gladly approve it.

. . .

[7] In cross-examination, the grievor admitted that he had not indicated the amount of leave he wished to obtain and stated that he wanted to file a grievance with the Board against his bargaining agent.

Summary of the arguments

[8] The grievor maintains that, under article 14 of the collective agreement signed by the Treasury Board and the Public Service Alliance of Canada on November 19, 2001, for the Program and Administrative Services group bargaining unit (“the collective agreement”), he is entitled to leave to file a grievance with the Board.

[9] The employer maintains that clause 14.01 of the collective agreement does not provide for leave after the grievance has been filed and that a refusal to grant leave to prepare for a hearing before the Board is in accordance with the provisions of article 14 of the collective agreement.

Reasons

[10] The evidence presented at the hearing is not entirely clear as to whether the employer’s refusal refers to the filing of a grievance with the Board or the preparations for a hearing. In its reply at the first level of the grievance procedure, the employer states that the “[translation] . . . collective agreement . . . does not provide for paid or unpaid leave to prepare a grievance or submit it to the Board. . . .” However, in its reply

at the final level, the employer stated that the collective agreement does not provide for leave to file a grievance and prepare for a hearing before the Board.

[11] Clause 14.01 of the collective agreement reads as follows:

14.01 When operational requirements permit, the Employer will grant leave with pay:

(a) to an employee who makes a complaint on his or her own behalf, before the Public Service Staff Relations Board,

and

(b) to an employee who acts on behalf of an employee making a complaint, or who acts on behalf of the Alliance making a complaint.

[12] In my opinion, the wording in paragraph 14.01(a) is clear and refers to the filing of a grievance. Before a public servant can file a grievance, the grievance must be prepared. Clause 14.01 provides a benefit to the grievor. The clause, in my opinion, must be interpreted such that the grievor actually obtains that benefit. I accept that the employer can refuse to grant the grievor leave to prepare for a hearing, but the employer should grant leave for the preparation and filing of a grievance with the Board if operational requirements permit.

[13] The grievor did not specify the amount of leave he wished to obtain. He also did not establish that operational requirements permitted the taking of leave. Therefore, I cannot assess the prejudice he has suffered.

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

(The Order appears on the next page)

Order

[15] I declare that the employer misinterpreted paragraph 14.01(a) of the collective agreement in refusing to grant the grievor paid leave to prepare and file a grievance with the Board.

May 18, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,
adjudicator**